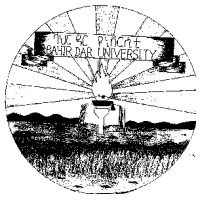
BAHIR DAR UNIVERSITY

FACULTY OF LAW



PROPERTY AND LAND LAW I (LAWS.235)

Distance Teaching Text

BY

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PROPERTY AND LAND LAW I

A DISTANCE TEACHING TEXT

BY

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INTRODUCTION

Property and Land Law or simply *Law of Property* is one of the branches of substantive civil laws. As such, therefore, it is distinct from procedural laws such as civil procedure and criminal procedure. It is also different from many branches of laws within the larger category of substantive public laws such as criminal and taxation laws. Even it is different from many substantive private laws such as law of persons, law of family, law of successions, law of contracts, law of non – contractual liabilities (torts), etc…

As the name itself suggests, Law of Property is concerned with relations of persons in regard to things called "property". Yet every aspect of human interactions that involves property is not necessarily a matter to be dealt with in the law of property. As can be gathered from a casual glimpse at various substantive and procedural laws, property may be found involved in a variety of ways in various forms in almost all branches of laws. For instance, a cursory glance at the law of Family, law of successions, also contracts, Law of non-contractual liabilities and commercial law prove that property is at the center (core) of many actual or potential legal interactions.

Indeed many of those bodies of principles and rules in those aforementioned branches of laws are concerned with rights and duties of persons which in one or another form involves property as subject matter of legal interactions. Besides these substantive civil law categories, if one makes a rough reading into criminal laws, one can easily discover that some part or section is devoted for protection of property.

But, all these are not properly speaking laws of property. Despite interrelationships each of them are distinct fields or branches of laws.

The boundaries and proper scopes of the law of property on the one hand, and each of the above-specialized categories of laws, on the other, is not always easily identifiable, some, uncertainties and contested terrains recur from time to time.

Furthermore, doubts and debates are not merely confined to the applicable laws and legal institutions as such. The idea of property, the subject matter of the Law of Property, in itself, is not simple to understand. The very concept of *property* is very difficult to define and is extremely broad ranging.

For laypersons property may signify a man's belongings_ physical objects _ such as lands, buildings, domestic animals, utensils and tools & equipment. Even more broadly it may mean non-physical things as patents, copyrights, trade secrets and business goodwill.

For others the term may refer both to physical objects in space and rights of individuals in these physical objects and every other legitimate interest.

For lawyers, the term, in its strict sense, refers not merely to physical objects and rights of individuals in or over those physical objects or in any other matters and relationships. It is more than many of those physical and non-physical things, and less than those of every things and relations.

Property is actually a dynamic term whose meanings contents and scopes change from time to time and varies from place to place.

It is a well-known fact that individual and communal life with out property is inconceivable. As one famous legal scholar observed, human life and human society would be impossible with out the use and consumption of material things. Food, cloth and tools are essential for individual as well as communal life.

Property is an indispensable foundation of every society. It involves the most basic relationships both in social, economic and political aspects. Law of property is then about these basic relationships as any part of the law, it attempts to govern, dictate and regulate the behavior of persons as it relates to the most basic relationships involving property.

Property and land law, Law of property in brief, is a two semester course designed to introduce students with the various principles, rules and norms that affect the behavior or persons when interacting each other making property the basis of their legal relationships. Hence these Modules are prepared for property and Land Law I and for its continuation, property and land Law II.

In these Modules an attempt is made to introduce students with basic legal concepts of Law of property, beginning from the idea (concept) of property, to possession, ownership through some other bundle of rights including usufruct, servitude, etc. Though our primary focus is on the Ethiopian Law of property as existing in the 1960 Civil Code and other piecemeal legislation, we have tried our best to provide the discussion with general theoretical backgrounds as developed in other jurisdictions and developed jurisprudential doctrines.

This modest attempt is made a midst acute shortage of domestic reference materials relating to the various topics and other shortcomings peculiar to our legal system in this field. Nevertheless, we have great hopes that the Modules will be serviceable not only for Distance program law students but also for regulars law students, practitioners, lawyers and judges

MODULE ONE

PROPERTY, LAW OF PROPERTY

AND

CLASSIFICATIONS OF OBJECTS OF PROPERTY

INTRODUCTION TO MODULE ONE

Hello! Dear distance student! Welcome to Property and Land Law I course. We hope you have had good time and opportunity to learn those other courses given before this time we further assume that you have acquired some skill and knowledge, which really equips you with good background to take this course.

In this property and land law I course, you will study about property and property law, possession and ownership. For this you will be having two modules that encompass four units in general.

This part now is a general introduction for module one Module one will introduce you with basic concepts in the law of property. As you will discover, the Module really provides you with basic legal concepts that serve as stepping-stones to enter in to meaningful discussions of more or less general and special detailed matters in the law of property.

This module consists of two units. Unit I introduces you with the idea (concept) of property. It presents various connotations of the term "property". It tries to analyze this concept from different legal perspectives. Whether property is referring to physical things (physicalist conception) as we are accustomed to, and/or the interests embodied in or over these things (dephysicalization of property) will be made out whether it signifies not only physical things and/or interests inhering in them but also other "things" which are insusceptible of perception by the sense organs will be examined as well.

With a view to come closer to the proper subject matter of the law of property in clear and understandable terms, some description is made, in general fashion, about patrimony, possession and ownership. Then, we have tried to

distinguish real rights (*rights* in *rem*), the real subject matter of law of property, from personal rights (*rights in personam*), the subject matters of law of obligations (i.e., law of contracts and torts). In doing so, the distinction between law of property and other laws that involve property in their regulations such as law of contracts, law of non-contractual liability, law of family, law of successions, etc. will be evident.

Unit II will deal with classifications of objects of property. For different purposes and goals, and on various grounds objects of property are classified in to a number of functional categories. Principally this unit will be treating these classifications: movables –Vs- immovable, corporals- vs incorporeals, intrinsic elements –vs- accessories, and private –vs- public. Some legal consequences, which flow from these classifications, will be presented.

Dear student, you need to read all the units and sections therein critically and thoroughly. You have to try to provide answers for every questions Presented everywhere in this module.

UNIT ONE

PROPERTY AND LAW OF PROPERTY

INTRODUCTION

This is the first unit of your study in this course. It deals with the idea of property and some concepts related to the term property. Property will be differentiated from things (*res*)- subject-matter of property (the object (material) of property), patrimony, possession and ownership. Law of property shall be defined and its distinctness will be shown in comparison to Law of contracts, Law of family, Law of successions, law of torts, etc.

This unit also discusses *rights in rem* (real rights) and *rights in personam* (Personal rights) with a view to give a clear setting of the place, scope and subject- matter of the Law of property.

Objectives:-

After completion of this unit, students will be able to:-

- Discuss the concept of property,
- Define the concept of property,
- Appreciate the dynamic nature of the concept of property,
- Define Law of property,
- Differentiate law of property from law of contracts, law of family, law of successions, law of torts, etc
- Distinguish property from related concepts such as patrimony, possession and ownership, and
- Compare and contrast Real rights (rights in Rem) and personal rights (Rights in personam).

1. THE IDEA OF PROPERTY AND LAW OF PROPERTY

It is good to begin from the beginning. So, what is property dear student? What is it referring to? Is " property" a collective name given for all sorts of physical things that are appreciable in terms of money? Or, is property a type of right rather than referring to physical objects? If it is a type of right, what type of right is it?

Dear student, can you distinguish "property" from such related legal concepts as "patrimony", "possession" and "ownership" ?

As is the case in other jurisdictions, Ethiopia has its own law that determine, among other things, what counts as property, who is to own what and the protection of various property rights. There is a part in the 1960 Ethiopian Civil Code that deals with these and related issues. Book III that is titled, as "Goods" in English, *Nibiretoch* in Amharic, is a part devoted for property and related issues. Plenty of Articles and provisions (Arts 1126-1674) are written in to the content of the Civil Code with a view to regulate the behavior of persons that pertain to property and related matters. This is actually the main body of the law of property of the country.

In addition to this part of the Civil Code, we do have a number of other proclamations and subsidiary legislation proclaimed at different times and in different circumstances to deal with matters of property. The supreme law of the country, the Constitution of the Federal Democratic Republic of Ethiopia (proclamation No. 1/1995), for instance, proclaims, in its Art.40, about property. This should not surprise any one as property plays an essential role in our individual and communal life. At present, if not always, property is

regarded as an indispensable foundation of the free individuals living in welfare states.

Some scholars treat property as the keystone right in liberal constitutional orders. These are others that treat property as a human right issue. Simply stated property is an important and basic matter in individual and societal life. As such it involves basic relationships, be it in the cultural, social, economic, or political spheres. So, it is one of the issues regulated by law. Constitutional laws of countries and other statutory laws, and the common law in the Anglo-Saxon legal system, somehow deal with property and behaviors of individual groups and state organs. There is therefore a specialized branch of law which deals with property and some basic proprietary rights and obligations, as will be shown below. This branch of the law is called law of property.

One cannot, however, properly grasp the law about or relating to property with out some background of the idea of property. At least a minimum knowledge of the idea of property is needed. Thus, in this course we shall attempt first to explain the concept of property, the subject matter of law of property.

The problem however begins with this meaning (definition) of the term "property". To begin with, property is not an expression of a specified concrete thing. It cannot be touched or seen. It is some thing ideal that we share in our communications and interactions in various ways and forms. But because it lacks precision and clarity at some point we may fail even to communicate. It is actually a term that has a bewildering variety of uses.

In the legal literatures one may find the term property used in different senses by different writers. Even with in the same book, journal or any other script, one may observe different senses of the term. This is because the term

has several meanings. For example, it can simply mean lands and buildings. In other cases, it may signify all the things a person owns, or any thing, which is useful to man, everything, that has material or moral value for human beings, beginning with their own body, reputation, freedom to think and act. Still in another context, it may mean a thing or things capable of ownership. In this sense, then the term includes not only physical, tangible, corporeal things such as land, car, computer, desk, book, pen, etc… but also non physical or incorporeal things such as copyrights, business goodwill, patent rights, shares, etc… sometimes property means simply ownership – a right in physical or non-physical things.

Thus we have to be careful in our readings relating to property to identify the particular context where in the term property is employed.

Generally the term property is too ambiguous to understand. It may mean many things depending on the context. Even when it is referring to things of value, what is property for one may not be property for another; what is property at one time may not be property at another time or vice versa; what is regarded as property in a given locality or country may not be treated as property in another place. Hence it really reveres powerful emotions and debates in law.

But, one should not be frustrated by the uncertainties and lack of precision as well as lack of agreements in the connotations of this term property. The study of not only of law of property, but law in general would have been so much easier if there were fewer ambiguities and contestable terms, concepts and issues. So, dear student, take this concept as a good enterprise to develop your ability to analyses concepts, take it as an advantage to dig in to its essence and understand what it really means in law.

As one noted legal scholar observed, many of us of course have been taught from childhood to think of property in narrow senses. Yes, often, if not always, physical things such as lands, buildings, automobiles, farming tools, domestic animals, utensils, food items, money, bed, etc the physical things as such just cross our minds when we think of property. In this popular sense, then property means the thing or things capable of ownership.

Yet, what is “thing” is in itself difficult to understand. In those earlier days, the word thing used to signify to physical objects that were appropriated by man at that time there were very limited things, which historically included certain sections of human beings as slaves, and in some nations married women and children. Later on, however, the domain of “things” began in a sense to expand to encompass hitherto unknown physical and non-physical objects and in another sense to shrink, not to include human beings and certain other physical objects.

Accordingly, in the popular, laypersons, sense, the term property includes not only physical (corporeal) things such as a pen, desk, watch, land, car, etc, but also non-physical (incorporeal) things such as patent rights, copyrights, business good will, debts etc. So an ordinary lay person thinks of property as a man’s belongings or as the things that a man owns. Even a lawyer commonly speaks similarly; "but when speaking with care", writes one legal scholar, "he defines the word beyond this popular meaning".

Nevertheless, we do not find one and the same meaning even with in the same family of jurists. For one and the same question: WHAT IS PROPERTY? One finds a number of variable answers. Even worse, there are some legal scholars that maintain the idea that the question is unanswerable. To the opposite of this, again, some say that the meaning of property depends on the context. Still there are many others who define property as meaning every interest or right. Hence, one famous property law scholar says that the word

“Property” is a word with high emotional covertness and so many meanings that it has defied attempts at accurate all –inclusive definition. There is, therefore, much debate over the meaning of the term and as to its coherence as a legal concept.

Etymologically the English word “property” is a derivative of the Latin “*proprietas*”, a noun form of *proprius*. In Latin *proprius* means something private, ones own or peculiar to one self. In this sense it denotes the objects of rights, 'things' that have pecuniary value and the rights that persons have with respect to things.

Black’s Law Dictionary defines the term as:

1. The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership …. Also termed bundle of rights.
2. Any external thing over which the right of possession, use and enjoyment are exercised.

Black’s law Dictionary further provides: “In its widest sense, property includes all a person’s legal rights, of whatever description. A man’s property is all that is his in law.”

Webster’s Ninth New Collegiate Dictionary, on the other hand, provides the following definitions:

"Something owned or possessed… the exclusive right to possess, enjoy and dispose of a thing; ownership something to which a person has a legal title".

Corpus Juris Secundum on its part runs:

> *Property is divisible in to different species, including physical things such as lands, goods, money; and intangible things, such as*

> *franchises, patent rights, copyrights, trade –marks, trade names, business goodwill, rights of action, etc; ... the word... may be construed to include both intangible rights and physical things ... It denotes the subject matter in which rights and interests exist, or the thing itself, that is tangible physical things or objects; a corporeal thing.*

After providing these meanings of the term property, again Corpus Juris Secundum goes on to give the strict legal meaning of the term. It reads:

> *In law it is not the physical material object, which constitutes property. The term means some thing more than the mere thing, which a person owns, and in its more appropriate and true legal sense, property is not alone the corporeal things or physical objects itself... The physical objects constitute only the foundation and material of property, and, although the subjects of property, they are, when coupled with possession only the indicia, the visible manifestations of invisible rights, the evidence of things not seen, and the idea of property springs out of the connection, or control, or interest which, according to law, may be acquired in or over things.*

From the forgoing it is possible to identify physical conception of property, on the one hand and dephysicalisation of the term on the other. Treating those physical things of value as lands, buildings, cows, slaves, radio, pen, etc, represents the time immemorial conception of property. This physicality conception still prevails in the common life. The inclusion of intangible things such as patent rights, copyrights, trade marks (design) trade secrets, goodwill etc has evolved through time with ever increasing civilization, technological developments and changes in the economic base of society which in turn brought about development in legal thinking.

Besides those physicalist and non-physcialist conceptions of property, the foregoing quotations show that the idea of property also extends to encompass those rights or interests embodied in the physical (corporeal) and non-physical (incorporeal) things, i.e., the rights or interests in or over or relating to the subject matters of the rights and interests. Mind you here the term is denoting the rights that persons have with respect to things (whether corporeal or incorporeal) besides the objects of rights that have a pecuniary content! Therefore, it should not appear as a strange and awkward idea if you here a legal scholar defining property as a claim or right rather than as thing.

It would be a puzzling one if property is defined as meaning everything. Once up on a time James Madison, one of the founding fathers of the U.S, for example, wrote as follows:-

> *This term (property) in its particular application means "hat dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."*
>
> *In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right, and which leaves to every one else, or merchandize, or money is called his property.*
>
> *In the latter sense, a man has property in his opinions and the free communication of them.*
>
> *He has a peculiar value in his religious opinions, and in the profession and practice dictated by them.*
>
> *He has property very dear to him in the safety and liberty of his person.*

> *He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.*
>
> *In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.*

Do you share this idea of Madison dear students? Dear colleague can you identify which, among the following, one is or is not property: the sun, the air, the ocean, a river, a snake, a hyena, a dog, a human being, an arm or leg or sperm /ova of a human being tissue or blood or kidney or any other part of a human person, corpse of dead human being, labor of a worker, knowledge on a particular matter, news or information which only one or a limited number of persons know, salary of an employee, right of privacy, pension debt. On what basis do you determine whether one is or is not property? Dear student, have you ever heard a name of a human person by Nibretu or Nibretie or Nibret? Is there any useful implication from such names for our discussion now?

Before concluding this discussion let's add another legal approach to the meaning of property. According to currently prevailing opinions, Property is defined as a complex aggregate of bundle of rights. What constitutes bundle of rights will be highlighted below in this unit under Section 1.3 and later on in Module two when we deal with ownership. Arguably, some scholars describe the term in analogous manner with a "shopping bag of fruit" As a shopping bag of fruit, filled with oranges, apples, bananas and peaches, where in people are free to pack it and rearrange it in whatever way they see fit, and where it is possible to take out the apples, for example, with out affecting the shopping bag. The concept property can be analyses as the aggregate of rights, privileges, power and immunities with their corresponding duties, disabilities and liabilities.

Leaving the in-depth analysis aside and confining our attempt here to a modest one, let's have a conclusion on the idea of property. Indeed, we observed that it has a bewildering variety of uses, in particular it is used in the legal literature to signify both the objects of rights that have money-value and the rights that persons have with respect to things. Another Jurist also maintains that the strict use of the word refers to the rights that a man has in or over things with which the law deals.

Thus:

> Property may be defined as an exclusive rights to control an economic good, corporeal or incorporeal, it is the name of a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of man with respect to things of value.

In the strict legal sense, therefore, property is a right, a claim. It exists in law as distinct from the objects (corporeal or incorporeal). Though the type and nature of the objects of rights of property, the things, vary from time to time and place to place, they are generally characterized as resources of wealth which society attaches to them some economic, aesthetic, spiritual or cultural values. And, in this regard it is immaterial whether the things, resources of wealth, are corporeal or incorporeal. Nevertheless, it must be known that all things are not necessarily objects of property rights. There are things – physical or incorporeal which cannot be legitimate objects of property. Certain objects may be excluded for customary, or religious or other public policy reasons.

Generally, legislation, doctrine or jurisprudence in various legal systems define the things that may or may not become objects of property rights. Some physical or intangible things may be excluded from becoming objects of property interests. Customs and morality as well as public policy and scientific truths may trigger for such exclusions. Hence, making human persons, or human body or any part there of an object of property interests is no more acceptable in the contemporary world. Of course, some exceptions may be found with regard to parts or certain bodily organs for some public interests in various nations.

Coming once again to the notion of property, we have said that it is, strictly speaking, a right or interest in or over, or in respect of things. At this juncture one has to inquire whether every right or interest can be treated as property. There are a variety of views in this regard.

One view is that which treats all and every rights of person's as forming part of property of that person. In other words, all a person's legal rights of whatever description will be treated as property. Thus in the past it used to be spoken of the property which a master has in the person of his servant and a father in the person of his child. So Hobbes wrote. " of things held in propriety, those that are dearest to a man are his own life, and limbs; and in the next degree, in most men, those that concern conjugal affection, and after than riches and means of living.

Even John Locke said that every man has a property in his own person. Do you see dear student that man's interest in his own life, in the person of his servant or child or in his marital life, etc, used to be described as property? Well, this is not the acceptable usage of the term property today.

Another view runs "property includes not all a person's rights but only his proprietary as opposed to his personal rights" According to this view, personal rights such as life, liberty, privacy, or reputation of a person are not property rights. Only those rights that are proprietary in nature, whether these involve *rights in rem* or rights in personam, are treated as property. As will be explained bellow proprietary rights are rights or interests that can be measured by money –rights that bear pecuniary value. The distinction between *rights in rem* and rights in person am will be shown below. Therefore, some how broadly, property may be described as encompassing these real and person am rights.

On the other hand, another view, which is contextually accepted in modern property laws of various legal systems, maintains that property is a term that includes not all proprietary rights, but only those, which are both proprietary and *in rem*. According to this view, therefore, rights in personam are not property even if they are assessable in terms of money. Debts and credits are thus not property. They are rights) interests) personal in nature- rights in personam.

While rights in rem are governed by the law of property, rights in personam are governed by the law of obligation which basically consists of law of contacts and law of non-contractual liabilities.

In conclusion we can say:

> Neither all things are objects of property rights, nor all rights that persons have with respect to things are property rights.

As professor Yiannopoulos made it clear only those things in the legal sense may be objects of property rights. Entities that are not things in the legal sense may be objects of a variety of other rights, according to modern conceptions living human bodies and members or parts there of are not things they are objects of a comprehensive rights of personality. He further explains, despite the generality of the above statement, blood plasma, hair, and organs separated from a human body are things and objects of property rights, dead bodies, though ordinarily destined to be disposed of by burial or cremation are likewise regarded as things-objects of property rights.

The other conclusion that we can have here will be that which is expressed by

> All rights that are susceptible of pecuniary evaluation are property in the sense that they are guaranteed by the legal order and form part of a person's patrimony. But only rights that confer a direct and immediate authority over a thing, that is, real rights (rights in rem) are governed by the civil law of property.

Dear student, now it is time for us to relate the foregoing general theoretical analysis of property, objects of property rights and other linked issues to what is provided under the Ethiopian Civil Code (1960), here in after to be mentioned as C.C

As mentioned before, the main body of the law of property of Ethiopia is contained under Book II of the Civil Code. As can be seen, Book III is titled as “Goods”, 'Sele Nibretoch' in Amharic. When we go through to the content or body of this Book (from Arts. 1126-1674), we can easily observe that the words “Goods”, “things” and “property” are employed sometimes as synonyms, as alternative terminologies (interchangeably). In some places, each of them may have some specific different meanings.

Further we may notice that objects of property rights and the rights (what we call property in the strict legal sense) as expressed by one of the above terms. This mixing –up, perhaps confusion, of rights and objects of rights may be a vice that Ethiopia has inherited from the Roman sources through the French Civil Code.

No one can find a definition of the terms “ Goods”, “things” and “property” under the Civil Code of Ethiopia. The code simply begins with classifications of goods in its Art.1126-with out defining what “goods” is. Though the title of the book is coined by this term “Goods”, it rarely appears in the content. The term “thing (s)” is rather frequently employed, the term “property” is used

sometimes. Any one can check this by going through each article in this part of the Civil Code. And, despite some mixing-up of rights and objects of rights, it appears for us that, through critical and informed readings, it is possible to distinguish the property rights from the objects. In other words, it is possible to identify the sense(s)of the word " Good(s), or "things(s) or "property" as referring to the right itself or the object of the right. An attempt to show these distinctions will be made through out our analysis of the provision of the Civil Code.

For the time being let's declare our idea there in this Module we will be employing the term "property" to refer to those rights and interests of persons assessable in terms of money and are in rem in their nature. But due to deep-rooted habits and slip of the pen we might be caught up using the term "property" to refer to objects of property rights. If that so happened please forgive us for this employment of one and the some term to express at least two different legal issues concepts or the regulation thereto.

Despite such probable technical errors, we assure to any reader that we are not confusing the idea of property with the objects of property. So, let's put this remark: the word " Property" in this module is referring to the strict legal sense of the term as described hereinabove. If physical things such as lands, buildings, cows, donkeys, desks, etc, or intangible things such as songs, novels or creation of the mind etc, are expressed by the term "property", it is to refer that these are objects of property rights.

This brings us to the discussion of law of property, or property law. Dear student, what do you think is Law of property? Do you think that it is a law dealing with all matters of property? Is it not that part of the law which consists in every body of principles and rules relating to property wherever and in whatever form its appears to be? Can you really distinguish law of property from law of contracts? Law of family?

You know that law in general regulates the behavior of persons. And it is usual to classify law in to a number of categories for various purposes. The basis of classification may vary as well. Taking the territorial scope of application or taking the parties involved in the regulation, we may classify law in to international and national (Municipal) laws. Taking national (Municipal or domestic) law as such, we may classify it as public law and private law. Within each category of public and private laws again we do have a number of specific or specialized fields of laws. Within such functional classifications of municipal laws, we find that property law is a branch of private law.

The law of property deals with principal real rights that a person may have in things, objects of property rights that a person may have in things-objects of property rights. It is different from the law of persons, the law of contracts, the law of torts, the law of family, the law of successions, etc. As you know the law of persons deals with the incidents of natural and juridical personality; the law of contracts as well as the law of torts deal with relations of creditors and debtors where in the creditors are entitled to demand from the debtors performances. On the other hand, the law of family regulates legal relations arising out of blood relationship or marriage; the law of successions deals with the devolution of property up on death.

Obviously the above mentioned and most other branches of the municipal law deal with relations of persons that may relate to property, or may give rise to property rights. Most matters in the law of successions are about property rights. Many of the issues in the law of non- contractual liabilities are related to property. Even with in the relationship of a husband and a wife, property holds central place. The same is true with law of contracts in general and other special contracts.

Unlike these various laws that may some how touch or involve property as the basic foundation of relationships between persons, the law of property regulates the relationship of person as they relate to real rights (*in rem* rights) which are enforceable against every person in relation to the object of property rights. In short law of property deals with proprietary rights in *rem*. It determines the behavior of person when it relates to these proprietary *rights in rem.* It answers these questions: what counts as property? Who is to own what –what justifies giving a particular person an exclusive right to a particular thing? What are the nature, content and scope of the rights of individual persons in or over particular things? What are the duties and limitations of others in regard to such objects of property rights? And how are property rights and other relations of persons with things to be protected?

1.2 Property Distinguished from patrimony, Possession and ownership

This section tries to clear doubts that may exist in understanding the concept of property with some related concepts. It is to be recalled that property is different from things (res) as such. Things are objects of property. These things may be corporeal or incorporeal. We hope our previous discussion has contributed a lot in distinguishing property from the objects. Now we shall proceed to differentiate property from patrimony, possession and ownership

OBJECTIVES:

After completion of this section, students will be able to:-

- Distinguish property from patrimony;
- Differentiate property from possession,
- Discuss the relationship that exists between property and ownership.

Dear student what do you think is patrimony? Is it another name for property? If not, how do you characterize the relation between the two? While it appears obvious for any person that property and possession are not

alternative, or interchangeable terms for same ideas, characterizing their connection and showing their distinctive features is not a simple task. Can you attempt dear student? How about property and ownership?

According to contemporary civilian writers, rights can be divided in to patrimonial rights and extra patrimonial rights. While extra patrimonial rights are not assessable (measurable) in terms of money value, patrimonial rights can be expressed in terms of money. The right cannot be evaluated in money in the case of extra patrimonial rights. For example, the paternal or maternal powers of parents the status of individuals, the right of man to his own body or name, etc can not be measured in money.

Patrimonial rights, on the other hand, can be expressed in terms of pecuniary value. This begs another issue which rights can really be expressed in terms of money. This needs to be explained. Though the in-depth treatment of this issue of patrimonial rights is beyond the scope of this course, generally we can explain it as a right mainly relating to property and objects of property. And patrimony may be defined as the set of all interests, assets and liabilities with an economic value. It includes rights and duties that are appreciable in terms of money. In other words this means that patrimony encompasses not only rights and rights in *rem,* but also duties, liabilities and rights in personam. Both *rights in rem* and *rights in personam* are contained in the notion of patrimony.

As shown above, matters that relate to principal real rights (*rights in rem*) are governed by law of property and this is founded up on the notion of property. But rights that relate to specific limited individuals, as will be shown below, are rights in personam and are subject –matters of laws of contracts & torts (law of obligation).

From the foregoing, one can easily notice that property and patrimony are not synonymous terms; patrimony is wider than property since it encompasses personal rights (rights in personam) beside those domains of property, i.e., *rights in rem*.

On the other hand, property is different from possession, though they are related. As we have seen, in its strict sense, property is a type of claim (rights). Though it is usual to call physical objects such as lands, buildings, cars etc with this name of property, in the strict sense these are objects of the interest or claim or right that we call it property .As shown herein before, these physical objects constitute the foundation and material of property, which is interest. They are the indicia, or visible manifestations of invisible rights. They are in the true sense evidences of things not perceptible to our sense organs.

When we come to possession, however, it principally expresses, as will be shown in the next module, the physical relationship that exists between a person and a thing. Of course, as will be explained, there will be some internal attachment between a person called the possessor and the thing under his possession. And it will be explained that possession is the source of many real and personal rights and obligations but as such taken on the face, possession is not strictly referring to things. It is not as well symbolizing property as such. It is neither an object of property nor property, it is rather a term that expresses the actual, whether direct or indirect, control which a person exercises over a thing with the necessary psychological element. (See Arts. 1140 ff).

Nevertheless, property and possession are very interrelated concepts. Possession represents the most basic relationship, in the physical sense, that exists between men and things-which are objects of property rights. And in the law of property one finds a part or section devoted to the regulation and

protection of possession. Simply possession is protected without inquiry in to the right of an individual in that object of property. That physical relationship of a man with an object of property will be honored until another person lawfully claims to take the thing with legally acceptable grounds. Further discussion is postponed for another time.

On the other hand, property and ownership are very akin notions; but they are not one and the same. It is an unfortunate circumstance that sometimes we may find these terms are used interchangeable to mean one and the same thing. But in the strict legal parlance they are not expressing same idea. As will be shown, ownership refers to the most comprehensive real right or power or privilege that a person may have in or over a thing. It signifies the widest and almost absolute real right in or over a thing.

In this light, then ownership is one of the preparatory rights in or over a thing. Because it is the widest and most comprehensive real right, it is possible to talk about other subsidiary or dismembered real rights, which can be curved out of the womb of ownership. And property is an idea, which encompasses those complex aggregate of real rights and duties including ownership, usufruct, servitude, pledge, mortgage, etc. It would be wrong if one equates this bag of real rights (property) with one of the components with one of the bundle of rights, be it ownership or any other. As a given shopping bag of fruits will not be equated with one of the varieties of fruits such as bananas, apples, oranges, etc., we cannot equate property with ownership. As the shopping bag of fruits will not be losing its name or identify if either the banana or orange or any other is absent, property will not be losing its name or identify if ownership is absent.

However, it should be underlined that ownership represents the most comprehensive and exclusive real rights within property. It is really the pillar, the most basic foundation of property.

1.3 RIGHTS IN REM DISTINGUISHED FROM RIGHTS IN PERSONAM

In this section an attempt will be made to examine the meaning, nature and legal effects of the two basic components of patrimonial rights, i.e. *rights in rem* (real rights) and rights in personam (personal Rights). This effort is important not only for the sake of theoretical thinking and academic purposes but also for the needs of daily practice.

This attempt equips us to provide solutions for a number of recurring and puzzling questions. Consider the following for example:-

- How shall we decide to what extent we are legally bound to respect another person's right?
- How does such a right arise?
- How is it transferred?
- When does it expire?
- How shall we know what law is applicable in all these matters? Is it the law of property or the law of contracts and or law of non-contractual liabilities?

A good understanding of the meanings, basic qualities and legal consequences of those two types of patrimonial rights enables one to provide answers for the above and related issues:

Objectives: -

After completion of this section, students will be able to:-

- Define rights in rem;
- Define rights in personam
- Understand the essence of rights in rem;
- Appreciate the nature of rights in personam;
- Discuss and characterize rights in rem,

- Compare and contrast rights in rem, and rights in personam; and
- Identify the scope and subject matter of law of property.

It is well known that rights and their correlative duties may be distinguished in various ways. As aforesaid, one such distinction is to classify rights and duties in to patrimonial rights, or proprietary rights as it is also called, and extra – patrimonial rights or non-proprietary rights.

Our immediate interest in this section relates to those of patrimonial rights. Again, we mentioned that patrimonial rights consist of rights in rem (real rights) and rights in personam (personal rights). But, what do we mean by rights in rem? By rights in personam? And what is the nature of these types of rights for our study of law of property? What legal consequences flow from the distinction of rights as real and personal?

To begin with, the notions of rights in rem and rights in personam are not easily understandable. Their meanings and contents are not as such amenable for universal generalizations. Though there are systematic generalizations across the globe, and more firmly in the western continental system of law, still there are variations among particular systems. Even there are a lot controversies and debates in the academic world.

So at the risk of hasty generalizations and vulnerability for criticism, we shall proceed to bring in to the attention of students the various meanings and basic qualities of these two rights.

A right in rem is an interest assessable in terms of money, which inheres in or over or upon a thing (res) and protected against the world at large. It represents a relation between an owner of a right and an undetermined multitude of persons. It means, in the literal sense, a right against or in respect of an object of property. Also, as any other type of right necessarily, it

has its own correlative duty and involves a relationship of persons relating to an object of property.

A real right is said to be exercised against an object of property (a res) though in fact, in the true sense, a right is exercised against another person (s). And here it is intended to imply that a right in rem is assertable against the whole world at large, it is said that rights in rem confer a direct and immediate power or authority over a thing. The thing appears subjected to the authority of a real right holder. A right in rem there fore can also be defined as the judicially recognized authority, which enables a person to draw from a thing directly all or part of its economic advantages.

According to some writers a right in rem constitutes a universal passive obligation and is defined as a legal relationship established between one person as active subject and all other persons as passive subjects. This relationship imposes a passive duty to refrain from interferences with the peaceful possession of the holder of the real right. The creditor of the obligation is the holder of the real right and the debtors are an unlimited number of persons. As Yiannopoulos observed, because of the passive role attributed to the debtors, attention is ordinarily focused on the creditor – holder of the right in rem. Here in emerges the idea of a direct relationship between a person and a thing. But though one may tend to lose sight of the passive debtors, they still exist in the background, and the obligation impressed against the entire world becomes visible in cases of interference with the possession of the holder of the right.

The number of passive subjects involved and the scope of the duties assumed also explains the nature of rights in rem. They involve an unlimited, an undetermined and unidentified number of obligors (debtors), and hence rights in rem are sometimes referred to as absolute rights – rights available against everyone. Among the absolute rights were included ownership and its dismemberment, like usufruct, use, habitations and servitudes, and also

mortgages and pledge. As to the scope of the obligations assumed, it is observed that real rights conceived as universal passive obligations are static and may impose only negative duties.

Rights in rem appear as obligations imposed on all persons to respect the position of the holder of these rights passive obligations that become active when a certain person is under a duty to restore possession of a thing to the holder of the right. On the other hand and internally, rights in rem appear as power over a thing which the holder of a right in rem has. This power is protected by law and is not merely a factual relationship. All attributes of this power are controlled and regulated by law.

The holder of a real right can create new legal relations concerning the thing, which can be asserted against third parties. In this context, rights in rem are defined as those rights which impose a general obligation to respect the power which the law confers on a certain person to derive from things the whole or only part of the advantages which their possession entails, or as those rights which confer on a person a direct and immediate authority over a thing which is operative not only against a certain person but against world.

It is to be emphasized that rights in rem are available against all other person except the right holder. And almost all rights in rem are negative, as they require passive behavior. Non-interference; they are rights characterized by a right to be left alone. The right holder is generally given a right in or over or upon a thing; he cannot compel another person to show positive behavior. In other terms, no person is in general given a legal right to the active assistance of all the world a general duty of abstention is what is required of the passive subjects. Every person in the world is simply bound to refrain from interfering with the res of the real right holder. Of course, there will be some exceptions in some types of real rights. Let's add in still other basic features of rights in rem.

Rights in rem are so closely interwoven with their object (res) that they cannot exist apart from it. Ownership, usufruct, servitude, etc, are inconceivable with out an object, which must be an existing and individually determined thing.

The holder of a right in rem may abandon it by his unilateral act. He is not required to obtain the consent of another party to renounce his right. This enables the right holder to avoid obligations and charges attached to a thing.

A right in rem enables the right holder to assert his right against any person. From this two other rights will follow, i.e, the right to follow and the right of preference/ priority/.

It is a prerogative of the holder of a right in rem to exercise his right over the thing in whatever hands of may be found. For instance, right of ownership, the best comprehensive and exclusive proprietary right, enables the owner of a thing to reclaim his thing in the hands of any possessor. As will be shown, this right to follow will be restricted in certain cases in some types of things. In other cases, however, such as in pledges and mortgages, the right to follow enables the right holder to assert his right by tracing the where about of the thing,

The right of preference is the prerogative which the holder of a right in rem has to exclude from the enjoyment of a thing all persons having only a personal right or a right in rem of an inferior rank. The real right holder is accorded preferential treatment when compared with ordinary creditors of a given debtor. It is after the satisfaction of the real right holder's interest that ordinary creditors will be considered even within the same family of real right holders, some real right holders will have right of propriety over the other real right holders. And the rule is that older real right holders shall be preferred over the more recent real right holders, first in time is preferable in law.

Therefore, conferring these rights to follow and preference (priority) up on real right holders can be treated as another basic features or qualities of rights in rem.

In order to be assertable against the whole world, and to entitle the right holder with those rights and benefits mentioned above, most real rights need to be registered and thus be publicized. Actually the valid existence of most of the real rights is dependent up on the fulfillment of registration of the acts and/or the rights.

Another unique feature of rights in rem in most legal systems is the doctrine of *numerus clausus*, i.e., exhaustive list of the type and nature of those rights in rem. Individual persons do not have the liberty or freedom to create or establish new forms or types of rights in rem other than those recognized and determined by law. Of courses, the legislature may provide certain freedoms for persons in its permissive provisions.

Beside all that is discussed above, rights in rem exibibit different mode of transferability and extinction. Hopefully, we will have time to understand these and related issues when we deal with ownership, usufruct, servitude and other rights in rem incorporated under the Ethiopian Civil Code.

Before passing to the discussion to rights in personam, we have to note two other important attributes of rights in rem. The first is that in reality rights in rem are sources of real actions such as petitory actions. In fact and historically real rights are derived from the Roman term action in rem. In the ancient Roman experience, an action in rem was an action for the recovery of dominium one in which the plaintiff claimed that a certain thing belonged to him and ought to be restored or given up to him. Actually the term “real right” or “right in rem” was not known to classical Roman Law. The classical jurists were preoccupied with the availability of remedies rather than the

existence of substantive rights. They did not have a generic term to include that we call now rights in rem. What were known at that time related to actions and remedies. The substantive rights were to come from the remedies. Thus in anctio in rem the plaintiff had to pray for the restitution of a res. In the petition only the name of the plaintiff, not the name of the defendant, had to be indicated. The name of the defendant had to appear in another part of the writ called condemnatio- and any person who possessed the res had to be adjudged to give up the res to the plaintiff. By observing these procedural forms of action and the final remedies provided to plaintiffs, medieval writers first coined the expression real rights or right in rem. So, any real right holder can institute a real action against any person who interferes in the peaceful enjoyment of the thing or the right. Owners, usufructuaries, pledgees, mortgagees, etc can institute real actions in their own name against any person with a view to maintain or restore their own specific rights in things.

The second important point worth –mentioning at this juncture relates to the types of right in rem in general. Rights in rem may be classified as principal and accessory. The principal real rights pertain to the substance of the thing which is placed to the service of the holder of the right. In fact these are the right of ownership and its dismemberments, i.e usufruct, servitude, use etc. On the other hand, accessory real rights pertain to the pecuniary value of a thing. This value is reserved to satisfy the interests of the holder of the right. They are named accessory because they exist to guarantee or secure payment of a debt, a personal right. Examples of accessory rights in rem includes mortgage, pledege, anticihresis, etc. And these, unlike those of principal rights in rem can not exist with out any other rights in personam.

Now this takes us to the discussion of rights in personam. This another component of patrimonial rights. Hence it pertains to rights or interests that bear money value. The other name for rights in personam is personal rights. And in this context, personal rights is not referring to those attributes of

personality such as status of a person, liberty of a person, human dignity, right to life, honour, bodily integrity, privacy, etc. We said these are extra patrimonial (non-proprietary) rights and interests. Here personal rights is referring to the other category of patrimonial rights.

A right in personam literally does mean a right against or in respect of a person. Legally, it may be defined as an interest protected solely against determinate individual(s). Unlike rights in rem, a right in personam is available only against particular person(s) and it corresponds to a duty imposed up on determinate individual(s). The interest in rights in personam is protected only against identified single or determined groups of persons. It may be thus explained as a right which a person has against another person or determined and limited number of persons to demand payment of money or a performance of a contract. Actually the interest of the right holder in rights are said to confer pouler over another person.

A right in personam appears as a subjection of one person to another. Yet, in fact and in the final analysis, it is only the patrimony of the debtor that is subjected to the authority of the right holder (creditor); the ultimate responsibility of the debtor is a financial one, i.e a sum of money will be paid to satisfy the interest of the creditor.

Though there are some exceptional cases such as in cases that involve specific (forced) performance, generally rights in personam are said to be assertable against a person. So generally it can be defined as a right created by the relation between two persons, the creditor and the debtor, in person and operates against that determinate debtor and only against this debtor. A right in personam involves relations between persons. In such rights, the right holder is an active subject while the debtor is a passive subject.

Unlike rights in rem, most rights in personam involve positive obligations; the debtor will be required to take positive measures-in most cases inactivity, abstention or non-performance constitutes failure to carry out debtor's obligations. The debtor will be required, depending on the circumstance of the case, to give or to do, to perform in favour of the creditor. Exceptionally, there are some cases of rights in personam that involve the obligation to refrain or abstain or tolerance.

As indicated above, the number of debtors in rights in personam is limited. Either one, single person or very limited determined and identified group of persons will be under positive duty to perform towards the right holder (creditor). Hence rights in personam are sometimes referred as relative rights-rights available only against (a) particular debtor(s). Many cases may be cited as falling with in this category of properityary rights. Contractual relationships are clear cases that involve rights in personam relations. Tort and unjust enrichment cases are also good examples. Besides these regular cases, certain aspects of family relations such as prvisions that deal with maintenance obligations fall under this relation.

The scope of obligations assumed by the debtor in rights in personam is also another distinguishing feature. Unlike rights in rem which are conceived as exhibiting static nature, rights in personam are dynamic and may impose both negative and affirmative duties.

Unlike in rights in rem. In rights in personam the object of obligations need be determinable only by quantity and quality, i.e, as genus rather than species, and may be a future thing. It is thus possible to be a creditor of a person who will procure or manfacture a thing in the future. This shows that rights in personam are not necessarily interworven with the object of the legal relationship.

Again unlike in rights in rem, inrights in personam the creditor or the right holder can not renounce his right to a certain performance unilaterally, the consent of the debtor is necessary. The remission of a debt requires the consent of the debtor.

A right in personam is effective only between the parties, the creditor and the debtor. And, in principle, a right in personam can not be asserted aginst third parties; third parties may even disregard these personam rights and only in exceptional cases may they be held for having intentionally interfered with the relationship of the creditor and the debtor.

Rights in persnam do not entail the right to follow and the right of preference against objects of personal relationships. As the rights of credeitors are said to be on the person of debtors, right holders can not assert their rights against objects of proprietary interests as such.

There is no also preferential treatment as between various creditors of the same debtor.

Most of the time rights in personam are valid as between parties with out the requirement of registration. Actually the nature of certain personal obligations can not be a menable for registration.

Contrary to cases of rights in rem, there is freedom of parties to determine and establish their own respective rights and duties. They are only required to observe certain mandatory rules. In many respects they can freely create, vary or extinguish their rights and duties. Hence there is no such limitative doctrine as the numerus clauses.

As can be easily imagined rights in personam are sources of personam actions. The historical evolution of rights in personam, like the rights in rem, is traceable to the classical Roman experience. It was derived from the Roman

actions and remedies there to, i.e, an action in personam, an action in personam was an action for the enforcement of an obligation. One in which the plaintiff claimed the payment of money, the performance of a contract, or the protection of some other personal rights vested in him as against the defendant.

Dear student, do you now understand the meanings, essences and unique features of rights in rem and rights in personam? We hope you do. Now let's add some vital points without going far from these specific matters.

We mentioned that there are no uncontroverted, universally accepted definitions of the two proprietary rights. There many be as many definitions as there are many commentators. Up until now we have been studing the notions as developed in a systematic generalizations and characterizations. There may also be variations in the content scope and variety of specific rights falling under the one or the other. Despite such variations, still it is possible to treat the two rights distinctively and separately.

Nevertheless, these two rights, rights in rem and rights in personam, are not necessarily in different planes. There is no watertight compartmentalization between the two. Rather they intersect at some points. They are not as such "pure" concepts as to exclude the existence of several categories of rights which partake of the nature of both and therefore defy accurate classification some rights may structurally appear to be personal rights but may functionally exhibit characteristics common to real rights or vice versa. We will have time to cite examples in our future discussion; for instance we will observe under possession in good faith and under servitude such concurrence of the two rights.

Generally, however, rights in rem and rights in personam are treated in various ways and in different legal approaches. As has developed in this contemporary period, while the law of obligations deals with proprietary rights in personam, the law of property deals with proprietary rights in rem. Matters of contractual and non- contractual relationships that involve pecuniary interests are relationships that involve pecuniary interests are regulated and governed by law of contracts, Law of non-contractual liabilities, and some by law of family and successions. But those interests and rights that involve in rem legal relationships as opposed to personal relationships are regulated and governed by the law of property.

When we relate the foregoing discussion and analysis of rights with the Ethiopian legal system, judicial experience and general; jurisprudence as shown sporadically, we may gather that rights in rem and rights in personam are treated distinctly. Of course no Law, including the Civil Code, does not expressly draw a formal distinction between rights in rem and rights in personam.

Yet a careful and critical reading of the organization of the Civil Code proves that the two rights are treated differently at different places of the Civil Code. It suffices simply to observe book IV which is titled as " Obligations" consisting of " Title XII, contracts in General", and Title XIII, Extra-contractual Liability and unlawful enrichment" and another part for representation (Agency). While these parts deal with personam relationships, Book III, titled as "Goods" and consisting of titles VI, VII, VIII, IX, X and XI, sub-titled as "Goods in General and possession", "Individual ownership", "joint ownership, usufruct and other rights in Rem," "Collective exploitation of property," "Registers of Immovable property" and " Literary and Artistic ownership" respectively, deal with in rem relationships.

Some court cases and academic writings also exhibit deferential treatment of the two rights. Matters that relate to contracts and torts are treated as involving in personam relationships.

