# THE AFFINITY BETWEEN
# THE SALE OF GOODS PROVISIONS
# OF
# THE *FETHA NAGAST*
# AND
# MODERN *LEX MERCATORIA*


***A Professorial Inauguration Lecture***

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> ***"No modern legislation which does not have its roots in the customs of those whom it governs can have a strong foundation."***
> Preface by Emperor Haile Sellasie I to the 1968 edition of the *Fetha Nagast.*

> ***"… that is the first precept of the law, that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are based on this."***
> St. Thomas Aquinas.

## I. Some Background Notes on the *Fetha Nagast*

Consciously or otherwise, many Orthodox Christians in Ethiopia take the *Fetha Nagast*, literally meaning" the Law of Kings" in Ge'ez, as the foundation of both the spiritual and secular law of the country. This is also what the Orthodox Church claims. But it was rather a knowledgeable Catholic Bishop, Abba Paulos Tzadua, who translated it into the English language in the mid Nineteen-Sixties. In his contribution on the *Fetha Nagast* to the 2005 *Encyclopaedea Aethiopica*, Abba Paulos Tzadua tells us that the *Fetha Nagast* is a book of law that has been in use in Christian Ethiopia since at least the 16th Century. Abba Paulos was a scholar with good training in theology, law and the social sciences and with a further mastery of several languages

including, Tigrigna, Ge'ez, Amharic, Italian, Arabic and English. Coupled with his personal dedication, these scholarly and linguistic exposures were instrumental in his effort to produce a magnificent translation of the hitherto unavailable English text of the Law Book. In his preface to the 2009 Second Print of the English version, Peter L. Strauss, the editor, describes Abba Paulos in the following words:

> *A gentle, unassuming man of remarkable intelligence, Abba Paulos would rise through the Catholic hierarchy to the rank of cardinal – the first Ethiopian to attain that rank in the history of his church; remembered by Pope John Paul II in his homily as a "zealous priest and Bishop", a pastor of "outstanding concern for lay people".*

Abba Paulos writes that the Ge'ez version of the *Fetha Nagast* was derived from the Arabic compilation of an original work in Greek. This assertion has also been substantiated by Peter H. Sand in his Article *"Roman Origins of the "Ethiopian Law of Kings" (Fetha Nagast)"* that was published in Volume 11 of the Journal of Ethiopian Law. Abba Paulos further states that the book from which the Ge'ez translation was taken was known as *Magmu al-quwanin*, meaning a Collection of Cannons, written in the year 1238 by the Christian Egyptian Jurist called Abul-Fada il Ibn al-Assal as-Safi.

The exact time this Canon was brought to Ethiopia and the period of its translation to Ge'ez is not yet determined with any degree of certainty, though. Some say it was brought to the country's spiritual and legal landscape as early as the late thirteenth Century, while many others argue that it came much later. Citing most authoritative opinions on the subject, Abba Paulos contends that this was done during the reign of Emperor Zer'a Yaqob in the Sixteenth Century. But other historical sources reveal that Zer'a Yaqob was an Ethiopian monarch who ruled in the middle of the Fifteenth Century. This chronological flaw notwithstanding, he goes on and tells that the Arabic version was brought by a certain Egyptian native called Petros Abda Sayd, presumably a Coptic Christian, upon the request and at the expense of the Emperor, and was later translated into Ge'ez by Abda Sayd's son.

As regards the actual use of the *Fetha Nagast*, many agree that not much is known about it to date. Even though the Canon is as concerned with secular matters in as much as it does with spiritual and theological issues, its application outside the clergy and some important Imperial-Court affairs leaves much to be desired. There are no strong historical pieces of evidence that depict its use in the regulation of the behaviors of the common people, even in the areas of the country where values based on Orthodox Christendom are deeply entrenched. Strauss says that "on some accounts it was treated as a document only the elect were privileged to know of and consult". Indeed, it has long been more of a symbolic document reflecting the values and Christian heritage of most people in the Northern and Central Ethiopian highlands than a practical enunciation of legal postulates. This view has also been tangentially expressed in the following words of Emperor Haile Selassie I in his Preface to the 1960 Civil Code of Ethiopia:

> *In preparing the Civil Code, the Codification Commission convened by Us and whose work We have directed has constantly borne in mind the special requirements of Our Empire and Our beloved subjects and has been inspired in its labours by the genius of Ethiopian legal traditions and institutions as revealed by the ancient and venerable Fetha Nagast.*

Be that as it may, however, some research works indicate scattered usages and consultations of the *Fetha Nagast* while dispensing justice on important matters, especially in the areas of criminal and property law. In his book entitled *An Introduction to the Legal History of Ethiopia, 1434-1974*, Aberra Jembere has this to state in this regard:

