Why a separate specific legal regime (subject of law) and course for land?

- Due to the relatively greater social, economic, cultural and political significance land has for individuals in particular and the society in general.

What are the benefits (purpose) of land?

- Everything of us is attached with land
- For direct exploitation of natural resources like woods, crops, minerals and etc.
- For smooth functioning of a market
- For construction of buildings
- For construction of roads, bridges, Dams and Water pipes
- It also has a sentimental value

NB. These purposes of land could be private (at individual level) or communal (at a society or community level)

What is property?

It is defined differently from different perspectives.

- In its general application the term refers to thing or objects. Things can be movable/personal or immovable/real, corporeal/incorporeal,
- It may also mean the characteristics of (color, shape, size, length etc.) just go to one application on you mobile phone see its properties.

- But, the legal conception of property refers to the relationship between people and things. Or the rights of a person in relation to a certain thing.

What is the working definition of property?

- William Blackstone-“the free use, enjoyment, and disposal of all his acquisition, without any control or diminution, save only by the laws of the land
- Black’s law dictionary added an important element to the above definition: an exchange value, or the ability to sell property
- The working or binding definition is the countries definition.

What is the nature of property (property right?)

- What is right? Types of right? (real Vs personal) what about property right?
- Unrestricted and Exclusive (what does it mean) (enjoyment with exclusion of all others) me and nobody else, a right asserted against all comers)
- Is it a negative or positive right?
- Is it a perpetual or temporary by its nature?

Property, Ownership and the metaphor of bundle of right

- A single thing or object of property may give rise to different rights for the same or different individuals

Rights in relation to a single thing include:

- Ownership
- Possession
- Usufruct
- Transfer (with or without consideration, temporarily (lease, mortgage, pledge, rent) permanently (sell, donate, legate,)
- Servitude (for immovable) , recovery, preemption,
- Right to bring a suit against infringers and etc.

NB. You have the right to do or not to do all these in relation to that thing. However, all of them are subject to the legally stipulated restrictions.

Of the above listed rights, ownership is the widest right. it has three components.

- Usus (detain and use for oneself and exclude others)
- Fructus (the right to collect the fruits thereof)
- Abusus (the right to alienate , sell, destroy, mortgage, lease, transform it)

Hence, it is nearly absolute.

See article 1204 and 1205 of the civil code.

Ownership is a bundle of right. The complete bundle of rights includes:

- The right to sell an interest
- The right to lease an interest and to occupy the property
- The right to mortgage an interest

- The right to give an interest away
- The right to do none or all of these things

NB. These rights can be separated from ownership right by way of sell, rent, lease, donation, mortgage,

One can exercise his/her ownership right without the need to hold the physical/material thing.

Bear this in your mind; some scholars equate property with ownership.

- Property =ownership, true or false? It depends.
- Property equal with ownership so long as no right is reduced/separated from ownership.

Real property, real estate and immovable

All these terminologies are similar in meaning. No difference in the subject matter they cover. The main difference is the jurisdiction where they are famous.

- They refer land and all other things annexed on it. Buildings, fences, standing trees, water pipes, and things annexed to buildings and so on.
- Article 1126 and 1130 of our civil code preferred the term immovable.
- Real estate and real property are commonly used in England and United states.

Land: in the law of real property, the term land is including the surface of the earth, the land beneath the surface to the center of the earth, and the air above. The term also includes property permanently affixed to the soil, such as water collected in wells, houses, and fences

What is the scope of land in Ethiopia???

- Article 1209 and 1211 of the civil code

Theories of property rights

- We have five theories
- Four in favor and one against private property regime
- They work for both movable and immovable properties
- What is private property ? see article 40(2) of FDRE

As we have said in our previous class, these theories do two things.

1. They tell us the historical development of property regime
2. They tell us the justification for private property.

Why we need justification? Way of life of the primitive society??

They are taken from the twenty-seventh chapter of Laveleye's book on Primitive Property (1878)

1. Occupation theory

- Roman jurists and most modern ones have considered occupancy of things without an owner as the principal title conferring property

- They say any one who first comes and seizes a thing without a master will become an owner of the same.
- It adopts a first come and take the thing approach.
- They considered earth and other natural resources as things without master. And they argue that the issue of private property regime came in to picture based on occupation. People either in group or individually started to seize or possess a certain plot of land and say this is mine, this is how the private property regime came in to existence.
- They justify it by the concept of priority and they assert that there was a sort of contractual arrangement between the primitive societies to this effect.