Nevertheless, some accessory real rights such as pledges, mortgages and antichresis are treated separately under book V of the Civil Code which deals with special contracts. As can be observed from the contents of those chapters concerned with the regulations of these accessory real rights, the rights and duties exhibit common features. Some aspect of each of them exhibits features of rights in personam, another aspect of each of them exhibits vital features of rights in rem. Hence there appears to be a good logic and justification for treating them separately. With this exceptional treatment of accessory real rights, one can pronounce or emphasize the unique place and treatment of principal real rights under the main body of the law of property of country.

Then, our study in this course will necessarily be up on that part of the Civil Code devoted to the regulation of proprietary rights in remand issues related to them. In short Book III and other legislation related to this Book are the basis of our study of this course. By now therefore we must be clear in our mind that we are not to repeat some of the law course that we studied before this time. In the strict sense contracts, family matters, tort cases and related others are not as such involving proprietary in rem relationships. They involve rather proprietary in personam and other extra-patrimonial relationships.

Hereinafter, therefore, we shall proceed to deal with principles and rules as relating to things and concerned with real rights. And logically, the study has to begin with the discussion of things (objects of proprietary rights) and the relationship that exists between persons and these things. Then it has to advance to bring proper property matter cases, i.e. discussion on various property interests (rights) and relationships. We shall accomplish these turn

by turn in our subsequent units and Modules. Before jumping into the next unit we have the following summary questions.

SUMMARY QUESTIONS

After thorough and critically reading the above explanation and other reference materials dealing on the pertinent issues, write a well organized and legally informed answers for the following questions.

1. What is property?
2. property is said to be a dynamic concept. Discuss it.
3. Identify property from:
    a) Things (Res)
    b) Possession, and
    c) Ownership
4. What is patrimony? How does it differ from property?
5. Define law of property
6. How does Law of property differ from:
    a) Law of persons?
    b) Law of Family?
    c) Law of Contracts?
    d) Law of non – contractual liabilities?
    e) Law of successions?
7. What are rights in rem and rights in personam?
8. Compare and contrast rights in rem and rights in personam
9. What is the significance of distinguishing rights in rem from rights in personam?
10. What are those basic qualities or features of rights in rem that distinguish it from rights in personam?
11. Briefly discuss the subject matters, Contents and scopes of law of property and law of obligations in comparison fashion?

12. Do you think that the distinctions between Law of property and Law of obligations is recognized under the Ethiopian Civil Code? Substantiate your answer with relevant Articles provisions.

UNIT TWO

2. CLASSIFICATIONS OF OBJECTS OF PROPERTY

INTRODUCTION

This is the second unit of our study in property and land law I, this unit tries to develop issues to be discussed the Law of property. It is to be recalled that the notion of property is understood widely as encompassing both objects of property rights and the rights themselves. It is also to be recalled that in the strict legal sense property is said to be referring to those exclusive rights in rem. This distinction will be maintained here.

This unit deals with objects of property. The various types of objects of property will be analysed. Such commonly known classifications of things /objects of property/ as:-

- Vs Immovables, corporeals-vs- incorpraeals, Intrinsic elements
- Vs- accessories, and private Domain –Vs- Public Domain will be examined. Some Sub –categories will also be explored.

In anglicizing things in to these various categories we shall pay attention to the basis of each classifications. Furthermore, the legal consequences of each classifications will be implicated and exemplified.

Objectives:

After successful completion of this unit, Students will be able to:-

- Classify or categorize objects of property (things) in to various types;
- Appreciate the basis and reasons behind each classifications
- Understand the distinction between movable and immovable things;
- List some legal consequences and merits of this classification of things in to movables and immovable;
- Know the distinction between corporeal and incorporeal things;
- Appreciate the effects of the classification of things in to corporeal sand incorporeal;
- Distinguish intrinsic elements from accessory things;
- Know the legal consequences of (a thing) becoming intrinsic and accessory;
- Differentiate things in to private and public domains;
- Forecast the legal implication and effects of things being treated as falling with in the private domain and public domain; and recognize the possibility of other classifications of things.

Dear distance student, do you observe that the Ethiopian Civil Code, in its part devoted to property, begins with classifications of "goods" or "things"? Before you read the following explanation please read Arts. 1126 through Art.1139. What did you gather from your readings in these provisions? Would you say that these provisions are about classifications of property or objects of property? What term is used for these classifications?

2.1 MOVABLES – VS- IMMOVABLE

In this section we will be considering the classification of things in to movables and immovable. Both the terms " movables" and "immovable" will be defined; the basis of this classification will be explained and some of the legal consequences of this classification will be expressed.

The section also tries to analyse the various types of movables as well as immovables. The legal effects of each of the sub-categories will be succinctly presented.

Objectives:

After competing this section, students will be able to:

- define movables;
- identify types of movables
- understand the distinction between movables by nature, movables by anticipation and movables by the fiction of the law;
- identify the various kinds of movables things;
- differentiate movables by nature, immovable by destination and immovable by the object to which rights apply;
- appreciate the basis as well as the legal consequences of this classification of things in to movables and immovables.

According to Art. 1126 c.c "All goods are movable or immovable" accordingly this classification pertains to things called "Good".

The Amharic Version (wrongly) states that all corporeal goods are movable or immovable. The classification is too general that it is not confined to corporeal things alone.

The first issue that we need to pay attention is whether the term "goods" is referring to objects of property or property as such Relating to the French Civil Code, which served to draft Arts. 1126 and the following of the Ethiopian civil code, it has been observed that a confusion of ideas exists between real rights and the objects over which the rights may be exercised. French Law inherited this confusion from the Roman classical law. Actually the common law also is not immune from this vice. Ethiopia inherited this

vice from the Roman system through the French law. Whether this classification into movable and immovable pertains to proprietary rights in rem or objects of these rights is not clearly put. The gist of the term “goods” is not clearly put. The gist of the term “goods” is not clear – as it can mean objects of property or property rights or both. Sometimes these three terms “goods”, ‘things” and “property” are used interchangeably to mean one and the same thing- whether to mean objects of property or property rights or to mean objects of property and property rights at the same time. Most of the time and in common parlance the term property, as discussed her before, signifies both the objects of property and the interest, rights or claims in these objects.

Now our immediate problem is to identify the context of the term “goods” under Art. 1126. Actually the problem is not confined to this classification. It is also found in that classification of corporeal and incorporeals. In order to know the correct idea we think it is good to think of the natures of objects of property and property as such. In reality objects of property may be physical, tangible objects or non-physical, intangible objects. As an example one may mention lands, buildings, cows, tools, etc as physical objects of property, and music, dance, share, electric energy etc, as non- physical objects of property. Even in ordinary language one may say that some physical /objects are movable and some others are immovable. We can not talk about or express the non- physical objects in this sense,at least in the ordinary language. On the same token, ordinarily we can not express property in these terms since property is an invisible pecuniary right in rem. A non-physical thing, pecuniary interest can not in fact “Move” or can not be expressed as a “fixed” one.

Though most of the time writers don’t bother themselves about such detailed points, we can gather from their opinions that the classification in to movable and immovable is applicable for objects of property interests. The organization

and express indication of property laws in many continental systems such as in Egypt, Greece, Italy, Switzerland and also Lousiana state in the USA, etc, support this view.

Thus we can sagely say that Art. 1126 is concerned about the classification of objects of property- goods – in to movable and immovable. This takes us in to the next issues. What does movable mean? What about immovable?

Before defining each of these terms let's proceed to indicate the various categories of each of them in law. And first about movables.

A) Movables

In law we can classify movables as:
i. movables by nature
ii. movables by anticipation, and
iii. movables by the fiction of the law.

(i) <u>Movables by nature</u>

Objects of property have been divided into movable and immovable in consideration of the physical nature of corporeal things with relation to their mobility. Things are movable or immovable according to whether they can be transported or can transport themselves from one place to another with out having to be uprooted or detached from a thing itself fixed in the ground.

Movables by nature are defined under Art. 1127 c.c. This article rules.

Corporeal chattels are things which have a material existence and can move themselves or be moved by man without losing their individual character.

Movables by nature are things that have a material existence; they are physical objects; they are perceivable, visible to the sense organs. They have body and occupy space. The word “chattels” is an equivalent for movables. Movability refers to the ability of a corporeal (physical) thing to move itself from one place to another place or the capacity of that physical thing to be moved (transported) from one destination to another destination by agent without being uprooted, of detached or without being damage or injury to the thing.. Thus movables by nature are those physical (corporeal) things that can move or can be moved from one place to another place without substantial damage to them. They are things that may be carried from one place to another, whether they move by themselves, as cattle, or can be removed without an extraneous power, as inanimate things.

For the characterization of a thing as movable by nature, controlling considerations should be, apart from economic value, the possibility of removal without application of extraordinary mechanical means or damage to the substance of the thing. This appears to be the idea behind “without losing their individual character” under Art. 1127. As is the case in some other jurisdictions such as France, a thing under the Ethiopian Civil Code may be treated as movable by nature even though its entire existence may have a fixed place according to the wishes of its right holders. The status of mobile homes and trailers which are not common here in our country until this time may be controversial but the experience of other countries shows that they have to be regarded as movables by nature.

Movables by nature may further be classified in to two: Ordinary movables by nature and special maoveables by nature. These two categories of movables by nature are regulated or governed by different rules of law. As an example we may simply cite Art. 1186(1) and (2)

such movables by nature as car, trains ship, airplane, and Television are governed by special rules of law and hence are treated as special movables by nature. Each of these special movables by nature have their own respective laws. Ordinary movables by nature, however, are regulated and governed by the Civil Code.

Mind you here that the basis of classification of things into movables by nature and any other involved these: material existence & movability. And the classification of movables by nature into ordinary and special is made on the basis of the law applicable to each of them which emanted from the pressing need and valuable interests that special movables represented. Legal transactions that involve special movables by nature thus require stringent rules and body of principles. For Example, the acquisition and transfer of ownership, proof and extinction of ownership of these special movables are as provided in the special laws (proclamations, regulations and legal notices).

(ii) Movables by Anticipation

This category of movable things presupposes knowledge and regulation there to of immovable things. We have to be conversant of the nature of immovables because movables by anticipation are normally exceptions to immovable by nature.

Nevertheless, the meaning of immovables by nature is not difficult to understand, simply it is referring to the fixity of objects of property or the inability of physical things to move or to be moved. This shall be expressed in detail here in below. And movables by anticipation share this quality.

While in fact movables by anticipation are immovable by nature they will be treated as movables. Immovable objects will be regarded as movables in the eye of the law when there is a factual anticipation of separation or

detachment of those objects in the near future through the will of the right holders. Let's investigate the issues surrounding it by referring into applicable provisions in our Civil Code.

After proclaiming that trees and crops are intrinsic elements of an immovable by nature, i.e land, Art.1133 provides in its sub article (2) as follows:-

They (trees & crops) shall be deemed to be distinct corporeal chattels where they are subject to contracts such separation.

In principle trees, crops & fruits are to be regarded as component parts, or intrinsic elements of the tracts of land in which they are connected. In so far as that factual connection or attachment remains intact they are treated as parts of the immovable by nature.

But if some legal transaction implied there separation in the near future, they would be treated as movables. They are to be regarded as movables because their is an anticipation that they will be changing their status. This is purely a result of legal abstraction and it may be repugnant to lay notions of mobility which is founded upon physical notions of mobility and inherent characteristics of those objects of property.

Before such immovables change their status into movables certain conditions need to be fulfilled. These prerequisites are:

- the thing has to be primarily an immovable by nature;
- this thing must be one whose separation is anticipated; and
- a juridical act that implies the separation of the thing must exist.

Of these preconditions, the first may appear simple to imderumdetst and. However, this may not be always true. The question of which immovable things by nature are susceptible to such a juridical act needs serious consideration. Because all immovables by nature are not susceptible to such change of status. For instance land, the best and foremost example of

immovables by nature can not qualify for this precondition. In other words, any immovable by nature which can not be expected to exist as a self sufficient movable, or which can not be a subject matter of separate legal transaction fails to fulfill the first criterion.

On the other hand, movables by anticipation are not confined to trees and crops. It includes some materials of a building, quarry and other intrinsic parts of immovables by nature Art. 2268 C.C supports this view after proclaiming the scope of application of chapter 1 (sale) as confined to corporeal movables under Art. 2267, then Art 2268 goes on to include those movables by anticipation, of which crops, materials of a building under demolition or products of a quarry are expressly provided

Article reads as follows:

1. The sale of intrinsic parts of an immovable shall be deemed to be a sale of movables where such parts, under the contract, to be separated from the immovable and transferred as corporeal chattels to the buyer
2. The provisions of Sub-art. (1) shall apply in particular where the sale relates to crops, materials of a building under demolition or products of a quarry.

Even from the reading of the above provisions of Art.2268, it is possible to conclude that movables by anticipation are not limited to those things expressly provided as crops, materials of a building under demolition or products of a quarry. These are rather examples see the expression “in particular”

When we come to the second precondition, it must be known that every crops, trees, quarries, materials of buildings, etc, is not necessarily a movable by anticipation. As made clear herein above, they are, in fact and in law, parts of immovables by nature. So long as that association or close attachment with

the other immovables by nature lasts and in so far as there is no expectation or anticipation of their immediate separation, they are regarded as intrinsic elements of the immovable they are attached with, or if treated as separate, self-sufficient objects of properly, as immovables by nature as such. In principle such intrinsic elements, or immovables by nature shall be regarded as immovables by nature.

However, there are some crops, trees, fruits, materials of buildings, or a building, quarries and others that will be cut down or harvested, or demolished in time. When crops & fruits ripe, when trees get maturity for different purposes, when the need arises for the demolition of parts of buildings or when quarries are needed, etc, that close connection with the other immovable by nature will cease to exist. If the time had already arrived and any of these separated from the immovable the separated objects are regarded as movables by nature. On the other hand, if any of these are not in fact separated but there is an anticipation in the meantime that they will be separated, they will be treated as movables by anticipation provided that a valid judicial act that aims at detachment of these things is concluded.

It is simply immovables by nature in fact are regarded as movables by anticipation for policy reasons. Had there not been such an anticiptation of separation and a juridical act which aims at such separation, they were simply to be treated as parts of the other immovable by nature, or depending on the circumstance as self-sufficient, independent immovables by nature. Without anticipation of their separation they will not change their status from immovable to movable. Hence “anticipation” or “expectation of what will happen in the near future” is a basic ingredient in such cases.

The time element, however, is very difficult to fix. How close should it appear that such immovable is anticipated to be cut down or harvested or demolished? Can we say, for example, that a newly planted eucalyptus tree is

a movable by anticipation, if the owner of this young plant concludes a contract with another person. A buyer, stating that the plant will be cut down and be taken by the buyer in 15 years time from the contract? This is actually arguable. But it must be emphasized that there must be anticipation of separation in the near future other wise, if individuals are given free hand to change the status of certain immovables in to movables, the determination of the legislature will be easily reversed. It must be only when the separation approaches or when it becomes clear that such separation in the near future an inevitable state of fact.

As mentioned above, existence of a valid juridical act that anticipate separation is the other basic precondition for movables by anticipation without such juridical act, there will not be change of status, things will be regarded as immovables. If a valid juridical act is concluded by pertinent parties envisaging separation in some close time, that immovable in fact will be treated as movable by law. This clearly shows that this category of movables is a result of legal abstraction, a determination by the law-maker.

Here again, we have to seriously consider the type of juridical act. Both Arts, 1133(2) and 2268 mention contract as aground for anticipation. Yes, if the concerned parties conclude a valid contract which anticipates the separation of an identified immovable, that subject matter shall be regarded as movable. The question that can be raised at this juncture is whether it is only contract that is acceptable or whether other juridical acts such as unilateral acts of party as will or donation, and court orders can be also grounds for change of status. This is not clearly provided by the law-maker in our case. But a close reading of Art. 1133(2) Amharic version gives an idea that contract is one of the acceptable juridical acts and not the only means. And, reasonably thinking there seems no acceptable justification to narrow the type of juridical act only to contracts. In so far as there exists a legally acceptable juridical act (whether contract or will or court order or any other) that

expressly provides about the separation of an immovable or apart thereof, or implies such separation, the thing which is the subject matter of the juridical act shall be treated as movable for all practical purposes. The law that governs movables will be applicable thenceforth.

III. Movables by the Fiction of the law

These are the third type of movable. Unlike the other two which have material existence, hence corporeal, movables by the fiction of the law are non-material, incorporeal objects of property.

In reality one can not speak about the movability or immovability of incorporeal things. They do not occupy space, do not have body and hence can not move themselves or can not be moved by any other agent. They are not fixed things. These objects of property are creations of the mind, having pecuniary value. Despite all these, those incorporeal objects which bear some economic interests are regarded as movables. This is another good example to show that classification of objects of property is not necessarily associated with the nature of things. The next issue, that we have to consider is whether this category of movables is also recognized under the Ethiopian Civil Code.

As observed before, the Ethiopian Civil Code begins with classifications of things into movables and immovables. Then it proclaims about movables from Art. 1127-through Art. 1129, and though as an exception to immovables, under Art. 1133(2). While Art. 1127 is dealing with proper and normal or regular cases of movable objects, Art. 1133 is concerned, as we said above, about movables by anticipation. Those other two articles coming after Art.1127 again are dealing with movables. Let's reproduce the contents of these two articles for a closer examination:

Art. 1128-2 securities to bearer

Unless otherwise provided by law, claims and other incorporeal rights embodied in securities to bearer shall be deemed to be corporeal chattels

Art. – 3. Natural forces

> *Unless otherwise provided by law, natural forces of an economic value, chattels where they have been mastered by man and put to his use.*

A closer and critical reading of these two articles shows that material things are not at the forefront of the rules enacted. The articles are not dealing with securities to bearer and natural forces or the sources of these natural forces as such. Let's explain these things in some detail.

Securities to bearer are instruments or documents that incorporate or embody pecuniary interests in them. They are parts of negotiable instruments. Negotiable instruments are those documents incorporating rights to entitlements in such manner that it is impossible to enforce or transfer the rights separately from the instruments. As it is expressly provided under Art. 715(2) of the 1960 commercial code of Ethiopian commercial instruments, transferable secuirites and documents of title to goods are common examples of negotiable instruments. Bill of exchange, promissory notes, cheques, travelers cheques and ware house goods deposit certificates are commercial instruments (Art. 732(2) comm. Come). Again bill of exchange, promissory notes and cheques are payable to bearer, i.e, payable to any person whosever bears any of these see comm. code Arts. 719, 721 cum Arts. 735(f), 823(e) and 833 (1) (c) respectively

All these negotiable instruments, whether payable to bearer or payable to order (i.e, payable to a particular person or his order) or any other nature as in the case of transferable securities and documents of title to goods exhibit

two qualities. First and foremost comes the documents, physical, tangible objects or simply papers. Without the interest embodied in these documents, the papers are objects of property rights and since they can be moved from place to place without losing their individual character, they are movables by nature so the papaers as such are treated under Art. 1127 c.c.

The second and the most puzzling quality of negotiable instruments is the claim and right incorporated or embodied in the documents. The claim or right embodied, in a given cheque for example, is something invisible. It is incorporeal. This incorporeal pecuniary interest is different from the document which embodies it, thought it can not be enforced without the documents. And Art.1128 c.c is dealing with such types of claims and rights embodied in documents.

Of course Art. 1128 is providing a rule about those claims and rights contained in securities to bearer-not about claims and rights contained in any types of negotiable instruments. Whether this provision is intended to deal with these narrow class of interests, actually including bearer shares (Art.325 comm. Code.) leaving aside many other such as interests embodied in instruments that are payable to order or any other is not clear. And this triggers, at least, for two divergent opinions.

As Art, 1128 stands now, those claims and other incorporeal rights are treated as corporeal movables, may be one possible interpretation. On the other hand, one may interprete the article as standing for all categories of claims and rights embodied in any negotiable instrument since all are interests contained in documents.

Be that as it may, Art.1128 is concerned about incorporeal pecuniary interests contained in physical things. While in reality these interests are not corporeal and are not movable or immovable, the law-maker declared by mere

fiction, that they are to be regarded as corporeal and are not movable or immovable, the law – maker declared, by not fiction, that they are to be regarded as corporeal movables. Whether this fiction exists solely to claims and right embodied in securities to bearer, i.e claims and rights embodied in bills of exchange, promissory notes and cheques, is debatable as implied above. Pecuniary interests embodied in insurance policy, shares, treasury bills, debentures, etc appear to be unregulated in this article further still claims and rights not established by title appear to be unregulated in this classification of objects of property and property rights themselves.

As the saving clause " unless otherwise provided by law", under Art.1128 makes it clear, those claims and incorporeal rights embodied in securities to bearer are treated as movables in so long as there is no other law providing otherwise. It means that the law –maker can determine these claims and rights to be regarded as immovables.

When we come to Art. 1129, " Natural forces of an economic value such as electricity" can be obtained from waterfall, wind, sunrays, geothermal heat, etc. And this article is not talking about the water, wind or hear or sun rays as such. Rather it is concerned about the force generated from theses corporeal and incorporeal things. When the forces/ manifested through light, heat, cool, sound or any other /are appropriated (mastered) by persons and start to give some economic or any other use to many they shall be regarded as corporeal movables. This is again another fiction made by the legislative body. And whenever the law-maker deems it necessary, it can provide other wise i.e. it can treat them as immovables.

Besides all the above, Art-124 com. Code provides that a business is an incorporeal movable. It is possible also to gather the intent of the legislature with regard to interests or claims contained in shares (shares other than bearer shares), in insurance policy, in documents of title to goods, in voucher

of goods warehoused etc. Since there are provisions in the civil and commercial codes of Ethiopia that provide about the pledgeability of the claims and interests therein, and because pledge relates to movables, we may conclude that they are regarded as movables by the fiction of the law. A cross reference to Arts. 329,697 and 729 comm. Code and Art. 1260, 2816, 2829, 2863-2874 c. c reinforces our view.

Even though these category of incorporeal things are treated as movables a detailed examination of body of principles and rules in various parts of our laws prove that movables by the fiction of the law have their own specific body of laws. Those principles and rules of law that are applicable for corporeal movables (whether movables by nature and /or anticipation) are not necessarily applicable to movables by the fiction of the law.

In many continental law jurisdictions, movables are regarded as residuary or reserving category of objects of property within that classification of things into movable and immovable. It means, according to such systems, that any thing which is not treated as immovable is to be treated as movable. Hence, usufruct in movable things, artistic and literary interests (copyrights), patents, other pecuniary interests in movable objects, even in rem actions involving movables, etc are treated as movables by the fiction of the law. In our case, we don't have, until the writing time, similar provisions. So whether an usufuruct interest in a movable object or copyright is to be treated as movable or immovable is an open question.

(B) IMMOVABLES

Since the division of things in to movable and immovable has many significances not only in the law of property but also in other fields such as law of obligations, law of family, law of successions, law of civil procedure, law of taxations, criminal law and conflict of laws, etc, we need to give due

attention to it. See Arts. 1723, 2266ff, 2829,3047,849,etc of the Civil Code, Arts. 25 & 27, in civil procedure code (1965), Arts. 68 and 277 of the revised federal family code or Arts. 79 and 288 of the family code of the Amhara national regional state, Arts. 665-684 &685-688 of the criminal code/2004) to appreciate the significance of our discussion here.

Hence let's proceed to examine and analyze provisions and articles dealing with immovables, conceptually immovables can be further classified into

(i) immovables by nature
(ii) immovables by destination; and
(iii) immovables by the object to which pecuniary interests apply.

Now let's treat each of them one by one.

(I) IMMOVABLES BY NATURE

Arts. 1130 and 1133(1) are dealing with immovables by nature. The first article provides that land and buildings shall be deemed to be immovables. The second article proclaims the intrinsic nature of trees and crops to lands. And there is no straight forward and express definition of immovables given by the law-maker yet we can deduce the meaning of immovables by nature from the acontrario reading of art. 1127 and the gist of two articles cited now.

Accordingly, immovables by nature may be defined as those material things (corporeals) that cannot either move themselves or be removed from one place to another. In brief they are fixed corporeal objects.

Arts. 1130 and 1133(1) seem to limit the category of things immovable by their nature to those of lands, building and trees and crops before they are separated to the land. This is not the case however. There are a lot others which may be found scattered in the various parts of the Civil Code and probably in any other specific statutory laws. while proclaiming about objects

of public domain Art. 1446 C.C. lists the following under the specific title of "immovables". These are

(a) roads and streets, canals and rail ways,
(b) seashores, part installations and lighthouses, and
(c) buildings especially adapted for public services such as fortifications and churches.

Besides, party-walls, ditches, water and gas pipes and electrical and other lines, and fences are immovables by nature-see Arts. 1201-1203 C.C. barns, gas tanks, and depotes are also immovables by nature.

Generally, immovables by nature includes tracts of land, trees, crops and fruits, buildings and other constructions, and all things which are so closely connected with tracts of land or buildings as to be regarded as intrinsic elements there of. And in a strict sense, observed one famous property law scholar, this category is also a juristic abstraction. Because it is possible these days to move all the above using contemporary mechanical means or device. The law regards the land, buildings, trees, crops, canals and other constructions as immovables by nature though they could be removed by application of extraordinary mechanical means. In this light, therefore, it appears that immovability by "nature" is a creation of the law based both on practical considerations and on inherent characteristics of the things concerned.

Land is the most obvious and representative of things immovable by nature. By "land" we are not treating the earth planet as such; rather land refers to a part or portion of the earth. This may relate to rural farmlands and postural lands and urban tracts of lands.

The other category of things within the immovables by nature, as said above, involves trees, crops and fruits.

These are referring to standing crops and the fruits of trees not yet gathered and trees before they are cut down or before they are reduced to the category of movables by anticipation. Trees and plants in the ground, even in nurseries, should be treated as immovables by nature though it is obvious that they are destined to be transplanted. In other words, trees and plants in nurseries that are meant to be separated from the ground would remain as immovables by nature until in fact they are uprooted or until a valid juridical act which envisages the reparation of them in the meantime is concluded. But plants in containers and pots appear to be movables by nature unless the fall under the second category of immovables, i.e, immovables by destination.

Art. 1133 (1) provides that trees and crops shall be an intrinsic element of the land until they are separated there from. Never the less, the gist and general application of this provision should be regarded as changed at least since the enactment of proclamations No. 31/1975 and 47/1975, proclamation that nationalized all rural and urban lands following the Dergues Socialist ideology and motto of land to the tillers. By virtue of these proclamations, all land which was previously owned by private owners has become public property. This is still the case as Art 40 of the FDRE constitution expressly maintains it. While all urban and rural land is under public ownership, trees, crops and fruits are still in private ownership. This shows that trees, crops and fruits are not forming an intrinsic or component parts of land. Hence these are to be treated as separate immovables by nature.

The other obvious category of immovables by nature is what is referred to as buildings under Art. 1130 C.C. But what is meant by “buildings”? well, this appears simple to understand. This is not always true however. Of course there are simple instances such as residence houses in the urban and rural areas, offices of public institutions as such.

Whether “buildings” includes mills, distilleries, refineries, manufactories may be debatable. Also, the status of tents and barracks erected by pasturalists, or erected during Ethiopian Epiphany (timiket) and other occasions, or on the occasion of afair as are common in Addis Ababa and other towns these days, is very controversial.

Furthermore, buildings are not mere skeletons and a framework of walls. As maintained in some other jurisdictions, balconies, lifts, electric networks, and a number of appliance should be treated as intrinsic element of the structure they are attached thereto. Additions to a building, such as partitions, new roofs, mezzanines, resulting from incorporation of materials into and existing building have been regarded as immovables by nature in Lausoaio State within the U.S so also courts in Louisiana regarded steam heating system. Hot water heater, safe and butance gas system as immovables by nature. Both tubs, lavatories, closets, and sinks, connected with the water pipes in a building are all regarded as immovables by nature. As all these are intrinsic elements of buildings according to Art 1131 and 1132 C.C, these should be treated in the same manner in Ethiopia.

(II) IMMOVABLES BY DESTINATION

While in the case of movables by anticipation, a thing that in fact can not move or can not be removed i.e an immovable by nature, is treated as movable for policy reasons, in the case of immovables by destination the reverse is maintained. A thing which by virtue of Art. 1127 is regarded as movable by nature will be treated as immovable for another policy reasons.

Immovables by destination are things movable by their nature but classified as immovable because of their close association with an immovable. They preserve their identity as movables and do not become component parts or

intrinsic elements of an immovable. Hence, immovables by destination are not provided for under Arts. 1130-1134 C.C. They are different from immovables by nature, and immovables by the object to which rights apply.

They are things that are immobilized by determination or decision and the fiction of immobilization rests on policy considerations for certain purposes, regarding such movables by nature which are closely associated with immovables by nature as immovables is important. Because of their close association in forming an economic unity, society regards them as accessories to the more permanent immovable things. Hence in many legal transactions and lawful activities these immovables by destination will follow the immovables by nature. In cases of transfer, attachment and seizure, partition and other legal transactions they will be following the immovableness by nature.

This shows that immovables by destination are subject to the same rules of law as immovables by nature. But they are not generally treated as immovable by nature. Rather the division of immovables into immovables by nature and immovables by destination carries or entails different number of legal consequences.

Arts. 1135-1139 c.c concern in part about these things called immovables by destination. They are one component or variety of accessory elements. As will be shown accessories consist of movables by nature that are permanently destined to the service of another movable or immovable by nature. These are things simply grouped or destined to give economic service for another movable by nature or immovable by nature. If it were not for the determination or decision of the entitled person, they were separate, independent and self-sufficient objects of property interests. It is the desire to get more economic or aesthetic utility from the co-ordinated relationship and

existence in unity that dictates for deviation from the normal and regular treatment of these things. And it must be clearly known that it is not every person that can change the status and independent individual (separate) existence of those movables by nature through destination. As expressly provided for under Art. 1136 only owners or usufructuaries –individuals having the best real rights in or over or upon these objects of property can determine otherwise. Even these entitled persons are not empowered by law to determine, the status and general condition of these objects as they want. Certain conditions must be fulfilled, rather.

Though these conditions are not expressly provided in the Civil Code there must be close association between the movable by nature and another immovable by nature. Besides, there must be an honest belief and actual decision of the destination there of on the part of the empowered person in that the destination will enable the movable destined to give more service for the immovable. Hence what matters is not such physical attachment but some close association /whether they are attached physically or are in a proximate physical relationship /and the actual or potential to generate more economic or aesthetic utility when they form a unity. It is by checking the existence of such close association and more service that the owners and usufructuaries can decide to destine a movable to an immovable.

Accordingly, it is possible to observe in some cases that cattle, containers, agricultural tools, seeds, beehives, machinery equipment, tractors, etc, all movables by nature, being treated as immovables by destination upon the preference of those entitled persons in agricultural, industrial and commercial works. This is not to employee that all these things are immovables by destination. Whether a given movable is actually destined for another immovable has to be rather checked case by case.

Again whether such destinations by owners or usufructaries are to be presumed from certain factual observations or that it has to be expressly declared is not clearly indicated under Art. 1136 or any other article in the Civil Code. In the real life we observe fans or ventilators curtains, in houses and offices giving economic services or beautification to the buildings; wrench, pincers, extretire, and sack in various cars. One may say that all these movable objects are in reality giving service for the immovables and special movables mentioned. But, whether all these are to be regarded as accessories or not is open to speculation. Actually we will be coming again to deal with these things under the other classification of objects of property, i.e intrinsic vs-accessory. And the legal consequences of immovables by destination will be clearer after that discussion.

(iii) IMMOVABLES BY THE OBJECT TO WHICH THEY APPLY

Unlike the previous two categories of immovables, this third category which, for lack of a brief nomenclature, is expressed as immovables by the object to which property rights apply, relates to intangible, incorporeal or non-physical things.

It is to be recalled that objects of property interests involve both physical objects and non-physical objects. Indeed the important idea in our discussion of proprietary interests is not tied with the material nature of things. What is important is rather the economic and other spiritual interest that men have in these physical or non-physical things. One can simply cite various types of intellectual properties whose objects are more incorporeal things.

Besides those instances as patents and copyrights, we do have a number of proprietary interests embodied in physical objects of other individuals. While the proprietary interests in those immaterial things such as patents, copyrights and trade marks and material things such as lands, buildings,

cattle, etc are called jura in re propria (property in incorporeal or corporeal things), those other properitary interests in material objects of others such as servitude, usufruct, mortgage and antichresis are called jura in re aliena (property in corporeal objects of others). In other words, proprietary rights in rem are divided into jura inre propria and jura in re aliena.

According to some scholars, jura in re aliena are proprietary rights in rem which limit or derogate from some more general real rights belonging to some other person in respect of the same subject matter, while all other real rights are jura in re propria. Yet others maintain a different view.

According to the latter, only ownership—the widest and most complete and exclusive real right over corporeal and incorporeal objects of property- is a jura in re propria. All other real rights are described as jura in re aliena. The jura in re aliena are regarded as fractions or partides of the right of ownership.

As will be described, ownership is the most complete of all rights in rem. The owner of a thing – whether movable or immovable, corporeal or incorporeal- has the right to enjoy the thing and to dispose of its substance (in so far as the thing is such a nature), except as his right may be limited by provisions of the law or by rights of others. But, other real right holders other than the owner have the right to use and enjoy the thing, in whole or in part, but not the right to dispose of the substance of the thing as this right in vested in the things owner. To make things clearer and to come again to the sub-category of immovables, let's take the following example.

Assume you are an owner of a given building. This building, which commonly will be referred as property, is legally speaking an object of proprietary interest. Because you are the only person who has the most complete and exclusive right you can enjoy it or you can dispose it- you can sale or donate it

to another or you can demolish it. But let's say that you have mortgaged this building to Dashen Bank S.C. to secure the payment of the loan you obtained from the Bank. Dashen Bank has a real right in this corporeal thing. Though the Bank can't dispose as you can, it can exercise its own real right against any person including you, the owner. It has an assertable ritht in rem. This is a real right existing in another's, i.e, yours, object of property. It is a real encumbrance or charge.

In this case you, the owner, have an immovable by nature (Art. 1130) as the object of your proprietary interest, i.e, ownership. And in the strict sense of the term your property is this ownership right. But Dashen Bank has also a proprietary interest called mostgage. This real right exists in the corporeal immovable by nature. Something incorporeal, understandable to the parties, is serving as an object of that proprietary interest of the Bank.

Again, by virtue of Art. 3088 C.C you can mortgage your immovable by nature to another mortgagee in addition to Dashen Bank, or you can charge it with usufruct to another party without the need to secure the consent of Dashen Bank. So, the other mortgagee or usefractuary will have his own right in rem that will be unsuitable against every person including you, the owner, as Dashen Bank and any person having any right in rem or personam. And the object of such right in rem is an incorporeal one. All such rem rights are called jura in re aliene.

And immovables by the object to which such real rights in referring to such in corporeal objects at the back of which exists an immovable by nature that serve as an object of the most complete real right (ownership).

To state the same thing otherwise, the owner of the immovable by nature is said to have a jura in repropria. The object of this right of ownership is a

corporeal immovable by nature-building. The mortgagees (those who have got the guarantee of payment-recured creditors) and the usufructuary have their own separate and independent proprietary right in the thing (in the building) which doesn't entitle each of them to dispose of the building. By the more fiction of the law, the objects of these rights in rem, which are really less complete than ownership, are said to be an immovable by the object to which these rights apply. In reality these real rights are existing in the corporeal immovable object of another person. The mortgagees, and the usufructuary have proprietary interests in your object of property. For you, their right is encumbrance (charge) you will be under a real obligation to honour the rights of the mortgagees and the usufructuary. In your own thing some others are again having real right, property. The object of their property is different from the object of your property. Yours is an immovable by nature, theirs is an incorporeal one which entitles each of them to assert their own interest against every person in the world. By more fiction, the object of their property is expressed as an immovable since the fiction is related with the physical immovable object.

Dear student, do you get some clue, hint to grasp what is behind this third category of immovables? Don't worry if things are getting complex! Simply observe those persons having the right of way in another's land/a type of servitude) or those others having usefruct in anothers immovable by nature, or the rights of mortgagees in the immovables of others. All these are said to have property whose object is an incorporeal thing which is highly connected with the object of property of another person, the owner. We will have another time to further discuss these ideas.

Now, coming to the Ethiopian legal regime in general we don't find such third category of immovable, at least there is no express indication provided by the legislature. While the Civil Code under Arts. 1309 and 1359 for example

recognize the possibility of having such real rights as usufruct and servitude in another's immovable by nature, it does not expressly say anything regarding the movability or immovability of the objects of such real rights. There is no such fiction given by the law-maker in an express manner.

So far we studied the meanings of movables and immovables, identified the sub-categories of movables and immovable, and also an attempt is made to show the basis and justifications of those dictions and subdivisions. Now lets have this summary of the effects of the classification of things into movables and immovables.

Generally different rules of law of property may apply to the different categories of things classified as movable or immovable in connection with the scope, acquisition, protection and transfer of rights. Their differing effects may also be shown in the Law of obligations, Law of family, Law of successions, Law of civil procedure, Law taxations and criminal Law. To cite common cases that exhibit differences:

- Different period of limitation (Arts. 1152,1153,1168,1192,1845)
- In possessory rights and legal effects thereof,
- Immovables in most cases are objects of many real rights,
- Different mode of transfer of title – immovables require registration;
- Some differences in the devolution of deceased's property;
- Difference that relates to court jurisdictions'
- Variation in attachment and execution proceedings;
- Bring variation in the power authority of tutors upon the incapables property.
- Limitations against foreigners in the case of immovables,
- Different types and modes of proof of title, can be mentioned.

To conclude: a movable is defined as a thing which can either move itself or be removed in space without losing its basic characteristics, an immovable is a thing having a fixed place in space. This distinction is not necessarily connected with physical notions of mobility and is applicable to both corporeal and incorporeal objects. The distinction between the two entails consequences attributable either to the nature of the things concerned or to their relative value. Taking into account the nature of things, the Civil Code has developed particular rules which apply to immovable things in connection with transfer, security transactions, seizure, usucaption, period of limitation, possession, jurisdiction of courts, etc.

2.2 CORPOREALS –VS- INCORPOREALS

The second classification or division of objects of property recognized in almost all legal systems is that which classifies them into corporeal and incorporeal. Thus in this section we shall consider this classification. In doing so we will be defining the terms “corporeal” and “incorporeal”. The basis of this classification of objects of property and some of the legal consequences that attach to this classification will be described.

Objectives:

After completing this section, students will be able to:

- Define corporeals;
- Define incorporeals;
- Appreciate the basis of classification of objects of property into corporeals and incorporeals,
- Appreciate the legal consequences of the distinctions as between corporeal and incorporeal things; and,
- Analyses legal provisions dealing with this classification of things into corporeal and incorporeal.

The terms corporeal and incorporeal, though found in different places in our civil Code, are not defined. In Law dictionaries such as Black's law dictionary and in the legal literature corporeals are defined as those physical, material, tangible objects of property. These are things which are perceptible to the senses, they have body and hence occupy space. We can touch or take such objects of property. They can be movables or immovable. Many animals and other inanimate things fall under this category of objects of property. The law of property almost relates to such types of objects of property. As observed hereinbefore in the strict sense these material, physical objects as cattle, horse, building, land, watch, desk, computer, etc are not properties in themselves; rather, they are corporeal objects of property interests. The property is said to exist in or over or upon or in relation to these objects. With regard to any of these and another material things differ out persons may have different properties.

For example if we take a desk, a movable corporeal object, different persons may have different property in relation to it. If this desk was bought by two individuals, Ato Mengesha and Ato Gebru, each of them contributing 450 and 150 Birr respectively, the two of them have one and the same object of property which is corporeal. In this one corporeal object, each of them have private property in proportion to their share. While the corporeal object belongs to them, the share in their own individual object of property.

If these joint owners pledge this desk for w/ro Tewabech to secure the payment of a debt which they owe, Tewabeh will be having a different property in that corporeal object. Her property is different from the properties of Mengesha and Gebru. But the subject-matter of all these various proprietary rights in rem is the same corporeal object.

On the other hand, incorporeal are immaterial, non-physical, intangible things. These things do not have body, hence they don't occupy space, they are not perceptible to our senses. But they do exist in reality bearing economic interests. You take business good-will, trade-marks and trade-names, patents and copyrights. All these and others are immaterial products of human skill and labour. Others may simply exist in or over or in relation to corporeal things bearing some economic interest. Legally speaking, these incorporeal objects are objects of proprietary; these incorporeal objects are objects of proprietary rights in rem. They are the subject-matter of property.

To make things very clear, let's take patents, literary copyrights, artistic copyrights, musical and dramatic copyrights and business good will. The subject-matter of a patent-right, one type of property, is an invention. The invention of an individual in itself is not property –rather it is an object of that property called patent right. Obviously invention is a real thing, a creation of the mind or a product of human labour and skill. Though it is real, we can not touch or perceive this object. It is an incorporeal one.

The subject-matter of literary copyright, another property, is the literary expression of facts or thoughts, say a novel or a textbook on property law. The literary expression in itself is not property. It is an object of literary copyright. This is not just a fiction of the mind. It exists in reality though one can not perceive through the sense organs. Again those artistic designs in all their various forms such as drawing, painting, sculpture, photography, etc, are creations of artists' skills and photographers' labour. The objects of all these artistic copyrights, still another kinds of property, are non-physical things. The object of these rights are not the material things produced. Rather the objects of these rights are the various forms impressed upon by the creators or makers. For example, the picture, in the concrete sense of the material point and canvas, may belong to any purchases whereas the picture, in the

abstract sense of the artistic form made visible by that point and canvas, belongs to him who made it. The former is material, corporeal object which embodies the right in rem of the purchases; the latter is an immaterial, incorporeal object which encompassed the copyright of the artist.

Dear student you may simply take the picture which you bought last time in one of the souvenir shops. Say that picture is made by the world renowned laureate M.artist Afework Tekle. The picture you bought in the shop is a corporeal object. You have proprietary rights in rem in or over this corporeal object. But, Afework Tekle has an incorporeal object, the form of expression which is manifested in the object you bought from the shop. He has copyrights in this incorporeal thing.

Take also one musical album of Artist Aster Awoke. The cassette you bought in a given music shop in a corporeal object and it belongs to you. But that incorporeal thing which pertains to the rhythm and style of the music is Aster's object of copyright.

In the case of business goodwill and other special forms related with this business goodwill such as trade-names and trade marks, he who by his skill and labour established a business has an incorporeal thing in the established disposition of customers to resort to it.

Besides those jura in re propria as we observed herein before, there are other incorporeal things in corporeal, material objects. So, Gebru's share in the above desk, Tewabech's recurity in the pledge are incorporeal objects. There is proprietary interest in the share and in the pledge. These are what we referred as jura in re aliena. We can mention many others such as servitude, usufruct, use, habitation, mortgage, antichresis, lien etc. These are incorporeal things.

The division of objects of property into corporeal and incorporeal doesn't appear to be expressly recognized under the Ethiopian Civil Code. The readings of Arts. 1127, 1128 and 1129 seem to establish a different classification. As it appears, movable things are divided into corporeal and incorporeals. While Art. 1127 is about those material things that have physical existence and can move or be moved from place to place, the other two articles are concerned about incorporeal objects.

However, it is obvious that lands, buildings, trees, crops and other immovables by nature are also corporeal things. Again, if we refer to Arts. 1260 (rights on share), 1309 (usufruct in rights or in an inheritance), 1318 (rights in rem over credits and incorporeal rights) etc., we easily conclude that the classification mentioned above is an imperfect one. The correct division of objects of property rights rather involves not only movables but also immovables and other immaterial things.

Even taking Arts 1127-1129 as they stand, they are not exhaustive in listing corporeal and incorporeal movables. For example, business good will (Art. 124 comm code) is not included. Copyrights, patents and others such as jura in re aliena are not incorporated in the classification.

As can be gathered from the foregoing discussion, the classification of objects of property into corporeal and incorporeal is founded upon material existence (physical existence) or lack of such quality and it is not movability or not.

Due to their nature, corporeal objects and incorporeal things are mainly regulated by different rules and principles of law. The interactions of persons that involve corporeal objects as a basis of the relationships is regulated by the rules in the Civil Code as incorporated in Book III. And some of the provisions in this part may also be applicable for interactions that involve incorporeal things. In other case one either finds separate sections of articles

that are applicable for some incorporeals or a separate and special law will be made to govern juridical relations thereto. We may cite the new copyright and neighboring rights protection proclamation made in 2004 copyright and Neighboring Rights proclamation No. 410/2004.

The division of objects of property into corporeal and incorporeals, therefore, entails a number of different consequences. The nature and scope of rights of individuals, the mode of acquisition, transfer and extinction of rights relating to these things, the degree of protection and life span of rights of individuals with regard to those corporeal and incorporeal things, the mode of proof, judicial jurisdiction and things related to attachment, seizure and execution, etc, in regard to those two types of objects vary greatly.

2.3 INTRINSIC ELEMNTS-VS-ACCESSORIES

This is the third classification of objects of property. Unlike the other three classifications, this classification pertains, though arguably, to corporeal objects. And unlike the other three again, this classification is not only expressly provided under the Civil Code but also treated in detailed manner.

Arts. 1131-1139 deal with intrinsic elements and accessories. Therefore, here we will analyse the definitions given to these terms, and examine all other detailed legal issues which involve this classification.

Objectives:

After completion of this section, students will be albe to:

- Understand the meaning of intrinsic elements
- Know the various meanings of intrinsic elements;
- Appreciate the nature of intrinsic things;

- Explain the legal consequences of becoming an intrinsic element of another object;
- Identify the rights and remedies of persons whose thing is regarded as an intrinsic element of another;
- Understand the notion of accessory;
- Relate the idea of accessory with the idea of immovables by destination;
- Identify the circumstances that lead in to destination of things;
- Know those individuals that are entitled to destine things;
- Appreciate the nature of accessories;
- Explain the legal consequences of becoming an accessory of another object.
- Compare and contrast intrinsic elements with accessories and
- Discuss the rights and remedies of those persons having a right in rem in or over accessory things and those other third parties who may have some connection or interest with these accessories.