> *It is not known when it [the Fetha Nagast] started to be cited as an authority in the process of adjudication of cases by courts… Even though the Fetha Nagast cannot be said to have been codified on the basis of the objective realities existing in Ethiopia, it was put into practice as well as interpreted in the context of Ethiopian thinking; and all this has given it an Ethiopian flavor.*

Content wise, the *Fetha Nagast* is divided into two main parts, fifty-one Articles (chapters) and One Thousand Eight Hundred and Seventy individual provisions. Part One, which deals with spiritual matters and theological issues, takes Twenty Two of the chapters and Eight Hundred one of the provisions. Part Two on secular affairs takes the other Twenty Nine chapters and One Thousand Sixty Nine individual provisions.

To come to the day's topic, it is around this second part of the *Fetha Nagast* and its relation to modern legal norms of commerce, otherwise referred to as the *Modern Lex Mercatoria* that the theme of my speech revolves. The expression *lex mercatoria* (literally meaning "the law merchant") has its origins in the ancient Roman notion of *Jus Mercatorum* that was meant to regulate commercial transactions although it was much elaborated and refined by developments in international trade over the centuries that followed the fall of the Roman Empire. No nation can, therefore, claim that it has the monopoly in its making. In a word, lex *mercatoria* originally referred to the body of laws developed through trade practices with a view to regulating commercial activities. In the words of Lord Mansfield, the 18$^{th}$ Century English judge who takes much of the credit for the development modern commercial law, it is said that "mercantile law is not the law of a particular country but the law of all nations".

The purpose of this speech is not to go deep into consideration of the inexhaustible domain of lex mercatoria as we understand it in modern trade, however. It is rather to make a modest attempt to investigate the commonalities of legal principles that we come across in a specific chapter of the *Fetha Nagast* with some universally accepted legal rules as they relate to the law of sales.

Allow me, therefore, ladies and gentlemen, to go into the theme of my speech.

## II. The *Emptio-Venditio* Provisions of the *Fetha Nagast*

### a. The Structure of the Chapter on the Sale of Goods

The chapter that pertains to sales transactions, i.e. Chapter XXXIII, is captioned as *"Sale, Purchase and Related Matters" (Be'inte te-sayto we-seyit we-zeteliwomu in Ge'ez)* with seven sections and 29 individual provisions. These seven sections deal with (i) essential conditions for the validity of a contract of sale; (ii) rules on transfer of risk in a contract of sale; (iii) trail and defects in the object sold; (iv) things that are not subject to a contract of sale; (v) improper practice in sales; (vi) modification of a contract of sale; and (vii) assignment of obligations arising out of a contract of sale. Many of the legal principles that we find in this Chapter are also available in the other sections that are meant to regulate juridical acts other than those stemming from a contract of sale.

### b. Section One: On Essential conditions

That the expression *emptio-venditio* is the Latin equivalent of the act of buying and selling is not an idea unfamiliar to us lawyers. As is widely understood by many, the development of the theory of consensual contracts, especially the rules relating to contract of sale, are some of the best achievements of the civilian legal tradition whose origin dates back to the era of Roman Jurisprudence. This notion is as valid in our times as it had then been. Roman law had it that the sole basis for the validity of a contract of sale is the agreement of the parties to deliver the goods sold and to pay the purchase price, there being no need to subscribe to any particular form. Zimmermann, a scholar widely acclaimed for his study of Roman law, also contends that "the Roman law of sales has provided us with the basic tools for our modern analysis of this economically most important of contracts, and it has invariably shaped our way of thinking about sale, irrespective of whether certain individual rules were preserved or rejected."

Our Civil Code too, in this respect, defines a sales contract as a contract whereby one of the parties undertakes to deliver the thing and to transfer its ownership to another party in consideration of a price. As a contract, therefore, all the essential ingredients of a valid agreement are required to be met. These are those relating to capacity of parties, to the will of the parties to be bound by the sale (fulfillment of the *intentio obligandi* requirement), to the object of sale and to formal requirements of the law, if any.

The striking similarity between these ideas and the relevant rules contained in the *Fetha Nagast* can be seen from the reading of the very first paragraph of the Section dealing with its rules on *emptio-venditio*:

> *A purchase is not valid unless the seller and buyer may dispose of their own property – unless they make an agreement with knowledge and are not subject to guardianship…. Purchase and sale is completed only by the act of giving on the part of the seller who owns it and of receiving on the part of the buyer,*

*without violence. Neither the giving of an object on the part of the seller, nor the receiving of it on the part of the buyer shall take place if they part before reaching an agreement on the price.*