Criticism

- history shows that the earth is never regarded by men as *res nullius*.
- The hunting grounds of hunting tribes, or the pastures of pastoral nations, are always recognized as the collective domain of the tribe; and this collective possession continues, even after agriculture has begun to fertilize the soil.
- Unoccupied land has therefore never been regarded as without an owner. Hence, occupation cannot work.
- This theory has also failed to establish the claimed agreement between the primitive societies.

- Even today, land, which does not belongs to a single individual is considered as a property of the state.
- Occupation is by chance or force and can in no case be just
- In our case; see article 1194 of the civil code and article 40 of the constitution for immovable and article 1151 ff. of the civil code for movables

2. Labor theory:

- It is adopted by economists because, they attributed wealth to labor.
- It is first propounded by Locke (the natural law theorist)
- Do you remember the state of nature? What is Locke's argument on the state of nature? What are the three natural rights of individuals according to locke? Life, liberty and property.

This theory stands on the following premises:

1. Land and other resources are given to all human being in common
2. No one can fully enjoy them unless he/she become owner or allowed the use, to the exclusion of all others.
3. The ownership ofman over his body (labor) extends to the fruits thereof.
4. Hence, whatever man produces by mixing his labor with land and other resources would become his property.

Justification:

- property right constitutes part of natural rights of an individual
- The condition of human life requires labor and some material over which it can be exercised.

What is the place of equality in this theory?

- Though a person is allowed to withdraw objects from the state of community and make them his own by using his labor, it is subjected to certain limitations.
- This theory confines every man's possession to a very moderate proportion, and such as he might appropriate to himself, without injury to anybody.'
- The great principle is ": 'Every one ought to have as much property as is necessary for his support"
- Hence no body is allowed to take more property than his need.

This theory is relatively better than occupation theory since there is more connection between labor and a thing produced.

Criticism

- ***No legislation ever allowed that labour or specification was alone a sufficient title to establish property.***

- Condemns the existing social organization (where majority of laborers are poor and so many idlers live in happiness being rich) .unjust.
- If this is recognized as the only means of acquiring land it would disturb the existing societal organization.

Example: owner and tenant

3. Social contract theory

The two premises:

- Primitive community was abandoned because of a convention (social contract)
- Hence, property is the outcome of that contract.
- But, no one is able to establish the existence of such contract.
- Even if the contract was there it cannot bind the current society and cannot be a legitimate source of property.
- Many scholars (montesque, Tronchet, Touillier, Mirabeau, Bossuet and Bentham,) argued that private property is the creation of law or public authority.
- They say law creates and protects property
- The last two (Bentham and Bossuet) stated that property and law exits together. The life of Private property depends on existence of law. Banish Governments and laws then private property will disappear.

Some scholars (like Mr. Laboulaye) contest this argument. They agree private property is protected only by force and law. But, what is the exact scope of private property? Is the law really creator of private property? Should not the property exist first to be regulated by law? The issue of slavery, the slave was the property of the master? Was it created by law? If yes was it just? They say things, be good

or bad, are there even before the law comes. And in as long as all laws are not just we should not allow it to create property.

4. Utilitarian

- The greatest benefit for the greatest number of society
- They assert that: the private appropriation of land isbeneficial to those who do not, as well as to those who do, obtain a share. How?
- Because, the strongest interest which the community and the human race have in the land is that it should yield the largest amount of food, and other necessary or useful things required by the community.
- And experience proves that the great majority of mankind will work much harder, and make much greater pecuniary sacrifices, for themselves and their immediate descendants than for the public
- therefore to give the greatest encouragement to production, individuals should have an exclusive property in land
- This theory is the most commonly used theory.
- The only suggestion here is that it is necessary to make constant reexamination as to their continued conformity to new wants and the new circumstances of a changing society

5. Anti Property Argument

All the theories we learned so far, are in favor of private property. This one is against private property regime.

- It is a Marxist view

Private property inevitably:

- creates a growing inequality of wealth which is morally unjustifiable
- undermines good moral character
- these lead to social instability or chaos
- it is supported byMarx,Henry Gorge, Plato, Pierre-Joseph Proudhon, Jean Jacques Rousseau, and many early Christian philosophers
- Some reject it entirely and others urge for its restriction.

So, these are the theories of property.

End of the class

Thank you!!