As mentioned above Arts.1131-1139 C.C deal with intrinsic elements and accessories and issues related there of. In particular Arts. 1131-1134 are concerned with intrinsic elements while Arts. 1135-1139 are concerned with accessories.

Then the first issue that we have to address is the meaning (s) of intrinsic element. But even this needs some background. As some legal scholars observed, an object of property right may consist, depending on the unique circumstance relating to it, only one substance, just a simple thing as cow or tree. In other cases a given object of property rights may be found as a composite thing; a number of component elements might have come into association to give rise that one object of property like the different parts involved in a given urban building.

If a given object of property is a simple, single object this section will be non-applicable to it. But if different substances or component elements have come in association to form a composite thing this diction on intrinsic and accessory elements will be relevant and appropriate.

The composite thing may be a result of various component elements. Some component substances might have come in an equal or almost equal contribution- in a relationship of coordination. In other cases one of the substances may be a principal thing whereas the other (s) may be subordinate or inferiors- a relationship of subordination.

Further still, the existence of a given component part may sometimes be a necessity for the composite thing to serve as an object of property interest as determined by customer economic considerations or any other. Without that component element the composite thing may not exist, or if it exists it may not give the expected complete services. Such component parts of a composite thing are identified as essential component parts or intrinsic elements in general. Whereas those component parts of a composite object that have come to the union or association to broaden the scope of serviceability of the composite thing, or to beautify or decorate it, or to proliterate the economic benefit are referred to as nonessential component parts or accessories of the principal object.

Coming to the Ethiopian Civil Code, we have a definition for each of the component parts of a composite object of property interest. The essential component parts or intrinsic elements are defined under Art. 1132. From the reading of this article we can observe that a double meaning is given to intrinsic elements; namely, natural meaning and customary (traditional or cultural meaning).

Art. 1132 (2) provides for a natural meaning of intrinsic elements. It reads:

> "Anything which is materially united to a thing (a principal or composite thing as such) and cannot be detached there from without destroying or damaging such thing shall be deemed to be an intrinsic element there of""

According to this definition, an intrinsic element is an integral part of the composite object. It is materially united with the principal thing or the composite thing in general. It cannot be separated from the composite thing; or if it is to be separated it will be possible at the risk of destroying or damaging the composite thing or one or another part there of. The factual association, the physical attachment is so strong that an attempt to dissociate it entails adverse effects to the whole or a part of the composite object of property. In other words, the intrinsic element is an essential component of the composite object.

As can be gathered from the above –cited provision, for an intrinsic element to exist two conditions must be fulfilled. These elements of natural intrinsic elements are:

(i) material union of the intrinsic element with the principal object or the composite thing, and
(ii) impossibility of detachment of this intrinsic element from the principal (composite) object without entailing damage or injury or loss to the composite thing or any part there of.

A careful examination of many things, whether movable or immovable, around us would enlighten us in understanding the essence of intrinsic elements in the present (immediate) context. Take any object of property around you. You can easily observe that many of the objects are composite things, and certain elements (substances) are really integral parts of the composite object. Take one urban building, a dwelling house, in Bahir Dar. The building is made up of many things such as bricks, cement, iron rods

(fero in Amharic), rafter, beams, tins, nails, chipboard, various woods, dye etc. All these are essential elements. They really constitute the composite object, the building. All these and other elements are materially, physically attached each other. It is the combination, the association of these elements that gave rise the building. It is impossible to separate any of these elements from the building. Or if it is practically possible to separate, it necessarily entails slight or serious injury to the house ranging from disfiguring the building to total destruction of the building. Actually these are simple to grasp.

Things appear to be complex when that building also encompasses such components as water pipes, radiators, electric wires, lavatories, electric light plants, heating or cooling plants, furnaces, lifts, balconies, partitions, shelvings, mezzanines, bath tubs, etc. whether all or any of these are to be treated as intrinsic elements may be open to debate. But we think all of these which are materially united with the building are essential elements, really integral parts of the building.

It is also possible to talk about trees and crops before they are separated from a plot of land. As they are firmly attached to the tract of land, they may be treated as intrinsic elements of the tract of land. Thus Art. 1133 (1) provides that “trees and crops shall be an intrinsic element of the land until they are separated there from”.

However, the associations of trees and plants and crops with tracts of land involve certain peculiarities not shared by other ordinary (normal) intrinsic elements. For example, cutting a tree from a given land will not be destructing or damaging that land in the restrictive sense of Art. 1132(2), not in the ecological or environmental concern sense. Even though there exists material union (attachment) each of them can be independent objects of property rights. This is true in our case especially as of public ownership of Rural lands prodamation No. 31/1975, and Government ownership of urban lands

and Extra Houses proclamation No. 47/1975 which reduced all rural and urban lands from the private domain into the public domain without envisaging the treatment of crops, plans and trees cultivated by individuals in their own possession after the redistribution. Again Art. 40 of the FDRE as well as Regional constitutions recognize this separate treatment of lands and on the one hand, and trees, plants and crops on the other hand. Ovbiously, therefore, at present trees, plants and crops should be treated as self-sufficient, independent objects of property but not as intrinsic elements of the land as provided under Art. 1133(1).

The nature of natural intrinsic elements can also be understood in movable objects of property – whether in an ordinary or special movable. Simply look into your jacket, trouser, tables, cupboard, sofa, car, television, refrigratior, mobile apparatus, bed, watch, doro wat, briefcase, computer PC, etc. In all these objects you will observe the existence of many essential component parts which fulfils the requirements envisaged by Art. 1132(2).

Besides, Art. 1132(1) provides another definition for intrinsic elements. According to this sub-article "anything which by custom is regarded as forming part of a thing shall be deemed to be an intrinsic element thereof." Unlike sub (2) of this article which requires material union, in this case there is no such condition. It is the customary treatment of a given thing as a part and parcel of another thing, principal or composite, that determines its intrinsic quality and status.

There are a lot of instances of intrinsic elements of another thing in our life experiences that does not necessarily require material attachment or union. For example in a balance (that apparatus which is in shops to weigh things such as sugar and coffee) we do find beam, pivot, pans or scales treated as intrinsic element by custom. Pair of shoes in itself and its lace kettle and its lid, pen and its lid, Masinko (traditional music instrument) and its harp, etc

can be mentioned here. In short, if a given thing is treated as an integral part of another without there being any material union that thing is an intrinsic element.

From the foregoing discussion one can easily discern that intrinsic elements, in either of its forms, act as a unity within the composite thing. Most of the time they can not exist separately and independently as an object of property. As a result, they will be treated as essential elements (integral parts), of a principal or composite object of property. And any juridical act that involves the principal or composite object relates the intrinsic element thereof as well. Of course, individuals can expressly determine otherwise. In this regard, Art. 1131 provides that:

> "unless otherwise provided, rights on, or dealing relating to, goods shall apply to all intrinsic elements thereof."

Thus, in principle any juridical act that pertains to "goods" equally applies to or affects the intrinsic element of that "good". Beware that the words "goods" and "thing" appearing here and there from Arts. 1131-1139 are referring to objects of property rights.

Art. 1134 C.C provides about the legal consequences of a thing becoming an intrinsic element of another and the rights of third parties whose objects of property is now being treated as intrinsic element of another. This article proclaims:

"(1). A thing which becomes an intrinsic element of a movable or immovable shall cease to constitute a distinct thing.
(2). All rights which third parties previously had on such thing shall be extinguished.

(3). Nothing shall affect the right of such third parties to make claims based on liability for damages or unlawful enrichment."

As sub-(1) makes it clear, so long as a thing is treated as an intrinsic element of another it can not be an object of separate property rights. It can not stand as a self-sufficient object of property. If it had been a separate, independent and self sufficient object of property before, its separate and independent existence ceases to continue as of that moment that it has become intrinsic element of another. As of that moment it follows the composite (principal) object. It can not be an object of separate real rights. In stead, any real right lawfully established on the composite (principal) object applies or equally relates to this intrinsic element. Of course the exception envisaged under Art. 1131 may apply when there are express indications by concerned parties.

Because an intrinsic element of a principal movable or immovable has no distinct status and separate existence, all rights and charges that previously had on such thing shall be extinguished by virtue of law. This will be one instance of restriction or derogation from that principle of right to follow (pursuit) and assert ones real right against any person in the world in real rights. This exception is provided for different reasons. One of this justification relates to the impossibility of dissociating (separating) an intrinsic element from the composite. In certain cases a person who previously had a real right over that object which has now become an intrinsic element of another may not practically be able to follow and reclaim that object. Say, if your five quintals of cement is unlawfully taken by another person who used it to construct his own or anothers building, you will not be able to reclaim it in kind. Art. 1206 (will not be really applicable in such cases as it will be beyond the capacity of persons to separate the previous object amidst the composite thing).

The other justification is that it will be uneconomical to allow real right holders to assert their rights and reclaim such intrinsic things as it entails total or partial destruction, or injury to the composite thing or any part thereof. So, for policy reasons Art. 1134 (2) declares the termination of the rights of previous real right holders over that object.

Despite sub (2) of this article, the critical and contextual reading of Art. 1183(1) would seem to allow for a joint ownership of the composite thing in certain cases where several component parts of comparable value have come to form that composite thing.

In other cases, however, a person whose object has now become an intrinsic element of another thing would be forced to drop his claim on that object. In such cases the third party is provided with another legal remedy, i.e asserting a right in personam against another person with a view to acquire a substitute or the value of the thing with attendant damages. This is what Art. 1134 (3) provides for. And this claim pertains to non-contractual liability or un lawful enrichment. It is legally possible for such affected person to institute an action in personam against the person who unlawfully misappropriated his object of property thereby making it an intrinsic element of another. It is also possible to claim for damages against the real right holder of the composite thing (despite the latter's innocence) since the claimants object has in effect enriched him or that the risk should fall against this latter person alone or jointly with the wrong doer. Actually these are insues that will be determined on the basis of law of obligations and procedural laws.

But, it should be pointed that payment of damage by the wrong doer for the unlawful act he committed against the third party (i.e the real right holder of that object before it became an intrinsic element) is provided under Art. 1134(3). This damage may be actual or future depending on the unique

circumstance of the case. Hope fully, this is intended to discourage those persons who may takes the law unto their hands with a view to enrich themselves or others at the expense of the real right holders of such objects of property.

Next to this we have to examine accessories. As stated above accessories are things that have come to same association or connection with another principal thing with a view to broaden the service of the latter, or simply to decorate or beautify it. These are objects of property that can exist separately, independently and distinctly. As is the case in intrinsic almost all elements, accessoies are movable objects. But, unlike intrinsic elements, accessories are susceptible of separate real rights but follow the principal thing in the absence of contrary determinations.

Arts 1135-1139 c.c are about accessories and legal issues related to them. Art-1136 provides a definition for accessory things. It reads.

> "Anything which the usufructuary (According to the Amharic and French versions) or owner of a thing has permanently destined for the use of such thing shall be deemed to be an accessory thereof."

This definition shows that accessories are things that are destined to the use of another thing. As the general gist of this article and subsequent provisions proves, accessories are movable objects. They are not naturally or customarily forming a unity within a principal thing, whether movable or immovable. Rather it is the decision of a usufructuray or an owner that creates such a coordinated or dependent relationship between it and another principal object.

As observed hereinbefore, accessories or non essential component parts of a composite thing are movable by nature. Hence either they can move from one

destination to another or can be moved from one place to another without injury or damage. They really fulfill the conditions provided under Art. 1127.

Nevertheless, the law gives some privileges for some real right holders of principal and accessory objects to change the condition and status of such accessory objects with a view to increase the economic or aesthetic utility of certain principal objects. Those entitled persons are only the:

- usufructuary (as the sources show it, thought the English veision incorrectly says posseson) or
- owner

Now the next question that we have to raise will be whether the usufractuary or owner of which object of property is entitled to destine. Is it the usufractuary or owner of the principal or the accessory? As we can understand from the expressions "usufructuary or owner of a thing…" and "…the use of such thing …" under Art 1136, it is the usufructuary or owner of a principal thing that destines an accessory object for the use of the principal thing.

Normally, it is the usufructuary or owner of a principal that destines his own accessory object to the use of his own principal thing. When one destines ones movable by nature to the use of ones principal movable or immovable by nature, the accessory will lose it independent status as a separate and distinct object.

In such cases the accessory which is destined to the service of a movable by nature will be treated as another element of that movable by nature. No change of status that relates to movability or immovability will come about in such instances; simply the accessory will be treated as a movable and as part of the principal movable object. But, in the case of a destination of an accessory to the service of an immovable by nature, the accessory will be

losing its movable status and will be treated as an element of the immovable by nature there by attaining an immovable status.

This is what we call as immovable by destination

Once an accessory is destined to the service of another principal movable or immovable by nature, it will be treated as a component part of the principal thing. This is the case even when there is no physical attachment between the accessory and the principal object as is the case when cattle, beehive, agricultural implements (tools), tractors. Etc are destined to the service of a mechanized farmland by owners of the land, or when certain tools, equipment and spare parts are deposited in a store in a factory with a view to use them as substitutes, or when the owner destines his own radio cassette or tape and/or extra type to the use of his car etc.

Since accessory things do not necessarily need to be physically attached to the principal thing, they can give more economic service or convenience or be decorations to the principal thing even when they are at some proximate distance. Even temporary separation or detachment of an accessory thing from a principal will not have the effect of terminating the pre-existing accessory principal relationship (Art.1137).

Hence reading on, the face any juridical act that relates to a principal thing also affects the principal's accessory. Art. 1135 establishes the principle. It proclaims.

> *"In doubtful cases, rights on, or dealings relating to, things shall apply to the accessories thereof."*

So, depending on the circumstance any juridical act that relates to a principal thing may relate also to its accessory. Art.3064 (1), for example, provides that

the mortgage shall charge the mortgaged immovable together with its intrinsic elements and accessories.

But, the expression “in doubtful cases” compels as to make a pause and contrast it with the expression under Art. 1131, for intrinsic elements. Obviously for all practical purposes any juridical act that involves the principal thing also involves the intrinsic elements of that principal thing (Art-1131). It is only when it is provided otherwise in an explicit and unequivocal manner, that the intrinsic elements will not be affected. But in the case of accessories, it is only when we are left with doubt that we shall be treating that the juridical act also affects the accessory. In other words, in so far as the parties are clear about their transaction as relating to accessories, their clear intention will be enforced. Even when they failed to indicate their intention in an explicit and unequivocal manner, one has to search what was intended in the circumstances. If it is possible act does not include accessories of the principal thing, they will be treated differently. On the contrary, if it proved difficult to know what was really intended, and if still the doubt persisted despite any attempt to dispel it, the doubt will be resolved in favour of including accessories with the principal as the juridical act also affects the accessories of the principal object.

In so far as the usufructuary or owner of a principal thing destined his own accessory to the service of the principal, there may not be recurring problems. Things will be complicated if:

(a) a usufructuary or an owner of a principal thing destines the movable object of another; or
(b) a usufructuary or an owner of a movable destines his own object to a principal of another.

As to the destination of ones movable to the service of another's principal there may not be that much problem as the usufructuary or owner of that accessory willed to commit it. Even the usufructuary or owner of the principal may not insist to claim an interest over that association as the law had made it clear that such destinations shall be made by the usufructuary or owner of a principal thing and not vice versa.

With regard to (a) above, Art. 1138 seems to envisage the possibility. According to sub (1) if usufructuary or owner of a principal thing destines the movable of a third party, this doesn't affect the rights of that third party. It is proclaimed that the rights which third parties may have on a thing shall not be affected by such thing being destined to the use of a movable or immovable. This provision will be enforced to its full extent in so far as these principal and accessory things are in the hands of that usufructuary or owner that established the association. But, if these principal and accessory things are transferred to another third party in good faith, the rights of those third parties whose movable object is destined and transferred to another good faith third party will come into clash with the rights of a transferee in good faith. Here we have two third parties in good faith one whose movable object is transferred to another through destination, and another is a transferee in good faith. Art. 1138(2) provides a solution for such incidents. It says:

> *"such rights (the rights of those whose object is destined by another) may not be set up against a third party in good faith (the transferee) unless they are embodied in a written document dated prior to this thing (the movable, now treated as an accessory) having been so destined."*

Thus, this provision seems to adopt a compromise solution. Neither of these third parties shall always be protected against the other. At times one will be

a loser and at another time a winner. In so far as there was no good faith on the part of the transferee at the time of transfer, the transferee (third part) is not protected at all. Even when there was good faith on the part of the transferee, there are times wherein the right holder of that object would be entitled to assert his claim against the transferee in good faith. This would happen provided that there was a written document that recognizes the right (s) of the claimant and that the written document contained a date which pre-dates the transfer date. If there is no written document made prior to that transfer to the transferee, the previous right holder can't follow his object and assert his right over can't follow his object and assert his right over it. Since will be another good example to show an exception to the principle of rights of real right holders.

Unlike Art. 1134 which provides for the remedies of affected third paties, Art. 1138 does not state the remedies of those third parties in good faith on two opposite sides, in case when one of them is to be a loser. We can fill this gap by analogizing the remedies provided under Art. 1134(2) and (3). Of course, the gap can be resolved by resorting into the non-contractual and unlawful enrichment provision of the Civil Code. Only an action in personam seems to be left for the loser party.

As stated time and again accessory things, unlike intrinsic elements, are self sufficient objects of property; they can exist and give economic service separately and independently of the principal objects. It is to increase the service of the principal that certain individuals are entitled to destine them. Art. 1139 also provides the possibility of terminating such association between a principal and an accessory. Cessation of the character of accessory is recognized expressly. Sub (1) of this article provides that the owner of a thing may put an end to the character of accessory of such thing. But this should not be open only for an owner it should include the usufructuary since Art. 1136 recognizes the destination of accessories not only by an owner

but also by a usufructuary. So, he who is entitled to create such a status, should also be permitted to cease it similarly. Of course, such cessations should not be allowed in a manner that adversely affects the interests of third parties (Art. 1139(2).

So far we have been discussing about intrinsic elements and accessories. As mentioned above, this classification of objects of property seem to be applicable only to corporeal objects. And that is what we can read from those articles of the Civil Code, i.e. Arts 1131-1139. In some other countries, however, this classification also applies to incorporeal objects of property. The scope of this module does not allow in further discussion on this issue.

2.4 PRIVATE DOMAIN –VS- PUBLIC DOMAIN

This is another way of classifying objects of property. But we will not make an endepth analysis there for it requires some other background to grasp issues under it. Actually this division will have its own place in our subsequent discussions, mainly in property and land law II. Here we should simply present some general points.

To begin with, the basis of this classification is different from the others. It does not take the nature of things or the policy reasons behind things as a basis. In stead the answer for the questions who has the ultimate, the most comprehensive and exclusive real right over objects of property? Provides the ground of this division.

Simply stated, if an object of property is owned by the public at large, if it is at the disposal of the public, it is referred to as a public domain. In other words an object of property which is directly placed or left at the disposal of the public or which is destined to a public service and is under the state or

administrative agencies of the state is said to be a public domain (see Art. 1445 C.C).

Any other property, whether jointly owned by private individuals or by individuals and the state, or by any private individual, or the state in its private capacity, is refered to as private domain.

The rule is that any object of property which is not declared to be a public domain, is a private domain. Hence, public domains are to be found expressly declared as falling out side of the private domain. For example Arts. 1446, 1447 and 1448 list those objects that fall under the public domain. As per proclamations No. 31/1975, and 47/1975 as well as the 1994 FDRE constitution, land, whether in the urban or rural areas, also falls under the public domain.

The effects of this classification will also be described in another place. To summarily state at this juncture, unlike objects within the private domain, things that are within the public domain are not objects open for acquisition of individual or joint ownership. Hence no person can acquire right ownership over any of the objects of public domain through occupation, possession in good faith, usucaption or accession (Artd-1454-1457). Again they are inalienable unless the proper organ determines otherwise validly (Art.1454).

So far we discussed four types of classification of objects of property. It is also possible to classify and treat closely in a detailed manner each of them as:

- Consumable -VS-non-consumable
- Fungible -VS-non-fungible
- Things of commerce –vs- things out of commerce etc. But detailed treatment of these is beyond the scope of this module. Actually, one can appreciate these distinctions easily as they are available in the laws of

obligations and in the law of property of Ethiopians at various places of the Civil Code.

Now, since this is the end of unit 2, we have the following summary questions.

SUMMARY QUESTIONS

1. Read the English and Amharic versions of Art-1126. Which classification is proper? Why?
2. Write some of the legal consequences of the classification of objects of property into movable and immovable.
3. Compare and coutrast movables by the fiction of the law and immovables by destination
4. What are incorporeal objects? Are these recognized under of the Civil Code?
5. Define intrinsic elements.
6. What are the legal consequences of a thing becoming an intrinsic element of another principal object?
7. Compare and contrast intrinsic elements with accessories.
8. What do you understand by jura in re propria and jura in re aliena?
9. Where do you classify patents, copyrights, business good will, mortgage, usufruct, servitude and pledge within the classification of things in to
    (a) Movables and immovables
    (b) Corporeals and incorporeals, and
    (c) Intrinsic elements and accessories
10. Describe the rights and remedies of third parties whose object has nolu become an intrinsic element and accessory of another thing.
11. It was on Tikimit 12,1999 E.C that Ato A sold his villa in Gondar with 900,000 birr to Ato B. They made their contract in a written form;

witnesses and contracting parties have put their signature on that document. Even then, their agreement was taken to the notary and it was registered in due time.

According to their agreement, B has already paid the full amount of the purchase price and has succeeded in having a title certificate in his own name. However, a dispute has arisen when delivery of the villa was to take place on Miazia 26,1999 E.C. The cause of their dispute relates to the water tanker (Rotto) placed near the villa, just beside the bed-room in the out side. While A claims to remove and take it to his other house, B contested saying that the sale also includes the water tanker. As there was no indication of this object in their contract, they failed to reach at agreement. Even witnesses were puzzled this matter as it was not discussed as between the contracting parties during the conclusion of their contract.

If you are asked for a legal opinion, what advise will you offer to these disputing parties?

12. Assume that you are an instructor of laws that teaches property and land law. Assume further that one of your students asked you whether water is an object of property or not? Not only that, the student also asked if water is an object of property, whether it is a movable or an immovable? Whether it is corporeal or incorporeal? Whether it is an intrinsic element or accessory? And whether it is under the public domain or private domain? Please describe in brief your opinions for these series of questions.

MODULE TWO

POSSESSION AND OWNERSHIP

INTRODUCTION TO MODULE TWO

This is the second Module in our study of the course property and land Law I. It is concerned with two important units, unit three and unit four.

In unit three, we will deal with one of the most complex matters in law of property. This is possession. As observed by various legal scholars of different periods, possession is the most ambiguous of all legal terms. Due to its dynamic nature and many connotations it has always been a puzzling subject. Not only its meaning but also its elements (ingredients) and its legal consequences have always taxed human ingenuity.

Thus in this first unit of the second Module an attempt will be made to define possession and identify its various ingredients as developed by known jurists and embodies in laws. How possession is related with and distinguished from detention will be presented in some detail.

The acquisition and transfer of possession, the defects and legal consequences of such defects in possession will be examined. Then the various forms of disturbance of and interference with someone's possession will be discussed. What constitutes an act of dispossession (Huket in Amharic) will be succinctly presented in light of the Ethiopian Civil Code. This will be followed by the legal remedies available for persons whose possession is disturbed with or interfered. Besides the self help (use of force), the possessory action as different from petitory and other real actions, will be explored as a remedy for dispossession.

The next unit, unit four, is concerned with the most comprehensive and exclusive real rights in law of property. It generally deals with ownership. The definitions, contents or ingredients, scopes and types of ownership will be

presented. After we examined issues relating to any of these generally and in light of Ethiopian Civil Code, we shall proceed to deal with one of the types of ownership, i.e, private (individual) ownership. Herein we will try to show the justifications for the recognition and respect as well as legal enforcement of private ownership. Theories (doctrines) as developed through time with a view to justify the institution of private ownership of property rights will be presented. Hence, we will have time to look into these theories, as theories of occupation, labour, economics and personality.

This will be followed by the discussion of the various modes of acquisition of individual ownership in contradistinction with that derivate modes. Occupation, possession in good faith, usucaption and accession will be examined and analyzed in light of the Ethiopian Civil Code.

UNIT 3

POSSESSION

- Hello dear distance student! Now we have come to study one form of human interaction that involves property. And this is in fact the most basic of all legal relationships that human kind can have in respect of property. This fundamental relationship is described by the term "possession".

Though possession represents the most basic of all legal relationships that men can have in relation to objects of property and property rights, its meaning is by no means clear and understandable to every person whether to a legally trained mind or to any lay person. Therefore, it is the immediate task of this unit to expound the concept of possession.

Its various meanings and elements thus will be explained in light of general theories and then an attempt will be made to relate these to the Ethiopian legal regime in respect of possession.

Then, how and in what ways a person acquires possession, and the manner (mode) of transfer of possession from one person to another will be followed on the basis or general theories. These will be again examined in light of the current Ethiopian legal system.

Next, we will be discussing the various vices or defects in some one's possession as developed in the civilian tradition and try to show the effects of

the existence of such a vice. The stand taken by the Ethiopian legislature in this regard will be examined as formulated in the Civil Code.

Lastly, we will be focusing on the various material acts that constitute dispossession (huket). Different forms of disturbance and interference in the peaceful enjoyment of objects of property will be expounded Naturally this will be followed by a discussion of the various legal remedies for such acts of disturbance and interference.

Objective:
After completion of this unit students will be able to:

- Define possession;
- List out elements of possession;
- Describe the various theories of possession;
- Know how a person acquires possession;
- Distinguish possession from property and ownership;
- Identify the various ways of transfer of possession;
- Explain the various vices in possession;
- Analyse the legal consequences of vices in possession;
- Understand the essence of dispossession and identify those material acts that constitute dispossession;
- Explain the legal remedies available for those persons whose possession is interfered with or disturbed; and
- Analyse the nature of possessory actions in contradistinction with petitory and other forms of real actions.

Now let's proceed to the discussion of the idea of possession.

3.1 The Idea of possession and Its Ingredients

Throughout human history, from the primeval to the contemporary period, possession represents the most basic relation between man and things, more correctly relations of persons involving objects of property. Despite this state of condition and real life, the term has been a bone of contention hitherto. It is always expressed as the most difficult to comprehend and the vaguest of all vague terms in law. Its relation with the concept of property itself needs critical appraisal. Whether it, in itself, is referring to property or any other real or personal right in relation to objects of property is one state of confusion that we see people grappling with.

On the other hand, we see people when they try to attribute it a certain quality that approximates ownership. But they fail somewhere to demarcate the boundary between "possession" and ownership". Because of their inability to properly identify possession and ownership, they fall into the pitfall of confusing the basic elements that constitute each of them as well the evidences required to prove the existence of each one of them. As a consequence of their blurred understandings, they also provide frail and ill-fitted solutions to those legal problems that relate to each one of them.

These problems are common in Ethiopia as many court practices and analysis thereto testify. Hence, in this particular section we will try to present the correct scenario which enables one to understand the term in a distinct manner. After a brief historical account of the term and conceptions there to, we shall proceed to see the most dominant theories thereby expounding basic elements that constitute it. Then an assessment of the Ethiopian Civil Code in relation to the conception and elements of possession will be made.

Objectives:
After completion of this section, students will be able to:

- Explain the origin and historical development of the term possession;
- Distinguish possession in fact and possession in law;

- Distinguish possession from detention;
- Analyse the various theories of possession;
- Identify the subjective and objective theories of possession;
- Understand the essence of possession as distinct from the concept of property and ownership;
- Appreciate the reason(s) behind the legal protection of possession;
- Write some of the legal consequences of legal possession;
- Define possession in the Ethiopian context;
- Sort out the ingredients of possession according to Ethiopian Civil Code
- Describe the types (forms) of possession in Ethiopia, and
- Differentiate a possessor from a mere holder (detentor) in the Ethiopian context.

Before proceeding to a detailed discussion, let us pose these questions. Dear student, what do you understand by the word "possession"? Is it another name for property? Or is it the same as ownership? Or is it a suei-generis right over an object of property? Or is it a totally different idea from all these? If so what is it referring to? Why the legislature of any country makes a law that protects possession? What are the legal consequences of possession?

From our previous discussions, we identified the idea of property from those corporeal and incorporeal objects. We have said that property in the legal sense refers to pecuniary and spiritual interests of persons in those objects of property. In particular, we have said that it connotes those rights in rem-pecuniary rights in rem, bundle of exclusive rights. So, legally speaking an object of property, whether corporeal or incorporeal such as cattle, land, building, patent, business goodwill or copyright, is different from, (though very related, one) property.

No doubt, the concept of property is a result of human abstractions deriving from the association of man with corporeal objects first, and incorporeal

objects later on. For the primitive society these abstractions were not known. Originally, man was simply one element of the natural circumstances and nature itself. Mankind formed one ingredient of the composition of the surrounding animate and inanimate things.

Through time, however, mankind started to distinguish itself from the surrounding elements of nature. Step by step it started to experess its supremacy and mastery over some of the surrounding inanimate and animate things. So, it started to exercise conscious control, as distinct from instinctive nature, over certain inanimate and other living creatures. Through its nomadic and wanderous life, mankind began to assert unshared claims over certain weapons (tools) and produces of nature. With the development of various aiding tools for day to day activities and domestication of certain animals the conscious exercise of control and claim to, these things (objects) began to take firm roots. At that earlier period therefore, retrospectively speaking, might (physical power over corporeal objects) and right were not distinguishable. The history of present day possession has began with this primitive form of physical power of a person over identified types of corporeal movable objects, especially clothes, weapons and tools as well as certain domestic animals.

In that ancient time, the objects of property were only movable things. Seizure or more occupany of these limited objects was the common method of acquiring exclusive claims, proprietary interests in present day language. The immediate contact with and power over those limited objects of property by a man at that time was honoured and respected. At that time men moved from place to place carrying all their belongings with them, or followed their cattle and their immediate contact and physical power of control was as such recognized and protected. We can not express that physical power of control was as such recognized and protected. We can not express that physical relationship and its attendant circumstances in terms of real rights as

ownership or any other as the rights conception was not yet born. Simply the seizure of corporeal movable objects in ones hands or the sphere of influence and expression of physical power over a given movable object as such was recognized and protected in favour of that person who exhibited that contact and power. This is what we call today as possession in fact (de facto possession) possessio naturalist.

As history tell us, the life of the human race began to transform into civilized way of life when growing of crops and cultivation of land appeared to the scene. With this growing of corn and cultivation of land came settling down in a given area – sedentary life arose in the evolution of mankind. This way of life of the ancient society in itself gave birth to exclusionary claim of occupied lands as well as cultivated lands. Attributing certain lands to certain individuals got its own recognition. This in turn brandened the subject matters of exclusive claims of earlier societies which was confined to limited corporeal movable objects to include lands. So, that physical control of objects which in the plesent day language called as possession in fact, broadened to include lands as well as hats and caves.

Hence, according to one jurist, a new departure was made in legal language by the creation of an entirely new word denoting possession- a word which was originally formed solely with a view to land. Actually even to land, it was the immediate visual impression which in the same way as with movable objects that determined the conception of the primitive mind. Whilst in the case of movable objects the perception of the object in the man's hand determined the earliest expression for possession, in the case of land, it was the picture of man sitting on the land or in its immediate proximity that formed the oral expression of the new phenomenon, the attribution of a land to a certain person.

The Roman term possession is thus derived from sedere and por or pod (apud) which means to sit on, or close to , the object of property, As noted by the same scholar, the ancient French and English legal terms for possession, saisine and seisin, have similar derivations. Whether the Amharic term Yizota or Ejjota has such similar derivations is yet not known.

Briefly stated thus possession in its ancient sense means exercise of actual control over corporeal objects. In this context, then, possession was nor referring to an object of property as such or it was not a type of right that people had with regard to corporeal objects of property. It simply was an expression that signified the contact of one man with an object which actually carried sense of exclusion of others from the use and enjoyment.

For the primitive society, this possession was not distinguishable from a right to objects. As there was no internal attribution of our object with an identified person, the external power of individuals over those objects decided the attribution of things to individuals. Hence, might and right, physical possession and ownership were said to coincide one another. When deviant behaviors such as violently removing and taking of objects that were under the possession of others started to occur through time initially persecution or vengeance by the possessor were the only solution that individuals could availed beside ostracization of the community.

Yet, some individuals were able to succeed in violently removing and taking objects from possessors. This was actually a vice that forced the primitive society to invent a solution to it. That solution had to enable that society to distinguish one who had legitimate possession from the other that had acquired physical possession through violent means. Necessarily this distinction needed to take some internal attachment of that same object with one of the individuals. When a previous possessor and later possessor were claiming as having the legitimate ground to use and enjoy one and same type

of object, it was necessary to determine in favour of one of them. Naturally, the one who possessed the object later on would not have been favoured while it was made clear that he acquired it with violent means. Because it could have the effect of nurturing protecting those who violently snatched others.

Step by step came a recognition of an invisible attribution of a given object with an earlier (previous) possessor; in old Romans, for example, previous possessors started to lodge possessory actions which were identified as interdicts, originally a sort of tort action; with a view to be reinstated or get damages from the wrong doer.

The object of the interdicts generally was remove interruptions of possession, prevent future interruptions, recover the thing or damages, from the wrong doer or tortfeasor. The basis of these actions was the unlawful dispossession or other violation of the state of possession by force or otherwise.

As time passed, extending internal attribution to persons in cases where objects of property were in a far distance under the custody of servants, children and other persons that held it on behalf of the other began to take roots. Those individuals under whose holding those objects of property were to be found, began to be identified as mere detentors while those far away from the objects as possessors. Beware here that possession started to signify not nerely external physical contact of one person with an object of property but also internal connection or justification for physical control. This represents one other incident of the transformation of the term possession.

While previously possession merely signified the physical control over a thing by a person, later on this became contingent up on internal attachment. Accordingly, one who had physical control of an object and an animus (mental disposition to use and enjoy the object in exclusion of others) obtained that status of possessor. But, any other person who physically held the thing

without the desired psychological element was relegated to a status of detentor (mere holder). So, the distinction between possession and detention became apparent.

In this new context then possession was and still is, defined in various ways. Some of those include the following:-

- "Possession is the actual holding of a thing accompanied by the intention to hold it for oneself and for not another." (Grotius)
- "Possession is a relation between a person and a thing which indicates that the person has an intention to possess that thing and has the capacity of disposing it of." (Zachaiae)
- "The possession of a material object is the continuing exercise of a claim to the exclusive use of it." (salmond)
- "Possession is the actual detention of something, with the intention of keeping it for oneself." (author omitted).

On the other hand, detention or custody retained the earlier meaning of possession i.e, physical control of a thing by a person. Its other descriptions included such expressions as "physical possession", "de facto or actual possession", "custody", and "corpus possessionis" or simply "natural possession". All these simply refer to the physical (external) contact a person has with an object.

This conception of possession and detention worked properly in the middle ages wherein the head of the family enjoyed legal protection of things under an actual control of his children and slaves.

Still social life continued to develop and to accept new forms of social and economic as well as political intercourse. It became a common feature of the feudal society to reduce one and the same object of property for the utility of

multiple persons at the same time. Particularly simultaneous use of lands and houses by land lords and masters of houses on the one hand and the tenants and lessees, on the other hand, became a routine activity. Then came another group of powerful economic interests, i.e creditors that seize objects of properties of debtors in pledge as security.

In this later period those persons that have right of ownership over objects were treated as possessers. Tenants and lessees were regarded as detentors. As time went on, however, such legal treatment of landlords, masters, tenants and lessees as described now faced various challenges from different angles.

First, treating tenants and lessees as mere holders while in fact they were having good reasons to use and enjoy the objects found to be repugnant to the reality.

Secondly, because they were treated as mere detentors they were exposed to the arbitrary measures of land lords and masters. The latter could evict as they pleased. This in itself spoiled the harmonious relationship that ought to exist at any time between the two parties.

Thirdly, the landlords and masters themselves started to taste the negative sides of treating tenants and lessees when their objects of property were unlawfully taken by third parties without the will of tenants and lessees. Because tenants and lessees could not legally institute possessory actions in their own name against those third parties that disturbed or usurapted objects of property of land lords or masters, the latter were required to institute cases against dispossessors after being communicated. And at this time, time might lapsed or one might be too late to get restoration or reinstitution. For movable objects in particular the owner might not be able to trace the whereabout of them.

Generally therefore there was a need to change or modify the law of possession and its effects. This was very much reinforced when those other categories of people having real rights other than ownership became prominent parties in economic transactions. Those persons having a real interests in or upon the object of property of another person, i.e, jura in re aliena, needed protection not only against any other person but also against owners. Some tribunals and legal writers began to interprete the old Roman law and customary norms of different societies with regard to possession in a broader way so that it included not only owners but also those others that had any other real or personal rights relating to objects of property. This in turn brought about controversies, which actually continued until this time, between those who stick to earlier practices and laws and those others who preferred to inculcate some changes in the previous conception and legal effects of possession. Thus, in the 19th century two prominent schools of thoughts evolved in the civil law world.

These are:

(i) the subjective school of though (saving's theory of possession); and
(ii) the objective school of though (Ihering's theory of possession).

The detailed analysis of these two schools and there differences thereto will be provided herein-below. But the main and basic difference between the schools relating to possession is not so much on the basic conception that possession is a factual relation between a person and an object of property but on whose fact of holding should be treated as possesson. In other words, what basically distinguishes one school from the other is ones answer in case when one is faced with a number of persons having different interests and connections with an object of property.

Both schools of thoughts understand and share that the term possession has changed in its meanings. Its original meaning has given way to the new forms of social and economic interactions. Attribution of a given object for an individual who showed actual physical power or for that person who hold it became insufficient, since it would give protection for those who succeeded in violently taking it or theifs or other illegal occupants again those of legitimate possessors. Even it has become clear to any school of thought and to any other person outside of the schools that physical possession has undergone fundamental changes.

Originally possession used to refer physical possession. In that context physical possession signified holding of things in ones hand, wearing of clothes, capturing of objects of property. If an object departed or escaped even for some time, momentarily, from a person, that person lost possession. Nevertheless the earlier society was forced to extend its conception of physical possession to include other circumstances. Hence, after a passage of some time, a person was regarded as possessor of a given object even when he had no actual holding. For example when he falls asleep, when he is away from his land or house, etc.

The nature and extent of physical control also kept growing. Instead of lying ones hand over an object of property, or sitting around it expressing sphere of control, it became an accepted practice that confining an animal with cages, fishing with nets constituted physical possession. So things in ones cage, net, container, land or premise started to be regarded as things under the physical possession of owners. The positive law has taken these customary practices and attitudes of the public and has provided legal protection under the law of possession. These are not cleavage points for the two schools of thoughts in the later ages.

The problem however related to this physical possession of objects. As we have seen above possession continued to expand, change and mutate itself from mere physical control to signify some internal connection of a person with a thing. While children, wifes and slaves were showing physical control of things they were treated as detentors; the head of the family, even where he was not around, was regarded as possessor. This is made by some internal attribution and ideology. This extension of the concept of possession also was shown in other forms of social, economic and political intercourses as explained above. Treating land lord, masters and owners as possessors when their objects of property were under the physical possession of lessees, tenants, bailees, pledges, etc. Properly worked for the medieval society. When the tenants in the cities as well as in the rural areas begin to emancipate themselves little by little, and to look upon themselves as independent economic persons, pursuing their own economic interests, when the protection given for creditors and bailees proved to be insufficient under the new economic and social development, it became inevitable to see the division in the conception of possession among practitioners and jurists. The division centered on whether these latter groups of economic powers, i.e, lessees, tenants, creditors (pledges, bailees and warehouse keepers), should be treated as possessors or not.

According to sarigny and other proponents of the subjective theory, only those persons that have the will (animus) to possess a thing as their own are regarded as possessors. Here, the intent to own the thing (animus domini) is an indispensable element of possession. Hence, possession in this context is defined as the holding of a thing in the power of a person who intends to exercise with regard to it a property right of ownership. Grotius' definition which runs as "possession is the actual holding of a thing accompanied by the intention to hold it for oneself and for not another" also represents this subjective conception of possession.

According to the subjective theory, therefore, possession has the following fundamental elements:

- ❖ corpus (physical control), and
- ❖ animus (mental element)

The corpus element refers to that physical control of a possessor over the corporeal object of property. This is an external relationship between the possessor and the object. Indeed this was a full full fledged possession in the ancient societies. Because at that time there was no distinction between detention and possession.

Nevertheless, corpus can be direct (immediate) or indirect (mediate), which proves the transformation of the idea of physical possession of the ancient societies. Of course, even today one may literally express this external relation ship between a person and a thing as possession. Well that is possession in fact (defacto possession) or possessionis naturalis. Yet, through time possession has already become a legal concept. Hence, possession in fact may be different from possession in law (possession de jure). Inspite of this distinction still in many cases possession in fact goes hand in hand with possession in law.

Accordingly, if a person is directly exercising physical control of a thing with the required mental element, he will be treated as having possession direct or immediate possession according to the subjective theory. Direct or immediate possession simply refers to the usual and normal type of possession; the one who exhibits external power over the object with the attendant internal connection is a direct possessor.

Unlike the ancient practice, When one person is holding a given object for and on account of some one else, the latter is said to be in possession of that thing by the agency of the former who holds the thing in fact. Such type of

possession is referred to as indirect or mediate possession, and it is of mainly three types.

The first kind of mediate possession is that which a person acquires through an agent or servant, through someone who holds solely on his account and claims no interest of his own. For instance, when you allow your servant to use your own tool in his work, or when you deposit goods with a warehouseman who holds them on your account, or when you send your shoes to a shoemaker to be repaired, you have mediate (indirect) possession; the servant, the warehouseman, and the shoemaker are defentors.

The second kind of mediate possession is that in which the direct physical control (corpus) is in one who holds both on your account and on his own, but who recognizes your superior right to obtain from him the direct possession whenever you choose to demand it. For instance, when you lend a given object for a borrower, you have mediate possession.

The third type is that in which the immediate “possession” is in a person who claims it for himself until sometime has elapsed or some condition has been fulfilled, but who acknowledges the title of another for whom he holds the thing, and to whom he is prepared to deliver it when his own temporary claim has come to an end. For instance, when you land a given movable object to another for a fixed time, or when you deliver it as a pledge to be returned on the payment of a debt you have an indirect possession according to this subjective theory.

Mind you here all these varieties of possession discussed above are described by simplicity taking into account that the second element (the animus) is existing.

So, according to the subjective theory corpus may, be direct or indirect and depending on the fulfillment and existence of the second element possession may be an indirect or mediate type. Again, we should not forget that physical power is not necessarily expressing those earlier forms alone. Rather, if you express some sphere of influence on an object to represent that you are exclusively exercising the use and enjoyment of the thing, it will be sufficient control. Actually this varies from case to case. If it relates to land, putting some marks, or fencing or planting activities may be sufficient. If it relates to wild animals reducing these into ones net or cage may be sufficient. The point here is that you are not required to lay your hand on or to sit near to the object. Besides, things in your premises, container or any other thing which you assert as having the exclusive power shall be treated as things under your physical power.

When we come to the second ingredient of possession, according to the subjective theory the possessor is that person who holds a thing directly or indirectly as his own. This necessarily looks into the psychological make-up of the person. The person should think or intend or believe that he is the owner of that thing. Savigny argues that the possessor is that person who exercises direct or indirect physical power over his own thing. But there are others within the subjective school of thought that argue otherwise. According to the latter an animus Dominican be the second element of possession; but it should not be the only type of mental element. They say that an animus possidendi (the intention to possess the thing even if one is not an owner) can be another variety.

According to saving, only an owner can have possession. Only he who can use, enjoy and dispose of an object can be a possessor. He who lacks the power of disposition of the object can not properly attain a status of possessor. For savigny, the law recognizes and protects possession because it has the effect of protecting owners. It is to broaden the scope of protection of

owners that the law protects possession as such. Law and order, stability and security will be maintained in a given society when the possession of owner of objects of property are recognized and guaranteed. This recognition and protection of possession further helps owners to lodge possessory actions against any one who obstructs the peaceful use, enjoyment and disposition of those objects of their own. And, owners can succeed in getting immediate relief since possessory actions do not require lengthy proceedings and litigations. Within short period of time and lesser types and qualities of evidences, owners will be well protected in their own private property.

Savigny and his followers actually recognize the adverse effects of their arguments –Many people that may have personal and real interests in anothers thing would remain without legal protection. In order to tackle possible challenges against these latter categories of people they invented the idea of quasi possession and quasi-possessory actions which enable these non-owner quasi-possessors to get protection against third parties other than owners.

According to the other wing of the subjective school of thought, however, many people who may be simultaneously using and enjoying the same type of object with the owner will be treated as possessors. Hence, unlike savigny, they treat many groups of people as having possession, whether direct or indirect, over an object at the same time. Lessees, tenants, usufructuaries, pledges, bailees, dipositees, ware housemen, etc, shall be treated as having possession over objects under their control or occupancy. These will be protected in their possession not only against third parties but also even against the owners. The law recognizes and guarantees possession because it aims at discouraging violent actions, thefts, robberies, arbitrary takings by taking the law unto ones hands, etc. Not only right of ownership but also any physical control of objects of property is to be protected to maintain status quo. According to this view, even a person having right of ownership should

be prohibited from taking arbitral actions against these other persons who exercise actual control over his object by having their own respective interests. Owners should seek peaceful means, they have to take their cases to lawful institution if they deem that they are suffering some harm or any injury.

When we come to the second school of thought, i.e, the objective theory of possession we find Ihering at the forefront and at the opposite extreme of the subjective school of thought propounded by savigny.

According to Ihering possession is the external visible relation of power between a person and an external object at any given moment. It is an actual control over a thing.