The phrase "not subject to guardianship" in the above stated rule is also an elucidation of the modern requirement for the existence of capacity for any one to enter into a juridical act, an act sustainable under the law. As is obvious in modern jurisprudence, capacity is a mechanism of safeguarding the weaker party in a legally created relationship and primarily relates to the age or state of mind of the one that is meant to be protected. In very vivid words, another chapter of the *Fetha Nagast* (Chapter XXXII) articulates the notion of capacity and guardianship as follows:

*Guardianship is necessary for the one who is unable to distinguish in his mind that which is suitable for the perfection of his nature and good for his will, either because of an evil spirit which seduces him – this is the mad person – or because his brain is wrecked by disease – this is the feeble minded person who forgets his previous actions – or because his brain is not mature – this is the boy who has not attained the age of eighteen years – or because his condition becomes more feeble than previously by nature, because of the use made of his brain – this is the case when he grows old and approaches 100 years of age. (What a marvelous material for students of the Law of Persons!)*

On the consent requirement for the validity of a contract of sale, the *Fetha Nagast* has rules relating to knowledge by the parties of the subject matter of the sale and to contractual freedom. Again presence of the required capacity is not the only pre-requisite for validity. It must be seen to it that those with capacity have freely expressed their consent in the transaction in order for it to be binding on them. It is this aspect of modern jurisprudence that the phrase "to make an agreement with knowledge" in the Canon depicts. Related to the idea of freedom of contract is the rule that protects the weaker party in the bargain from being coerced to enter into a contract as a result of violence exercised on him. The *Fetha Nagast* recognizes the validity of a sales contract only where it is not a result of violence. In fact, so strongly is duress resisted by the rules of the Canon that Chapter XXXV provides different alternatives to the victim, in as much the same way as the modern notions of void and voidable contracts do. Here is what it says:

*If a man is compelled [against his will] to [agree to] sell his own property, to buy another's property, to lease his property, to hire another's property or to confess to another something which is not with him, he may either perform [the resulting contract] if he wishes, or refuse [to perform it] if he does not.*

We may compare this statement with the stipulations made in the section of the Civil Code on Invalidation of Contracts (Articles 1808-1815).

Another interesting similarity with modern practice is the way disagreements are meant to be resolved where parties are at variance in relation to the price of the goods sold. In

this respect, it is specified under Article 2271 of the Civil Code that the price may be referred to the arbitration of a third party and that there shall be no sale where such third party refuses or is unable to make such an estimate. The *Fetha Nagast* too says that:

> *The parties shall not complete the contract unless another person acceptable to both is present, even if this person has not made the estimate. And if one of them agrees to the proposed terms of the contract, the consent of the other shall conclude it.*

As far as the object of sale is concerned, in Roman law, almost everything could be the subject of sale whether corporeal or incorporeal, including chattels, land, claims against third parties, inheritance rights and servitudes as long as the seller has the title to dispose it off. The rule in the *Fetha Nagast* too is coined with a much similar content to the adage *"Nome Dat Non Habet"* in which it is long recognized that one cannot transfer a right better than that of his own. On the other hand, just as Roman law and its modern successors do make distinctions between *emptio-venditio* (purchase and sale) and *locatio-conductio* (contract of hire) so does the *Fetha Nagast*. In this sense, while a contract made for the benefit of some other person's services or for the use of property belonging to another person is *locatio-conductio* the one made with a view to transferring not only the physical possession of the thing but also the title over it is that of *emptio-venditio*. In the Civil Code too (Article 2728), it is provided that the object hired shall remain the property of the lessor who has the right to claim it back at the end the term of hire. In a clear attempt to differentiate between an act of *emptio-venditio* and *locatio-conductio*, the Code specifies that "where it is stipulated that after a certain number of payments of the rent or hire, the lessee shall become the owner of the object, the contract shall constitute a contract of sale notwithstanding that the parties have termed it a contract of hire". This same idea of hire is prescribed in Chapter 28 of the *Fetha Nagast* in the following words:

> *Whosoever is entitled to dispose of his property may lend whatever he may dispose of and may hire whatever yields him profit, getting his property back in its original condition.*

On the payment of earnest, the *Fetha Nagast* recognizes earnest as one mode of proving the existence of a sales contract. It specifies that:

> *The receiving of earnest by the seller from the hand of the buyer brings about the conclusion of the contract of sale and purchase. If the buyer rescinds the sale, the seller keeps the earnest; if the seller rescinds he must pay double the earnest he received.*

Aren't the following words of the Civil Code direct reproductions of this rule?

Article 1883. – Effect of Earnest.

> The giving of earnest shall be proof of the making of the contract.

Article 1885. – Nonperformance of contract.

1. Unless otherwise agreed, the party who has given earnest may cancel the contract subject to forfeiture of the earnest given by him.

2. Unless otherwise agreed, the party who has received earnest may cancel the contract subject to repayment of double the amount received by him.