Ihering challenged the subjective theory of possession and sought to demonstrate that the subjective intent of the person who has physical control over a thing is implicit in his factual authority, but it is not determinative for the qualification of that authority as possession. Ihering's theory is known as the objective theory of possession, because any intentional exercise of physical control over a thing is possession. Ihering distinguished between possession and detention, but he did not ground the distinction on the presence or absence of the intent to own the thing. According to Ihering, a person has detention rather than possession when the causa possessionis (the "caude of possession") is of a nature that implies exercise of physical control over a thing on behalf of another person. When this happens, there can be no possessionis becomes a causa detentionis.

Thus, according to the objective theory of possession, possession has one ingredient which is corpus. As stated above the mental element is to be presumed from the factual physical control. And this element which is to be presumed should not necessarily be an animus domini. An animus possedendi is sufficient. Any person who excrcises physical control, factual

authority, over a thing is possessor, even if he exercises that authority on behalf of another person. But if a person exercises actual power of control over a thing on behalf of another person in the latter's household or place of business, or in a similar relationship by virtue of which he has to comply with the instructions of the other concerning the thing, only such other person is the possessor. The detainer is referred to as possessor servant or possession helper.

Consequently, therefore, lessees, tenants, depositaries, borrowers, bailees, warehousemen, pledges etc. are possessors in the proper sense of the term.

According to the objective theory of possession, factual possession (possession in fact) and legal possession (possession in law, de jure possession) are the same except in a few cases. The law recognizes and protects possession in fact because it aims at preventing disturbances and violent acts that generally negate the public status quo. The protection may even go to the extent of shielding robbers, theifs and other undlawful persons that exhibit physical control over things. Though it sounds odd in such cases, it has the advantage of protecting the peace and security of the public as a whole. And previous lawful possessors are not prohibited from reclaiming the things dispossessed against any unlawful person. But they will be required to follow the procedural requirements in law.

Like the subjective theorists, objective theorists also recognize the presence of two types of possession; namely, direct (immediate) and indirect (mediate) possessions. But the latter differ from the former in that they also regard those who factually exercise physical power over the thing as possessors not as detentors. Hence there are possibilities for two or more persons to have possession over a given thing at the same time one as direct possessor, another as indirect possessor. But, then, ihering and his followers propose different legal consequences ensuing from various possessions. According to

them such legal consequences of possession relating to prescriptive acquisition (usucaption), presumption of ownership and proof of ownership will not be available for those possessors who acquired the object through personam relationships established with owners. Robbers, theifs, and those other persons that acquired possession in an illegal manner will not also be beneficiaries of those and other legal consequences of possession. Only possessory action is allowed for these group of possessors.

Thus, in effect both schools of thoughts are almost similar. While the subjective theorists narrow the scope of possessors and broaden the class of detentors and quasipossessors, the objective theorist treat many class of people as having this status of possession. The legal consequences that go into this large category of people in the objective school of thought are almost the same with the legal effects of becoming a detentor or quasi-possessor in the subjective school of thought.

Be this as it may, these two dominating theories of the 19th century have influenced the legal formulations of countries across the globe. Many continental European countries adopted savigny's and his adherents view while Germany drafted and finally made its law in accordance with Iherings analysis of possession. France, Italy, Switzerland and a number of other countries adopted savigny's view in their law that relates to possession.

After all this extended background, we now proceed to relate these theories with the Ethiopian perspective on this issue of possession. How is possession defined under the Ethiopian legal regime? Who is/can be a possessor? What is the distinction between a possessor and a mere holder?

Fortunately we do have a definition of possession under the Civil Code. Art. 1140 reads:

"possession consists in the actual control which a person exercises over a thing."

From this definition one easily gathers that possession in itself is not property; even it is obvious here that it is not a right in a thing. As expressly declared, it is rather primarily and basically referring to actual control over a thing. This actual control over a thing by a person necessarily relates first to external connection, physical relationship that exists between a person and a thing.

There is nothing in this article that indicates a right element or incident of a right in the thing. It amounts to read what is not written if one really reads about a right in this article. By the way, the very organization and structure of the law of property in our Civil Code is in itself informative that possession is some thing different from ownership (whether individual, joint, or communal or public) and other rights in rem such as usufruct, servitudes, right of recovery, right of repurchase, right of pre-emption, pledge, mortgage, antichresis or any other. As is common in many other jurisdictions, the Ethiopian law-maker provided a separate part, chapter 2 (Arts.1140-1150) for this matter called possession.

This does not however imply that possession is not related with other legal issues in the law of property. To the contrary, many provisions in the Civil Code prove that possession has relevancy in many aspects of in rem and in personam relationships of persons. As the saying goes, possession is nine tenth of ownership. It is really the source of the most comprehensive and exclusive real right – right of ownership. It can be the foundation, the source of right of ownership; but it is not ownership itself.

Now coming again to the definition provided under Art. 1140, we observe that possession is an actual (physical) control over a thing. This control over a thing has to be by a person. The actual control is referring to that corpus element of possession as we tried to show.

From the readings of Art. 1141, 1144, 1145, and 1147(1) we learn that actual control can be direct (immediate) or indirect (mediate). Hence correspondingly, there are two types of possession as expressly written in the very title of Art. 1141. These are direct possession and indirect possession.

When a person exercises an actual control over athing, depending on the mental element of this person, he may be regarded as a possessor or a mere holder. Art.1141 reads "The possessor may exercise his control over a thing directly or through a third party who holds such thing" (emphasis added). Art. 1147(1) on its part proclaims that "(…), he who began to possess [rather hold, to be consistent] on behalf of another person shall be regarded as a mere holder." From these two articles we can infer that to be a possessor in Ethiopia, unlike in Germany a person needs to have internal (mental) attachment to a thing for otherwise one will be regarded as a mere holder. What distinguishes a possessor from a mere holder is clearly his attitude towards that object of property. If one holds it for oneself, the holder is at the same time a possessor, but if one holds it for another, the holder is simply treated as a mere holder, a detentor.

Thus, it is possible for one to be accorded with a status of possessor in either of this two cases:-

(i) When one exercises actual control over an object of property [a "thing'] on his own account, or

(ii) When one exercises an actual control over an object of property on behalf of another person (who retained the mental element of possession but put his thing under the detention of another).

Therefore we can conclude that possession under the Ethiopian Civil Code comprises of two elements, viz.

- Corpus (physical or external control over a thing)
- Animus (psychological element or the attitude of a person exercising actual control over a thing).

The incorporation of the subjective theory of possession in the Ethiopian Civil Code is thus clear. As the drafter of the Civil Code, Rene David, relied on the French and Swiss Civil Codes, this subjective inspiration becomes apparent. Nevertheless, no provision in this part of the Civil Code expressly proclaim the specific type of mental element. Whether it requires an animus domini or animus possidendi is not clear. What is expressly provided as point of exclusion is animus detinendi (the intent to detain a thing on behalf of another).

In a real life, one may see (externally, visibly) another person exercising physical power over a given object of property. One may witness that a person is using, and enjoying a given object, or that his sphere of influence and control may be apparent. Depending on this person's internal attachment with the thing he may be an owner of that thing, or he may be one who uses and enjoys or simply keeps or holds that thing by virtue of his right or duty that emanated from his contractual relationship with the owner or simply arising from the law in force. So, he may be a usufructuary, a lessee, a bailee, a dipositary, a pledge, a borrower, etc. or he may be one who found a lost object, or an occupant of a building which has no any other person to assert

an exclusive claim. Still one may be a guard or a keeper of that object as reguired by an owner or any other person who asserts a claim over this thing. In short, besides the visible external relationship of that person with that thing internally that person may have an animus domini, wherein he thinks and believes that he is acting as an owner of the thing or he may have an animus possidendi, wherein he thinks that he has reason to control this thing on his own account even though he is not an owner, or still he may have an animus detinendi wherein he understands that he is holding for another person.

As we said, the person who has an actual control of the thing and an animus detinendi is expressly dubbed as a mere holder under Art. 1147(1). Still there is no problem if the one who actually exercises physical control is the owner of that thing-simply he is an owner and at the same time a possessor. The problem arises when we are confronted with those persons having an animus possidendi and actual control. If it were in accordance with the French legal literature and the theories of Savigny these persons will have been treated as detentors or at most as quasi possessors.

Since the chapter on possession in our Civil Code does not expressly or implicitly tell us about the type of animus required for the Ethiopian possessor, we will be forced to consult other articles and provisions both within and without the Civil Code. In this respect a quick reference to Arts. 1151,1154-1157,1161-1166,1168,1193,1311,1341,2698, 2709, 2727, 2806,2830-2832,2914, etc in the Civil Code show that a non-owner can be a possessor. Occupants, finders, good faith buyers of movable objects from non-owners, usufructuaries and owners of dominant tenements, pledgees, bailees, borrowers, lessees etc. can has possession of their own in the objects under their control.

Even though it may be debatable, proclamations No.31/1975, and 47/1975, as well as Art. 40 of the FDRE and other proclamations made after the ratification of this constitution seem to establish possessorial status for both rural and urban land users. It is clear that since 1975 land is a public domain, individuals and groups have no private right of ownership. These various laws simply provide possessory right for individuals. Of course, possessory right and possession are not one and the same. However possessory right is one legal effect of possession in law (defacto possession). From these we can reasonably infer that different peoples both in the rural and urban areas are treated as possessors without the need to have an animus domini.

Thus, it can be concluded that the Ethiopian Civil Code lies between the subjective and objective theories of possession. It does not wholly endorse the French or swiss Civil Codes stand; it does not as such adopted the German system. It rather takes the middle –of- the road position.

But, then, one unresolved problem remains under the Ethiopian Civil Code. That is the question: who is a mere holder under the Ethiopian Civil Code? Is it confined for children, servants and business employees as is the case in Germany? This is open for interpretation. Obviously those who are regarded as possessor servants in Germany will be treated as detentors, or mere holders in light of Art. 1147(1). Nevertheless, the scope of this provision is open for speculation. Gaurds, agents that keep-up objects of property will fall under this category of defentors.

From the foregoing analysis it follows that even theif persons, robbers, and those who might have succeeded in violently taking an object of property from the lawful possessor, will attain the status of possessor. Of course their possession will be a defective type. These will be discussed below under vices of possession.

Again here we have to ask ourselves about the subject-matters of possession. Historically possession had to do only with corporeal movable and immovable objects. But in recent times this concept is highly becoming too artificial that it also applies to incorporeal things. Hence the word “thing” under Arts. 1140 and the following may be broadly interpreted to include incorporeal things as well. Actually, there is no true actual control over incorporeal things. Thus in some jurisdictions there is such terminology as quasi-possession or incorporeal possession. But one should not miss that possession has to do with objects of property; we should not relate with all types of incorporeal interests and right whether a right in rem or in personam. It must be applicable in relation to things we call objects of proprietary rights. No possession on claims and debts, on contractual rights, and duties!

We have to also remember that possession as such is accorded legal protection and guarantee. Without the necessity to show or prove ones right in an object of property, the fact of possession as such is protected. Hence any possessor can lawfully defend his own possession from any act of disturbance or interference. The law provides a remedy, possessorial action, for those whose possession is disturbed, or interfered or usurped. Except for those defective possessors (whose possession has a vice) who may be vulnerable for a counter-claim, any possessor can assert his possessorial right against any intruder or dispossessor.

Besides this possessorial right and possessorial action, certain possessions will legally entail other benefits. Depending on the unique circumstance a possessor may acquire right of ownership by virtue of his possession. Possession of corporeal movable objects entail in certain cases presumption of ownership; even possession may be a proof of ownership. But these rights (acquisition of ownership, and proof for ownership) will not be applicable for those persons that have acquired the possession of those objects with in rem

and in personam relationships short of translative juridical acts. Hence, a lessee, a borrower, a pledge or a usufructurary cannot benefit from the prescription of time or from the presumptions of ownership

Before passing to the next section we have to also state that in some real cases, possession and its protection thereto will be a matter of relativity. Take this case for example. If A momentarily hands his wallet to B, from whom it is stolen by C, who then loses it on D's object of property, where it is then found by E, the question who has possession and the right to possess the wallet will depend on who brings action against whom. Against all subsequent parties E'S claim would prevail, for finding confers such a right. In an action between D and E, however, it would seem that D would have the better position (right) of he could show that the article was found on an object of property from which he had a general intention to exclude others. Again neither D nor E would be said by law to have possession as against C. The latter, since he had possession, has a right good against all the world except the true owner or the state in exercising its law enforcement power.

In an action by C against D and E, the latter would not be able to plead jus tertii, i.e., to argue that the object belongs to someone other than C and that therefore C should not succeed against D or E. As observed by scholars, to allow this would be to allow any one who could prove a defect in a possessor's title to dispossess him of the objects of property.

As against A or B, however, C would have no defence. B could recover the wallet because he had actual possession of it. A could recover it from C because, although it was in B's hands, he had an immediate right to possess. So either A or B, whichever brought action against C, would be deemed to have possession as against C. Is that not dear distance student? Try to relate this example which is provided and explained in the common law context with that of the Ethiopian Civil Code.

3.2 Acquisition and Transfer of possession

From the foregoing discussion we hope that you have properly grasped the idea of possession and identified its ingredients. And this section will proceed to build on what has been discussed. The manner of acquisition and transfer of possession will be addressed. Loss of possession will also be examined.

Objectives:

After completing this section, students will be able to:

- Describe the manner (mode) of acquisition of possession;
- Discuss the various ways and forms of transfer of possession;
- Distinguish such ways of transfer of possession as delivery of the thing, delivery of documents (traditio per cartam), constructive possession (constitutum possessorium), traditio longa manu and tradition brevi manui
- Relate those forms (ways) of transfer of possession with the provisions in the Ethiopian Civil Code; and
- Understand how possession will be lost.

The objective and subjective theories of possession have their own effect upon the acquisition, transfer and loss of possession. Thus, according to the subjective theory, possession is acquired whenever the two elements of corpus and animus are existent and the loss of either of these elements will usually tend to destroy possession. And there are three known modes of acquiring possession. These are by:

(i) taking (occupation)

(ii) delivery, and

(iii) operation of law.

Taking:- This is the acquisition of possession without the consent of the previous owner. It may be either rightful or wrongful. The thing taken may or may not have been already in the possession of someone else. For instance, res nullius /a thing belonging to no one, masterless object) has no previous possessor. One who occupies this res nullius acquires possession over it.

As is the for ownership, taking may be original or derivative. The taking is original, hence the possession will correspondingly be original, when the object taken has no possessor or owner. A good example may be when a man catches a wild animal or a bird, etc.

Possession is derivative when the taking takes place against an object which has a previous possessor or owner.

Delivery- This is another mode of acquisition of possession. This takes place when a person acquires possession with the consent or cooperation of the previous possessor. It can be actual or constructive.

Actual or delivery is the transfer of immediate possession. It involves transfer of an object from the hands of one possessor to another. For instance, actual delivery of an object on sale, or on loan or deposit.

In constructive delivery there is no change in the position of immediate possession; there is only transfer of mediate possession. This again can take place in either of the following forms, i.e by traditro brevi manu, constitutum possessorium or attornment.
Tradition Brevi manu refers to a surrender of the immediate possession to one who is already in immediate possession of it. If a person gives his watch to a watch-maker for repairs and subsequently sells it to him, there is surrender of mediate possession to the watch-maker who already has

immediate possession of the watch. Such examples are referred to as tradition brevi manu in roman law, for which we failed to find an English simple term.

Constitutum possessorium on the other hand is the converse of traditis breve manu. It is translated as construction possession, and it refers to transfer of mediate possession while the immediate possession remains with the transferor.

For example, if you purchase a car from one who habitually hire out cars and then allow him to continue its use as a car for hire, you get constructive delivery of the car, although there is no immediate transfer of the possession of the car. Again, a warehouseman is in control of certain items of property (goods) which belongs to him. If you purchase those goods from him and allow him to continue possession of it in the warehouse on your behalf, to be effectively delivered to you at specified time, it is a case of constructive delivery to you.

In the case of attornment, there is the transfer of mediate possession while immediate possession is in the hands of a third person. For example, if A has goods in the warehouse of B and they are sold by A to C, then in this case case A has actually delivered them to C as soon as B has agreed to hold them for C and no longer for A.

OPERATION OF LAW

Possession may also be obtained by operation of law. This happens when possession changes hands as a result of operation of law. For example, if a person dies, the possession of his objects of property, or property as such, is transferred to his successors and legal heirs.

So far we presented issues relating to acquisition of possession as are found in legal literatures. Now it is time to relate with the Ethiopian legal regime. As usual we have to first begin in the law of property part of the Civil Code, and as well as in other laws as are made from time to time since the promulgation of the Civil Code.

Accordingly, we don't find specific title that deals with acquisition of possession in our laws. But those Articles from 1143-1150 have though in an implicit manner, ideas that relate with acquisition of possession.

For example, the possibility for one to acquire possession in an improper or illegal manner can be inferred from Art. 1146. It is for that reason that the acquirer's possession would be qualified as secret or dubious possession. Even Art. 1148 in itself has its own element for the wrongdoer to succeed in unlawfully and through violence or any other improper way to acquire possession. If the victim could not repel the act of usurpation or could not seize and retain the object under his possession or detention, and the usurper succeeds the latter will acquire possession at least until he is condemned to restore by the lawfully instituted organ, court.

The occupation and taking hold of masterless objects and of lost objects are also provided from Art. 1151-1157 wherein we can infer cases of acquisitions of possession. Such acquired possessions are actually expressly endorsed as essential conditions for acquiring individual ownership as we shall see below under acquisition of ownership.

Though Art. 1143-1144 are directly relating to transfer of possession, on the other side we find acquisition of possession. If possession is transferred from the transferor to the transferee in either of the modes recognized under Arts. 1143, 1144,and 1147 their will be acquisition of possession to the transferee.

If we also refer to Arts. 2274,2412,2471,2628,2662,2698.2709,2727,2779,2804,2806,2830, 2831,2832,2896 as examples we find one or the other mode of acquisition of possession under the Ethiopian Civil Code. A good example for actual delivery is Art. 1143 Again, Art. 1147 (1) can be a best example for tradition brevi manu if the mere holder proves the lawful transfer of possession to him. Art. 1145 is expressly proclaiming about constructive possession. And Art. 2831 may be cited as an example of acquisition of possession by attornment.

Besides the above illustrative provisions, if we refer into proclamations No. 31/1975 and 47/1975 we can easily read the acquisition of possession in case of lands and buildings by the operation of the law.

The land Adminsitration proclamations, the lease proclamations and other subsidiary laws of the federal and regional governments also contain provisions relevant to acquisition and transfer of possession. In cases of death Art. 826 and relevant provisions in the law of successions (as well as other proclamation if it relates to land) can also be cited.

By the way all the discussions herein above are made taking into account in our case that two elements (carpus and animus) are necessary to acquire possession. If it is in accordance with the objective theory, things will be very simple to understand. Because any person, except the possessor servants, who acquires physical control over any given object will acquire possession over that thing. Besides, those indirect methods of becoming a possessor will be applicable.

When we came to transfer of possession we will find clear ways (modes) of transfer. Actually, in this case we will be required to repeat what we discussed above under acquisition of possession in another angle.

Theoretically, possession may be transferred from the transferor to the transferee in various ways. Beware, we are talking about transfer of possession which is not the same as transfer of object of property or transfer of ownership ! These are the main ways.

(I) delivery of the thing,
(II) delivery of document (s) that represent the thing (known in Roman law as Traditio per cartam),
(III) constructive possession (constitutum possessorium),
(IV) indication of the where about of a thing (Traditio longe manu); and
(V) Traditio brevi manu-which we translate as change of ones status from detentor to possessor.

The transfer of possession from the transferor to the transferee by delivery of things is simple to understand. It suffices to refer Art. 1143, and to note also that it should not be confined for contracts to serve as a lawful ground to transfer it from the one to the other. Even other juridical acts such as will (Testamentary disposition) and court orders can be envisaged

Art. 1144 is about transfer of possession through documents and this is a good illustration to show that transfer of possession is not always the same as transfer of the object of property rub (1) of this article provides that possession may be transferred to a new possessor by the delivery of the documents representing the thing and enabling him to dispose (to use and enjoy rather) thereof.

In this case the transferee will take delivery of the documents that represent the thing as well as that entitle him to make use of the thing as a possessor. Hence it must be known that any document which has any relevance does not necessarily transfer possession. Instead it has to be a specific type of document that not only represents the things but also a kind that gives the power to use and enjoy the thing as any possessor

The word “dispose” appearing in this sub article must be a wrong translation or a slip of the pen since possession does not always go hand in hand with ownership which brings the power or privilege of disposition (Art. 1204 & 1205).

Again, Art. 1144 is another clear example that demonstrates the separation of possession in fact and possession in law in some instances. Actually sub. (2) is providing a norm that helps to resolve a dispute if it arises as between the holder of the documents and the other having an actual possession of the thing (possession in fact). This provision reads:

“Where a dispute arises between the holder of the documents and the person who has the actual possession of the thing, the latter shall be preferred unless his bad faith can be proved.”

We have been talking about the relativity of possession in certain practical cases in our real life. And here sub-2 seems to envisage a contest between the one who holds documents that not only represent the thing but also entitles the holder and another person who actually possesses (holds) the thing. If it is the transferor that actually holds the thing after delivering the documents with a view to transfer to the transferee his own possession but now disputing it in bad faith, courts have to resolve in favour of the holder of the documents.

But in cases where good faith can be inferred from the actual possessor, whether the original or any third party possessor, the latter shall be preferred.

As mentioned time and again Art. 1145 is dealing with transfer of possession from one to the other. And this will be effected by simple but earnest declaration. Art. 1145 (1) proclaims:

“The possession of things which are certain and things pertaining to a genetic species which have been individualized shall be deemed to be transferred to the new possessor where the person who exercises actual control over the thing declares that he shall henceforth detain on behalf of the new possessor.”

Here possession will be transferred to the new transferee without transfer of objects-with out delivery of things or documents. It is that leally binding declaration of the previous possessor that transfers his possession to the new possessor. The previous possessor will now be treated as a detentor, or a person who exercises actual control over a thing on behalf of another.

To effect transfer of possession in constructive possession, it must be ascertained that the previous possessor’s declaration relates to “certain things pertaining to a generic species”. This is to say that things must be non-fungible one; they must be easily identifiable in kind, with no contemplation of substituting any other thing which may be equivalent or approximate to the other thing.

The declaration may be made in different ways. Other than oral or written declaration which third parties could easily learn, putting in a separate place or container baring the name of the new possessor, or simply putting a tag or signpost or any other distinguishing mark may be used. If lawfully and validly made the former (previous) immediate possessor will be changed in to

mediate possessor from the perspective of third parties, or in to a mere holder from the angle of the new possessor. And, in order to tackle possible fraudulent acts of some real possessor in their relation with their creditors sub-2 of Art. 1145 provides an outlet. Actually this applies to traders since it expressly refers to bankruptcy cases. Since some debtor traders may attempt to conceal their goods by creating such a pretext, by alleding that the thing under their control is under some others possession, this sub-provision has closed the room.

A critical reading of the saving clause of Art. 1147(1) proves that possession can also be transferred by traditio brevi manu. Here the holder will be changing his status from a mere holder to a direct possessor. But this change must be made lawfully and validly, it needs either the consent of the previous possessor or an order of court or any other lawful authority. Obviously, it can't occur by a mere change of the intention of the holder or detentor.

Traditio longa manu seems to have no place. Actually this had been one possible way of transferring a possession on hand by simply but earnestly indicating the specific area, location and the distinguishing boundaries and demarcations thereto.

Since we have talked about the acquisition and transfer of possession, now we can easily reflect on the loss of possession. According to the objective theory of possession, ones possession will be lost the moment a person loses actual control of that thing unless the law elongates in another policy consideration. And according to the subjective theory, one will lose his possession the moment he loses one of the elements or both elements of possession, i.e corpus and/or animus, of course if there is no special declaration by the law-maker.

In our context one will be losing his possession when he/she transfers to another person, or when one loses the corpus and the object fall under the possession of a finder. Art. 1142 made it clear that temporary hindrances and obstacles that prevent the possessor from exercising actual control over the thing will not have such effect of loss of possession. The a contrario reading will give that idea of proper loss of possession, i.e if the previous possessor is prevented from exercising actual control for a long time, he will be losing possession. The time nature of things and circumstances must be treated case by case, for example, in cases of animals that have the animus reveretendi (the habit to return to their possessor's house) a long period of time may be required before the loss of possession of the previous possessor.

3.3 DEFECTS (VICES) OF POSSESSION

As one talk about a sick or disabled person, or about a degraded land, etc, it is also possible to speak about a defective possession. Not only the defects or vices of such possession, it is also legally possible to express the legal consequences of the existence of some vice (defect) in possession.

Thus this section will be concerned with examination of vices of or in possession and their effects. To aid or facilitate the discussion, this section will also attempt to pinpoint some of the known effects of a pure, unpolluted, or uncontaminated possession.

OBJECTIVES:

After completion of this section, students will be able to:

- explain vices of/ in possession;
- list the types of vices of/in possession;
- relate the various types of vices of/in possession with the Ethiopian legal regime;

- understand the effects of possession proper,
- explain the effects of defective possession, and,
- identify the legal remedy available even to a defective possession.

To begin with, vice in/of possession is an expression that describes the existence of some defect in or relating to a given possession. These are state of affairs which without destroying possession make it juridically valueless when compared with normal cases of possession.

The most familiar vices of possession are:

- vice of discontinuity,
- vice of cladestinity (secrecy),
- vice of equivocality (debiousness or ambiguity),and
- vice of violence.

The vice of discontinuity arises when the possession of a thing is not continuous. Continuity consists in the regular, successive acts of possession such as use and enjoyment to the exclusion of others at sufficiently short intervals not to form lacuna/or gap).

Vice of secrecy arises when a person attempts to hide his status or his acts relating to possession from the general public or from those who are interested in knowing it. As the name itself suggests it is not public, but secret one. The reasons may vary from case to case.

Vice of equivocality on the other hand arises when a person is shown to exhibit ambiguity as to his proper status with regard to a given object. Whether he is actually holding a thing on his own account or on behalf of another remains vague or confused for external observer.

Vice of violence expresses the manner of acquisition of a thing which is now under the possessors hand. If the possessor acquired it through act of violence, or sobbery, or theft or misrepresentation (fraudulent act) it is said to have the vice of violence.

While a clean, clear, pure and normal possession produces or entails a number of advantages to the possessor, the defective one remains a sterile or docile possession. Under normal circumstances and without those special cases where in possession may be acquired through agreement or any other juridical act that limits, possession has the following and other effects:

- possession is one of the essential conditions (prerequisites) for acquiring ownership;
- it serves as a ground of creates the bridge for, real security such as pledge and lien;
- possession of a thing for a long period of time may lead into the acquisition of ownership (acquisition prescription);
- possession is a prima facie evidence of right of ownership of corporeal movable objects;
- possession lightens or reduces the weight of evidence required by a claimant to assert proprietary interests; It relieves the burden of owners in cases where they can not produce any or satisfactorily for different reasons;
- possession enables the possessor to defend his possession through force (self-help) from any act of usurpation or inter ference;
- possession enables the possessor to institute a possessorial action to maintain his possession or to ensure the peaceful enjoyment of his possession or depending on the case to get restoration of the thing.

- Possession as such is protected and cannot be defeated by an allegation of jus tertii (by arguing that the object belongs to some one other than the plaintiff); etc.

Contrary to possession proper, defective possession will not entail that much legal consequences. Of course, it in itself, the defective one, will be provided with legal protection for other policy reasons behind. So entitling the defective possessor to possessorial remedies, i.e protection using force and lodging a possessorial action before a court of law are available even to a defective possession. In other cases it remains dormant or sterile. Of course the duration of this period of dormancy or sterility may be debatable, and may vary according to the types of vice.

When we come to the Ethiopian Civil Code, vices of secrecy and dubiousness are expressly incorporated under Art. 1146. these two vices are defined under sub(2) and (3) respectively. As the definitions are clear that does not warrant any further elaboration, let's simply put them as they are. Sub (2) reads:
"possession is secret where he who exercises actual control over the thing conceals his status as possessor in circumstances which justify the assumption that he has no right (rather no possession) there of". Again sub (3) enacts:

" Possession is dubious where in the circumstances it is doubtful whether it belongs to him who alleges himself to be the possessor or whether he detains the thing on behalf of another person."

And the effect of these two vices is expressly declared under sub. (1) of Art. 1146. It states that secret or dubious possession shall given rise to no right. When this provision is read in light of Arts. 1148 and 1149, it seems for us that protection of such a defective possession by use of force and legal action

is available for defective possessors, and in all other cases it cannot be a ground for other rights to originate or ripen. Of course there are others that interprete Art. 1146(1) as applicable to any situation across the board-including possessorial remedies. That is to say that a defective possessor has no such rights as provided under Arts. 1148 and 1149. But we think this is not a tenable argument in the face of these provision which fail to expressly discriminate. Also, it will have the effect of undermining the very reasons or justifications for the law to give recognition and protection of possession without inquiry into the existence of a valid right in the thing possessed.

By no means any legislature tolerate or act as a neutral body in cases where one person snatches a given object under the possession of a previous defective possessor, as it will bring total cheos, disorder and disturbance of a status quo.

Be this as it may, next we have to inquire if the other two vices described above are also recognized under our Civil Code. Unlike vices of secrecy and equivacality which we said are expressly provided the Civil Code does not positively say anything about discontinuity and violence defects. Nevertheless a critical examination of Arts. 1142 and 1148 as well as 1149 seem to embody these two vices. The contrario reading of Art. 1142 and the direct implication of Arts. 1148 would really enable one to entertain such a belief.

Art. 1142, which is titled as “Temporary hindrance”, proclaims: “The possessor shall not lose his rights (may be benefits and rights emanating from possession and/or simply his possession) where he is temporarily prevented from exercising control over a thing.” Now take the converse. If some one’s possession is interrupted or hindered for a long time, vice of discontinuity, this person’s possession will be a defective one.

Again, Arts. 1148 and 1149, which will be reproduced in the next section very relatively, have clear messages for the possessor (and holder) and the wrong doer. The former are empowered to take a private justice measure or to obtain judicial justice against that wrong does who commits acts of dispossession. Incidentally we have to mention that violence is a social evil that has helped for the evolution and development of the legal concept of possession and possessorial remedies not only in ancient Roman law but also in other legal systems. Here we have to also note that violence is not confined to the application of force to take an object under the holding or possession of another but also includes those acts of theft, robbery and other illegal methods of taking an object without the consent of the victim party. And reasonably thinking, our legislature could not fail to envisage such possibilities when it bothers itself about the vices of secrecy and dubiousness-less forms of vices when compared to violence. Not only this; the wrongdoer is made a subject of the measures to be taken by a possessor or holder. There is no reason for the treatment of the wrong doer's possession as clear, pure and normal one when he succeeds in his act of usurpation and escape from justice at least for some time.

To our mind, the effect of these two latter vices will be the same as those other former vices. By analogy Art. 1146 (1) shall be applicable.

3.4 DISPOSSESSION AND LEGAL REMEDIES

After a comprehensive and wide discussion on possession, now we have come to the central point of this concept. Many confusions and inconsistent as well as unpredictable practices become very apparent when cases involve issues of dispossession and legal remedies.

Hence, in this section, the idea of dispossession and its manifestations will be treated. What constitutes an act of disturbance or interference or usurpation, or eviction, or deprivation-in short dispossession (Huket in Amharic) will be detailed out. The legal remedies for victims of acts of dispossession will be discussed. The possessory action as different from petitory and other forms of real actions (actions in rem) will be presented as well. The nature of such proceedings and the quantity as well as qualities of evidences that will be submitted by litigating parties in possessory actions will be highlighted. Also the manner of court proceedings and final disposition of cases by courts shall be analysed.

OBJECTIVES:

After completion of this section, students will be able to :

- ❖ define dispossession;
- ❖ identify the various forms (manifestations) of acts of dispossession;
- ❖ understand the nature of possessorial actions in contrast to petitorial and other real actions,
- ❖ know the subject-matter of possessory action;
- ❖ sort out those factual circumstances and activities that give rise to state of dispossession;
- ❖ analyse the defenses available for a defendant in possessory action.
- ❖ Appreciate the nature, type, quantity and quality of evidences in possessory action proceedings.
- ❖ Comprehend the ideas and rules provided by the law- maker under Arts. 1148 and 1149 C.C.

Dear distance student, have you ever had a chance to read pleadings that relate to possessiorial action? Have you tried to identify the allegations of facts asserted by plaintiff and defendant? What about the types of evidences submitted by each side? How did the court frame issue (s) and then resolve the dispute?

Here we have presented you some real court cases to help you understand the issues under discussion. Read, reread all these cases and decisions of courts before you proceed to read the following explanation and analysis of provisions. In your reading pay good attention to the following points in particular.

- ➢ the factual allegation (s) of the plaintiff;
- ➢ the nature and type of evidences submitted by plaintiff;

- the plaintiff's prayer;
- the response of the defendant in regard to the facts alleged by plaintiff (whether he simply admitted, or denied or admitted with reservations and/or other allegations, or remained silent);
- the nature and type of defense evidences, if any, submitted by defendant;
- the analysis of those facts made by the court;
- the issue (s) framed by the court;
- the ruling (s) of the court with regard to evidences of parties (issues of admissibility and inadmissibility);
- how the court related those evidences (whether oral (witness testimony) or documentary or demonstrative) with those factual allegations and the issuels) under investigation
- the verdict of the court;
- the reason (s) given for such holding of by the court ;
- confusion, if any, made by the court in treating /analyzing facts, evidences and legal provisions, especially mixing up of issues of possession with ownership or any other personal or real right as relating to the object of property.
- Ponder over the effects of those decisions.

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III. u²=I S´Ñw }cØ„ ¾’u[¨< ¾°ÓÉ ƒº³´ }’e…M:: Ãíõ::

IV. Ÿ}ŸXg< k`x ¾’u[¨< T°Å` ÃSKe::

ò`T ›K¨<

¾õ/w/Ã/S/l 1719/88
ØpUƒ 3 k” 1993 ¯.U

Ç™‹' NÑ<e ¨MÆ
Ç–@ SLŸ<
Åe› Ñw\

ÃÓv˜ vÃ.....›„ ›có ÅvÃ k[u
SMe cß.....¨/a iw_ KT ›Mk[u‹U

S´Ñu<” S`U[” ¾T>Ÿ}K¨<” ¨<X’@ cØ}“M::

¨< X ’@'

ÃÓv–< ¾k[u¨< ¾¡MM 14 Se}ÇÉ` µ” õ/u?ƒ uõ/Ã/S/lØ` 330/87 %Ç` 28 k” 1987 ¯.U ¾›G<’< ÃÓv˜ vÃ ›„ ›Wó ÅvÃ ¾›G<“E SMe cÜ ¨/a iw_ KT ¾Mwe eòƒ SŸ=“ ›lT@ ¨ÅUW^uƒ ¡õM ÑwŠ ”ÇMW^ uTÉ[Ó G<Ÿƒ ðØ^w—K‹ c=M Ák[u¨<” ¡`¡` G<Ÿƒ ðØ^u›K‹ ¾T>Ác˜ ›ÃÅKU uTKƒ ¾cÖ¨<” ¨<X’@ uSn¨U ’¨<::

¡`¡\ ¾}ËS[¨< ¨[Ç õ/u?ƒ ’¨<::
ŸXi ¾’u[¨< ¾›G<’< ÃÓv˜ vÃ ›„ ›có ÅvÃ ’¨<:: }ŸXi ¾’u[‹¨< ¾›G<“E SMe cÜ ¨/a iw_ KT “ƒ::

ÃÓv˜ vÃ uSMe cßª LÃ ›p`xƒ ¾’u[¨< ¡Y:- ’Nc? 1 k” 1964 ¯.U u}éð ¨<M SMe cÜ u¨[Ç 5 kuK? 06 uu?ƒ lØ` 269 ¨<eØ ¾Mwe eôƒ SŸ=“ ¾T>ÁeqU x› ›Ÿ^Ã›˜ uw` 15 Ÿ=^Ã ¾ŸðM"Dƒ eŸ ›IXY 12 k” 1986 ¯.U É[e vKTs[Ø ¾S”ÓYƒ Ów` ¾ŸðMŸ< ec^uƒ Ÿq¾G< u%EL ŸK?L c<p ¾}’X nÖKA ße u?~” eKq^[Ö¨< KTÅe °n ›¨<Ø}” u?~” ›Éc” e”Ú`e °nÂ” uTeÑvƒ MW^ eM u?~” uSqKõ ›LeÑvU wL G<Ÿƒ eKðÖ[‹w˜ G<Ÿƒ ”Ç=¨ÑÉ ÃÅ[ÓM˜ ¾T>M ’u`::

SMe cÜU K¡c< ucÖ‹¨< SMe ÃÓv˜ vÃ }SMg? MÓvuƒ uT>K¨< c<p LÃ U”U ¯Ã’ƒ Swƒ ”ÅK?K¨< “ ›K˜ ¾T>K¨< ¾x› Ÿ=^Ã ¨<MU S_ƒ“ ƒ`õ x›” ¾S”ÓYƒ vÅ[Ñ¨< ›ªÏ Sp[~”“ Ss[Ö<” uÃÓv˜ vÃ LÃ ¾ðçS‹¨< U”U ¯Ã’ƒ ¾G<Ÿƒ }Óv` ÁKS•\” uSÓKê }Ÿ^¡^K‹::

¨[Ç¨< õ/u?ƒU ¾Ó^ k–<” ¡`¡` ŸcT u%EL S`Ua ÃÓv˜ vÃ SMe cÜ u1964 ¯.U ¾Mwe eôƒ SŸ=“ ›lT@ ¾UW^uƒ x› ›Ÿ^Ã›—K‹ ¾T>K¨< S_ƒ“ ƒ`õ ¾Ÿ}T u?„‹” ¾S”ÓYƒ vÅ[Ñ¨< ›ªÏ lØ` 47/67 k] eKJ’“ ux›U LÃ }Å`ÕM ¾}vK¨< ¨<M K=ðçU eKTÃ‹M SMe cß uÃÓv˜ vÃ LÃ ðØ^u›K‹ ¾T>vM G<Ÿƒ ¾KU uTKƒ ¨e“EM::

ÃÓv˜ Ñ<Ç¿ K¡MM 14 Se}ÇÉ` µ” õ/u?ƒ k`x "¾¨< u%EL ¨[Ç 5 õ/u?ƒ ¾cÖ¨< ¨<X’@ ¾T>’kõ ›ÃÅKU uTKƒ SMe cÜ” XÃÖ^ uõ/Y/Y/Q/l 337 SW[ƒ ÃÓv–<” vKSkuM W`µ›M::

u²=I S´Ñw ÃÓv–< ¾k[u¨<U ÃI”’< ¨<X’@ uSn¨U ’¨<::
ÃÓv˜ vÃ Ø` 19 k” 1987 ¯.U êö Lk[u¨< ¾ÃÓv˜ TSMŸ‰' ’Nc? 1 k” 1964 ¯.U u}éð ¨<M u¨[Ç 5 kuK? 06 ¡MM lØ` 59 ¾J’¨< ukuK? lØ` 269 uT>M }S´Óx uT>Ñ–¨< c<p w` 15 u¾¨\ Ÿ=^¿” KSMe cÜ uS¡ðM eŸ ›ªÏ lØ` 47/67 É[e w‰ XÃJ” Ÿ²=ÁU u%EL eŸ 1986 ¯.U É[e uu?~ uSÖkU Ów` KS”ÓYƒ ¾ŸðK c=W^uƒ Sq¾~“'

SMe cÜ uS"ŸL†¨< ¾Ÿ=^Ã ¨<M Ó”–<’ƒ eKS•\ ¾U›U”“ uIÑ<U ›Óvw }s`×DM ¾TƒM SJ’<”'

õ/u?ƒ ^c< ›ªÏ lØ` 47/67 uSØke ¾Ÿ=^Ã ¨<K< ”Å}s[Ö ›É`ÑA ¨c’ ”Í= SMe cÜ Ÿ}Ökc¨< ›ªÏ ›"DÁ Ák[u‹¨< ¾lÓ ¡`¡` ÁKS•\”“&

u›ªÏ lØ` 292/87 ¾›ÇvÃ“ }ÇvÃ Ó”–<’ƒ ”Ç=•` eKT>ðpÉ õ/u?~ ÃI” G<K< vKTÖ?” Ÿ¨<M“ lÑ< ¨<ß ›K›Óvw S¨c’<” uSÓKê ¨<X’@¨< }ia vk[u¨< ¾¡e ›u?~› SW[ƒ ”Ç=¨c”Kƒ ÖÃsM::

SMe cÜU uÃÓv–< p_) LÃ SMe ”ÉfcØuƒ }Å`ÑA c’@ 9 k” 1987 ¯.U uÖunª ›T"Ã’ƒ ¾}éð 2 Ñê SMe uTp[w ÃÓv˜ vÃ ¡`¡` ve’X¨< c<p LÃ vKÃµ)U J’ vKu?ƒ ¾T>ÁÅ`Ñ¨< ¾¨<M ¨ÃU ¾IÓ U¡”Áƒ ”ÅK?K uS²`²` Ák[u¨< ¾¡Y ›u?~) ¾ÃÓv˜ ¡`¡` SW[´ ›Kuƒ eƒM }Ÿ^¡^K‹::

ÃÓv˜ vÃU NUK? 21 k” 1987 ¯.U ¾SMe SMc<” îö uTp[w uc<p LÃ ¾Ãµ) Swƒ ›K˜ uTKƒ uTÖ“Ÿ` }Ÿ^¡bM::

—U SMe cÜ uÃÓv˜ vÃ Ãµ) LÃ G<Ÿƒ ðØ^K‹' ›MðÖ[‹U ¾T>K¨<” ŸQÓ“ TY[Í¨< Ò` uTÑ“²w S`U[“M::

¡`¡` Áe’X¨< u›/›uv Ÿ}T ¨[Ç 5 kuK? 06 ¡MM ¨<eØ ¾T>Ñ˜ lØ` 269 ¾J’¨< c<p ’¨<::

c<o u¨/a iw_ KT YU }S´Óx ¾T>Ñ˜ ’¨<:: c<l ¾wƒ” Ú`n Ú`p SÅw` SJ’<” ”ÓÉ T>’>e,` ¾cÖ¨< ¾”ÓÉ ðnÉ Áe[ÇM::

SMe cÜ Ÿ[ÏU Ñ>²? ›”e„ ¾²=l c<p lÒ© vKÃµ) SJ“E ¾T>ÁŸ^¡` ›ÃÅKU::

ÃÓv˜ vÃU SMe cÜ uUƒW^uƒ c<p ¨<eØ ¾Mwe eôƒ SŸ=“ uTeÑvƒ Mwe ”Ç=có ¾Ÿ=^Ã ¨<M uTÉ[Ó ›ÇwL—K‹ ŸTKƒ ¨<ß uc<p LÃ ŸvKc<s ¾}hK ¾vKÃµ)’ƒ ¨ÃU ¾vKu?ƒ’ƒ Swƒ ›K˜ ›ÃMU::

uc<p ¾U)´uƒ“ ƒ¡¡K—ª vKÃµ) SMe cÜ SJ“E Ÿ}[ÒÑÖ SMe cÜ” ›eðpÊ ¨Åc<p ¾Ñv¨< ¾›G<” ÃÓv˜ vÃ ¾Mwe eôƒ SŸ=“ TqT>Á uJ’¨< x) LÃ w‰ uIÑ< ›Óvw ƒ¡¡K— ¾Ãµ) Swƒ ›K¨< KTKƒ ¾T>ÁeÅõ` ›ÃÅKU::

¾c<l ª“ vKÃµ) SMe cÜ SJ“E Ÿ)¨k ÃÓv˜ vÃ ¾¨x“ ¾Ñv SY^~ u}¨c’¨< ¾c<p x) LÃ w‰ ¾lÒ© vKÃµ)’ƒ Swƒ K=cÖ¨< ›Ã‹MU::

¾õƒNwN?` QÓ lØ` 1140
Ãµ) TKƒ ›”É c¨< ›”É” ’Ñ` uÌ ›É`ÑA u¨<’ƒ ¾T>Á´uƒ J• c=Ñ˜ ’¨< uTKƒ eKÃµ) ƒ`Ñ<U Áw^^M::

u²=lU SW[ƒ c<l S<K< uS<K< uSMe cÜ¨< Ãµ) Y` SJ’< u}[ÒÑÖ ÃÓv˜ vÃ k” ¨Å c<p ¾Mwe eòƒ SŸ=“ uTeÑvƒ ”Ç=W^ uŸ=^Ã SM¡ SªªLD ¨ÃU SõkÇD ÃÓv˜ vÃ uc<p LÃ ¾vKÃµ)’ƒ Swƒ ”Ç=ÁÑ˜ ¾T>ÁÅ`Ó "KSJ’<U uLÃ ¨Åc<p ¾Ñvuƒ G<’@)ª uc<p LÃ u¨<’ƒ ¾T>Á´uƒ ¾vKÃµ)’ƒ Swƒ ”ÅK?K¨< ¾T>Á[ÒÓØ ’¨<:: Mwe eòƒ SŸ=“ ÁqSuƒ x)¨< ¾c<p ›"M ”Í= Kw‰ }KÃ„ ¾T>)Ã ›ÃÅKU:: u›ÖnLÃ S)¾ƒ ÁKuƒU ¾c<p vKÃµ)’ƒ ”Í= l^i ¾J’¨< ÃÓv˜ vÃ ¾Mwe eòƒ SŸ=“¨<” ÁqSuƒ x) ›ÃÅKU::

eK²=l ÃÓv˜ vÃ ŸSMe cÜ Ò` ›K˜ ŸT>K¨< ¾Ÿ=^Ã ¨<M ›”é`U J’ ŸIÑ< ›"DÁ c=)Ã ÃÓv˜ vÃ u¨[Ç 5 kuK? 06 ¡MM ¨<eØ uT>Ñ–¨< lØ` 269 uJ’¨< c<p LÃ ›K˜ K=M ¾T>Ñv¨< ¾Ãµ)U J’ ¾vKu?ƒ’ƒ Swƒ eKK?K¨< uõƒNwN?` QÓ lØ` 1149/1/ SW[ƒ G<Ÿƒ }ðØaw—M uTKƒ uSMe cÜ LÃ ¾T>Ák`u¨< ¾G<Ÿƒ ¡Y ¾KU::

uSJ’<U ÃÓv˜ vÃ uSMe cÜ LÃ Ák[u¨< ¡`¡` uIÓ }kvÃ’ƒ ¾K?K¨< SJ’<” ›[ÒÓÖ” uS¨c” uY` õ/u?ƒ uÑ<Ç¿ LÃ ¾}cÖ¨<” ¨<X’@ uõ/Y/Y/Q/lØ` 348/1/ SW[ƒ uTîƒ SMc“M::

ÃÓv˜ vÃ ›K›Óvw vk[u¨< ¡`¡` uSMe cÜ LÃ KÅ[c¨< SÑ<LLƒ“ ¨Ü ul`Ø w` 1000.00 /›”É g=I w`/ ”Ç=ŸõLƒ ¨e’” S´Ñu<” ²Ó}” ¨Å S´Ñw u?ƒ SMc“M::

¾TÃ’uw ¾feƒ Ç™‹ ò`T ›Kuƒ::

¾W.S.l 019/93

NUK? 20 k” 1993 ¯.U

Ç™‹' - Seõ” ›Ç=e

- unK< ØLG<”
- ÃKT>"›?M }jS
- S¡ww xÒK
- nMŸ=Ç” ²Kk

¾Wu` ›SM"‹ .....›„ ÃK? ”Ò,

¾Wu` }Ö]‹.....1/ ¨[Ç 17 kuK? 20 ›e}ÇÅ` ê/u?ƒ

2/ ¨[Ç 17 ›e}ÇÅ` ê/u?ƒ

¾k[u¨<” ¾Wu` ¡`¡` S`U[” kØKA ÁK¨<” ¨<d’@ WØ}“M::

¨< X ’@

¾Wu` ›u?~)¨< ¾k[u¨< ¾Ÿ}T ’¡ Ñ<ÇÂ‹ ÃÓv˜ cT> õ`É u?ƒ uõ.w.Ã.S.l 211/92 IÇ` 7 k” 1993 ¯.U uWÖ¨< ¾SÚ[h ¨<d’@ LÃ ’¨<::

¾¡`¡\ ›S×Ø ”ÅT>Ÿ}K¨< ’¨<::

¾Wu` ›SM"‹ KŸ}T ’¡ Ñ<Ç¿‹ ¾SËS]Á Å[Í õ/u?ƒ Ÿdi uSJ” ¾Wu` }Ö]‹” ÅÓV }Ÿdj‹ uTÉ[Ó Ák[u<ƒ ¡e u¨[Ç 17 kuK? 19 ¡MM ¨<eØ uIÒ© S”ÑÉ vÑ–<ƒ x) LÃ uÓM Ñ”²v†¨< ¾S•]Á u?ƒ W`}¨<“ ¾”ÓÉ u?ƒ ›slS¨< c=ÖkS<uƒ x)¨< K›û`)T Se]Á eK}SÅu u¨[Ç 17 kuK? 20 ¡MM ¨<eØ Uƒ¡ x) }WØ...†¨< lØ` 1507 ¾J’ ¾”ÓÉ É`Ïƒ“ ¾S•]Á u?ƒ uÓM Ñ”²v†¨< W`}¨< Ÿ1972 ¯.U ËUa e"G<” Ów` ¾ŸðK< c=ÖkS<uƒ u1988 ¾”ÓÉ u?„‹” Ÿ=^Ã uT>SKŸƒ u¨×¨< SS]Á S’h ¾Ÿdi” ¾”ÓÉ É`Ïƒ Ÿ=^Ã kSe uTeSWM ŸkuK?¨< ê/u?ƒ Ò` ¾Ÿ=^Ã ¨<M "MÑvI ”¨eÉwHK” uTKƒ Ÿõ}— ¾J’ ¾ÃM }î°•“ Teð^^ƒ uŸdi LÃ uTdÅ` ¾Ÿ=^Ã ¨<M ”Ç=VK< eLeÑÅÅ“ ¨<´õ Ÿ=^¿” ¡ðM uTKƒ ¾”ÓÉ u?~” Ÿ’}²ÒÌ Uóx‹ uTgÓ Ÿdi” ŸÉ`Ï~ uTv[` uŸdi G<Ÿƒ eKðÖ\ G<Ÿ~ ”Ç=¨ÑÉ uTKƒ ¡e ›p`uªM:: uY` }Ÿdj‹

uŸ<MU ¾k[u¨< ¾SŸLŸÁ SMe Ÿdi eK”w[~ lÒ© vKu?ƒƒ Ák[u<ƒ ¾Ue¡` ¨[kƒ ÁKS•\"' uÃM“ uTeð^^ƒ ¾Ÿ=^Ã ¨<M }Å`ÕM K}vK¨<U uõ.w.l.l 1706 SW[ƒ uSÑÅÉ ¾}Å[Ñ ¨<M eKSJ’< ÁKTe[Ç)†¨<"' ¾Ÿ=^Ã SÖ” ŸMŸ=~ SÖ” Ò` ¾}e}"ŸK SJ’<” uSÓKî u¨[Ç 17 kuK? 19 ¾u?ƒ lØ` 1507 }S´Óx ¾’u[¨< u?ƒ u›ªÏ lØ` 47/67 ¾}¨[c“ ¾}Ÿdj‹ ”w[ƒ uSJ’<“ ¡`¡` Áe’d¨<” u?ƒ ulÒ© S”ÑÉ KSÁ´ Ÿdi vKGwƒ K=J’< eKTÃ‹K< u”ÓÉ u?~ LÃ Ÿ=^Ã ”Ç=ŸõK< ¾}Ö¾lƒ u›Óvu< ’¨< wLDM:: ¾Y` ŸdiU uWÖ¨< ¾SMe SMe ¾¡`¡\ U¡”Áƒ ¾J’¨< u?ƒ Ÿ=^Ã kSe K}vK¨< Te[Í ÁKSp[u<"' Ÿdi ¾Ÿ=^Ã ¨<M Ñw„ S¡ðK< ¾”w[~” ›K›Óvw S¨[e ›U•uƒ dÃJ” Ñ>²? ›Ó˜„ ›u?~)¨<” KõfI ›"Lƒ eŸ=Ák`w É[e }ÑÉÊ S¡ðK<” ”Í= ›U• SkuM ÁKSJ’<"' uMŸ?~ SW[ƒ Ÿ=^¿ ÚUbM K}vK¨<U É`Ï~ ¾Ÿdi ¾ÓM Ãµ)¨< eKJ’ Ÿ=^Ã ”Ç=ŸõM SÑÅÉ ¾KuƒU }wKA ¾k[u ¡e eKJ’ ¾}Ÿdj‹ SŸ^Ÿ]Á ¨<Ép ”Ç=J” ¾Ö¾kuƒ ’¨<::

¾Y` õ`É u?ƒU ¾Ó^ k–<” ¡`¡` Ÿ}SKŸ} u%EL ¾WÖ¨< ¨<X’@ ¾Ó^ k–< Ó”–<’ƒ ¾S’Ú¨< u1/12/89 ¯.U G<K~U ¨Ñ•‹ Ÿð[S<ƒ ¨<M KSJ’< ¾k[u¨< Te[Í eKT>Ác[Ç“ Ÿdi }ÑÉÎ ¨<M ð`T@ÁKG< ÃuK< ”Í= ÃI”” ›vvL†¨<” K=Áe[Ç ¾T><M ›”Ç‹U Te[Í eLLk[u< “ Te[Í ›p`u¨< u=J” •aU ¾T>Ák`u<ƒ ›u?~) ¨<K<” }ÑÉÎ eKð[UŸ< “¨<K< Ãõ[eM˜” ¾T>M ”Í= “G<Ÿƒ Ã¨ÑÉM˜” ¾T>M SJ” eKTÃÑv¨< Ÿdi ¨Å¨< uÑu<ƒ ¨<M SW[ƒ ÓÈ)†¨<” ”Ç=¨Ö< SÖ¾p G<Ÿƒ SõÖ` vKSJ’< G<Ÿƒ ¾KU uTKƒ ’¨<::

u²=I ¾Y` õ`É u?ƒ ¨<d’@ LÃ p` uSc–ƒ KŸ}T ’¡ Ñ<Ç¿‹ ÃÓv˜ cT> õ`É u?ƒ uÃ/S/l 211/92 ¾k[u¨< ÃÓv˜ Ø` 29 k” 1992 ¯.U u}éð ¾ÃÓv˜ TSMŸ‰ LÃ ¾k[u<ƒ ¾p_) ’Øx‹ ÃÓv˜ vÃ u?~” u1972 ¯.U ¾W^¨< u1967 ¯.U ¾ƒ`õ u?ƒ“ x) ›ªÏ Ÿ¨× u %EL SJ’<"' ¾¡`¡\ U¡”Áƒ ¾J’¨< u?ƒ ¾}¨[W ÁKSJ’<"' ¾ÃÓv˜ vÃ u?ƒ“ x) Kl´w ØpU ¾T>ðKÓ ŸJ’U uôÇ=^M IÓS”Óeƒ ›”ke 40/8/ SW[ƒ }S××˜ "d upÉT>Á uS¡ðM SJ” ”ÇKuƒ' uõ.w.l.l 1168/2/ É”ÒÑ@ SW[ƒ ÃÓv˜ vÃ Ÿ15 ¯Sƒ uLÃ Ów` ¾Ñu[uƒ eKJ’ Ãµ)¨< ¾ÃÓv˜ vÃ SJ’<"' ÃÓv˜ vÃ u^c< Ñ”²w uW^¨< ¾ÓM u?~ LÃ ¾”ÓÉ u?ƒ Ÿ=^Ã }S” Te}"ŸÁ K=¨W”uƒ ”ÅTÃÑv“ KY` õ/u?ƒ ¾k[u<ƒ Te[Í‹ dÃS²’< ¨<d’@ SWÖ~ u›Óvu< ÁKSJ’<"' ¾Y` õ/u?ƒ ¾Á²¨< ßwØ ¾}dd} uSJ’< ¾}dd} ¨d’@ uSeÖ~ ¾Y` ¨<d’@¨< }ia uÃÓv˜ vÃ Ãµ)“ ”w[ƒ LÃ SMe cß‹ ¾ðÖ\ƒ ¾ÃM Y^“

G<Ÿƒ ”Ç=¨ÑÉ ”Ç=¨W”Kƒ ÖÃsM:: uõ.w.Y.Y.I.l 327/3/ SW[ƒU ¡`¡\ uY` õ/u?ƒ c=Å[Ó uÌ ÁM’u[}ÚT] Te[Í KTp[w ¾Ö¾k c=J” Te[Í¨< ¾T>Áe[Ç¨<U ¡`¡` ¾}’duƒ u?ƒ“ É`Ïƒ uK=´ SgÖ<”“ ¾u?~”“ ¾É`Ï~” ÓUƒ ¾T>ÑMî ¾›Ç=e ›uv Ÿ}T Se}ÇÉ` ÅwÇu?¨<” K¨[Ç 17 kuK? 20 ›e}ÇÅ` ê/u?ƒ u14/4/91 ¯.U ¾}éð SJ’<” ÖlTEM:: ÃÓv˜ cT>¨< õ/u?ƒU SMe cß‹ vK<uƒ KT×^ƒ ÃÓv–<” Áek`vM uTKƒ uSMe cß‹ uŸ<M u19/8/92 ¯.U u}éð SMe Ák[u< c=J” Ã²~ ÃÓv˜ v¿ u?~” ^c< KSe^~ Te[Í ÁKTp[u<”' ŸY^“ Ÿ}T MTƒ u=a ¾}WÖ ¾vKGwƒ’ƒ ¾Ue¡` ¨[kƒ uTp[w ¾TÃ”kdke ”w[ƒ vKu?ƒ’ƒ” ÁL[ÒÑÖ< SJ’<”' ÃÓv˜ vÃ ¾Ÿ=^Ã ¨<M ¾}ªªK<ƒ }ÑÉÅ¨< dÃJ” uðnÇ†¨< SJ’<”' ¾ÃÓv˜ vÃ“ ¾SMe cß‹ Ó”–<’ƒ ¾S’Ú¨< Ÿ¨<M uSJ’< u¨<K< ›”kê 4/2/ LÃ ŸG<Kƒ ¨` uLÃ ¾”ÓÉ u?ƒ Ÿ=^Ã vKS¡ðL†¨< TeÖ”kmÁ ¾}WÖ¨< u›Óvu< SJ’<”' ¾Y` õ/u?ƒU ¾¨<M Ó”–<’ƒ S•\” uSÓKî ¾WÖ¨< ¨<d’@ u›Óvu< eKJ’ ¾ÃÓv˜ vÃ ›u?~› ¨<Ép }Å`ÑA ¾Y` ¨<d’@ ”Ç=ì“Kƒ ÖÃsM::

uÃÓv˜ v¿ uŸ<MU ¾ÃÓv˜ TSMŸ‰†¨<” uSÅÑõ ¾SMe SMe }WØ…M::

¾Ÿ}T ’¡ Ñ<Ç¿‹ ÃÓv˜ cT> õ`É u?ƒU ¾Ó^k–<” ¡`¡` ŸS[S[ u%EL IÇ` 7 k” 1993 ¯.U uWÖ¨< ¨<d’@ ÃÓv˜ vÃ ¨<K<” ¾ð[UŸ<ƒ }ÑÉÎ ’¨< ¾T>K< ŸJ’ uÓM ”w[›†¨< LÃ Ÿ=^Ã ”Ç=ŸõK< ¾T>ÁeÑÉÇ†¨<” ¨<M uõ.w.I.l 1808“ }Ÿ››Ä‹ ›”kë‹ SW[ƒ ”Ç=ð`e TÉ[Ó c=Ñv†¨< ÃÓv˜ vÃ ”Å¨<K< ›MðîUU uTK›†¨< uSMe cß‹ uŸ<M TeÖ”kmÁ SeÖƒ ¾G<Ÿƒ É`Ñ>ƒ J• ÁKTÓ–~” uSØke ¾ÃÓv˜ vÃ ¡`¡` pÅU }Ÿ}K<” ÁMÖuk SJ’<” uS}†ƒ ¾Y` õ/u?ƒ G<Ÿƒ ¾KU uTKƒ ¾WÖ¨<” ¨<X’@ ›î”…M:: ¾}ÚT] Te[Í uSÖ¾p ¾k[u¨<” TSMŸ‰ u}SKŸ}U ÖkT@›¨< vKu?ƒ’ƒ KT[ÒÑØ c=J” ÃÓv˜ vÃ ¾ÓK? ’¨< uT>K<ƒ ”w[ƒ LÃ Ÿ=^Ã KS¡ðM ¾}eTS< eKJ’“ ¨<K<”U eLLeð[W<ƒ uÃÓv˜ Å[Í KT>Å[Ñ¨< ¡`¡` eKTÃÖpU vKSkuM ›Möƒ ¨<d’@ WØ…M::

ÃI ¾Wu` ›u?~› u²=I ¾Ÿ}T ’¡ Ñ<Ç¿‹ ÃÓv˜ cT> õ`É u?ƒ ¾SÚ[h ¨<d’@ LÃ SW[›© ¾IÓ eI}ƒ eLKuƒ uWu` ”Ç=›[U ¾k[u ’¨<::

uWu` ›SM"‹ uŸ<M ›Ide 10 k” 1993 ¯.U uWu` TSMŸ‰¨< LÃ uIÓ eI}ƒ’ƒ ¾}ÑKì<ƒ uY` õ/u?„‹ ¾¡`¡\ U¡”Áƒ ¾J’¨< ¾”ÓÉ u?ƒ uWu` ›SM"‹ uUƒ¡ u}WÖ¨< x›

LÃ u^c< Ñ”²w ¾}W^ J• dK uWu` }Ö]‹ uŸ<M u?~ ¾}¨[W ”ÅJ’ }Å`ÑA ¾k[u¨< ¡`¡` ÁKTe[Í SJ’<”' ¾1989 ¯.U ¾”ÓÉ u?ƒ Ÿ=^Ã Te}"ŸÁ ¾Wu` ›SM"‹” ¾TÃSKŸ}¨< J• ÁK ¾Wu` ›SM"‹ Ÿ=^Ã ”Ç=ŸõM SÖ¾l G<Ÿƒ ›ÃÅKU uTKƒ ŸßwÖ< uS¨<×ƒ ¾}WÖ¨< ¨<d’@ SW[›© ¾lÓ eI}ƒ SJ’<”' uIÑS”Óe~ SW[ƒ ¾}[ÒÑÖ¨< ¾Wu` ›SM"‹ Swƒ uY` õ/u?„‹ u´U› S›Kñ SW[›© ¾lÓ eI}ƒ SJ’<”' ›SM"‹ ›Ÿ^"]¨<” Ãµ› uIÒ© S”ÑÉ ¾Á²¨< c=J” uIÑ¨Ø S”ÑÉ Ãµ›M u=vM ”"D” uõ.w.l.l 1168/2/ É”ÒÑ@ SW[ƒ K15 ¯S›ƒ Ów` S¡ðK< Ãµ›¨<” ”ÅT>Áì“Kƒ ¾k[u¨< ¾Ã`Ò ¡`¡` LÃ wÃ” ›KSWÖ~ SW[›© ¾lÓ eI}ƒ SJ’<”' eKŸ}T x›“ u?ƒ ›e}ÇÇ` ¾¨Ö<ƒ SS]Á‹ ¾Wu` ›SM"‹ ›Ÿ^"]¨<” x› uËS“— ›MÁ²¨<U ”Í= u=Ã²¨< ”"D” Ÿ1972 ¯.U ËUa uÌ uT>Ñ–¨< Ãµ› LÃ vKSwƒ ”ÅT>J” ¾}ðkÅ¨<” ŸÓUƒ ¨<eØ vKTeÑvƒ ¾}¨W’¨< SW[›© ¾lÓ eI}ƒ SJ’<” uSÓKî Ãµ›¨< uK=´ ¾T>WØ u=J” uK=´ ›ªÌ SW[ƒ ¾Wu` ›SM"‹ ¾pÉT>Á Swƒ ÁK¨<“ K=Ö¾p c=Ñv Ÿ²=I ¨<ß ¾Y` õ/u?„‹ ”ßóÝò‹ Ñ<Ç¿‹ LÃ uSSe[ƒ ¾WÖ<ƒ ¨<d’@ SW[›© ¾lÓ eI}ƒ ÁKuƒ uSJ’< uWu` ›`V Ãµ›¨< uK=´ K=Á´ ÃÑvM ¾T>vM c=J” u›ªÌ SW[ƒ Ãµ›¨<” uK=´ ¾TÓ–ƒ pÉT>Á Swƒ ¾Wu` ›SM"‹ ”ÇK¨< }ÓMë ”Ç=¨c” ›SM¡…M::

¾Wu` WT> ‹KAƒU ¾k[u¨<” ¾Wu` ›u?~› ¾Wu` }Ö]‹ vK<uƒ KT×^ƒ Áek`vM uTKƒ SMe ”Ç=WÖ<uƒ ›É`ÕM:: u7/7/93 ¯.U u}éð u}Ö]‹ uŸ<M ¾k[u¨< SMe Ã²~ ›SM"‹ c<p“ SÒ²” W^G<Kƒ ¾T>K<uƒ x› uÑ>²?Á©’ƒ ¾}W×†¨< eKJ’ S”Óeƒ uðKÑ¨< Ñ>²? x›¨<” ›eKpq KðKÑ¨< ØpU TªM ¾T>‹M SJ’<”' ›SM"‹ ¾x›¨< vKÃµ› KSJ“†¨< uõ.w.l.l 1195 SW[ƒ ÁL[ÒÑÖ< “ ukuK?“ u¨[Ç ›"vu= }Å`ÑA ¾}vK<ƒ Séëö‹ ¾›SM"‹” vKÃµ›’ƒ ¾TÁ[ÒÓÖ< SJ’<”' ¾G<K~ ¨Ñ•‹ Ó”–<’ƒ ¾S’Ú¨< Ÿ¨<M eKJ’ Ÿ=^Ã ”Ç=ŸõK< SÖ¾n†¨< G<Ÿƒ ›ÃÅKU }wKA ¾}¨W’¨< ¾õ_ ’Ñ`U J’ ¾lÓ eI}ƒ ¾K?Kuƒ SJ’<”' uIÑS”Óe~ ›”kê 40/8/ SW[ƒ "d ¾T>ŸðK¨< ¾ÓM ”w[ƒ vKu?ƒ’~ ¾}[ÒÑÖKƒ ›"M w‰ eKJ’ K¡`¡\ ›Óvw’ƒ ¾K?K¨< SJ’<”' ¾õ.w.l.l 1168/2/ SW[ƒ uTÉ[Ó ¾k[u¨<” ¡`¡`U u}SKŸ} ¾Ÿ}T x› u›ªÏ lØ` 47/67 ›”kê 3/1/ ¾S”Óeƒ ”w[ƒ SJ’< eK}Å’ÑÑ ¾Wu` ›SM"‹ ØÁo }Ñu= ÁKSJ’<”' ›SM"‹ ¨<K<” }ÑÉÎ ð[UŸ< ¾T>K< u=J” ”"D” uõ.w.l.l 1808 “ }Ÿ›¿‹ ›”kë‹ ¨<K< ”Ç=ð`e TÉ[Ó“ Ÿ²=Á u%EL eKÃµ› SŸ^Ÿ` ”ÅT>Ñv ¾}¨W’¨< u›Óvu< SJ’<”' eKSS]Á lØ` 1 ¾k[u¨< SŸ^Ÿ]Á uWu` Å[Í ›Ç=e ¾k[u uSJ’< }kvÃ’ƒ K=•[¨< ”ÅTÃÑv“ Ãp[w u=vM ”"D” ¾Wu` ›SM"‹ ”w[~ ¾S”Óeƒ SJ’<” }kwKA ¨<M ¾Ñv

eKJ’ ¾¨×¨< SS]Á lØ` 1 ›Ãgõ’¨<U“ p_)¨< ¨<Ép ”Ç=J”' ¾K=´ pÉT>Á ØÁoU uY` õ/u?„‹ ÁM}’d ›Ç=e ¡`¡` eKJ’ ¨<Ép ”Ç=J” ›SM"‹ uK=´ TMTƒ u=ðMÑ< ”"D” lÒ© Seð`„‹” uTTELƒ ýaË¡ƒ k`ì¨< KT>SKŸ}¨< ›"M ›p`u¨< SÖ¾p ¾T>‹K< SJ’<” uSÓKî ¾k[u<ƒ ¾Wu` ’Øx‹ ¾lÓ el}ƒ ¾TÃ)Ãv†¨< eKJ’< ¾Wu` ›u?~)¨< ¨<Ép }Å`ÑA ¾}WÖ<ƒ ¨<d’@‹ SW[)© ¾lÓ el}ƒ ¾Kv†¨<U }wKA ”Ç=ì“ ¾}Ö¾kuƒ ’¨<::

uWu` ›SM"‹ uŸ<M SÒu=ƒ 28 k” 1993 ¯.U u}éð Sn¨T>Á“ ¾SMe SMe ¾k[u c=J” uSn¨T>Á’ƒ ¾k[u¨< ¾K=´ ê/u?ƒ ¾Wu` }Ö]‹” uS¨ŸM SMe KTp[w ¨<¡M“ eKK? K¨<“ ¾K=´ ê/u?ƒ ¾¡`¡\ }d)ò K=J” ›ÃÑvU ¾T>M c=J” uSMe SMe’ƒ ¾k[u¨< ÅÓV u¨p~ vÊ x) ¾SeÖƒ YM×” u’u[¨< ¾Y^“ Ÿ}T MTƒ T>’>e,` vÊ x) KWu` ›SM"‹ }WØ„ S•]Á u?ƒ“ É`Ïƒ Ñ”w…M' S”Óeƒ uðKÑ¨< Ñ>²? ›SM"‹ x)¨<” ”Ç=Kp ÓÈ) Ñw…M K}vK¨< u¨<M ’¨< ¾Á²¨< "K< ulÓ SÖkU ”Í= uÃM“ uÑ<Muƒ x)¨<”“ ”w[~” uŸ=^Ã Wuw S¨<[e ¾›SM"‹” IÑS”Óe)© Swƒ ¾T>é[` SJ’<”' ›SM"‹ x)¨< ulÒ© S”ÑÉ u=WÖ¨<U ¾TÃ”kdke ”w[ƒ ¾UeŸ` ¨[kƒ uH>Åƒ ¾T>Ñ˜ uSJ’< ¾Ue¡` ¨[kƒ vKSÁ³†¨< w‰ ŸlÓ ¨<ß Ãµ)†¨<” K=’Öl ¾TÃÑv SJ’<”' ¾Wu` ›SM"‹ uSS]Á lØ` 1 }ÖnT> ”ÅT>J” uSÓKî uY` õ/u?ƒ ¡`¡` K=k`wKƒ ÁM‰K¨< u¨p~ SS]Á¨< eLM¨× uSJ’< ¾Wu` }Ö]‹ }n¨<V }kvÃ’ƒ ¾K?K¨< SJ’<”' ›Ÿ^"]¨< x) Kl´w ›ÑMÓKAƒ ØpU KTªM Ÿ}ðKÑ Kx)¨<“ K”w[~ um "d“ Uƒ¡ x) K›SM"‹ Ÿ}WÖ¨< Ãµ)¨<” KSMkp ðnÅ— SJ’<” uSÓKî ¾Y` õ`É u?„‹ ¾W×D†¨< ¨<d’@‹ SW[)© ¾lÓ el}ƒ eLKv†¨< uWu` cT> ‹KAƒ uŸ<M )`V uWu` ›SM"‹ ØÁo SW[ƒ ”Ç=¨W”Kƒ ›SM¡…M::

¾Wu` WT> ‹KA~U ¾Ó^k–<” ¡`¡` ŸlÓ Ò` uTÑ“²w S`Ua)M:: Ÿ²=I Wu` WT> ‹KAƒ uŸ<M ¾T>)¿ƒ ’Øx‹ uŸ}T ’¡ Ñ<Ç¿‹ ÃÓv˜ cT> õ`É u?ƒ ¾}WÖ¨< ¾SÚ[h ¨<d’@ SW[)© ¾lÓ el}ƒ ›Kuƒ ¨Ãe ¾KufU ¾T>K¨< c=J” uS”Å`Å]Á’ƒU uWu` ›SM"‹ uŸ<M SW[)© ¾lÓ el}ƒ “†¨< ¾}vK<ƒ” ’Øx‹ ”ÅT>Ÿ}K¨< ”SKŸ)K”::

¾Ó^k˜ ¨Ñ•‹ ¡`¡` u²=I Wu` cT> ‹KAƒ LÃ c=)Ã ¾õ/u?~” ULi ¾T>ðMÑ< ª“ ßwÙ‹'

1. uY` õ/u?„‹ Ñ<Ç¿ u}Ñu=¨< Y’ Y`¯ƒ eKS)¾~

2. ¾vKÃµ›ƒ Swƒ“ ¾u?ƒ vKu?ƒ’ƒ Swƒ eKS•\
3. ¾”ÓÉ u?„‹ ¾Ÿ=^Ã Te}"ŸÁ SS]Á“ }ðéT>’ƒ
4. ¾K=´ ›ðéçU” u}SKŸ}

¾}’c<ƒ c=J” ”ÅT>Ÿ}K¨< upÅU }Ÿ}M ”SKŸ}ªK”::

¾SËS]Á¨<” ßwØ u}SKŸ}

J’ uÃÓv˜ cT>¨< õ/u?ƒ uŸ<M ›SM"‹ Ÿ}Ö]‹ Ò` u¨[Ç 17 kuK? 20 ¾u?ƒ lØ` 1507 uJ’¨< ¾”ÓÉ u?ƒ LÃ ¾Ÿ=^Ã ¨<M ”Ç=VL ¾}Å[Ñ¨<” uSn¨U ›SM"‹ u^c< Ñ”²w uW^¨< u?ƒ Ÿ=^Ã S¡ðM ”ÅK?Kuƒ SŸ^Ÿ]Á Tp[u<” Ÿ¡e ›u?~›¨< ”Ç=G<U ŸÃÓv˜ TSMŸ‰¨< LÃ SÑ”²w Ã‰LM:: ¾SËS]Á Å[Í õ/u?~U J’ ÃÓv˜ cT>¨< õ`É u?ƒ u²=I ’Øw LÃ ¾WÖ<ƒ ¨<d’@ ÅÓV c=›Ã u›SM"‹“ u}Ö] S"ŸM ¾”ÓÉ u?ƒ Ÿ=^Ã ¨<M }Å`ÑA Ó”–<’ƒ ¾}ËS[eKJ’ uSËS]Á ¨<K< ”Ç=ð`e SÅ[Ó ”ÇKuƒ“ Ÿ²=ÁU uSkÖM ÅÓV ¾G<Ÿƒ Te¨ÑÍ ›u?~› Sp[w ”ÅT>Ñv¨< ’¨< ¾¨c’<:: ÃI ¾¡e ›k^[w dÃŸu` ¾k[u ¾G<Ÿƒ Te¨ÑÍ ¡e eKJ’ u›SM"‹ LÃ ¾}ðÖ[G<Ÿƒ ¾KU }wKA ¨<d’@ uSWÖ~ Ñ<Ç¿ K²=I Wu` ‹KA› K=k`w ‹LDM::

¾Ó^k–< ¾›u?~› îOö‹ KY` õ`É u?„‹ ¾k[u< c=J’< u}Ÿ^"] ¨Ñ•‹ S"ŸM ÁK<ƒ” M¿’„‹“ ¾Sw„‰†¨< SW[ƒ }Å`Ñ¨< ¾k[u<ƒ” Te[Í‹ uSS`S` ¾¡`¡\” ßwØ SK¾ƒ“ ußw×†¨< LÃ }Se`„ ¨<d?’@ SeÖƒ }Ñu= ¾¡`¡` ›S^` eMƒ SJ’<” uõ.w.Y.Y.IÓ lØ` 247 “ 248 LÃ }Å”ÓÕM:: u²=G< SW[ƒ ¾Wu` ›SM"‹ uY` õ/u?„‹ Ÿdi“ ÃÓv˜ vÃ uSJ” ÁSKŸ}¨< uIÒ© S”ÑÉ ŸY^“ Ÿ}T MTƒ T>’>e,`“ ¾Se}ÇÉ\ ›"Lƒ uUƒ¡ u}WÖ˜ x› LÃ u^c< Ñ”²w u1972 ¯.U ¾S•]Á u?ƒ“ ¾”ÓÉ u?ƒ uSe^ƒ ¾x› Ów` uS¡ðM ¾}ÑKÑK dK u1989 ¯.U u¨x¨< ¾”ÓÉ u?„‹ ¾Ÿ=^Ã Te}"ŸÁ SS]Á SW[ƒ ¾”ÓÉ u?ƒ Ÿ=^Ã ”Ç=ŸõM ukuK?¨< ›e}ÇÅ` uŸ<M ¾}¨W’uƒ” uSn¨U u”w[~ LÃ G<Ÿƒ }ðØaw—M uTKƒ ’¨<:: K²=I ¾Ÿdi/ ÃÓv˜ vÃ ›sU u}Ÿdi/ SMe cß uŸ<M ¾}WÖ<ƒ ¾SŸLŸÁ SMf‹ ¡`¡` ¾}’duƒ u?ƒ vKu?ƒ eKSJ’< ue` Ÿdi uŸ<M Te[Í ÁKSp[u<”' u?~ ¾}¨[W SJ’<” “ u”ÓÉ u?~ LÃ ¾Ÿ=^Ã ¨<M ¾}Ñvuƒ eKJ’ ¾e` Ÿdi ¡e }kvÃ’ƒ ”Ç=•[¨< ¾T>ÖÃp SJ’<” }SM¡}“M:: vß\ ŸWð\ƒ ¾Ó^k˜ ¨Ñ•‹ ¾õ_ ’Ñ`“ ¾lÓ ¡`¡a‹ uS’dƒ G<K~ ¨Ñ•‹ ¾}KÁ¿v†¨< ’Øx‹ ußwØ’ƒ }Ã²¨< ”Ç=×\ TÉ[Ó

uY’ Y`¯ƒ IÑ< ÓÉ ¾T>K¨< ›"H@É ’¨<:: uSJ’<U ¡`¡` ¾}’duƒ ¾x› vKÃµ›’ƒ Swƒ ¾e` Ÿdi SJ’< ¨ÃU ¾}¨[W Ãµ› SJ’<' ¾u?~ vKu?ƒ ¾e` Ÿdi SJ’< ¨ÃU ¾”ÓÉ u?~ ¾}¨[W u?ƒ eKSJ’<' ¾”ÓÉ u?ƒ Ÿ=^Ã ¨<M ”Ç=Ñv ¾}Å[Ñuƒ ›e}ÇÅ^© ¨<d’@ u›Óvu< SJ” ÁKSJ’< ue` õ`É u?„‹ }Ÿ^"]‹ ¾}KÁ¿v†¨< ’Øx‹ eK’u\ uõ`É u?„‡ uŸ<M ußwØ’ƒ }Ã²¨< ¨<d’@ K=Á`õv†¨< ÃÑv ’u`:: ’Ñ` Ó” ¾Ó^k˜ ¨Ñ•‹ ¾}KÁ¿v†¨< ’Øx‹ uõ.w.Y.Y.l.l 247 SW[ƒ ußwØ’ƒ }KÃ}¨< vKSÁ³†¨< Á”Ç”Ç†¨< uIÓ [ÑÉ ÁL†¨< ¨<Ö?ƒ dÃS[S` uSp[~ K²=I ¾Wu` ›u?~› U¡”Áƒ J• k`vDM:: eK²=I ¾SËS]Á Å[Í õ/u?ƒU J’ uÃÓv˜ cT> õ/u?ƒ uŸ<M ¾e` Ÿdi/ÃÓv˜ vÃ “ ¾e` }Ÿdi/SMe cß ¾}KÁ¿v†¨< ¾õ_ ’Ñ` ßwÙ‹ u›Óvu< dÃS²’< ›Mð¨< ¾Wu` ›SM"‹“ ¾Wu` }Ö] ÁÅ[Ñ<ƒ ¾”ÓÉ u?ƒ Ÿ=^Ã ¨<M ”Ç=ð`e dÃÅ[Ó G<Ÿƒ ”Ç=¨ÑÉ ¾}Ö¾k¨< u›Óvu< ›ÃÅKU uTKƒ ¾¨W’<ƒ ¾Ó]k–< ¡`¡` K=S^uƒ ¾T>Ñv¨<” ¾Y’ Y`¯ƒ É”ÒÑ@‹ ÁM}Ÿ}K uSJ’< u›Óvu< J• ›LÑ–’¨<U::

uSJ’<U ¾Y’ Y`¯ƒ IÑ<” É”ÒÑ@‹ u}Ÿ}K SMŸ< ŸLÃ ¾}ÑKì<ƒ ¾õ_ ’Ñ` ßwÙ‹ }Ã²¨< u`ÓØU ¾Wu` ›SM"‹ ¾^c< Ãµ›“ u^c< Ñ”²w uW^¨< ¾”ÓÉ u?ƒ LÃ uWu` }Ö] uŸ<M u}WÖ ›e}ÇÅ^© ¨<d’@ ¾”ÓÉ u?ƒ Ÿ=^Ã ¨<M ’Ç=Ñv eKSÅ[Ó ÁKSÅ[Ñ< uT×^ƒ ¾Wu` ›SM"‹ “ u}Ö] S"ŸM ÁK¨< ¡`¡` uu?ƒ vKu?ƒ’ƒ“ }kvÃ’ƒ vK¨< ¾vKÃµ›’ƒ Swƒ/uÉU\ right in rem ¨ÃU uWu` }Ö] ›e}ÇÅ` Y` ÁK ¾x› Ãµ›“ ¾}¨[W u?ƒ ŸJ’ u”ÓÉ u?ƒ ¾Ÿ=^Ã ¨<M LÃ ¾}SW[} Swƒ/ uÉU\ right in personanm SJ’< }KÃ„ ¨<d’@ uScÖƒ ¾Ó^k–<” ¨Ñ•‹ ßwØ u}TEL KSSKe Ã‰M ¾’u[¨< }ðéT> dÃÅ[Ó Sp[~” }Ñ”´u“M:: uSJ’<U ue` õ/u?„‹ ¾Ó^ k˜ ¡`¡` SÁ´ ÁKv†¨< ¾õ_ ’Ñ` ßwÙ‹ u}TEL SMŸ< ÁM›¾uƒ eK’u` ¾Y’ Y`¯ƒ IÓ É”ÒÑ@‹ SW[ƒ uTÉ[Ó ¾k[uM” ¾Wu` ›u?~› u›Óvu< J• }Ñ˜…M::

ሁለተኛውን ጭብጥ በተመለከተ

የስር ከሳሽ ክሱን ሲያቀርብ ክርክር የተነሳበትን በወረዳ 17 ቀበሌ የሚገኘውን ቦታ በተመለከተ የባላይዞታነት መብት ያገኘው የሥራና ከተማ ልማት ሚኒ ስቴር ለሠበር ተጠሪው በጻፈው ደብዳቤ በወረዳ 17 ቀበሌ 19 ውስጥ የነበረው ይዞታቸው ለአፓርታማ መስሪያ በመዋሉ በወረዳ 17 ቀበሌ 2 ዐ ውስጥ በጊዜያዊነት ለሠበር አመልካች ቦታ እንዲሰጥ መፈቀዱን በቁጥር 5 ዐዐ - ሀ-193/2636/72 በ 3/4/72

ዓ.ም በተጻፈው መሠረት የቀበሌው ጽ/ቤትም አስፈላጊውን ርዳታና ትብብር እንዲያደርግ የተገለፀለት መሆኑን ያሳያል። የቀበሌው ጽ/ቤትና በስተዳድሩ መካከል ስለይዞታው መብት በተመለተ የተጻጻፋቸው የፅሁፍ ማስረጃዎች የሠበር አመልካቹ ክርክሩ የተነሳበትን ቦታ በተመለከተ ተቀባይነት ያለው የባለይዞታነት መብት ከ1972 ዓ.ም ጀምሮ ማግኘቱን የሚያስረዱ ማስረጃዎች ተደርገው የቀረቡናቸው። በሥራና ከተማ ልማትና በመስተዳድሩ አካላት መካከል የተደረጉት የፅሑፍ ልውውጦችም ሆኑ ሌሎች ማስረጃዎች አንዳቸውም ክርክር የተነሳበት ቦታ ለሠበር አመልካች እንዳልተሰጡ የሚያስተባብሉ ሆነው አልተገኙም የቦታ ባለዩዘታነቱ ለሠበር አመልካቹ ከተሠጠበት ከ1972 ዓ.ም ጀምሮ በሠበር ተጠሪ አረጋጋጭነት የቦታ ግብር የሠበር አመልካቹ እየከፈለ መቀጠሉም የሠበር አመልካቹ ክርክር የተነሳበት ቦታ ህጋዊ ባለይዞታነት በደጋፊ ማስረጃነት የሚያረጋግጥ ሆኖ አግኝተነዋል። ስለዚህ ክርክር የተነሳበት ቦታ ለሠበር አመልካቹ በባለይዞታነት የተሠጠው እንጂ እንደሠበር ተጠሪ መከራከሪያ ተወርሶ በተጠሪ አስተዳደር እጅ የሚገኝ ስለመሆኑ የሚደገፍ ማስረጃ አላገኘንም።

በሌላ በኩል በቤት ቁጥረ 15 ዐ 7 የሚታወቀው የመኖሪያ ቤትና የንግድ ቤት ባለቤትነት ሲታይም የቀረቡት ማስረጃዎች የሠበር አመልካች በራሱ ገንዘብ የሠራቸው መሆኑን ስለሚያረጋግጡ ባለንብረቱ አመልካቹ ሆኖ አግኝተነዋል። እንደ ሠበር ተጠሪ መከራከሪያ ቤቱ የተወረሰና በቀበሌው አስተዳደር እጅ የሚገኝ ስለመሆኑ ምንም የሚደገፍ ማስረጃ አላገኘንም። በ1972 ዓ.ም ለሠበር አመልካች በተሠጠ ቦታ ላይ ቤቶች መሠራታቸውን የቀረቡት ማስረጃዎች ስለሚያስረዱ አዋጅ ቁጥር 47/67 በወጣው ወቅት ያልተሰሩ ቤቶች በመሆናቸውም በአዋጅ ቁጥር 47/67 መሠረት የተወረሱ ነበር ብሉ ለማስረዳት የሚቻል አይደለም።

በመሆኑም የሠበር አመልካቹ ክርክር የተነሳበት በወረዳ 17 ቀበሌ የቤት ቁጥር 15 ዐ 7 የሚታወቃው ቦታ ህጋዊ ባለይዞታና የቤቱ ባለቤት መሆኑን የሚያስረዱ ማስረጃዎች በማቅረቡ የቦታው ባለይዞታና የቤቱ ባለቤት ሆኖ አግኝተነዋል። በሌላ በኩል የሠበር ተጠሪ ባቀረበው መከራከሪያ የሠበር አመልካቹ የቦታ ባለይዞታና የቤት ባለቤት ስለመሆኑ ያቀረባቸውን ማስረጃዎች ብቃት በተመለከተ ያቀረባቸውን ክርክሮችም ከዚህ ጭብጥ ጋር በማያያዝ ተልክተነዋል። የቦታ ባለቤትነት መብት ከአዋጅ ቁጥረ 47/67 መውጣት በኋላ የመንግስት እንጂ በግል ባለቤትነት ሊያዝ እንደማይችል ይታወቃል። የሠበር አመልካቹም የቦታው ባለቤት ሊሆን አይችልም ። ነገር ግን በቦታ ላይ የባለይዞታነት መብት አግባብነት ባላቸው የመንግስት

አካላት ተፈቅዶ ሊሠጥ ይችላል። በዚሁ መሠረት የሠበር አመልካቹ የቦታና ቤት አስተዳደር ሥልጣን በተሠጠው የሥራና ከተማ ልማት ሚኒስቴርና የተለያዩ የመስተዳድሩ አካላት በኩል ተፈቅዶ በተሠጣቸው ቦታ ላይ የባላይዞታነት መብት ይኖራቸዋል። የባለይዞታነት መብትን ለማስረዳት ብቃት ያላቸውን ማስረጃዎች በተመለከተም ሥልጣን ባለው አካል በኩል ተረጋግጦ የሚሠጥ የባለ ይዞታነት ማረጋገጫ ማስረጃ አንዱ ሲሆን ይህ የባለይዞታነት ማረጋገጫ ማስረጃ ባልተሠጠበት ሁኔታም አግባብነት ካላቸው መንግስታዊ አካላት የባለይዞታነት መብቱ ተፈቅዶ መሠጠቱን የሚገልፅ ማስረጃ ከቀረበ የባለይዞታነት ግንኙነት ስለመኖሩ ለማስረዳት ብቃት ያለው ይሆናል። ስለዚህ የክርክሩ ምክንያት የሆነው ቦታ ለሠበር አመልካቹ በሥራና ከተማ ልማት ቢሮና በመስተዳድሩ አካላት በኩል በ1972 ዓ.ም ተፈቅዶ ተሠጥቶ ስለባለይዞታነቱም የፅሁፍ ማስረጃዎች ተሠጥተውና የቦታ ግብር እየተከፈለ መቆየቱ የሠበር አመልካቹን የባለይዞታነት መብት ለማስረዳት ብቃት ያላቸው ማስረጃዎች ሆነው ተገኝተዋል። በመሆኑም በባለይዞታነት ለአመልካቹ በተሠጠ የቦታ ይዞታ ላይ የሠበር አመልካቹ የቤት ቁጥር 15 ዐ 7 የሆነውን በራሳቸው ገንዘብ ስለመስራታቸው የሚገልፁት ማስረጃዎች የቤት ባለቤትነት ደብተር ባይቀርብበትም የቤቱ ቁጥር 15 ዐ 7 የሆነውን የሠበር አመልካች በመስራት የቤቱ ባለቤት መሆናቸውን ለማስረዳት ብቁ በመሆኑ በሠበር ተጠሪ በኩል ለስር ፍ/ቤት በዚህ ረገድ የቀረቡት መከራከሪያዎች ተቀባይነት ያላቸው ሆነው አልተገኙም።

ሶስተኛውን ጭብጥ በተመለከተ

በነሐሴ ወር 1989 ዓ.ም የወጣው የንግድ ቤቶች የኪራይ ማስተካከያ መመሪያ ለግራቀኙ ክርክር ተፈጻሚ መሆን ያለመሆኑን እንደሚከተለው እንመረምራለን። አዋጅ ቁጥር 47/1967 የከተማ ቦታና ትርፍ ቤቶችን የመንግስት ንብረት ለማድረግ በወጣው አዋጅ መሠረት ትርፍ ቤቶች ተወርሠው በቀበሌ አስተዳደርና በኪራይ ቤቶች አስተዳደር ሥር ውለዋል። የአዲስ አበባ ከተማ መስተዳድርም በቀበሌ አስተዳደር ሥር የሚገኙ የመንግስት ንብረት የሆኑ ንግድ ቤቶች ላይ የኪራይ ተመን ማስተካከያ በማድረግ ከነሐሴ 1988 ዓ.ም ጀምሮ የኪራይ ውል በማሻሻል ተግባራዊ ማድረጉ ይታወቃል። ለዚህ ክርክር መነሻ የሆነውም የሠበር አመልካች በተሠጠው ይዞታ ላይ በራሱ ገንዘብ በሠራው ቤት ላይ ከኪራይ ማስተካከያው መመሪያ ጋር ተያይዞ የንግድ ቤት ኪራይ እንዲከፍል በመጠየቁ አስተዳደራዊ ውሳኔውን በመቃወም በንብረቱ ላይ የተፈጠረው ሁከት እንዲወገድ በመጠየቅ ነው። ከላይ በተገለፁለት ጭብጦች ውስጥ እንደተመለከተው

የሠበር አመልካቹ ክርክር የተነሳበት ቦታ ህጋዊ ባለይዞታና የንግድ ቤቱ ባለቤት አስከሆነ ድረስ በቀበሌ አስተዳደር እጅ የሚገኝ የንግድ ቤቶችን በተመለከተ የወጣው የኪራይ ማስተካከያ በሠበር አመልካቹ ላይ ተፈጻሚ ይሆን ዘንድ የተወሠደው አስተዳደራዊ አርምጃ በአግባቡ ሆኖ አላገኘነውም። የሠበር አመልካቹም የንግድ ቤት ኪራይ ውሉን ሊዋዋል ስለቻለበት ሁኔታ በመገደድና ለሌላ ሰው የንግድ ቤቱ እንዳይሠጥበት በመፍራትና ጉዳዩን በተመለከተ አቤቱታ ለሚመለከታቸው ለማቅረብ በመፈለግ መሆኑን በመግለፅ የውሉን ህጋዊነት በመቃወም ሲከራከር ከሠበር ደረጃ ደርሷል። እኛም የሠበር አመልካቹን ክስ በተመለከተ የተሠጡበትን አስተዳደራዊ ውሳኔ በመቃወም ራሱ በሠራው የንግድ ቤት ላይ የንግድ ቤት ኪራይ ውል መግባቱን በመቃወም ያቀረበው ክስ እንደመሆኑ መጠን የአስተዳደር ውሳኔው ህግዊ አግባብ ከውሉ ጋር ተያይዞ የሚታይ በመሆኑ ተጣምረው በምክንያትና ውጤት ሊመረመሩ የሚባቸውን እንጂ በመጀመሪያ የውል ማፍረስ አቤቱታ ቀርቦ በመቀጠል የሁከት ማስወገጃ ክስ ንብረቱን ለማስለቀቅ መቅረብ አለበት ተብሎ በስር ፍ/ቤቶች የተወሠነው በአግባቡ ሆኖ አላገኘነውም።

ስለዚህ በ 1988 ዓ.ም የወጣው የንግድ ቤቶች ኪራይ ተመን ማስተካከያ መመሪያ ተፈጻሚነቱ በቀበሌ አስተዳደር እጅ ለሚገኙ የመንግስት ንብረት ለሆኑ የንግድ ቤቶች እንጂ የክርክሩ ምክንያት የሆነውና ለሠበር አመልካቹ ባለይዞታነት በተሠጠው ቦታ ላይ በራሱ ገንዘብ በሠራው ቤት ላይ የንግድ ቤት ኪራይ ውል የተገነባው ተቀባይነት ያለው ሆኖ አላገኘነውም። የሠበር ተጠሪ ቤቱ የንግድ ቤት ኪራይ ሊከፈልበት የሚገባ ስለመሆኑ ቤቱ የተወረሠ ወይም በሌላ ዓይነት የውል ስምምነት ስለመሠራቱ ያስርዳው ነገር ባለመኖሩ የኪራይ ውል አንዲገባ የተሠጠው አስተዳደራዊ ውሳኔም ሆነ የንግድ ቤት ኪራይ ውሉ በህግ ተቀባይነት ያለው ሆኖ አልተገኘም። በመሆኑም በ 1988 ዓ.ም የወጣው የንግድ ቤቶች ኪራይ ተመን ማስተካከያ መመሪያ በሠበር አመልካችና በሠበር ተጠሪ መካከል ባለው ክርክር ላይ ተፈጻሚ ሊደረግ የሚባው ሆኖ አላገኘነውም።

አራተኛውን ጭብጥ በተመለከተ

በግራቀኙ መካከል ያለው ጉዳይ የንግድ ቤቶች የኪራይ ተመን ማስተካከያን በተመለከተ በክስ ደረጃ የቀረበ ሲሆን ጉዳዩ በይግባኝ ሰሚ ፍ/ቤትና በሠበር ሠሚ ችሎት ደረጃ ላይ እያለ የክርክሩ ምክንያት የሆነው ይዞታ በሊዝ ለሌላ አልሚ መሠጠቱ ተገልጾአል፤ በዚህ ነጥብ ላይ ደግሞ የግራቀኝ ወገኖችን መብት እንደሚከተለው እንመረምራለን። የመ S ት ባለቤትነት መብት በአሁኑ ወቅት በግል ሊያዝ የማይችል

በመሆኑ ግለሠቦች የሚኖራቸው መብት ቦታን በባለይዞታነት በመያዝ የመጠቀም መብት ነው። በሊዝ አዋጆችና ደንቦች መሠረት ቦታ በሊዝ ለአልሚዎች በሚሠጥበት ጊዜም የሌዝ አፈጻጸሙ ሊከተላቸው የሚባቸው ሥነ ሥርዓቶች በህግ ተደንግገዋል። በያዝነው ጉዳይ የቦታው ባለይዞታነት መብትና የቤቱ ባለቤትነት መብት የሠበር አመልካች እንደመሆኑ መጠን ቦታው በሊዝ የሚሠጥ ከሆነ በሊዝ አዋጅና ደንቦች መሠረት የቦታው ለአልሚዎች መሠጠት መስተናገድ ተገቢ ይሆናል። በመሆኑም የሠበር አመልካቹ በቦታው ላይ በሊዝ ለማልማት የሚፈልጉ ከሆነ በሊዝ ህጉ መሠረት የቅድሚያ መብት ተሠጥቷቸው በቦታው ላይ ከቀረበው ኘሮጀክት ተመጣጣኝ ወይም የተሻለ የማልማት ፍላጐት ካላቸው በተገቢው ሥርዓት ተስተናግዶ የክርክሩ ምክንያት የሆነው ቦታ በሊዝ ሊለማ የሚችል ይሆናል።

ስለዚህ የክርክሩ ምክንያት የሆነው ቦታ በሊዝ እንዲሠጥ ለማድረግ የሊዝ ህጐችን በተከተለ መልኩ የሠበር አመልካቹን የቦታ ባለይዞታነት መብትና የቤት ባለቤትነት መብት ከግምት ውስጥ በማስገባት ተፈጻሚ ሊደረግ የሚባው ሆኖ አግኝተነዋል።

ስናጠቃልለው ከዚህ በላይ በተገለፀት አራት ጭብጦች ሰር በሠጠነው ህጋዊ ምክንያቶች የከተማ ነክ ጉዳዩች ይገባኝ ሰሚ ፍ/ቤት መዝገብ ቁጥር 211/92 የሠጠው የመጨረሻ ውሳኔ ለግራቀኙ ክርክር አግባብነት ያላቸውን ጭብጦች ሳይይዝ በማለፉ የሠበር አመልካች የቦታ ባለይዞታነትና የቤት ባለቤትነት መብት ሳይመረመር ወሳኔ በመስጠቱ! የንግድ ቤቶች ኪራይ ተመን ማስተካከያ መመሪያ በሠበር አመልካች ላይ ተፈፃሚ እንዲሆን የተሠጠውን አስተዳደራዊ ውሳኔ በመቃውም የቀርበው ሳይመርመር በመታለፉ፣ እንዲሁም የግራቀኙ ክርክር ከኪራይ ወጥቶ የሊዝ ህግን የሚመለከት ጭብጥ ማስነሳቱ ቀርቦለት ከሊዝ ህጐች አንጻር ውሳኔ ሳይሠጥበት ታልፎ የግራቀኙ ክርክር በመጀመሪያ የንግድ ቤት ኪራይ ውሉ እንዲፈርስ ተድርጐ በመቀጠል የሁከት ማስወገድ አቤቱታ ከሚቀርብ በሰተቀር የተፈጠር ሁከት የለም ተብሉ የተወሠነው የመጨረሻ ውሳኔ የሥነስርአት ህጉም ሆነ የፍሬ ነገር ህጐች አተረጓጐም መሠረታዊ ስህተት ስላለባቸው በሠበር ሊታረሙ ይገባል ስንል የከተማ ነክ ጉዳዩች ፍርድ ቤት ማቋቋሚያ ደንብ ቁጥር 1/9 0 አንቀጽ 4 እና 11/5/ መሠረት የይግባኝ ሰሚ ፍ/ቤት በይ/መ/ቁጥር 211/92 የሠጠውን የመጨረሻ ውሳኔ በድምፅ ብልጫ በመሻር የሠበር አመልካች በተሰጣቸው ህጋዊ ይዞታ ላይ በራሳቸው ገንዘብ በሠሩት ቤት ላይ ኪራይ ሊከፍሉ አይገባም ብለናል።

መዝገቡ በአዳሪ ሲሰራ ቆይቶ ነሃሴ 4 ቀን 1993 ዓ.ም በሠበር ሰሚ ችሎት ተሠጠ

የውሳኔው ግልባጭ ለይግባኝ ሰሚው ፍ/ቤተ ይተላለፍ ብለናል።

የዳኞች ፊርማ፣ በቃሉ ጥላሁን

ኃይለሚካኤል ተሾመ

መክቡብ ቦጋለ

ቃልኪዳን ዘለቀ

የሃሳብ ልዩነት

እኔ ስሜ በተራ ቁጥር 1 የተመለከተው ዳኛ ከዚህ በታች በተመለከተው ምክኒያት በአብላጫ ድምፅ ከተስጠው ውሳኔ በሃሳብ ተለይቻለሁ።

የሰበር አመልካች በወረዳ 17 ቀበሌ 2 ዐ ክልል በሚገኛው የቤት ቁጥር 15 ዐ 7 በሆነው በግል ገንዘቤ በሰራሁት ቤት በመልስ ሰጮች አማካይነት በሀይልና በተፀእኖ የኪራይ ውል እንድዋዋል ተገድጄ ውል እንድፈርምና ኪራይ እንድከፍል በማድርግ ሁከት ተፈጥሮብኛል በማለት የመጀመሪያ ክስ ያቀርቡ ሲሆኑ ክሰሳቸውና ከመዝገቡም ለመረዳት የሚቻለው በይዞታው ላይ የሁከት ድርጊት የፈፀሞብኛል የሚለው ክስ የቀርበው የስበር አመልካቸ በቤቱ ላይ የተከራይነት ውል ከፈረሙ በኃላ ነው። በዚህም መሠረት በግራቀኙ መካከል በተፈረመው የአከራይነት ውል የተነሳ የሰበር አመልካች የአከራይነት በተጠሪዎች በኩል የአከራይነት ሁኔታ በመኖሩ ይህ ውል እስካለ ድርስ አከራይ ወገን የሆነው የመስተዳደር አካል ኪራይ የማስከፈልና ሌሎች ከውሉ ላይ የተያዩዙ መብቶች የሚኖሩት ሲሆን ውል በተወያይ ወገኖች መካከል ህግ እንዲሆን በመሆኑ በፍ/ብ/ሕ/ፊ 1149 ንዑስ ቁጥር 3 መሠረት በሚወስዳቸው ማናቸውም አይነት በውል ላይ የተመስርቱ እርምጃዎች ከውል የመነጨ ድርጌቱን የሚፈቅድለት መብት/ right in his favour justifying his conduct /ይኖረዋል ስለዚህም የሰበር አመልካች አስቀድሞ በሀይልና በተፅዕኖ እንዲፈርም ተደርጌአለሁ የሚለውን ውል ከፍ/ብ/ሕ/ቁ 18 ዐ 1 እና በተከታዩቱ ድንጋጌዎች መሠረት እንዲሰረዝለት ወይም እንዲፈርሰለት በክስ ሳይጠይቅና ውሉም ሳይፈርስ በምንም አይነት ምክንያት የሁከት ይወገድልኝ ክስ ለማቅርብ ስለማይችልና ውሉ እስካለ ድርስ መልስ ሰጮች የአከራይነት መብት ስለሚኖራቸው የመጀመሪያ ደርጃውም ሆነ የይግባኝ ስሚው ፍርድ ቤት የሰጡት ውሳኔ ምንም አይነት መሠረታዊ የህግ ስህተት የለውም ሲል በሃሳብ ተለይቻለሁ ።

የዳኞች ፊርማ፣ መስፍን አዲሴ

የፋ/ይ/መ/ቁ/ 208/87

ጥር 6 ቀን 1990 ዓ.ም

ዳኞች -- ተገኛ ከበደ

ጥጋቡ ጌጤ

አሊ መሐመድ

ይግባኝ ባይ ..... አምሣሉ ሽፈራው

መልስ ሰጭ ..... አህመድ ወዳጅ

መዝገቢ ተመርምሮ የሚከተለው ውሣኔ ተሰጠ ።

<u>ውሣኔ</u>

ይህ ይግባኝ የቀረበው የአዊ ዞን ከፍተኛ ፍርድ ቤት ሐምሌ 19/1987 በሰጠው ውሣኔ ቅር በመሰኘት ነው።

ከመዝገቡ ግልባጭ አንደተረዳነው ይህ ክርክር የተጀመረው በጓንጓ ወረዳ ፍርድ ቤት ሲሆን ፣ የአሁን ይግባኝ ባይ ተከሣሽ መልስ ሰጭ ደግሞ ከሣሽ ነበሩ።

ግራ ቀኙ የሚከራከሩት ከቻግኒ ከተማ ዐ1 ቀበሌ በሚገኘውና የቤት ቁጥሩ ዐ75 በሆነው በአቶ ኢሣ ገላን ቤት ነው።

ክርክሩን ከሥረ መሠረቱ እንደተረዳነው፣ የዚሁ ቤት ባለቤት የነበረው አቶ ኢሣገላን ከአሁኑ መልስ ሰጭ የካቲት 1/1984 በተፃፈ ውል በብር 1 ዐ,000 = ሽጦለታል ቤቱንም መልስ ሰጭው ተረክቧል።

ይሁን እንጂ መልስ ሰጪው ቤቱን ከመረከቡ በስተቀር ሕጉን ተከትሎ ስሙን አላዛወረም። ባጭሩ ከኢሣ ገላ ጋር የቤት ሽያጭ ውል ከመዋዋሉና ቤቱን ከመረከቡ ውጭ የፈጸመው ነገር የለም።

የአሁን ይግባኝ ባይ በበኩሉ ቤቱን ከኢሣ ገላ ከገዛ በኃላ ይህንኑ ለማዘጋጀ ቤቱ በማስታወቅ ቤቱ የኢሣ ገላ መሆኑ ተረጋግጦ ከእዳና ከእዳም ነፃ መሆኑ በቀበሌው ተረጋግጦ ከቀርበ በኃላ ማዘጋጀ ቤቱ ተቃዋሚ እንዳሉ እንዲቀርብ በጋዜጣ ጥሪ ተደር.ጐ ተቃዋሚ ስላልቀርበ የሻያጩ ውል እንዲጽድቅ ተደርጓል ።

ይግባኝ ባዩ ይህንን ካደርግ በኃላ መልስ ሰጭውን ከቤቱ አስወጥቶታል ። የአሁን መልስ ሰጭም ቤቱን ከለቀቀ በኃላ በፍታ/ሕግ 1149 መሠረት ሁከት ፈጥሮ
ብኛል በማለት ሁከት እንዲወገድለት በአሁን ይግባኝ ባይ ላይ ክስ መሥርቶበታል።

የአሁን ይግባኝ ባይም በባንባ ወረዳ ፍ/ቤት በተከሣሽነት ቀርቦ፣

1 ኛ. ቤቱን ከኢሣ ገላ የገዛው መሆኑን፣

2 ኛ. ቤቱ ከእዳና ከእግዳ ነፀ መሆኑ፣

3 ኛ. በቻግኒ ከተማ ማዘጋጃ ቤት ተቃዋሚ እንዳለ እንዲቀርብ በጋዜጣ ጥሪ አድርጐ ተቀዋሚ ስላልቀረበ ውሉ ጸድቆ የቤቱ ባለቤት የሆንኩ ስለሆነ ሁከት አልፈጠርኩም በማለት ክሱን ተቃውሚል፣ ማስርጃዬ ነው ያለውን አያይዟል።

ከሣሽ በበኩሉ እኔ የገዛሁት ቤት ተከሳሹ ከኢሣ ገላ ጋር በመመሳጠር እንደገና ቤቱን የገዛው በተንኮል ነው በመሆኑም ውሉ ፈራሽ ነው። በአጠቃላይም በእኔ ውል ላይ የተደርገ ውል በመሆኑ ተቀባይነት የለውም በማለት ተከራክሯል።

የጓንጓ ወረዳ ፍ/ቤትም የግራ ቀኙን ክርክርና ማስረጃ ከመረመረ በኃላ የከሣሽን ክስ ውድቅ አድርጐ ሀብት የለም በማለት መዝገቡን ዘግቶ ተከሣሽን በነፃ አስናብቶታል። የወረዳው ፍ/ቤት ለዚህ ውሣኔው መሠረት ያደረገው ከሣሽ ለዚህ ክርክር መነሻ የሆነውን ቤት ገዝቸዋለሁ፤ ቤቱንም ተርክቤአለሁ ቢልም ተከሣሹ ቤቱን የገዛው ቤቱ ከዕዳና ከእግዳ ነፃ መሆኑ በቀበሌው በቁጥር 322/ዐ 1/85 በ 12/1/85 ከተረጋገጠና ማዘጋጃ ቤቱን ይህንን ከአረጋገጠ በኃላ ነው በመሆኑም ተከሣሽም በቂና አሣማኝ የባለይዞታነት ማረጋገጫ ያቀረቡ ስለሆነ ሁከት አልፈጠሩም በሚል ምክንያት ነው።

የአሁን መልስ ሰጭም በዚህ ውሣኔ ቅር ተሰኝተው ይግባኙን ለከፍተኛው ፍ/ቤት አቅርቧዋል።

የከፍተኛው ፍ/ቤትም ግራ ቀኙን ከአከራከረ በኃላ ከፍ ሲል በጠቀስነው ቀን ውሣኔ ሰጥቷል። በዚህ ውሣኔም የወረዳውን ፍ/ቤት ውሣኔ ሽሮ ሁከት አለ ሁከቱ ሊወገድ ይገባል ሲል ወስኗል።

ፍ/ቤቱ ለዚህ ውሣኔ መሠረት ያደረገው፣ ተከሣሽ በቤቱ ላይ መብት ቢኖረው እንኳ የገዛው ንብረት በይዞታ ወይም በሌላ ምክንያት በ3ኛ እጅ ሲገኝ ንብረቱን የሸጠለትን ወይም ንብረቱን የያዘውን በሕግ ከሶ ያስለቅቃል እንጅ በኃይል አይጠቀምም። በኃይል መጠቀም ሕገወጥ ሥራ ነው።

በፍታ/ሕግ ቁጥር 1149 ይዞታው በኃይል የተወሰደበት ሰው ሁከት የተፈጠረበት መሆኑን ገልጾ ክስ መመሥረትና መብቱን ማስከበር እንደሚችል ተደንግጓል።

ተከሣሽም መብቱን በዚህ ሕግ መሠረት መጠቆም ሲገባው የቤቱን ቁልፍ ሰብሮ በኃይል ወደ ቤቱ የገባው አላግባብ ነው። ሁከት ፈጥሯል በመሆኑም ሁከቱ መወገድ አለበት ብሏል።

ይህ ይግባኝም የቀረበው ይህንኑ በመቃወም ነው። ይግባኙን ለዚህ ፍ/ቤት ቀርቦ ግራ ቀኙ ተከራክረዋል።

ይግባኝ ባይም ሆነ መልስ ሰጭ በዚህ ፍ/ቤት የተከራከሩት በሥር ፍ/ቤት ያቀረቡትን ክርክር በመድገም እዚህ ፍ/ቤትም ተከራክረዋል።

የይግባኝ ባዩ ክርክር በአጭሩ ቤቱን በሕጋዊ መንግድ ገዝቸና ቤቱ ከእዳና ከዕገዳ ነፃ መሆኑ ተረጋግጦ ተቃዋሚ እንዳለ እንዲቀርብም በአዲስ ዘመን ጋዜጣ ተጠርቶ ባለመቅረቡ ውሉ ጸድቆ ባለቤት ሆኛለሁ። በመሆኑም በገዛሁት ቤት መግባቴ ሁከት እንደፈጠርኩ አያስቆጥረኝም ይልቁንም ከሣሽ ቤቱን ገዛሁ ይበል እንጂ ሕጉን ተከትሎ ያልፈፀመው ስለሆነ ተቀባይነት የሌለው ሆኖ እያለ ሀብት ፈጥረሃል መባሉ አላግባብ ነው የሚል ክርክር አቅርቧል።

መልስ ሰጭ በበኩሉ ቤቱን ከኢሣ ገላ ከገዛሁ በኋላ ተረክቤው በእጅ ካደረኩኝ በኋላ የንግድ ፈቃድ አውጥቸበታለሁ። ሆኖም ይግባኝ ባዩ ከኢሣ ገላ ጋር በመመሳጠር ግዥ ፈጸሜአለሁ በማለት ቤቴን ሰብሮ መግባቱ ሁከት መፍጠሩን ያሣያል።

ይልቁንም መብት አለኝ ሲል በሕግ መጠቀም ሲገባው በኃይል መጠቀሙ ሕገ ወጥ ሥራ በመሆኑ ሁከት አለ መባሉ በአግባቡ ነው በማለት ፍርዱ በፍርድ እንዲጸናለት ጠይቋል።

ክርክሩ ከሞላ ጐደል በአጭሩ ይኸው ነው።

እኛም የግራ ቀኙን ክርክር መሠረት አድርገን ሁከት አለ? የለም ? የሚለውን ጭብጥ ይዘን መርምረናል።

ወደፍ S ጉዳዩ ንብተን የበኩላችን መደምደሚያ ከሰጠታችን በፊት ሕጉን መመርመር አስፈላጊ ሆኖ አግኝተነዋል።

በመሠረቱ በፍታ/ሥ/ሥ/ቁጥር 1149 መሠረት አንድ ሰው ሁከት ተፈጥሮብኛል ብሎ ክስ የሚመሠርተው በይዞታው ሥር ያለው ንብረት እንዲመለሰለት ሲሆን ፣ ዳኞችም ሁከት አለ የሚሉት ተከሣሽ ወይም ሁከት ፈጠረ የተባለው ሰው መብት ያለው መሆኑን በፍጥነትና በማይታበል ሁኔታ ማስረዳት ካልቻለ ነው። ተከሣሺ ይህንን ማስረዳት ከቻለ ወይም በሌላ አነጋገር ሁከት ተፈጥሮበታል የተባለውን ንብረት በይዞታው ያደረገው ከከሣሽ በተሻለ መብት ባለው ሁኔታ ማሰረዳት ከቻለ ሀብት አለ የሚያሰኝ ምክንያት የለም።

ይህንንም ይበልጥ ለማብራራት ከሣሽ በይዞታው ሥር ያደረገውን ንብረት ተከሣሽ ከከሣሽ በተሻለ ሁኔታ ወይም መብት ይዞት ከሆነ ለምሳሌም በፍታ/ሕግ ቁጥር 12 ዐ 4 መሠረት የሰፋ መብት ካለው ባለይዞታ የሆነው ከሣሽ የሰፋ መብት ባለው በተከሣሽ ላይ የሁከት ይወገድልኝ ጥያቄ ማቅረብ አይችልም።

በሌላም በኩል አንድ ተከሣሽ ከከሣሽ የተሻለ መብት ካለው ይህንን ንብረት በሌላ ሰው ይዞታ ሥር ሆኖ ካገኘው የግድ በሕግ ብቻ መጠቀም አለበት አያሰኝም። በተለይም በይዞታ ሥር ያደረገው ሰው በምን ምክንያት እንደያዘው ካላወቀ በፍታ/ሕግ ቁጥር 1148 መሠረት በኃይል ለመጠቀም ይቻላል።

በዚህ ሕግ በግልጽ እንደተደነገገውም በንጥቂያ ወይም በስውር የተወሰደን ንብረት ማስመለስ ወይም ማስወጣት ክስ መሥርቶ ብቻ ሣይሆን በኃይልም መጠቀም ይችላል።

ይህንን እንግዲ እኛ ሕጉን አስከ ተረዳነው ድረስ ነው።

ስለ ሕጉ በመጠኑም ይህንን ካልን በመቀጠል ደግሞ ከሕጉ አኳይ የግራ ቀኙን ክርክር መርመረናል።

በመሠረቱ ከሣሽ ማለትም በዚህ ፍ/ቤት መልስ ሰጭ የሆነው ግለሰብ የቤቱ ባለ ቤት ነኝ የሚለው ቤቱን ከኢሣ ገላን ገዝቼ ቤቱን ተረክቤ ድርጅት አቋቁሜበታለሁ ብሎ ነው።

ይሁን እንጂ ሽያጩ የማይንቀሳቀስ ንብረት ሲሆን ፤ ቤቱም የሚገኘው በቻግኒ ከተማ ሆኖ ማዘጋጃ ቤት ያለው ነው። ይህም ግራ ቀኙ ከአደረጉት ውል በተጨማሪ ሕጉ በሚያዘው መሠረት ማናቸውም ሕጋዊ መንገዶች ተሟልተው ከሣሽ በስሙ አዛውሮ በእጅ ያደረገው አይደለም ። ከሣሽ ያደረገው እንደማናቸውም ተንቀሳቃሽ ዕቃ ከሻጭ ጋር ውል ፈጽሞ ቤቱን መረከብ ብቻ ነው።

ተከሣሽ ማለትም የአሁኑ ይግባኝ ባይ በበኩሉ ቤቱን ከኢሣ ገላን ላይ ከገዛ በኋላ ቤቱ ከዕዳና በእግዳ የነፃ መሆኑ ተረጋግጦ በማዘጋጃ ቤቱ አማካኝነት ሽያጩን የሚቃወም ካለ በአዲስ ዘመን ጋዜጣ ጥሪ ተደርጐ ተቃዋሚ ባለመቅረቡ ውሉ ፀንቷል።

ይግባኝ ባይም ቤቱን ከመልስ ሰጭ ያስለቀቀው ይህንን መብት ይዞ ነው።

እውነቱ ይህ ከሆነ ደግሞ የሚነሣው ጥያቄ ተከሣሹ ይህንን መብት ይዞ ከሣሽን ማስለቀቁ ሁከት ፈጥሯልን? የሚለው ነው።

ከፍሲል የፍታ/ሕግ ቁጥር 1149 በተመለከተ ስንገልጽ በተለይ በንዑስ ሁለት ላይ እንደመለከተው ዳኞች ሁከት አለ ፤ ሁከት ይወገድ ብለው መወሰን የሚችሉት ሁከት ፈጠረ የተባለው ተከሣሽ በማይታበል ዓይነት መብቱን ማስርዳት ከቻለ ነው።

እዚህ ላይ የሚነሳው ጥያቄ ደግሞ ፍ/ቤት መመርመር ያለበት ሁከት ፈጥሯል የተባው ሰው መብት እያለው በሕግ መጠቀም እንጂ በኃይል መጠቀም የለበትም ነው? ወይስ በምንም መንገድ ወደቤቱ ይግባ ሆኖም መብቱን ማሳየት ብቻ አለበት የሚለው ነው።

በበኩላቸው ተከሣሽ በምንም ዓይነት መንገድ ወደ ቤቱ የገባ ሆግም በሕጉ አንደተደነገገው ሀብት ፈጥሯል ለማለት መብተን ማየት አስፈላጊ ነው። መብት ካለው በሆነውም መንገድ ይግባ ሁከት ፈጥሯል አይባልም።

ተከሣሹ ምን ጊዜም ከከሣሽ የተሻለ መብት ያለው መሆኑን ከአረጋገጠ ሁከት አለ ማለት አይቻልም። ፍ/ቤቶችም በሕጉ መሠረት ማረጋገጥ ያለባቸው ይህንን ነው። ሆኖም ተከሣሽ መብት እያለው በሕግ መጠቀም ነበረበት እንጂ በኃይል ወደ ቤቱመግባት አልነበረበትም የሚለው ሕጉን መቃረን ነው። በበኩላችን ስለ ተከሣሽ ወደ ቤት በኃይል መግባት ማንሳት አስፈላጊ አይደለም። ምክንያቱም በኃይል በመግባቱ ምክንያት ስለገባም ነው ሁከት ይወገዳል የተባለው።

ስለሆነም መነሳት ያለበት በኃይል የገባው በምን መብቱ ነው ? የሚለው ነው። ተከሣሹ በኃይል የገባበትን ምክንያት መብቱን ከከሣሽ በተሻለ ሁኔታ ካሰረዳ ወይም በሌላ አነጋገር ማሳየት ከቻለ በቂው ነው።

ይሁን እንጂ መብቱ በግልጽ እየታየና ማስረጃውም እያረጋገጠ መብት አለህ ነገር ግን በኃይል በመጠቀምህ ሁከት ፈጥረኃል መባሉ በሕግም ሆነ በሕሊና ተቀባይነት የለውም።

አንድ ሰው በንብረቱ ላይ ወይም በይዞታው ላይ ሁከት ሲፈጠርበት በኃይልም መጠቀም እንደሚችል በፍታ/ሕግ ቁጥር 1148 እና 12 ዐ 6 ተደንግጓል።

ይህም ያለምክንያት አይደለም። ንብረቱ ሲወሰድበትም ሆነ መብቱ ሲደፈርበት ተከላክሎ ማስከበር ሕጋዊ መብቱ በመሆኑ ነው።

ሆኖም መብት ቢኖርም በሕግ ተጠቀም እንጂ በኃይል አትጠቀም ማለት ከሕጉ ጋር የሚቃረን ነው።

አሁን በዚህ ክርክር በግልጽ እንደሚታየው ከሣሽ ቤቱን ገዛሁ አለ እንጂ በፍታ/ሕግ ቁጥር 1723 መሠረት የማይንቀሣቀስ ንብረት በመሆኑ ውሉ ተመዝግቦ ባለቤትነቱ በገዥው ስም መዛወር ነበረበት ። ይህ አልተፈጸመም። ከሣሽ በእጁ የሚገኘው ውሉ ብቻ ነው። ይህ ደግሞ ረቂቅ ነው የሚባል በስተቀር በ 3 ኛ ወገኖች ላይ አንዳችም መቃወሚያ ሊሆን አይችልም።

የተከሣሽን መብት በምናይበት ጊዜ ግን በማዘጋጃ ቤት አማካኝነት ቤቱ ከዕዳና ከዕገዳ የፀዳ መሆኑ ተረጋግጦ ተቃዋሚ እንዳለ በጋዜጣ ተጠርቶ ተቃዋሚ ባመቅረቡ የሽያጭ ውሉ ፀድቋል። የቀረው ነገር ቢኖር የስም ማዛወሪያ መክፈልና ማዛወር ነው። ይህ ከሆነ ደግሞ ተከሣሹ የተሻለ መብት እንዳለው ያረጋግጣል።

ተከሣሹ የተሻለ መብት አለው ከተባለ ደግሞ ሁከት አልፈጠረም ማለት ነው። ተከሣሹ ይህ መብት እያለው ደግሞ ክስ መሥርተ መብትህን ማስከበር ነበረብህ የሚለው ከፍታ/ሕግ ቁጥር 1149/2/ ጋር የማይገናኝ በመሆኑ ተቀባይነት የለውም።

እንግዲህ ስናጠቃልለው የከፍተኛው ፍ/ቤት የሰጠው ውሣኔ ሕጉን ያላገናዘበ ስለሆነ በፍታ/ሥ/ሥ/ቁጥር 348/1/ መሠረት ሽረናል።

የወረዳው ፍ/ቤት ሁከት የለም ሲል የሰጠው ውሣኔ ግን ሕጉን ያገናዘበ ስለ ሆነ በድምፅ ብልጫ አጽንተነዋል። ግራ ቀኙ ወጭና ኪሣራ ይቻቻሉ።

ፍርዱ የተሻረ መሆኑን እንዲያውቀው ለከፍተኛው ፍ/ቤት ይተላለፍ።

መዝገቡ ወደ መዝጉብ ቤት ይመለስ።

የብዙሃን ዳኞች ፊርማ አለበት።

<u>የሀሣብ ልዩነት</u>

እኔ በሶስተኛ ተራ ቁጥር የተሰየምኩት ዳኛ አብላጫ ድምፅ በሰጠው ውሣኔ ባለመስማማቴ የልዩነት ሃሣቤን በሚከተለው አኳኋን አስፍ S አለሁ።

አብላጫው ድምጽ ውሣኔ የሰጠው ከግራ ቀኙ መካከል ማን የተሻለ መብት አለው? የሚለውን ጭብጥ በመመዘን ነው። በክርክሩና ከቀረበው ማስረጃ መመልከት እንደሚቻለው ክርክር የተነሳበት ቤት ባለቤት አቶ ኢሣ ገላ የሱፍ ናቸው።

አቶ ኢሣ ገላ የሱፍ በዚህ ቤት ላይ ያላቸውን የባለቤትነት መብት በሽያጭ ውል ለማስተላለፍ ከመልስ ሰጭ ጋር እና ከይግባኝ ባይ ጋር በተለያዩ ጊዜ ውል ተዋውለዋል። የመጀመሪያውን ውል የተዋዋሉት ከመልስ ሰጭ ከአቶ አህመድ ወዳጅ ጋር ሲሆን ፤ በዚህም ውል መሠረት ቤቱን በብር 1 0,000/ አስር ሺ ብር/ የሸጡ ሲሆን ፤ ብር 4 0 0 0.00 / አራት ሺ ብር/ ውሉን በተዋዋሉበት የካቲት 1 ቀን 1984 ዓ.ም የተቀበሉ መሆኑን ብር 4 0 0 0.00 / አራት ሺ ብር/ ቤቱን ለቅቀው ለአቶ አህመድ ወዳጅ ሲያስረክቡ የሚቀበሉ መሆኑንና ቀሪውን ብር 2 0 0 0.00 /ሁለት ሺ ብር / ስመ ንብረቱ በመልስ ሰጭ ስም ሲዛወር የሚከፈለ መሆኑን በመዘርዝር ምሥክሮች ባሉበት የተዋዋሉት ውል እና የፊረሙት ሠነድ ያረጋግጣል።

ከዚህ በኋላ የቤቱ ባለቤት አቶ ኢሣ ገላ ቤቱን ለመልስ ሰጭ አስረክበው መልስ ሰጭ ቤቱን የንግድ ፈቃድ በማውጣት የተገለገሉበት መሆኑን በመልስ ሰጭ እና በአቶ ኢሣ ገላ የሱፍ መካከል ግንቦት 27 ቀን 1985 ዓ.ም የተደረገው የዕርቅ ስምምነት ያሰረዳል።

አቶ ኢሣ ገላ ይህንኑ ለመልስ ሰጭ የሸጡትንና ብር 9 ዐዐዐ.00 /ዘጠኝ ሺ ብር/ ክፍያ የተቀበሉበትን ቤት ቤቱ በመልስ ሰጭ ይዞታ እያለ የካቲት 3 ዐ ቀን 1985 ዓ.ም ለይግባኝ ባይ መሸጣቸውን በማስማማት ውል ፈርመዋል።

እንደዚሁም ሚያዚያ 7 ቀን 1985 ዓ.ም ክፍያን በሚመለከት ከይግባኝ ባይ ጋር ተጨማሪ ውል ተፈራርመዋል።

ከዚህ በኋላ አቶ ኢሣ ገላ ቤቱ እዳ የሌለበት መሆኑ ማረጋገጫ ይሰጠኝ በማለት ለዐ 1 ቀበሌ ፍርድ ኮሚቴ አመልክተው ሶስት ምሥክሮች አቅርበው ካሰሙ በኃላ የቀበሌው ፍርድ ኮሚቴ ቤቱ የራሣቸውና በዕዳ ያልተያዘ ነው በማለት ማረጋገጫ ሰጥቷል።

የቀበሌው ፍርድ ኮሚቴ የሰጠውን ማረጋገጫ በመቀበል የቻግኒ ከተማ ማዘጋጃ ቤት ቤቱ በዕዳ ያልተያዘ መሆኑ ሽንጐው በሶስት ምሥክሮች አረጋግጦ ውሣኔ የሰጠበት ስለሆነ ቢሸጡ አንቃወምም በማለት ሚያዚያ 12 ቀን 1985 ዓ.ም አቶ ኢሣ ገላ ቤቱን እንዲሸጥ የተፈቀደለት መሆኑን የሚያረጋግጥ ማስረጃ ሰጥቷል።

አብዛኛው ድምፅ በይግባኝ ባይና በአቶ ኢሣ ገላ መካከል የተደረገው ውል በማዘጋጃ ቤቱ የተመዘገበ እና የጸደቀ ነው በማለት በፍርድ ሀተታው ላይ ያሰፈረ ቢሆንም በመዝገቡ የቻግኒ ከተማ ማዘጋጃ ቤት ሚያዚያ 12 ቀን 1985 ዓ.ም የሰጠው ማስረጃ የሚያረጋግጠው ነገር ቢኖር በአዋጅ ቁጥር 47/67 መሠረት ማንኛውም የከተማ ኗሪ ቤቱን ሲሸጥ በመጀመሪያ ከከተማ ልማትና ቤት ሚኒስቴር ፈቃድ ማግኘት ስላለበት አቶ ኢሣ ገላ ሌላ ትርፍ ቤት የሌላቸው እና ይህንኑ ቤት ለመሸጥ የሚችሉ መሆኑን የተፈቀደላቸው መሆኑን ከሚያረጋግጥ ውጭ በይግባኝ ባይና በአቶ ኢሣ ገላ መካከል የተደረገው የሽያጭ ውል በማዘጋጃ ቤቱ የተመዘገበ እና ተቃዋሚም በጋዜጣ ተጠርቶ ባለመቅረቡ የጸደቀ መሆኑን የሚያስረዳ አይደለም።

መልስ ሰጭ ይህንን አሠራር በመቃወም በወረዳው የአስተዳደር መሥሪያ ቤቶች የሠሩትን ስህተት በማየትና ለማረም በሚችለው የጓንጓ ወረዳ ምክር ቤት አመልክቷል። እንደዚሁም አቶ ኢሣ ገላ አጭበርብረው በውል የሸጡትንና ዋጋውን የተቀበሉትን ቤት ለይግባኝ ባይ በድጋሚ በመሸጣቸው ምርመራ በፖሊስ በኩል

እንዲጣራ አመልክተው የነበረ መሆኑን በአቶ ኢሣ ገላና በመልስ ሰጭ መካከል ግንቦት 27 ቀን 1985 ዓ.ም የተደረገው የዕርቅ ሰነድ ያስረዳል።

ይግባኝ ባይ ውል ከአቶ ኢሣ ገላ ጋር እንደተዋዋሉ መልስ ሰጭን ከቤት ያለምንም የፍርድ ቤት ትእዛዝ አስወጥተው የንግድ እንቅስቃሴውን የገደቡ ሲሆን፣ ይህንኑ ቤት በተመለከተ የካቲት 3 ዐ ቀን 1986 ዓ.ም በድጋሚ ከአቶ ኢሣ ገላ ጋር የቤት ሽያጭ ውል መፈራረማቸውን በእራሣቸው በኩል የቀረበው የጽሑፍ ሰነድ ያስረዳል።ውል ያጽናልኝ የሚል ክስ ለወረዳው ፍርድ ቤት አቅርበው ተቃዋሚ በመቅረቡ ምክንያት የወረዳው ፍርድ ቤት ጥያቄውን አግዶት እንደገና ይግባኝ ባይ በፊርማቸው ለጓንጓ ወረዳ ፍርድ ቤት ግንቦት 3 ቀን 1986 ዓ.ም ጽፈው ያቀረቡት ማመልከቻ ያረጋግጣል።

በመዝገቡ ግራ ቀኙ ያቀረቧቸው ማስረጃዎች የሚያረጋግጡት ፍሬ ጉዳይ በአጭሩ ከላይ የተገለፀው ሲሆን፤ አብላጫው ድምጽ ይግባኝ ባይ ከመልስ ሰጭ የተሻለ መብት አለው ከሚለው መደምደሚያ ላይ የደረሰው ይግባኝ ባይ ከአቶ ኢሣ ገላ ቤቱን የገዛው የቀበሌው ፍርድ ኮሚቴ ከዕዳ ነፃ መሆኑን አረጋግጦ እና በማዘጋጃ ቤቱ ተቃዋሚ ካለ ተጣርቶ ባለመቅረቡ ውሉ ጸድቋል በማለት ነው።

የቀበሌው ፍርድ ኮሚቴ አቶ ኢሣ ገላ ያቀረባቸውን ሶስት ምሥክሮች ቃል በመስማት ማረጋገጫ ከመስጠቱ ውጭ በቤቱ ላይ መብት አለን የሚሉ ሶስተኛ ወገን ተከራካሪዎች ካሉ ቀርበው እንዲቃወሙ ጥሪ አላደረገም። የቻግኒ ማዘጋጃ ቤት በበኩሉ የቀበሌው ሽንጐ ቤቱ ዕዳ የሌለበት መሆኑን በሶስት ምስክሮች የተረጋገጠ ስለሆነ ቤቱ ቢሸጥ አንቃወምም ሽያጩ ተፈቀዷል ከማለቱ በስተቀር በይግባኝ ባይና በአቶ ኢሣ ገላ መካከል ስለተደረገው የሽያጭ ውል የሚያስረዳው ምንም ነገር የለም። በቀረበው በዚህ ሰነድ ላይ የሽይጭ የአቶ ኢሣ ገላው ስም ብቻ እንጂ የገዢ ስም አልተጠቀሰም። በዚህ ሁኔታ ይግባኝ ባይ ከመልስ ሰጭ የተሻለ እና የተመዘገበ መብት አላቸው የሚለው ውሣኔ አሳማኝ ሆኖ አላገኘሁትም።

በሌላ በኩል ክርክር የተነሳበት ቤት በአቶ ኢሣ ገላ ስም መሆኑና የቤቱ ባለቤት አቶ ኢሣ ገላ መሆናቸው ይግባኝ ባይ የቤቱ ባለቤት ለመሆን የስም ማዛወሪያ ክፍያ ከፍሎ ስመ ንብረቱ በስሙ መዛወረ እንዳለበት ነገር ግን ይህ ሁኔታ ብቻ ሣይሟላ መቅረቱን አብላጫው ድምጽ ተስማምቶበታል። ከዚህም የምንረዳው ይግባኝ ባይ በቤቱ ላይ ከአቶ ኢሣ ገላ ጋር ውል ከመዋዋሉ ውጭ የባለቤትነት መብቱ ያልተላለፈለት እና ባለቤት ያልሆነ መሆኑን ነው።

በበኩሌ ከቀረበው ክርክርና በመዝገቡ ከተያያዙት ማስረጃዎች እንደተገነዘብኩት መልስ ሰጭ የካቲት 1 ቀን 1984 ዓ.ም ከአቶ ኢሣ ገላ ጋር ባደረጉት የቤት ገዣ ውል መሠረት ቤቱን ተረክበው በቤቱ የንግድ ፈቃድ አውጥተው ከቤቱ ዋጋ ብር 9 ዐዐዐ.ዐዐ /ዘጠኝ ሺ ብር/ ከፍለው ብር 1 ዐዐዐ.ዐዐ /አንድ ሽ ብር/ የሚቀርባቸው መሆኑን ፤ ይህም የፍታብሔር ሕግ ቁጥር 114 ዐ በሚደነግገው መሠረት ክርክር የተነሣበትን ቤት በእርግጥ በእጃቸው አድርገው የሚያዙበት መሆኑና ሕጋዊ ባለይዞታ መሆናቸውን ነው።

በይግባኝ ባይ በኩል ያለውን ሁኔታ ስንመለከት ይግባኝ ባይ በኃይል መልስ ሰጭን ከማስወጣታቸው በፊት ቤቱን በሕጋዊ መንገድ ተረክበው በእጃቸው ያልያዙት እንደዚሁም የቤቱ ስመ ንብረት በስማቸው ያልተዛወረ በመሆኑ በቤቱ ላይ የባለቤትነት መብት የሌላቸው በአጠቃላይ የበላይዞታነት ወይም የባለቤትነት መብት የሌላቸው ናቸው።

ይህ ከሆነ አንድ ሰው ውል ከቤቱ ባለንብረት ጋር በመዋዋሉ ብቻ በማናቸውም መንገድ በሕጋዊ ሁኔታ በቤቱ ውስጥ ሰፍረው የሚገኙትንና ሕጋዊ ባለይዞታ የሆኑትን ሰዎች በኃይና በጉልበት ለማስወጣት ይችላልን? ይህስ አድራጐት ማንም ሰው ሕጉን በእጅ አድርጐ እንዲቀጠም አይፈቅድለትም የሚለውን መሠረታዊ የሕግ መርህ የሚቃረን አይሆንም? በፍታብሔር ሕጋችን ከበላይዞታው የተሻለ መብት ያለው የንብረቱ ባለቤት የሆነ ሰው ነው። የንብረቱ ባለቤት የሆነ ሰው በንብረቱ ላይ የሚመጣውን ማናቸውንም ሰው የመፋለም መብት እንዳለው የፍታብሔር ሕግ ቁጥር 12 ዐ 6 ይደረግጋል። ይግባኝ ባይ እኔም ሆንኩ አብዛኛው ድምጽ እንደምንስማማው ክርክር በተነሣበት ቤት ላይ የባለቤትነት መብት የለውም። ምክንያቱም ስመንብረቱ በሽያጩ በአቶ ኢሣ ገላ ስም ሲሆን ወደ ይግባኝ ባይ ስም አልተዛወረም።

ይግባኝ ባይ ሽያጩ አቶ ኢሣ ገላ ቤቱን ሊያስረክቡኝ እና ስመንብረቱን ሊያዛውሩልኝ ይገባል ባጠቃለይ እንደ ውሉ ይፈጸምልኝ በማለት የውል ይፈጸምልኝ ክስ ሥልጣኑ ለሚፈቅድለት ፍርድ ቤት ማቅረብ ያለባቸው ሲሆን፤ ውል ይፈጸምልኝ የሚል ክስ ሲያቀርቡም በቤቱ ሠፍረው የሚገኙትን መልስ ሰጭን የፍታብሔር ሥነ-ሥርዓት ሕግ ቁጥር 36/4/ በሚደነግገው መሠረት በሁለተኛ ተከሣሽነት በመክሰስ በውል አግኝቸዋለሁ የሚሉትን መብት ማስጠበቅ ይገባቸዋል እንጂ ውል ተዋውየ አለሁ በሚል ምክንያት ተነሣስተው በኃይልና በጉልበት መልስ ሰጭን ከይዞታቸው እንዲወጡ ማድረጋቸው እና የንግድ ሥራቸውን ማሰናከላቸው በማናቸውም መመዘኛ ቢሆን ሕጋዊ ሆኖ አላገኘሁትም።

ከዚሁ ጋር በማያያዝ አብላጫው ድምጽ የይግባኝ ባይ አድራጐት በፍታብሔር ሕግ ቁጥር 1148 የሚሸፍን መሆኑን በመግለጽ የሰጠውን ትርጉም በበኩሌ ስመለከተው፤ የፍታብሔር ሕግ ቁጥር 1148 ድንጋጌ ከመሠረቱ ባለይዞታ የሆነ ሰው በኃይልና በጉልበት በይዞታው ላይ ሁከት ለማንሣት የሚመጣን ማንኛውንም ኃይል ችሎታውና አቅሙ ካለው በኃይል በመከላከል ሕጋዊ ይዞታውን ለማስከበር መብት እንዳለው የሚደነግግ ነው።

ይህን ድንጋጌ በዋቢነት ጠቅሰው ክርክር የሚያቀርቡት ከጅምሩ የንብረት ሕጋዊ ባለይዞታ የሆኑ ሰዎች ወደ ይዞታቸው በሕገወጥ መንገድ የሚገባን አመፀኛ በኃይል መክተው ለመመለስ መብት የተሰጣቸው መሆኑን በግልጽ የተቀመጠ ሲሆን ፤ ንብረቱን በሕጋዊ መንገድ በእጅ አድርጐ የማያውቅና ሕጋዊ የይዞታ መብት በንብረቱ ላይ ኦሮት የማያውቅ ሰው ከንብረቱ ባለቤት ጋር ውል ተዋውያለሁ በማለት ንብረቱን በሕጋዊ መንገድ በይዞታ ይዘው የሚያዙበትን ሰዎች በኃይልና በጉልበት እንዲያስወጣ የሚፈቅድ አይደለም ። የፍታብሔር ሕግ ቁጥር 1148 ይዞታን በኃይል ሰለመ ከላከል ካለይዞታው ያለውን መብት ይደነግጋል እንጂ ይዞታን በኃይል መንጠቅ ሕጋዊነት ያለው መሆኑን አይደነግግም። በኃይል የይዞታ መብት እና የሕግ ጥበቃ ማግኘት አይቻልም።

በመሆኑም በፍትታብሔር ሕግ ቁጥር 1148 ድንጋጌዎች ለመጠቀም በመጀመሪያ የንብረቱ ሕጋዊ ባለይዞታ ሆኖ መገኘትን ይጠይቃል። በያዝነው ጉዳይ ይግባኝ ባይ ከአቶ ኢሣ ገላ ጋር በጽሑፍ ውል ከመዋዋሉ ውጭ ቤቱን በሕጋዊ መንገድ ተረክቦ በእጅ በማድረግ ተገልግሎበት አያውቅም። ይህ ከሆነ ይግባኝ ባይ በኃይልና በጉልበት ወደ ቤቱ ለመግባት ሲሞክር በኃይል የመግባት መብት የነበራቸው መልስ ሰጭ እንጂ የፍታብሔር ሕግ ቁጥር 1148 ድንጋጌ የይግባኝ ባይን አድራጐት የሚደግፍ አይደለም።

በመሆኑም አብላጫው ድምጽ በፍታብሔር ሕግ ቁጥር 1148 የሰጠው ትርጉም ከሕጉ ድንጋጌ መንፈስና ዓላማ እንደዚሁም ሕግ አውጭው ሊደርስበት ካሰበው ግብ ውጭ እርቆ የሄደ ይመስለኛል።

በዚህ በተጨማሪ መልስ ሰጭ ከአቶ ኢሣ ገላ ጋር የካቲት 1 ቀን 1984 ዓ.ም ክርክር የተነሣበትን ቤት ለመግዛት ውል ተዋውሏል። ይግባኝ ባይ በበኩሉ የካቲት 30 ቀን 1985 ዓ.ም ሚያዚያ 7 ቀን 1985 ዓ.ም እና የካቲት 30 ቀን 1986 ዓ.ም ይህንኑ ክርክር የተነሣበትን ቤት ለመግዛት ውል ተዋውሏል።

ሽያጭ አቶ ኢሣ ገላ እንዲፈጽሙ የሚገደዱት የማናቸውን ውል ነው የሚለው ጥያቄ አጥጋቢ መልስ የሚያገኘው የውል ይፈጸምልኝ ክርክር ቤቱን ገዝተነዋል በሚሉትና በአቶ ኢሣ ገላ መካከል ሲነሣ ነው።

በያዝነው ጉዳይ ይግባኙ የቀረበው የውል ይፈጸምልኝ ክርክር ቤቱን ገዝተነዋል በሚሉትና በሻጭ በአቶ ኢሣ ገላ መካከል ተነስቶ የሥር ፍርድ ቤት በሰጠው ብይን ይግባኝ በመጠየቅ አይደለም። በመሆኑም ሽያጭ በማንኛቸው ውል ይገደዳል የሚለውን ጭብጥ በመጨመር አብዛኛው ድምጽ ውሣኔ መስጠቱ ተገቢ አይመስለኝም።

በመሆኑም በበኩሌ መልስ ሰጭ ቤቱን ተረክበው እና እጅ አድርገው የንግድ ፈቃድ አውጥተው እየተገለገሉበት ነበር። ይግባኝ ባይ ቤቱን በውል ከአቶ ኢሣ ገላ ገዝቸዋለሁ በሚል ምክንያት ተነሳሰተው ስመንብረቱ ሣይዛወርላቸው በኃይልና በጉልበት መልስ ሰጭ ከይዞታቸው ማፈናቀላቸው ተገቢ ባለመሆኑና ይግባኝ ባይ ክርክር በተነሳበት ቤት ላይ ከመልስ ሰጭ የተሻለ ማለትም የባለቤትነት መብት የሌላቸው በመሆኑ አድርጐታቸው ከሁከት መፍጠር ውጭ ሌላ ትርጉም ሊሰጠው የማይችል ባለመሆኑ፤ እንደዚሁም አንድ ሰው ውል ተዋዋለ ማለት ውሉ ሙሉ በሙሉ ይፈጸምለታል ማለት ባመሆኑና ውሉ የሚፈጸመው የሶስተኛ ወገኖች መብት የማይነካና በግዳጅ መፈጸም ያለበት መሆኑን አረጋግጦ ፍርድ ቤት ትእዛዝ ሲሰጥ በመሆኑ፤ ውሉ የተዋዋለ ሰው በውሉ መሠረት ይፈጸምልኝ በማለት ጥያቄውን ለፍርድ ቤት ሣያቀርብ ውሉን በኃይልና በጉልበት አስፈጽመዋለሁ በማለት ሲነሣ የተሻለ መብት አለህ እያሉ ማበረታታት ተገቢ ባለመሆኑ ይህ ዓይነት ሕገ ወጥ አደራጐት በፍርድ በችሎት ካልተወገዘ እና እንዲስተካከል ካልተደረገ ውሉን በተዋዋለው ሰው ላይ ምሆነ በሶስተኛ ወገን ባለመብቶች ላይ ከፍተኛ የሆነ ጉዳት የሚያስከትል በመሆኑና ተመሳሳይ ድርጊት ሲደጋገም የግለሰብን መብት ከመጉዳት አልፎ ማኅበራዊ ሁከት የሚያስነሣ በመሆኑ የይግባኝ ባይ አድራጐት ተገቢና ሕጋዊ ሆኖ አላገኘሁትም።

በመሆኑም የከፍተኛው ፍርድ ቤት ይግባኝ ባይ በመልስ ሰጭ ይዞታ ላይ በኃይል እና በጉልበት በመግባት ሁከት የፈጠረ ስለሆነ፤ የፈጠረው ሁከት እንዲወድ በማለት የሰጠውን ውሣኔ ከላይ ባነሣኋቸው የፍ S ጉዳይ እና የሕግ ምክንያቶች ተገቢ ሆኖ ስላገኘሁት መጽናት ይገባዋል በማለት በልዩነት ወስኛለሁ።

በሶስተኛው ተራ ቁ. ስማቸው የተመዘገበው ዳኛ ፊርማ አለበት።

Now relate all the activities accomplished in those various courts with the following analysis. In doing so, recall the views of judges, majority decisions and dissenting opinions especially in Haile Nigate—VS- Woreda 17, Kebele 20 et.al, and Amsalu shiferaw - VS- Ahmed wodaj cases.

(By the way we tried to produce sample cases from first Instance municipal court of Addis Ababa city, Appellate Municipal court of Addis Ababa city, Supreme Court of Amhara National Regional state and Federal Supreme Court.)

Coming to the issues under discussion, it goes with out saying that no state can meaning fully maintain law and order, and ensure peace and security in its territory without effectively protecting and maintaining the possession and proprietary rights of its residents. As described herein before, few relationships are as vital to man as that of possession and proprietary rights of its residents. Human life and human society would be impossible without the use and consumption of material, and in this contemporary period immaterial, things. We need food to eat, clothes to wear, and tools to use in order to win a living from our environment. But to eat food, we must first get hold of it, to wear clothes, we must have them; and to use tools we must "possess" them. As observed by scholars, possession of these and other material and immaterial things is essential to life. We, hence, say that possession is the most basic relationship between men and things.

Thus, not only acquisition of possession but also recognition and protection of continued use and enjoyment of ones possession will be an essential part of a state's responsibility. A society lacking all respect for indivual possession would quite clearly be unviable. If a man could never be sure that the food before him, the coat on his back and the tool in his hand will not be snatched from him by his neighbor, then obviously life in society would be completely impracticable. Simple economics dictates that, as a minimum, some measure

of uninterrupted enjoyment is a prerequisite to man's deriving any benefit or value from objects and that such temporary possession must be respected by, and protected from, his neighbour.

Human nature being what it is, men are tempted to prefer their own selfish and immediate interests to the wide and long-term interests of society in general. If there is no law to safeguard possession, no doubt, there will be violence, chaos and disorder in the life of the society.

Therefore, it is no surprise to find specific provisions that recognize and protect possession as such in civil and criminal laws of countries across the globe.

In Ethiopia, we do have Arts. 685 and 686 FDRE criminal code that criminalize acts of interference, disturbance and usurpation of possession. Nevertheless, we are now concerned with those civil measures and remedies that are available for the maintenance and uninterrupted enjoyment of, or remedies we have to introduce ourselves with those circumstances that lead into the remedies. It is when there are imminent or actual acts of dispossession that one will be thinking of the remedies for it. So, what is dispossession? What constitutes it?

As mentioned before, the Ethiopian Civil Code has a definition for possession. But it does not expressly and positively define what dispossession is. Nevertheless it has Arts. 1148 and 1149 that deal with dispossession. And it is possible to deduce a definition from these two articles and Art. 1140/ Art. 1148, entitled as "protection of possession

- use of force" provides in its sub-article (1) "The possessor and the holder may use force to repel any act of usurpation or interference."

Also, Art. 1149, which is entitled as, " legal action" reads under sub- (1) as follows:

"The possessor or holder who is deprived of his possession or whose possession is interfered with may require the restoration of the thing or the cessation of the interference and claim compensation for damage." From these two provisions, it is possible to sort out some activities that hamper or dislodge the peaceful use and enjoyment of a thing under ones possession or holding. The words "act of usurpation", "act of interference" and "deprived (deprivation)" all sound negation of the use and enjoyment of things under someone's possession or holding (Arts. 1140-1145). These are material acts that constitute dispossession.

Hence dispossession may be defined as:

> A material act of interference or disturbance committed against a possession or detention of another or the attempt to commit such acts; a deprivation or usurpation of a thing which was under the possession or detention of another.

Let's analyse the ingredients of dispossession then. First, dispossession, as a negation of possession, involves at least an over conduct-material act. Mere thought or desire is not an element of dispossession.

Secondly, to constitute dispossession that material act need to be targeting, either imminently or actually, against the peaceful use and enjoyment of a thing under someone's possession or detention. The material act must be antithetical to peaceful possession or detention. Whether it is made by physical person or by any other juridical act is immaterial in sofar as it threatened or actually did hamper ones possession or holding. Whether these

material acts relate to movable or immovable objects of property is not discriminated under our code, unlike some other countries.

Thirdly, the material act (s) committed either physically or juridically must be proved to have taken place without the consent of the possessor or holder.

Fourthly, the author of these acts of interference, disturbance, deprivation or usurpation is any person other than the legally recognized possessor or holder. Having a right of ownership or any other real or personam right in or upon or in relation to that object of property does not in any sense neutralize its dispossession-ness. Whether it is also possible to envisage an act of dispossession by one possessor against another joint possessor may be arguable.

Fifthly, dispossession is not the same as causing nuisance or damage or showing any form of abuse of a real right including ownership. The latter actually may practically hamper or reduce the peaceful use and enjoyment of an object of property. However, these are not committed with a view to affect a possessor's or holder's physical control over such objects. An act of dispossession, on the other hand, targets at another's possession or detention. For easier understanding one may closely read what is contained in Art. 1225 as distinct from Arts 1148 and 1149.

From the forgoing discussion, we understand that dispossession constitutes acts of negation of possession. It is a third party's juridical or physical act that really disturbs or interferes against that peaceful relation of things and men; it is the usurpation or eviction or deprivation of a person of his possession or detention. Mind you here detention is also included for the sake of possessory remedies.

Because we said that it is essential to recognize, preserve and protect the relations of men with things for a peaceful, harmounious and orderly life of a society the law guarantees possession and detention. Under the Ethiopian Civil Code, then, we have two types of legally recognized remedies against acts of dispossession. These are:

use of force (self-help remedy)
possessory action

The first remedy for actions of dispossession is a natural one. If the possessor holder is in an imminent or actual danger of lossing his possession or detention, or if he is disturbed or interfered the law empowers him to take a private justice solution against the aggressor or unlauful person. One famous scholar observed that. “Man, by an instinct which he shares with the domestic dog, will not allow himself to be dispossessed… of what he holds.” Is it not true dear distance student? Whatever the case, the law permits to defend and maintain ones possession or detention in so far as one has the physical ability to do so.

But, the gist of Art. 1148 should not be taken too far. The purpose of entitling possessors and holders to use force is clear: it is to repel the act of usurpation or interference and to ensure peaceful physical control and use and enjoyment of the thing or to seize the thing which was being taken by secret or violent act of the dispossessor. It is not to punish the wrong doer for his misdeed. In this regard sub-(2) of Art. 1148 provides:

“ Where the thing has been taken away from him either by violence or secretly, he may take it back forthwith, either by expelling the usurper or by seizing the thing from the hands of a usurper caught in the act or when running away.”

So, the purpose of employing physical force here is very clear, it is not to penalize the wrong doer. Still, however the proportionality of that force will be vital point to consider. How much force is to be applied against the wrong doer with a view to repel the act of interference or to seize the object? Well, this has to be determined case by case. Of course we know that different people interpret Art. 1148 (2) and (3) in different ways. Some say that the degree and intensity of force should be determined by taking in to account the value of the thing being threatened to be taken or actually being taken. Others say that it has to be measured not against the value of the object but against the ability of that minimum force to avoid the act of interference or to get ride of that thing being taken by the wrong doer.

In our view, the value of the thing, or the amount of your interest that you lose as a result of the interference or usurpation or deprivation will be taken into account. But this should not be the sole standard in measuring the proportionality of the force you applied against the wrongdoer. More than any of this considerations, it is to be measured against that minimum force which compels the wrong doer to stop or drop his wrong conduct. Art. 1148(3) provides that the person who takes such measure must refrain from any act of violence which is not justified in the circumstances.

If one cannot maintain his possession or detention or if one was not around to protect, or still if one prefers to take the matter before a court of law instead of this self-help remedy, there is another legal remedy,
i.e, possessory action.

Historically, in Roman law, there had no distinction between substantive rights and the actions, procedural remedies. What was known as that earlier time was a system of nominate actions –actions that functioned as writs, i.e., as procedure forms available to particular plaintiffs for the enforcement of specifically described claims. Actually in that system one had a right if one

had a remedy. There were known forms of action such as the rei-vindicatio (revendicatory action), the action publiciana (" publician action) and the action negatoria (nugatory action). These actions were different from actions brought to maintain and protect possession. Possession of movables and immovables and the quasi-possession of servitudes were protected in classical Roman law by interdict rather than by real actions.

Interdicts were available to any possessor whether he had the right to possess or not; they lay against any one who violated another's possession again without regard to whether or not he had the right to possess. Thus, since the only issue was the fact of possession and disturbance, ownership was not a valid defense.

The purpose of the interdicts was to preserve the public peace and order and this was achieved by summary proceedings. There were several kinds of interdicts in classical law for the recovery, and maintenance in possession, of both movables and immovables. In the Justinian legislation the classical interdicts were converted into actions of two species, bearing the names of interdictum unde vi, and interdictum uti possidetis.
The first was available for the recovery of the possession of immovables. The second was available for the maintenance in possession of immovables and movables. There was no procedure, may be forgotten, for the recovery of the possession of movables. These earlier practices and legal systems influenced the development of real actions in other jurisdictions even after the birth of this distinction between rights and, actions.

Depending on whether protection is afforded to the right itself or only to the possession and quasi-possession, real actions are distinguished into petitory and possessory.

Now we are not going to discuss petitory actions and possessory actions as such or in particular. Our immediate interest is possessory actions.

Here again we will not be concerned about the various types of possessory actions as are adopted in different legal systems such as the French which distinguishes between three varieties: the complainte, the variation of complaint and reintegrande- all available for immovables and not for movables. As there no distinctions under Article 1149 C.C, we will be dealing with possessory action whether the action relates to:

movables or immovables, and even quasi-possession,
disturbance/interference or usurpation/eviction or deprivation.

According to sub-(1) the possessor or holder who is

deprived of his possession /or holding/detention), or
interfered with his possession or detention, may lodge possessorial action before the court having proper jurisdiction to entertain the case. The procedural laws determine which court will be hearing and deciding such cases, and according to our analysis of the nature of possession and Art. 18 of the 1965 Ethiopian civil procedure code possession cannot be assessed interms of money.

In his petition, the possessory plaintiff has to state and succinctly describe those factual circumstances that constitute acts of deprivation/usurpation or eviction, or depending on the circumstance of the case, the acts that constitute disturbance/interference. Let's emphasis, those material (factual) physical or juridical acts must be stated instead of putting the conclusion (s) in ones pleading ! The allegations of the plaintiff must be clear on the face. These allegations should be confined to the description of over conducts of the defendant(s) as occurring to negate the peaceful use and enjoyment of the

object or in fact deprived of such use and enjoyment or simple detention. Finally has to pray for a legal solution.

This pleading must be supported by evidence whether oral, documentary or demonstrative- These Evidences again must relate not to the personal or real right of the plaintiff (unless they are required to show the lawful basis of the plaintiff) but to those of two types of factual circumstances:

Proof of plaintiff's possession, and

Proof of the factual circumstances that constitute disturbance (interference or deprivation (usurpation) education in short dispossessions.

The plaintiff is required to introduce evidences that prove that he is the lawful possessor (whether his possession is free from any vice or not is immaterial here. This is a necessary requirement, for otherwise there will not be cause of action. (Art.33 civil procedure code)

This is also applicable for a mere holder.

Besides this prima facie evidence, the plaintiff has to introduce evidences that will prove those factual allegations allegedly committed by the defendant(s).

The purpose of the possesory action must be known. It is either for:-

The recovery of the movable or immovable which the defendants(s) dispossessed, usurpted or deprived (evicted, or

The maintenance in possession of the movable or immovable expressly described in the plaintiff's petition.

The purpose of the possessory action is not to prove or establish or certify any personal or real right of the plaintiff as against the defendant or over/ upon the object of property. Of course, it is possible for the plaintiff to require payment of compensation- personal action in nature if he suffered a loss. Let's reproduce Art. 1149(1) in full once again for a better understanding and emphasis. It goes:-

"The possessor or holder who is deprived of his possession or whose possession is interfered with may require the restoration of the thing or the cessation of the interference and claim compensation for damages," (emphasis added).

The possessory action has to be instituted with in two years of the commission of that dispossessive act by the defendants(s). Art. 1149(2) runs.

" The action shall be barred if it is not brought with in one year (the Amharic version, the controlling one, says with in two years) <u>from the day of the usurpation or interference</u>." Since this is a special period of limitation for possessory action, the plaintiff has to observe this period. Of course, he can lodge his action even after the lapse of two years; but he will be vulnerable for a preliminary objection (Art. 244 (2) (f)) by the defendant (s).

Assuming now the plaintiff has instituted possessory action against a defendant as described above, what will be the nature of the defendant's statement of defense? What must be stated and described in his petition? What about the nature of his evidences?

Here again the defendant has to respond to the factual and legal allegations of the plaintiff. Depending on the circumstances and personal conditions, the defendant may expressly or impliedly or evasively admit commission of alleged physical or juridical acts; or may admit and then lodge counterclaims (s) or totally deny the commission of any of such conduct that constitutes dispossession. If he admits etheir expressly or impliedly) evasively, there will not be issue. Plaintiff's prayer will be accepted and decision will be given in his favour, plaintiff's possession.

If the defendant, however, moves to contest, he has to state and describe his own side parallel to the allegations of the plaintiff. And he has to adduce evidence(s) to disprove plaintiff's allegations, in case burden of proof is shifted towards him. Since the court will, in its decision, order for the restoration of the thing or the cessation of the interference unless the defendant introduces his evidence (s), the defendant has to be very careful in the preparation of his statement of defense and evidences sub. (3) of Art.1149 enacts.

" The court shall order the restoration of the thing or the cessation of the interference unless the defendant can prove forth with and conclusively the existence of a right in his favour justifying his conduct."

This actually a problematic provision as is shown in the various court decisions. And the problem relates to the defendant's counter- claim or assertion. This is not available incase the defendant admits or denies as such. But, if defendant admits commission of those alleged physical and or juridical acts and next asserts that he can legally commit these, things will be

controversial. This is so, because sub(3) says that "existence of a right in his [defendant's] favour justifying his conduct." So, the issue here is; what type of right will be, if asserted, justifiable? Will it be an acceptable justifiable conduct, if a defendant introduces his right of ownership, or any other real right or personal right up on the thing or against the plaintiff? If these are not acceptable justifiable conducts, what else can be submitted in accordance with this sub-article?

Here are at least two arguments and sides. On the one hand, there are lawyers and judges that understand this provision as permitting the possessor dependant to introduce his real rights in the thing, such as ownership, usufruct or any other dismembered right from ownership. According to these, if the defendant admits committing that physical or juridical act which constitutes dispossession and then shows with sufficient constitutes dispossession and then shows with sufficient evidence that he is the owner any other real right holder of that thing, he will not be required by the act of interference. This can be testified by the majority's holding in the Amsalu shiferaw VS- Ahmed wodaj case civ- App. File No. 208/87 E.C, given on Tir 6,1990 E.C in the Amhara Superme court)

On the other hand, there are others who interprete sub (3) to mean any legal empowerment or justification such as acting in accordance with public duties, state duties or privet justice. For instance, if the defendant physically deprived/ usurpted or evicted the plaintiff in accordance with court order (as a police office officer who executes court order), or in accvordance with special law, he will not be condemned and lose the case provided that he is able to support this with evidence forthwith. We can also provide other examples in cases that involve contraband, illegal constructions (of building) in cities and towns, sequestrations, attachment, seizure, search, etc, committed in accordance with court orders, administrative actions permitted by valid laws,

military state of necessity or lawful measures to maintain law and order. Be careful, all these have to be either lawful or permitted (authorized or required by any other valid law). And we think this is the correct spirit of sub-(3).

In our view, the first stand is very repugnant to the very idea and justification of recognition and protection of possession. Possession is recognized and protected as such because society needs it to maintain law and order, and to ensure peace and security. As we have seen even persons having no real or personal rights will be accorded with that status of possessor, and their status should not be easily taken away by those others who have real or personal rights without following legal procedures. To allow them to interfere with or usurp another's possession is to allow the reigning of anarchy and disorder. This will be contrary to many property law and law of obligation Articles provisions/ such as Arts, 1311,2830.2709,2914,etc./

Therefore, in our view, the defendant will not succeed of he admits commission of the alleged factual conducts and introduces evidences that show his real or personal rights.

In conclusion, we should not confuse possessory action with those of petitory actions such as revindication of right of ownership(Art. 1206). Because, the causes of actions, the ingredients of the possessory action, the evidences required in possessory action are very different from those of petitory actions we should not mix up things; there is not such proper legal conduct to switch over to petitory action. And it must be also underlined that possessory action is summary proceeding, and the court's verdict simply has to relate to the restoration of the thing or to the cessation of the interference. But petitory actions will be instituted to the court having a material jurisdiction on the basis of the pecuniary assessment of the right; will be requiring long period of time until parties prove their titles or rights. Even the decision of the court in

petitory actions will be concluded by either recognizing or ascertaining or establishing real rights in/on or upon a thing which is the subject matter of litigation. Hence, courts should not be misguided or cheated by certain mischievous or innocent allegations of parties that mix-up possessory matters with right-related matters. Possessory action should not be a short-cut to evade court-fees and to establish or certify or prove real or personal rights. Possessory action is one of the remedies available for possessors and holders to fight acts of dispossession! To win acts of dispossession!

SUMMARY QUESTIONS

1.Define possession.

2 Compare and contrast the subjective and objective theories of possession.

3 What are the various modes of transfer or possession under the Ethiopian legal regime?

4 What are vices of possessions? What is the legal effect of the existence of any such vice?

5 "Secret or debious possession shall give rise to no right." (Art. 1146(1). Discuss.

6 According to Art. 1147(1) C.C. " he who began to hold on behalf of another person shall be regarded as a mere holder." Elaborate this.

7 Who is a possessor servant(mere holder) under the Ethiopian legal system?

8 Write some of the legal effects of some lawful, clean and pure possession.

9 What do you understand by constructive possession?

10 Is intent or animus an element of possession in Ethiopia? If so what type of animus is required?

11 How do you define dispossession?

12 What is the difference between dispossession and act of nuisances?

13 How do you characterize those conducts of individuals that constitute dispossession?

14. What facts must be included in a possessory petition? What is or should be the nature and type of evidences to be adduced in such petitions?

How do you understand Art, 1149(3) C.C.?

A, a resident of Gondar, bought a house around cheula sefer area from B in a contract made on sene 1997.E.C

He took delivery of the house after five days of the conclusion of their contract. Since then A has been living in that house.

To the surprise of A, another person, came toward A and asked him to leave off this house stating that he bought it from B in a contract made on Megabit 17, 1999E.C. Further C showed to A the title certificate issued in his name from the pertinent government organ.

Even though A knows that he didn't yet have a title certificate in his own name, he believes that B's act of sale of this house to C is illegal. Hence he refused to deliver the house.

What will be your decision, if this case is brought before a court where you are presiding as a judge?

If you are required to redraft Art. 1149(3), how would you make it?

Do you think that violence is a vice in possession under the Ethiopian Civil Code? State your reasons.

Assume that A violently dispossessed your Civil Code on Meskerem 10, 1996 E.C. from that time on he has been using it until Ginbot 10,1999 E.C. But, on Ginbot 11,1999 E.C you just convinced yourself that you could physically win A and you determined to use your fist instead of the legal procedure and the court. So, you went where A was working an assignment on property and land law I course using that Civil Code. With slight resistance you were able to retake that Civil Code.

To your surprise, however, A took the matter to a wareda court and now you have received A's possessorial claim with the court's summons. What will be your response for A's petition which clearly mentions that you took that Civil Code using your fist and prays for the restoration of the code?

Do you think that the court would give a decision that orders you to give back the Civil Code to A?

UNIT FOUR

OWNERSHIP

Hello dear colleague! How do you find out discussion on possession? We hope you have understood that possession represents objects of property. At you observed possession is some thing about property. It is not a kind of property in itself. Also it must be clear by now that possession is a source of many proprietary rights of which possessory rights of rights of ownership are best examples

Though possession may be a source of many proprietary rights whether in rem or in personam. It in itself is not a right or a type of rights though there are some scholars that accord a suei-generis right status to it. Hence it is understandable that possession and ownership are not synonymous concepts. As we will be discussing hereinbelow, ownership, unlike possession, is a type of right a person may have in or over or upon an object of property.

It is the immediate concern of this unit to explore the concept of ownership. The definition, ingredients, scopes and types of ownership will be detailed and analyzed. These again will be related to the Ethiopian legal context.

After examining the types of ownership into private (individual or sole) ownership and public ownership then we shall proceeded to investigate the various ways (modes) in which a person will become an owner. It will be shown that a person can become an owner of a given object of property by acquisition and transfer of ownership. The distinction between these two ways of becoming an owner will be explained. This will be followed by a further detailed discussions of the various modes of acquisition of individual ownership.

As will be shown, there are four modes of acquisition of individual ownership under the Ethiopian Civil Code. These are occupation, possession in good Faith, usucapation and accession. Hence each of these modes of acquisition of ownership will be analyzed.

The discussion of the other way of becoming an owner, i.e through transfer of ownership, will be postponed for another time. It will be a matter to be addressed in property and land law II course.

Objectives:-

After completion of this unit students will be able to:-

(VI) define ownership,

(VII) describe the contents (ingredients) of ownership;

(VIII) identify the pillars, bundle of exclusive rights within ownership;

(IX) appreciate the scope of ownership;

(X) explain the types (kinds) of ownership;

(XI) know the various ways of becoming an owner;

(XII) explain the four modes of acquisition of individual ownership;

(XIII) compare and contrast the four modes of acquisition of individual ownership; and

(XIV) Relate each of the four modes of acqustion of individual ownership with applicable provisions in the Ethiopian Civil Code.

Dear distance student, now we shall proceed to examine and analyses the concept of ownership. By the way, can you tell us what this concept of owner5ship is all about? What is it? How do you characterize it as distict from the concepts of property and possession? For example you assert that you are the owner of this module. What do you mean by this?,

4.1 DEFINITION, CONTENT AND TYPES OF OWNERSHIP

Ownership is a complex juristic concept which has its origin in the ancient Roman law. As observed by scholars, of all the rights that individuals may have in a thing, this right to ownership is the most important right. The earlier legal systems did not recognize the distinction between ownership and possession. It was with the advancement of civilization that the two were considered as separate and distinct concepts.

In Roman law, ownership and possession were respectively termed as dominium and possession. The term dominium denoted absolute right to a thing while possession, as we observed herein before, implied only physical control over a thing. Romans attached greater importance to ownership rather than possession because in their view having absolute right over a thing was much more important than merely having physical control over it.

In the ancient and medieval English law, the source of the Anglo –Saxon common law system, the concept of ownership developed much later than possession. The earlier law gave importance to possession of land and movable objects because of the misconception that possession includes within it ownership as well. As described by scholars, the term ownership was used in English law, for the first time in 1583 when it was distinguished from possession.

May be Ethiopian the idea of ownership has to be trace to the country's attachment in those earlier days to the Byzantine, Romano Germanic legal system, which is to be related to the concept of dominium.

So it is necessary to examine in to the inner content of ownership and understand its unique essence or nature. And this section is devoted to the analysis of the meaning. Content, scope and types of ownership.

Objectives:-

After completing this section, students will be able to:-

- define ownership;
- understand the essence (nature) of ownership;
- indicate the place of ownership in the category of real rights (rights in rem)
- describe those pillars of ownership such as usus, fructusn and abusus – bundle of rights with in ownership;
- appreciate the scope of ownership;
- understand the essence (nature) of ownership;
- write the usual incidents of ownership, and discuss the types of ownership.

Thus, let's begin our discussion with the definition(s) of ownership. Jurists have defined ownership in different ways. Some of these are as follows:

ownership is a right which avails against everyone who is subject to the law conferring the right to put a thing to user of indefinite nature. It is a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration. It is a right in rem which is available to the owner against the world at large.

Ownership, in its most comprehensive signification, denotes the relation between a person and right that is vested in him. It signifies the relation between the person of inherence and the object of ownership. It consists in a complex of rights. All of which are rights in rem. It exihibits the following incidents:

- ❖ The owners shall have a right to possess the thing (the object of ownership)
- ❖ The owner has normally the right to use and enjoy the thing owned;
- ❖ The owner has a right to consume, destroy or alienate the thing;
- ❖ Ownership has the characteristic of being indeterminate in duration;
- ❖ Ownership has a residurary character .

. Ownership is a plenary absolute, unlimted power to control an object. It connotes at least three different kinds of powers:

- ❖ it denotes control over material objects;
- ❖ it means control over aggregate rights;
- ❖ it implies an aggregate of all those rights vested in a person which he can use against others.

It can be also described as conferring three kinds of powers on the owner, i.e possession, enjoyment and disposition.

- ➢ Ownership is the ultimate right to the enjoyment of a thing, as full as the state permits, when all prior rights in that thing vested in persons other than the one entitled to the ultimate use, by way of encumbrance, have exhausted.
- ➢ Ownership is the ultimate right to the thing or what is left when all other rights vested in various people are taken out.
- ➢ Ownership is the entirety of the powers of use and disposal allowed by law.
- ➢ Ownership is a collection of rights, privileges and powers, some of which are frequently found to reside, either for a limited period or perpetually, in persons other than the owner. It is no more to be conceived as an aggregate of separate drops. Just as we can take one drop or many drops from the bucket, Likewise we can detach one or several right from ownership.

The above are some illustrations of the definitions of ownership so we have to bear in mind that it can have also other meanings. Of course the concept itself is in a dynamic state. From its earlier connotation as an absolute, unlimited and perpetual power of control over corporeal objects of property, it has now reached to signify the most complete or supreme and comprehensive real right that can be exercised over any object of property, be it corporeal or incorporeal, movable or immovable. Because of its diversified manifestations, it is treated by some as power, by other as privilege, and still by many other as type of real right. Even there are some who equate this term with the term property, since they feel that every conceivable proprietary interest or right is curved out of it. According to them every bundle of rights coming together forms ownership and that is the same as property.

However, this later view is not able to get universal acceptance since ownership is one type of real right, though the most comprehensive and supreme as well as exclusive of all, that a person may have over an object of property.

Be this as it may, ownership has its own unique nature (essence) which is not shared by the idea of property and possession as such being the " mother" of all rights in rem, it entitles the right holder to use the thing (usus), to collect and enjoy the fruit of that thing (fructus) and to dispose and alienate the thing (abusus) or not use, enjoy or exercise any of these. It is an umbrella right that encompasses many other real rights. Though limitations or restrictions are always there for any right, whatever its type and nature, ownership is the most comprehensive, exclusive, perpetual and absolute right that a person may have in an object of property,

All other real rights, whether principal or accessory, are curved out of the right of ownership. Thus they are referred as dismembered real rights. Because individuals can not create or establish any form of real right other

than those recognized by the legislature. There is one fundamental principle in the law of property, i.e, the principle of doctrine of numerus clauses (closed, limited, number of real rights). That is to say, the law itself establishes all the types of limited real rights and determines their scope and content.

The type, scope and content of those real rights with in ownership varies from jurisdiction to jurisdiction and from time to time. Nevertheless, the rights of usus, fractures and abusus are always expressed as pillars of right of ownership. These are representatives of the bundle of rights idea.

USUS – refers to the right to use and possession of the subject matter of ownership.

Fructus – signifies the right to enjoyment and collection or exploitation of the subject matter of ownership.

Abusus – expresses the rights to alienate the subject matter of ownership either inter vivos (during ones life time) or mortis causa (after death) gratituously or for consideration. It also implies the liberty of the owner to dispose, to desruct or damage the subject- matter of ownership.

These rights, or powers or privileges, as they are sometimes described, occupay the central part of the idea of ownership. These are really the multiple or “triad” foetus or embryo in the womb of ownership.

Coming again to the concept of ownership, we said that it is the most comprehensive, absolute, perpetual and exclusive real right these terms that qualify the nature of ownership should not be taken too broadly to imply that there is no form of restriction or limitation. Rather, any of these or all of them are to be determined case by case and in accordance with the general legal frame work and ideology of countries as well as global influences and

practices. Generally, ownership is said to exhibit the following main features. These include.

I. Ownership may be either absolute or restricted, exclusive or limited. It can be limited by agreements as permitted by law or by operation of the law.
II. The right of ownership can be restricted in times of emergency – certain objects of ownership may, in such circumstances, be requisitioned or requestrated.
III. Ownership may not be exercised in a manner that is injurious to others.
IV. Restrictions may be imposed by law on owner's right of disposal of the thing owned. Thus any alienation of an object of property made with intent to defeat or delay the claims of creditors can be set,. a side. The power of disposition can also be limited by the existence of the rights of encumbrances such as a mortgagees, etc.
V. The owner has a right to possess the thing which he owns. It is immaterial whether he has actual possession of it or not.
VI. Ownership entitles the owner with the right to follow (right of pursuit), the right to exclude others in the use and enjoyment and any other form.
VII. Ownership is residurary in character. Curve out any number of real rights as recognized by law, and yet still there remains ownership – not as an empty womb but having some thing, interest or right.
VIII. The right to ownership does not end with the death of the owner but instead, it is transferred to his heirs.

Now, let's relate some of the issues raised above with the Ethiopian legal context. Actually, this is a big task. We do have a Civil Code made in the 1960's during the empperor's era, while the Ethiopian society was featured as passing through feudalism. Then, the Civil Code has been through the

communist Dergue, wherein private ownership was highly denounced and the exclusive as well as perpctual, comprehensive and absolute natures of ownership were severely restricted to individuals. With no repeals or amendments in the principal legislation, the Civil Code, but with sporadic pieces of legislation eroding the core parts of the Civil Code dealing with proprietary relationships, we have now reached to the era of free marker-economy which highly sanctifies individual ownership.

So, it will require extraordinary research if one really intends to relate the laws in those various periods with what is generally discussed above. Here, we shall simply confine ourselves to certain articles in the Civil Code as they simply remain on the paper!

First, Art. 1204 seems to give a definition to the right of ownership. Its sub(1) goes to read : ownership is the widest right that may be had on a corporeat thing. But, in the real sense, this is not a definition. It rather declares the place of ownership in terms of scope. It simply tells the extent- it is the widest right. Hence, we will be forced to search for (a) definition (s) as provided hereins above. May be, it is possible to deduce a meaning from the cumulative reading of Art. 1204 with Art.1205. Since Art.1205(1) & (2) law contained the three bundle of rights, the usus, fructus and abusus, and Art.1204(1) & (2) provides about the extent of ownership and its subjection to the doctrine of numberus clauses, one may define ownership in the Ethiopia Civil Code context as the most comprehensive exclusive and absolute right over a thing.

Again Art. 1204(1) sounds too anachronistic since it restricts right of ownership to those corporeal things as objects of right. Even this plainly contradicts some of the articles in the Civil Code which expressly recognize right of ownership over or in shares, copyrights and the like.

Now it is very clear to any reasonable person that the subject matter of right of ownership can be corporeal or incorporeal objects of property in so far as these are not excluded by law. The copyright and neighboring rights proclamation is a living testimony to the absurd limitation of Art.1204(1) . But, then the scope and nature of right of ownership over corporeal and incorporeal things may vary greatly.

Art. 1204(2) provides that right of ownership may neither be divided nor restricted except in accordance with the law. This is a clear case of the incorporation of the doctrine of numberus clauses under the Ethiopian legal system. Incidentally, we have to mention that this is one point of distinctions between rights and duties in contractual relationships.

Therefore, under the Ethiopian legal system individuals can not establish or create real rights which are not recognized by the legislature. Only those dismemberments of right of ownership or jura in re aliena, as usufruct usups, fructurs, abusus (bare ownership), servitude, right of recovery, promise of sale, right of pre-emption, lien,pledge, mortgage, etc, etc. as expreasly and exhaustively recognized and listed will have legal effect.

Art. 1205(1) proclaims about the right of the owner to use his property (subject matter of property) and exploit it as he thinks fit. Restrictions that may relate to these components are implicated in the saving clause of this sub-article. Again sub(2) is proclaiming about the right of disposition by the owner while he is alive or after his death, gratituously or for consideration. Of course due to some inadvertence, it seems, this sub-article fails to contain a saving clause that implies restrictions just like the usus and fructus rights.

An essential attribute of right of ownership is enacted under Art. 1206. This article which bears “Right to reclaim property” reads as follows. “The owner

may claim his property from any person who unlawfully possesses or holds it and may oppose any act of usurpation."

As the best real right, an owner can assert his right of ownership against the world at large. He can exclude any person in the world in the use, enjoyment and exercise of his right. Unless he either through his consent or by the operation of the law restricted his prerogatives and claims in his ownership, he can assert against every person in the enjoyment and exercise of his rights/power emanating from his ownership: he can exclude others in enjoyment of the incidents of ownership; He can possess the object of ownership directly or through another person; he can protect his possession (Arts.1148 & 1149). He can reclaim the subject-matter of ownership by an action called petitory action (revindication).

Here pay attention that the legislature haphazardly employs the terms "thing" and "property" from Art. 1204- 1206 to mean objects of ownership, which can be corporeal or incorporeal things [res].

Depending on who has the most comprehensive, excluseive, absolute and perpetual right over (in upon an incorporeal or corporeal object of property, we can classify, as described in unit 2, section 2.4, things into two: Viz. those under the ownership of the public and those under the ownership of the public and those under the ownership of individual persons. Or the other way round ownership can be divided in to private (individual) ownership and public (collective) ownership.

When an individual or a certain group of individuals are having the right of ownership over a given object of property, there is private ownership. But when the public in general, the state representing the public owns a given object of property, there is public ownership in respect of that object. Which things will be under the public domain and which others under the private

domain will be determined by law. And we will be having another time, in property and land law II course, to discuss about such issues. Here it suffices to simply mention that the two types of ownership are recognized in the Civil Code, in the constitution and other legislation. And now we shall proceed to deal with legal issues relating to individual ownership.

4.2 ACQUISITION OF INDIVIDUAL (SOLE) OWNERSHIP

From the foregoing discussion, we hope that you have understood what ownership is all about. Bearing that in mind and also recalling what we have said immediately hereinabove about the types of ownership, now will go on to deal with the manner (mode) of becoming an individual owner of a given object – actually corporeal objects here!

How are private, individual persons to have that comprehensive, exclusive, perpetual and absolute right over an object? What cause of action or mechanisms are avialiable for indivual persons (physical or juridical) to be owners of things? And why the law recognizes and protects such exclusive rights? What is /are the justification(s) for private ownership? These and related issues will be examined in this section.

Objectives

After completing this section, students will be able to:-

- describe the mechanisms available for individual persons to obtain right of ownership;
- distinguish acquisition of individual ownership from the derivative mode of becoming an owner (from transfer of ownership);
- discuss the justifications for private ownership;
- enumerate the different modalities of acquisition of ownership; and,

characterize the different modalities of acquisition of individual ownership in a general fashion.

Dear distance student, let's pose simple questions to you. Look around. You observe many objects of property. Clothes lands, buildings, hats, cows, oxen, donkeys, foxes, camels fishs, cats, hens partridges books, watches, roads, offices etc. Who owns each one of these? How did the owner become an owner of this or that object?

To begin with, public domain and private domain are in different planes. The mechanisms of becoming an owner over public things and things that can be objects of private ownership vary greatly. Here we are concerned with the mechanisms of obtaining private (individual) ownership.

Without going too far, our Civil Code provides that a person may become an owner in two ways:

through acquisition of ownership, or

through transfer of ownership.

As we mentioned before, the second mechanism. Becoming an owner through transfer will be treated in property and land law II. Here we will be high lightening it with a view to clarify the first mechanism.

Acquisition of ownership is just one means of becoming an individual owner. A person acquires right of ownership independently of any one else's ownership, over a thing which:

has never been owned, res nullies; or

have had previous owners, but masterlees at the time of acquisition.

has owner but for which the new ownership will not have it as a source or background.

This mechanism is said to be an original mechanism of becoming an owner of a given object. It is said to be original because it may be the first ownership

right that relates to that object, or if it is not the first in time, it is not dependent up on previous right of ownership. It is established upon that thing simply by the operation of the law.

But, transfer of ownership is a derivative mechanism of becoming an owner over a given object. The right of the present owner is founded up on the right of a transferor Transfer occurs when one person receives ownership from another person. The ownership of the present owner is dependent up on, or is a derivating of, the ownership previous owner. And there is a general property law maxim which runs, nemo dat quod non habet (No one can transfer what he does not have or a transferee can take no better title than his transferor) This maxim is applicable for the second mechanism.

Therefore, in case of acquisition of private ownership, it is that law that confers title or ownership to the new owner but in case of transfer it is the title of the previous owner. These two mechanisms are alternative ways for a person to become a sole owner of a given object of [property). As every person can understand, private ownership of objects of property is not an instinctive and natural phenomenon. When we trace back to history, everything was communal. Private ownership is a result of social transformation and civilization. Though it is still unclear when it evolved. There is agreement that everything was communal at the earliest primitive time.

Since its evolution, however, private ownership of things has exerted considerable influence in the life of every society. It has become a source of social power in various stages of development of society. Ownership of means of production has become the source and symbol of power and social status. Private ownership still plays great roles in the present social order. It is one of the fundamental constitutional rights in the FDRE constitution (Art. 40) There must be some justifications to accord it such a status and place.

The following are some of the justifications forwarded in favour of private ownership of objects of property

Theory of occupation
Theory of labour
Theory of economics and
Theory of personality

According to the theory of occupation, the law recognizes and gives protection of individual ownership of things since the individual is the first person to occupay and appropriate that thing.

According to the theory of labour, the law recognizes and gives protection of individual ownership of things because it is the result of his labour. It is that owner who produces the object or brings it in to existence.

On the other hand, the law recognizes private of ownership and guarantees it according to the theory of economics for it is a deriving force to social economic development; it gives a sense of motivation and competition for members of every community. Individuals will be creative and hard working; they will try to maximize their profits and other benefits and this in turn is very much useful to the society as a whole.

According to the theory of personality, private ownership of things is part of the attributes of personality; of individuals. To recognize, honour and protect it means to give full recognition, respect and enforcement of the dignity of human kind.

There are also other theories and justifications forwarded in favour of private ownership. But no one theory is free from criticism; not every theory holds true in every aspect of private ownership of things, actually private ownership

of objects of property has been treated as a means (tool to oppress the have nots by the haves. According to Marxism Leninism, it is a means of exploitation of the proletariat and other section of the people. It was condomned to doom in communism. Nevertheless, such views which were able to get immense support during the heyday of communist soviet Russia, seem to loose support in this contemporary free market and information era. Since these ideological changes have swept us (Ethiopians) in recent decades, further discussion seems unwarranted. Suffice to remember the policies of nationalizations of not only rural and urban lands but also extra houses and other means of productions during the Dergue and privatization of means of production and other things other than lands in the present regime.

So,today we are in the free market economy world where in private ownership of objects of property is sanctified and regarded as a good medication for a number of social ills. Therefore we have to now proceed to deal with the various modes of acquisition of this individual ownership of things.

According to Ethiopian Civil Code, there are four modes for a person to acquire individual (sole) ownership of objects of property. These are:-

V. occupation
VI. possession in good faith
VII. usucaption, and
VIII. Accession

Among these modes of acquisition of individual ownership provided from Arts. 1151-1183 C.C some apply to acquisition of owners ship over corporeal movable objects others to corporeal immovable objects and still others to both corporeal movable and immovable objects of property. Generally stated, occupation and possession in good faith apply to corporeal movables. Accession, on the other hand, applies to both corporeal movables and

immovable. We shall examine in detail each one of them in the following sub-sections.

4.2.1 OCCUPATION

In this sub-section, we will see occupation as one mode of acquisition of individual ownership of corporeal movale objects. The meaning of occupation, the subject matters of this mode of acquisition and the principles and rules that mode of acquisition and the principles and rules that govern the conduct of individuals in respect of occupation will be examined.

Objectives:

After completing this sub-section students will be able to:-

- define occupation;
- analyse the circumstances that lead to the acquisition of individual ownership of corporeal movables through occupation,
- identify the principles and detaile rules of occupation that are applicable for various categories of corporeal movable objects of property, and,
- identify those corporeal movables that are susceptible to acquisition of individual ownership in this mode.

The first and older mode of acquisition of individual ownership of corporeal movable objects is occupation. It is a mode of acquiring individual ownership by which a corporeal movable thing which belongs to no body comes under the control and becomes the subject matter of individual ownership of a person who takes possession of it with the intention of acquiring a right of ownership up on it. Though we do not find an express definition in our Civil Code, Art. 1151 gives such an idea. It reads:-

> *"Whosoever takes possession of a corporeal chattel [movable] which has no master with the intention of becoming the owner there of shall acquire the ownership of such chattel [movables]."*

This a principle provided for acquisition of individual.

Ownership through occupation. For this principle to be applicable the following requisites need to be fulfilled

First, the subject-matter of the individual ownership must be a corporeal movable which is susceptible to individual ownership. Since we have been thoroughly discussing about the classifications of objects of property, the meaning of corporeal movables must be clear at this phase of our study. However, susceptibility of individual ownership needs some clarification. Of course, this also is related to that classification of things in to the private and public domains.

As will be discussed in the other module, there are some corporeal movable objects which the public in collectivity exercises right of ownership. A glance to Arts. 1457 cum. 1448 gives us that some corporeal movables that fall under the public domain are insusceptible to occupation, or insusceptible to individual ownership unless express permission is given.

Finally, it must be known that corporeal immovables in Ethiopia can not be subject – matters of acquisition of individual ownership in whatever mode. Art.1194 clearly declares that immovables situate in Ethiopia which are vacant and without a master [individual owner] shall be the property of the state.

The second ingredient in occupation is that the corporeal movable should be a masterless one (res nullius). These objects which have no owner are of two type: those that have previously had a master but no more at the time of occupation, and those other objects that have never had a master previously.

Those movable objects that have never had a master before the time of occupation are mostly wild animals and insects and some inanimate things. These are representatives of the res-nulllius group. Unless occupation is prohibited in various ways in different pieces of legislation, these are proper objects for acquisition of individual ownership. Whether such laws that prohibit acts of occupation (in the form of hunting, fishing and capturing using cages, nets and traps) do exist or not must be checked not only in Forestry and wildlife proclamations but also in laws that relate to fishing, natural resources, environment, eco- tourism and bio diversity. If there are no special laws that prohibit otherwise, it is possible to acquire individual right of ownership over such masterless movable objects.

Those corporeal movable objects which have had previous owners but are now masterless are again of two type. They are either abandoned things or lost and /or escaped things. A thing might have had an owner before; but, this thing may be a vacant (maserless) one at this time and the reason may be due to abandonment of owner's right of ownership. While proclaiming about one means (way) of extinction of individual ownership under section 3 of Title Vii of the civil code, the legislature made it clear under Art. 1191 that abandonment of right of ownership over corporeal movables is one means. It provides that the ownership of corporeal chattels shall be extinguished where the owner expresses in an unequivocal manner his intention to waive his rights as an owner.

As the liberty aspect of ownership, an individual has the right or liberty to waive his right of ownership over his own corporeal movable object. Of course

there will be limitations /restriction/ in another areas of the law that aim at protection of the public, the creditors and other related persons to the owner. Except in such exceptional cases every owner of a corporeal movable object can abandon his right of ownership; and this can be expressly indicated by oral or written acts or factual circumstances, such as throwing or ignoring such objects. Abandoned things, res derelictae, are masterless things. It is possible to acquire individual ownership over such things. The cumulative readings of Arts.1151 and
1191 gives this obvious idea.

The other category, lost and escaped things, is a bit complex to comprehend. The expression " lost things" and "escaped things" that appear in legal literatures relate to those ideas embodied in Arts. 1153, 1154 and 1192.C.C

Strictly speaking, lost things are not masterless things as such. They are things, upon which owners lost there possession owing to different factors. Until the legally provided period of extinctive prescription matures, they are objects owned. But owners way not be aware of their rights, or the fact that they lost these things or the where about of these things. According to Art.1154 (1) any person who happens to find and take possession of such corporeal movables is expected by law to report his findings, to call up on the knowledge of owners and to deliver these found objects to the owners. And until the owner learns the fact and takes the object, the finder who complied with administrative duties shall retain the possession of that object. For all purposes, the finder shall be treated as a possessor – not owner.

Nevertheless, if the owner disappears and fails to reclaim within the legally prescribed time, the object becomes an ownerless (master less) one. Such lost objects can be tamed or captive animals and other inanimate objects.

“Captive animals” are those wild animals which were under the control & possession and ownership of a previous owner. These may be apes, monkeys, hares, foxes, Partridges, wild fowls, snakes, rates, fish, insects, wild bees, which at some point in the past were under the direct or indirect (intermediary) control of another person, but then escaped and returned in to their wild nature, or lost and returned into their state of nature. Captivity presupposes wildness and wildness is not a matter of the characteristics of individual animals but of the speicies to which they belong. So, in law there is no such thing as tame or domestic tiger, lion, fox, etc.

On the other hand, “tamed animals” refers to those of domestic animals. Domestic animals are such classes of animals such as cattle, horse, etc, as by habit or training live in association with men. Poultry, domestic cats, dogs, cattle, sheep, goats, pigs, etc. are typical domestic animals.

Unlike captive animals most of tamed animals have the habit of returning in to their master’s house (animus reveretend) even after going away in the fields.

Now the issue is to identify when these captive and tamed animals will be considered as masterless in law. Briefly stated, they will be regarded as materless when the owner:

abandons any of such things;
fails to capture or attempt to capture within the legally provided time for captive animals after they escaped or lost
fails to reclaim tamed animals within the legally provided time since he lost possession of them.

Since we treated cases of abandonment, we have to confine ourselves now to cases of lost and escaped things. A given thing, whether captive or tamed

animals or any other thing is said to be maserless when the owner fails to exercise his right of ownership over such things with in the legally provided time since he lost possession of them.

This varies from case to case depending on the type and nature of things escaped or lost. The Ethiopian civil code provides different periods of extinctive prescription which made things masterless

According to Art.1152(1) tamed or captive animals shall become things with out a master when they escape from the control of their owner and he does not attempt to recapture them with in the following month or he ceases for one month to attempt to recapture. What does this mean? Well, as it stands now, this sub- provision treats certain tamed animals and all cpaitve animals in the same manner. Both will be treated as masterless if their owner:

- does not attempt to recapture them within a month; or
- after trying, searching for and attempting to seize or recapture them, then, faild or interrupted his effort to recapture and one month lapsed from that date of interruption.

A number of debatable issues arise from this provision. Is this provision applicable only for escaped animals or does it include also lost animals? If it does include, how are we to reconcile that ten years period of prescription provided for under Art.1192? And what is the relationship between Art.1152 and Art.1154-1157?

If a fisher man succeeds in capturing fish in his own net but then some of them escaps from the net, are these escaped pieces of fish to require one month's time for another person to occupy them as masterless? What about a person who after capturing a partridge in a forest was maintaining it for a week happens to lose it since it escaped and returned in to her wildness?

Can't you acquire right of ownership over this partridge or fish if you succeed to harvest each of them with your own net or trap?

Again what type of tamed animals are convered under sub(1)? Note that many of the domestic animals are excepted under sub-(2) of Art.1152. It reads:
"The provisions of sub. Art(1) shall not apply to animals of the equine, or asinine speicies or cross –breedings thereof nor to camels and animals of the bovine species"

Even, domestic bees are covered under Art.1153. From these it follows that Arts. 1192 and 1153(3) will be applicable if the owner loses possession of those domestic animals indicated under Art.1152(2) and domestic bees (Art.1153). Let's reproduce the articles for a closer scrutiny.

" Art. 1192. prescription
The owner of a corporeal chattel shall lose his rights [of ownership and any other] as an owner were he failed to exercise them for a period of ten years by reason of his not knowing where such chattel was or that he was the owner there of."

On the other hand, Art. 1153 which proclaims about domestic bees runs:-

1. Bee swarms which have left their hive shall be deemed to be things without a master.
2. The person in whose hive they settle down shall become the owner of such swarms by virtue of occupation
3. The former owner may take them back where he chased them and arrives where they have settled immediately afterwards."

Aleast from these two articles we can understand that those expressly indicated objects will be treated as master less when the prescribed time matures.

The cases of domestic bee swarms is very simple. If the bee swarms have left their hive and settled in another person's hive, the owner of the latter hive will acquire individual right of ownership at the time of settlement provided that the former owner was not able to arrive immediately. So, this is an instant case that does not require the lapse of days, weeks and months. Of course the word " immediately" under sub-article (3) leaves some room for a case by case treatment of circumstances. The same norm (ought to have been provided for those escaped captive animals as different from tamed animals under Art. 1152.

With regard to animals of the equine species such as donkeys, horses and mules, or asinine species such as cows , oxen, goals and sheep, or cross breeding of the former such as mares, or camels and the like, a longer period of prescription is provided. [inquire also: what are those bovine species treated in the same manner as those of the equine and asinine species?] Why the legislature provided such longer period of extinctive prescription is clear to understand. These are very common and important objects of property to almost all members of the community. Because they do have the habit of living in closer association with men and because most of them will show up to house of their master by themselves, it is reasonable to give such a "grace" period for owners to search for their lost animals.

These domestic animals will be treated as master less when the owner fails to take possession of them with in ten years. Of course the counting of that ten years may vary from case to case depending on the habit of those lost animals (actually this is arguable) or depending on where the finder of these animals complied width administrative requirements of notification as provided under Art. 1154

Some jurists argue that the period of ten years starts to be counted against the owner of those domestic animals from that date of departure or straying away of the animals if they don't have the habit of returning (animals reveretendi) to their master's house .But, if they have such habit, it would be counted as of that date which they lost to intend to go back to their maste's house. Others reject this latter view saying that it is not declared, expressly or impliedly, by the law – maker; so, they simply start to count the ten years from the date of departure and in the case of animals who fell under the possession of a finder from the date of notification. Since then they will be regarded as materless and any other person has the chance to acquire individual ownership through occupation.

When we come back to Art. 1152(1) once again, we will be forced to conduct a further inquiry as to the types of animals covered in it and the reasonableness of the time provided therein. As we have said above, almost all conceiveable domestic animals are covered under sub-art. (2) of Art. 1152. It seems for us that dogs, domestic cats, hens and the like are left to be included under sub-art (1). These latter domestic (tamed) animals will be treated as masterless after a lapse of one month since their departure or since their owner stopped his attempt to seize or capture them, or still according to some since some of them lost their animus reveretendi (habit to return). This seems to be a reasonable time to maintain the interest of the previous owner and the interest of the finders. Whether the finder of such domestic animals is also under duty to advertise (notify) his findings in accordance with Art.1154 is another problem.

If the finder of these domestic animals fails to comply with the administrative requirements it seems that he will not be benefited by the lapse of one month.

The case of captive animals is very puzzling one. They are treated in like manner with dogs, domestic cats and hens. Lapse of one month's time since they escaped is required before they are treated as master less!! What an odd provision to read!

So far we have been dealing with the second prerequisite of occupation, i.e., the corporeal movable should be master less.

The third element for acquisition of individual ownership over master less corporeal movable objects through the occupation mode is the need to take possession of the object. Without taking possession of such movable objects there cannot be occupation that leads into acquisition of ownership. So, possession is very crucial element here. This is one legal consequence of legal possession. We know now what legal possession is in our case. It involves the corpus and animus elements. If one element is missing there is no possession.

If a person takes possession of a masterless corporeal movable which is susceptible to individual ownership, there is the possibility for that person to acquire individual ownership through occupation. The possession may be direct (immediate) or indirect (mediate) type. But it should be a clean and pure possession; if there is any vice (defect) such as equivocality, secrecy, violence and discontinuity it does not give rise to such right (Art. 1146(1)). When a finder, for example, keeps his finding secret contrary to Art. 1154, he will not be able to acquire right of ownership over that thing.

When there are no vices in ones possession or another transferees possession there is the possibility to acquire right of ownership. Art. 1150(1) may be relevant in such cases. It provides:

"(1) The possessor who is entitled to avail himself of prescription shall benefit by the periods of prescription having run in favour of the former possessor where such former possessor could avail himself of prescription."

The last and fourth element of occupation is the intention of that person who takes possession of that masterless corporeal movable object. According to Art. 1151, he must have the intention of becoming the owner of that thing he takes possession of. This is another essential ingredient for a person to acquire right of ownership through occupation.

Provided that all the four requirements discussed so far are fulfilled in a given case a person will acquire individual ownership. But there are exceptions to these. The exceptions relate to treasures and antiques (Arts.1159 & 1160).

Treasures are things of which nobody can be shown to be the owner and are discovered after the lapse of not less than fifty years since they were buried in the land or hidden in another thing (Art.1159(3). So, Arts. 1154 and 1192 will not be applicable to treasures. If such an object is discovered the ownership goes to the owner of the land or thing in which the treasure was found (Art.1159(1)). This is one challenge that we face in this "old" civil code. As we all know, as of 1975 land belongs to the state and the public at large. It is a public domain. But Art.1159 was enacted at the time of Emperor Haile selassie wherein land was within the private domain.

Thus, the application of Art.1159(1) as relating to land requires a new legislative stand. To simply interpret things in a simplistic approach and then say that treasures will be under the ownership of the state does not sound reasonable to say the least.

What is provided under Art.1160 is clear Antiques and archaeological excavations involve historical, cultural and archaeological aspects of the

Ethiopian people. Such objects are governed by special laws as they fall under the public domain and are insusceptible of individual ownership.

Before passing to the other mode of acquisition of individual ownership we would like to raise two issues under Arts. 1154-1157. One of the issues relates to the types of movable objects that will be treated as lost things. What kinds of movables are lost and found things? Do you think that it includes even spoons, forks, coins, birr (legal currencies), pens, exercise books, etc? If it includes such minor objects, do you think that Art. 1192 will be applicable for them?

Obviously, these articles, for that matter all articles on occupation, does not include special corporeal movables such as cars, television and ships.

The second issue relates to the practice in respect of lost and found things. As far as the author of this work knows, the government is claiming ownership of things found by ordinary individuals. Though not sure, lawyers of the Ministry of Finance or Finance Bureau even cite an article in another legislation. So, how do you see this continuing practice with Arts.1154-1157 and 1192 C.C? These and related issues are left for you to discuss.

The next discussion pertains to another mode of acquisition of individual ownership, again applicable only to corporeal ordinary movable objects. This is as follows.

4.2.2 POSSESSION IN GOOD FAITH

This section is concerned with the discussion of the second mode of acquisition of individual ownership, i.e, possession in good faith. The meaning of the expression, the elements that constitute it, the principle and rules that relate to it as well as exceptions to it and exceptions to exception again will be addressed in some detail analysis.

Objectives:

After completing this section, students will be able to:

- Define what "possession in good faith" is;
- List down the elements of possession in good faith;
- Understand the exceptioness of possession in good faith from the general maxim of law of property;
- Analyse each elements of possession in good faith;
- Know the principle of possession in good faith;
- Identify the exceptions of this principle of possession in good faith;
- Explain the justifications of the principle and exceptions of possession in good faith;
- Distinguish the exceptions to the exceptions of possession in good faith; and
- Comprehend the justification (s) of the exceptions to exceptions of possession in good faith.

Title VII of Book III of the civil code presents possession in good faith as one other means of acquiring individual ownership. Arts. 1161-1167 all are devoted to possession in good faith. Without offering an express and affirmative definition for the expression "possession in good faith" the law runs to proclaim the principle applicable to it under Art. 1161. Yet, one can infer the meaning from the principle as it appears in sub-articles (1) and (2).

Art.1161 which bears the title, "principle" reads:
"(1) whose ever in good faith enters for consideration into a contract to acquire the ownership of a corporeal chattel shall become the owner thereof by virtue of his good faith when he takes possession of such chattle.

(2) his rights shall not be affected by the fact that the person with whom he contracted had no valid title."

Thus, possession in good faith may be defined as a method of acquisition of ownership of corporeal movables by a person who concludes a contract for consideration and takes possession of such thing in order to acquire ownership in a belief that the person with whom he is contracting has a title[right of ownership], but the person in fact has no right of ownership and thus cannot transfer it.

It is a principle whereby a person concluding a contract with a view to obtain ownership of a corporeal movable, would be the owner when he takes possession of the movable, inspite of the fact that the person contracting with him with a view of passing (transferring) the ownership of the movable is not its true owner.

As we mentioned else where, one fundamental principle of law of property is that which maintains Nemo dat quod non habet, i.e No one can transfer what he does not have, or a transferee can take no better title than his transferor. This is a general maxim that holds true every where, every time and in every circumstance. The maxim goes in lime with the essence and quality of right of ownership.

Thus, you the owner of a given object of property feel confident that no other person (other than the courts and in exceptional cases the state as such) without your permission or consent will transfer your right of ownership to another. Even the courts and the state will make otherwise in exceptional cases when either your conduct or the public interest dictates transgressing your honoured right of ownership.

To exclude others, to act as a supreme and sovereign entity over ones object of property are the virtues and attributes of ownership. Again we have said that

relatively speaking right of ownership, unlike all other rights in rem, is absolute and perpetual.

These are good things that go in line with many democratic values of civilized people. On the other hand, contemporary real life requires that these values and the above maxim be somehow softened to allow favorable room for safer commercial transactions in this free market economy world. This demands the softening of that principle of law of property not in every types of objects of property but in respect of ordinary corporeal movables. It has practically become an impossible effort to check true rights of ownership over many corporeal movable objects before one enters into a commercial transaction. Because ordinary corporeal movables, unlike immovable, do not require registration and publicity of rights and duties pertaining to them, there are always dangers for every member of the community to experience the unlawful activities of non-owners. For example, any buyer of soap, bread, sheep, goat, hen, radio, or any domestic utencils, tools and equipment cannot be sure of his market if the above maxim is always to be applicable.

To require those sellers to produce documents or any other evidences to certify and to ascertain that the things they sale to purchasers are their own is to ask the impossible, or if possible that it does not necessarily be reliable. Bona fide faith is an invisible good element in social and economic life of every society. To trust others is not bad virtue.

On the other hand, right of ownership should not be revered as something always sacred and divine. Yes, it is the most comprehensive, absolute, perpetual and co-extensive as well as exclusive real right. It is a social construct, not an inborn attribute of objects of property. It is one of the legally recognized and protected rights of all types of rights. It can not be put in ivory-tower, to say the least. It must bear its fruits, as desired, within social realities. It should not be a mask (shield) for those lazy persons that fail to

keep their eyes on their objects of property once they put or borrow or let/hire them to others. That right to follow (right of pursuit) should not be used extremely to affect the tranquility and security of market. As the Germanic adage goes society may be more benefited if it maintains "where you have put your faith, there you must seek it."

There fore, a compromise is made between security of ownership and security of commerce in respect of ordinary corporeal movable objects. In this arrangement no one interest (both bearing social interests) always prevails over the other. Possession in good faith is an exception to that general maxim of law of property and is a compromise between the two interests mentioned here now. Though in itself an exception to the general maxim of law of property, it has its own principle, detailed rules and exceptions, even exceptions to exceptions.

As an exception of the general maxim, it is one other mode for individuals to acquire right of ownership from non-owners. As such them possession in good faith is not a form or modality of transfer of ownership. Rather it is a legally recognized means of acquiring right of ownership from non-owners! It means then it is possible for "transferees" to get better title than their "transferors", or, some times in law, fictitiously, one may transfer what he himself does not have! Such compromises are results of social, practical realities.

As mentioned, Art.1161 consists of the principle of possession in good faith. For a person to acquire individual ownership through this mode the following elements must be found fulfilled. These are:

IX. There must exist a contract.
X. The contract must be for consideration;

XI. The object of the contract must aim at transferring a right of ownership from one of the contracting parties to the other;

XII. One of the contracting parties that purports to transfer right of ownership must be a non-owner;

XIII. One of the contracting parties that intends to become owner must have good faith;

XIV. The contract must relate to ordinary corporeal movable object (the subject-matter of the contract must be an ordinary corporeal movable); and

XV. The party who intends to become owner must take possession of that ordinary corporeal movable object.

All these requirements are embodied in Art. 1161. If one element is missing there is no possibility to acquire right of ownership through this mode.

Mere existence of all the elements alone is even not sufficient. It is necessary to see that a valid contract, whether made orally or in a written from, exists between the contracting parties. What a valid contract looks like and demands must be seen in light of the general law of contracts and special rules as applicable to certain things. The contract should be for consideration and not of gratuitous one. Whether "for consideration" requires payment of money is not clear. It seems that it includes not only cash money, but also credits and exchanges or barters. So, it is an act of selling and buying.

Further, the nature of the contract must be of a translative type. That is to say that inconcluding their contract parties must have clearly intended to conclude an act of selling and buying; it should not be for hiring, letting, borrowing or renting.

In concluding that contract, the buyer must believe that the seller is an owner of the subject-matter of their contract. In fact he must be aiming at becoming an owner of corporeal movable object through the derivative mode of becoming an owner. When later on he knew that the seller was not the true

owner of the thing, the law gives him right of ownership provided that he had good faith at the time of concluding the contract as well as at the time of taking possession of the thing.

By the way possession in good faith is applicable only for ordinary corporeal movables that are susceptible to individual ownership (see Art. 1161 (1) cum. Art.1455). Art.1455 enacts that property [object of property] forming part of the public domain may not be acquired by possession in good faith.

In order to acquire right of ownership in this mode, the buyer needs to take possession of the movable object. Whether this taking possession or entry into possession applies to cases of delivery or all other forms of possession is not clearly indicated. But it appears to envisage all instances of transfer of possession from the seller to the buyer. If that is the intent of the legislature, besides delivery of the thing, one will be treated as has taken of possession when the seller delivers documents that represent the thing and empower the transferee to exercise his rights relating to it. Constructive possession and *traditio brevi manu* will also be treated likewise.

Once again we are witnessing the essential effect of legal possession here. It is one of the elements that lead in to the acquisition of individual ownership through possession in good faith.

Art.1162 pertains to one of the ingredients of possession in good faith. It defines what "good faith" is and provides an evidentiary rule. Believing that the seller is the owner of the thing constitutes good faith. And this good faith must exist not only at the time of the conclusion of the contract with the seller but also at the time of the entry into possession of the thing (Arts. 1162(1) and 1163(1). The existence of such a good faith on the part of the buyer at these times may be difficult to prove as good faith relates to the mental condition of the buyer. The legislature, however, provided an easy way

out. Art.1162 (2) provides that good faith shall be presumed to exist in those times. But, this is a rebuttable presumption. It is possible for the previous owner of that thing to disprove the presumption available in favour of the buyer. Here now comes the nature and standard required to disprove the existence of good faith on the part of the buyer. Are we to assess the existence or not of good faith by applying an objective standard or subjective standard or any middle-of-the way position?

The reading of sub-art. (1) of 1162 seems to provide a subjective standard. It reads as follows:

> "whosever acquires a corporeal chattel shall be deemed to be in good faith where he believes that he is contracting with a person entitled to transfer the thing [the ownership of the thing, more correctly] to him." Emphasis added.

This seems to endorse a subjective standard. The belief of the buyer seems to be the applicable standard. But a closer reading of this sub-article with Art.1166 seems to give a different idea. As shall be addressed below, Art. 1166 proclaims about the indemnity of the buyer when he is condemned to give back the thing he bought to the true owner. Therein some objective criteria are included. So, it seems that these two standards are adopted in the civil code to give a middle of the way position.

Hence, the price of the thing, the place and time of conclusion of the contract and/or transfer of possession, general circumstances that relate to the transaction, the existence or not of some distinguishing marks on the thing and the sight of the buyer, existence or not of witnesses, whether the transaction was committed in an overt market or in private and in dark or hidden or suspicious places, whether the buyer is an educated one or not, and his business experiences, etc., will be taken into account and will be

assessed. Any of these or another may testify in favor or against of the existence of good faith on the part of the buyer. Actually, the burden of showing the non-existence of good faith on the part of the buyer is lied upon the claimant, the plaintiff in petitory action.

According to the principle under Art. 1161, if a good faith buyer fulfils all the above elements and takes possession of the thing, he shall acquire right of ownership over that corporeal movable object. Such acquisition of right of ownership will not be affected by the fact that the seller was not the true owner of the thing sold to the buyer (Art. 1161(2). In addition Art. 1163 (2) provides a reinforcing statement:

> "Discovery by the possessor [buyer] that he acquired the thing from a person who was not entitled to transfer the ownership thereof shall be of no effect where such discovery occurs after he entered into possession."

It should be emphasized that if one element is missing under Art. 1161(1), there will not be acquisition of individual ownership through this mode. For example, receiving a corporeal movable from another as gift or reward will not lead into acquisition of ownership. We said that the contract should be for consideration. So also a bad faith buyer who paid the exact price of the thing to the seller and who took delivery of the thing will not acquire right of ownership.

Generally, possession in good faith leads into acquisition of individual ownership only and only when all the requirements are fulfilled. Even such fulfillment of all the requirements will be subjected to some exceptional treatments. The *acontrario* reading of Art. 1164 (1) gives the idea of exceptions from the principle provided in Art. 1161. Arts. 1165 and 1166 also deal with consequences of the exceptional circumstance.

The direct reading of Art. 1164 goes in line with Arts. 1161, and 1163(2). A good faith buyer who fulfills all the requirements in Art. 1161 and takes possession of the thing he buys will acquire individual ownership. The previous owner can not assert his right of pursuit and reclaim his object as provided under Art. 1206 since possession in good faith is an exception to the general maxim as we stated above.

In particular those individuals who voluntarily parted with their objects can not revindicate against good faith buyers. Art. 1164(1) states that whosever voluntarily relinquishes the ownership of [rather, the possession of, see Amharic version as well] a corporeal chattel may not reclaim it from the person who has become owner thereof in good faith. That Germanic adage which goes "where you have put your faith, there you must seek it" seems fully endorsed. Further sub art. (2) provides that the previous owner may not raise against the good faith buyer the fact that the seller deceived him to relinquish his possession. Hence borrowers, hirers, depositors, bailors, etc cannot reclaim their previously owned movable objects against good faith buyers.

The exceptions to the principle of possession in good faith are then to be derived from the acontrario reading of Art. 1164 (1) and express declarations of Arts. 1165 and 1166. When we read the clause "whosoever voluntarily relinquishes the possession of a corporeal chatte..." in an acontrario, or reversely, it gives; "who so ever involuntarily relinquishes the possession of a corporeal chattel may reclaim it from the person who has taken possession of it in good faith."

One of the clear instances of involuntary relinquishment of ones possession over a corporeal object is theft. This is expressly indicated under Art. 1165. In addition to theft, however, there are other cases of involuntary

relinquishments. These are robbery cases and when the object is lost without the will of the owner. That which is provided for under Art. 1165 includes robbery is very clear since theft is one ingredient of it. Nevertheless, the law-maker failed to expressly provide the effect of involuntary relinquishment of corporeal movables by the owner in lost circumstances, when one loses it out of his will.

But, first, what is the effect of the existence of an act of theft or robbery? In cases where the owner's corporeal movable object is found in the possession of any good faith buyer (either in a single or a series of chains of transactions), the owner can reclaim such object from the good faith buyer provided that this object was taken and then sold after the commission of the act of theft or robbery. Art. 1165(1) states that any person from whom a corporeal chattel was stolen may reclaim it from the person who has become owner [possessor] thereof in good faith. And the plaintiff's claim will be barred if it is not made within three [the Amharic version, which has to prevail, says five] years from the time when the theft occurred. We can also add from the time when the robbery occurred. Mind you the time is to be counted starting from the day of the occurrence of the act of theft or robbery.

Then, if the owner institutes a petitory action with a view to reclaim his movable object he will succeed against the good faith buyer provided that he is able to prove the occurrence of any of the above illegal and criminal acts against that object. This is really an exception from the principle of possession in good faith. The law is clear here that it opted to discourage criminal acts, even at the risk of affecting the interest of innocent buyers.

When we come back to the owner of the lost corporeal object, the law is silent. By taking the acontrario reading of Art. 1164 (1) it is possible to apply the exceptional rule available for theft and robbery cases to lost objects.

Such analogical interpretation is not prohibited in civil cases. Such interpretation again begs another unresolved problem, i.e the time allowed for the owner of the lost thing to institute a claim against the good faith buyer. Are we to apply still that five years period of limitation provided for theft by analogy? or are we to apply the ten years period of limitation provided under Art. 1192 or 1845 C.C ? Well, these are open for speculations. We think that five years period of limitation will be reasonable to be applicable for lost objects. The buyer of a lost object should not be exposed for longer period of revindication than the good faith buyer of a stolen object. Even this interpretation may apparently contradict what is provided under Art 1154 cum. Art.1192 which requires the finder to take possession of and keep his finding until ten years. Nevertheless, now the issue is not between the owner of the lost object and the finder; but between the owner of the lost object and the present good faith buyer.

Next we have to discuss the fate of the previous owner when he loses ownership of his movable object in favour of the good faith buyer and the fate of the good faith buyer in circumstances when he is exceptionally required to give back the thing he bought to the true owner.

In the first case the previous owner has the right to institute a personam action against that person who broke his promise or against that person who committed breach of trust.

In the second case, the good faith buyer can institute a personam action against the seller. But this may not be a sufficient way out. In reality, a good faith buyer may not be able to trace to the seller. He may fail to identify or remember his seller after some time has lapsed, or even if he identifies his seller, the latter may not have financial capacity to reimburse the purchase

price. So, there are jurisdiction that provide additional right of recourse by the good faith buyer against the claimant (true owner) in certain cases. The French civil code, the source of Art. 1166 C.C, can be cited in this regard. It allows the true owner to reclaim his movable object from the good faith buyer upon condition of reimbursing the latter where he has bought the object at a fair, a market or a public auction, or from a merchant who deals in similar objects.

To the opposite of the French, in Germany the true owner can in general recover the object without reimbursing the good faith buyer.

When we come to Ethiopia, Art. 1166 seems to adopt the French system except that it (the article) wrongly or unreasonably or even absurdly provided that reimbursement is to be required from the seller when the good faith buyer bought in those similar circumstances. The article reads:

> *"Where the person from whom the property [the object] is reclaimed acquired [bought] it from a tradesman dealing in similar articles, in market overt or at a public auction he may require the seller to reimburse him with the price he paid."*

Since the right of the good faith buyer to demand reimbursement is always available, Art. 1166 must be taken to provide an additional way out (remedy) for the utmost good faith buyer. As those circumstances are objectively misleading to any buyer and as the claimant can easily substitute from such sellers, it is reasonable to give this further option for the good faith buyer to require imbursement from the plaintiff.

After talking about the exceptions of the principle of possession in good faith, now we are again to go against these exceptions. Acts of theft, robbery or loss

that relate to currency or securities to bearer will not give rise to a right of reclaiming by true owners against good faith acquires for considerations. What is provided under Art. 1167 is simple to understand. It reads

> *"(1) currency or securities to bearer may in no case be claimed from a person who acquired them in good faith. (2) they may not be claimed either from a person who acquired them from a third party in good faith."*

As these sub-articles are very clear to understand and to identify that they are again exceptions to the exceptions of possession in good faith, additional explanation seems unwarranted here. Therefore we shall now proceed to another mode of acquisition of individual ownership.

4.2.3 USUCAPTION

Usucaption is presented in the civil code of Ethiopia as a means of acquiring individual right of ownership. This mode, however, has limited application at least since the nationalization of land in 1975. Hence this sub section will be confined to give some general overview of this mode.

Objective:

After going through this sub-section, students will be able to:-

- Define usucaption;
- Analyse the elements of usucaption; and

- Appreciate how usucaption can be a means of acquiring individual right of ownership.

Usucaption is presented in Arts. 1168 and 1169 as a means of acquiring individual right of ownership. Unlike the former two other modes, this mode is applicable to corporeal immovable objects. However, this mode is not applicable to lands since 1975 as land has become a public domain upon which individuals cannot acquire individual right of ownership.

Historically, usucaption had played vital roles in the acquisition of individual ownership over lands. And usucaption, which literally means taking by usage, is a means of acquiring individual ownership by possession of immovable for a longer period of time and payment of taxes in the name of the possessor. So, in a sense usucaption is a type of prescription.

Prescription signifies the acquisition or the extinction of a right by the lapse of time. Hence prescription is of two type:

acquisitive prescription, and
extinctive prescription.

Acquisitive prescription is another name for usucaption. It is a means of acquiring individual right of ownership by prolonged possession. On the other hand, extinctive prescription signifies the divesting of a right due to the lapse of a period of time fixed by law without availing of ones right.

Limiting ourselves here, usucaption at present is a means of acquiring individual right of ownership over buildings. For an individual to acquire right of ownership under this mode, two conditions need to be fulfilled. These two elements are:

Possession of the building for at least fifteen consecutive years; and

Payment of tax over that building in the possessor's name for fifteen consecutive years.

Art.1150 may be helpful for the transferee of such building.

The practicability of this mode is limited as the likelihood of former owners to stay away leaving their building for fifteen years is rare. It is really almost inconceivable to see a building being possessed by a non-owner, a non-agent, possessor using that building for this longer period of time by paying taxes in his own name. Hence we preferred to limit our discussion. In practice usucaption helps to prove once right of ownership rather than serving one to acquire ownership.

4.2.4 ACCESSION

Unlike all the other three modes of acquisition of individual ownership, the fourth mode, i.e, accession is applicable for both corporeal movables and corporeal immovables. Thus, in this sub section an attempt will be made to examine the meaning and nature of accession as well as to analyse the various mechanisms by which accession will lead into acquisition of individual ownership. Besides, the various types of accession will be explained.

Objectives:-

After completion of this sub-section, students will be able to:

- Define accession;
- Understand the essence (nature) of accession;
- List out the various types of accession;
- Analayse each of the various types of accession;
- Appreciate the place of each types of accession under the Ethiopian civil code; and
- Analyse those articles of the civil code dealing with accession as mode of acquiring individual right of ownership.

Accession is included as one other vital mode of acquiring individual right of ownership under the Ethiopian civil code. Arts. 1170 through 1183 are all concerned about this mode.

But, there is no express definition offered by the law-maker. Conceptually, accession may be defined in various ways. There are broad and narrow definitions. Here, we shall try to give one narrow meaning and then another wider definition.

Narrowly, accession may be defined as the process whereby one thing becomes attached to and inseparable from another. And as a mode of acquisition of ownership it may be taken that an individual acquires right of ownership over that object which acceded into his other object. In this context, accession is a means of acquiring ownership of a thing which becomes united with a thing the acquirer already owns.

In its broadest sense, however, accession may be defined as not only as a process where by one thing becomes united to or incorporated to but also to include all cases in which there will be addition to the object of some one's

ownership throught fruits, offsprings and other forms of detachments from one's thing.

Accession, which may result from act of nature (natural accession) or act of man (artificial accession, is of various time. The following are the various kinds of accession in the broadest sense of the term.

Accession of an immovable to another immovable;
Accession of fruits;
Accession of movables to immovables; and
Accession of movable to another movable.

Conceptually, it is possible for an individual to acquire right of ownership in any of these types of accession. Taking this broad approach then, an individual can acquire right of ownership over object that become united to or incorporated in his object, or over objects that are products; fruits, or divisions, increments or off springs of his own object.

Now, let's examine each of the types of accession in general and in relation to the Ethiopian civil code.

Accession of Immovable to another Immovable

This form or type of accession is not included under the Ethiopian civil code. In other jurisdictions one may find principles and rules that govern such situations as when one immovable acceds into another immovable.

An accession of an immovable to another immovable arises when:

Soil is taken by erosion or any other natural phenomena and deposited in another's land. This is called alluvion. Then the issue will be, who owns that alluvion? (Actually this envisages private ownership of land.)

A parcel of land goes and rests on another's land. This is called avulsia, and the issue will be who owns this acceded land?

Different countries have their own principles and rules to resolve such issues. In our case, it is obvious that such issues will not arise until land is made a private domain. However, related issues may arise in respect of possession. Asume that a parcel of land which was under the possession of a person is taken by earth quack or high erosion and then rested upon another person's possession of land. The accession may be manifested by superimposition on the latter man's possession of land or it may rest in an adjacent relationship broadening the boundary of the possession of the latter person. Speculate how to resolve conflicts that involve such forms of accession, if not in ownership, in possession.

Accession of Fruits

Even though the accession of one immovable into another immovable is not recognized under our civil code, it is clear that the concept "accession" is used in a broader sense. Arts. 1170-1183, all of which come under the

fourth mode of acquisition of ownership, treat a number of cases in which the object of ownership is increased. They provide different rules as to whether the owner of the object of this or that, or some one else owns the increase.

A close reading of these articles shows that the increase may come from union of another object, or from breeding (a case where young are separated from an object rather than united with it) or from fruits.

Art. 1170 (1) provides that the owner of a thing owns the natural fruits of that thing. “Eguits” is defined under sub-art.(2).

“periodical products of a thing and any thing which may according to usage be derived from a thing in conformity with its purpose shall be deemed to be fruits.”

This definition is broader than the convention meaning of fruits which goes like this; “all that a thing produces at periodical intervals without dimunition of its own substance.” In our context, the term “fwits” includes this conventional meaning and then addrs those other products that will be obtained through cuttings, extractions and other civil and industrial fruits as rents, interests and profits. Accordingly the owner of the principal (main) thing acquires right of ownership over those natural and customary fruits of the main thing.

Accession that results from breeding is provided under Art.1171. It is made clear that the young, the off springs shall follow the mother and one who owns the mother shall acquire right of ownership over the off springs.

Accession of movables to Immovables

Arts. 1172-1181 C.C deal with this form of accession. The accession of crops, plants (treas), and building materials as well as buildings into lands are provided in detail. However, since 1975 land has become a public domain and now we cannot discuss issues in accordance with those provisions which are founded upon private ownership of land. Yet, legal issues will necessarily arise in relation to accession of any of those movables in to the possessorial land of another.

Hence a mutatis mutandis approach of these provisions may be one way out to resolve those inevitable issues until the legislative body enacts another law which takes such problems in to account.

Here we will give very crucial dues that help one to envisage & understand likely problems and to enable one to five solutions for these problems. Here is how we presented.

Fist, think of accession of crops, plants and building mater4ials performed by the owners of these movable objects and acceded to a possessorial land of another person. Such accession may be made with the knowledge and express objection of, or with the knowledge but in a condition where expression of objection was not available, or with the knowledge but with out the objection of, or with the knowledge and express or implied permission of or with out the knowledge of the possessor of that may arise between owners of those movalbes and the possessor of such land? Hint: read Arts 1172-1174 c.c for crops,

Arts, 1175-1177 for plants, and
Arts. 1178 – 1180 for building materials

Secondly, thinks of accession of crops, plants and building materials performed by the activities of the possessor of land. take the states of mind of the possessor as well as the states of mind of the owners of those movables. Read Art. 1181 c.c. according to sub art[1] the land owner [the possessor]who makes buildings, plantations, or works with material the property of another shall become the owner of such material. Do you see the distinction dear students? Speculate why such discrimination is made.

D. Accession of movable to another movable

Arts. 1182 and 1183 c.c are concerned with this last, but not least, type of accession. In itself this type of accession exhibits three various forms, namely,

Specification (Transformation),

Adjunction (embodiment) and

Merger (commingling or fusion or confusion or admixture)

Specification or transformation signifies the act of making a new thing using one's labour with the material belonging to another. Who will acquire right of ownership over such new thing? And what is the standard to measure whether really a new thing is made by the labourer? These and related problems are resolved in accordance with different theories and policy determinations of countries.

On this point, there are at least four schools of thoughts that try to provide solutions. According to the Sabinians school of thought, the ownership of the new thing should go to the owners of the original materials. The Proculians school of thought maintains the opposite of the first; they say the maker should acquire right of ownership. There is another school of though which ascribes to the middle of the way position of the former two. According to these proponents the ownership of the new thing shall be given to the maker

only and only if the materials could not be restored to their former state. According to the Justinian school of thought however, the maker will acquire right of ownership if he has also contributed any part of the material.

Under the Ethiopian civil code, Art. 1182 tries to provide a solution According to this article, the value of labor and the value of the original materials will be taken in to account and then will be compared. Besides, the existence or not of good faith on the part of the maker is a vital consideration. Sub- art (1) provides:

> *" Where a person has worked with or transformed a substance which did not belong to him, the new article shall become the property of (ownership) the worker where the labor supplied is of greater value than that of the substance (the original objects before transformation*).

Hence, the maker will acquire individual right of ownership over the new thing only when the value of his labor exceeds the value of the original materials. If the value of labor is less than the value of the original thing the owner of the original thing now acquires right of ownership over the new thing. The value of labor will be obtained by subtracting the value of the original thing from the value of the new thing.

Besides the above rule, Art.1182 (2) provides:" where the worker did not act in good faith, the court may allot the new thing to the owner of the substance even though the value of the labor supplied is greater."
Thus, good faith plays a decisive role in the acquisition of ownership under this mode. The discretion of the court also has its own impact.

Sub article (3) of Art.1182 provides a right in person am remedy for the owner of the original substance or for the maker in case one is not to acquire right of ownership by the above rules.

Art. 1183 treats merger and embodiment in a similar fashion. Conceptually, however, merger and embodiment show some differences. Briefly stated merger signifies a situation where by two or more dry or liquid objects belonging to different owners are now fused so that they can not be separated, or if susceptible of separation, it requires extra ordinary effort or energy.

On the other hand, embodiment or adjunction refers to the union of two or more things belonging to different owners so that this things form a single whole, though each of them is a distinct and a recognizable part of that single whole.

Without making any distinction Art. 1183 provides:

> *'' (1) where things belonging to several owners are mixed together or embodied in such a manner that they can not be separated without appreciable deterioration or only at the cost of excessive labour or expenses, the parties concerned shall become joint owners of the new thing pro rata to the value of its component parts prior to the mixture or embodiment.*
>
> *(2) Where two things are mixed together or embodied but one of them must be regarded as an accessory [of minor quality or price or any other attribute] to the other, the new thing shall belong to the owner of the principal thing."*

Hence, we can see that the Ethiopian civil code tries to avoid many complications by providing two simple solutions, i,e making all concerned parties joint owners or giving ownership to the owner of that principal (main)

thing that came in to the union and if ownership is to be given to the owner of the principal thing, the other individual is provided with a right in personam solution, i.e to require compensation on the basis of undue enrichment.

Though a number of issues could be raised and analysed accordingly under Arts. 1182 and 1183,for limitation of space, time and energy we are forced to limit ourselves here. But we hope students will be able to raise and discuss amongst themselves those remained issues.

Summary Questions

1. Define ownership
2. What is the difference between ownership, possession and the idea of property?
3. What are bundle of rights?
4. Discuss the justifications of individual (private) ownership of objects of property.
5. Discuss the roles of possession in the acquisition of individual ownership of corporeal objects;
6. Compare and contrast original mode of acquiring individual ownership with the derivative mode of becoming an owners.
7. What preconditions must be fulfilled for a person to acquire right of ownership through occupation?
8. What are the requirements for a person to acquire right of ownership through possession in good faith?
9. Discuss the principle, the exceptions and the exceptions to exceptions in the acquisition of ownership through possession in good faith?
10. Do you think that many of the articles in the Civil Code will be applicable as a mode of acquisition of individual ownership through accession?
11. What is a "new thing" under Art.1182?
12. Compare and contrast merger and embodiment.

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