On the formal requirements of a contract of sale, it is stated in the *Fetha Nagast* that writing is not mandatory in such a contract.

> *Some contracts of sale and purchase are made in writing, and some without writing. A written contract in the possession of the buyer is valid if the document is attested by two, three or more witnesses… The contract should specify other related terms, the object for sale, the amount of the price, whether the price is to be paid immediately, and the date of payment, if it is on credit.*

This is equally the case in Roman law. According to the Justinain Institute, writing was not necessary in a contract of sale, but once it is agreed to make the contract in writing, it won't be binding unless it is signed by the parties. It is also the case in modern laws, including ours. As a rule, a sale of goods contract is not subject to any formality. Our Civil Code (Art. 1719) states that no special form is required for the validity of a contract unless it is provided otherwise. But once it is made in writing, the conditions that are required to be met are almost similar to the one we see in the quoted provisions.

### c. Section Two: On Transfer of Risk

The idea of transfer of risk in modern contract law attempts to provide the answer to the question: - Which one of the contracting parties is responsible for the loss, damage, or deterioration in the value of the goods sold, that take place after the conclusion of the contract of sale but before these goods are effectively delivered from the seller to the buyer. This is what Planiol and Repert have also asked in their Treatise on the Civil Law. The problem is more common in sales contracts than most other transactions. According to the Civil Code (Art. 1758), a person legally bound to deliver something shoulders the risk of damage, loss or deterioration of that thing until such time that it is duly delivered to the other party. But his risk is transferred to the other party, if that party fails to take delivery of it as agreed. This rule has been elaborated further in the provisions of the Code on sales contracts. Similarly, the 1979 Sale of Goods Act of England in its Article 20 provides that:

> *Unless otherwise agreed, the goods remain at the seller risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not. But where delivery has been delayed through the fault of either the*

> *buyer or seller, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.*

The rule is also regarded as one of the most important provisions governing contracts of sale in international trade. In this respect, Article 66 of the 1980 United Nations Convention on the International Sale of Goods (the CISG) provides that "loss or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller". The same is true in the case of the thirteen International Contract Terms, alias, INCOTERMS that are developed by the International Chamber of commerce (ICC) and are widely in use in today's international business transaction

It is again interesting to take account of the proximity of the rules of *Fetha Nagast* to the above principles of modern jurisprudence. Here is what it has to offer on the subject:

> *If the thing for sale is spoiled before the sale is completed, one must consider whether the object was in the hands of the buyer or not. If it is the buyer who has spoiled the object, he must keep it and pay to the seller the price agreed upon… If the object sold is destroyed in whole or in part, after the sale is perfected it belongs to the buyer and he must give the seller its price, even if it is destroyed the day he bought it.*

Abba Paulos explains in the footnotes to this rule that in the first case the sale is not perfected but the buyer is presumed to have taken possession of the object for trail, while in the second one the sale has been perfected and the risk is thus transferred to the buyer following the Latin rule *res perit domino*. In contrast to this stipulation which is close to related ideas in modern jurisprudence, Roman law used to consider the buyer as the owner of the thing sold from the time the contract of sale is concluded. This ownership entitlement includes the right to own the natural fruits and increases of the thing that accrued before delivery but after the conclusion of the contract. The famous Digest of the Justinian Institute had it that the buyer shoulders the risk on the property even though that property was not delivered to him. He was likewise responsible for the expenses of keeping and preserving the thing prior to delivery. The seller was, however, obliged to take as much good care of the things sold as would a *bonus paterfamilias.*

### d. Section Three: On Sale on Trial and on Defects

Sale on trail is not something unique to modern contracts. The Ethiopian Civil Code, for one, provides that where parties agree to sell and buy a thing on trial, the buyer shall, upon taking delivery, declare his intention to buy the thing with an agreed period of time, or within a reasonable period if no time is specified in the contract. Failure by the buyer to do so implies his acceptance of the sale with all the legal consequences ensuing there from. Nevertheless, the risks are still borne by the seller unless the buyer

confirms the contract or until the lapse of the period stipulated for acceptance (see Civil Code Arts. 2380-2383). Similarly, the *Fetha Nagast* states that where parties agree on a sale on trial:

> *The seller must give the buyer three days to put the object to trail, or more than three days if the object will not spoil [be spoiled] in a short time. The price of sale shall remain with the seller during the period of trial. But he shall not dispose of it without the permission of the buyer.*

On defective sale, the *Fetha Nagast* prescribes that:

> *If a defect is discovered before the sale is perfected, but the seller in making the contract was unaware of it, the buyer may either take or refuse to take it, as he chooses. However, he may not buy it at a reduced price unless the seller agrees… If a defect appears in the object after its transfer to the buyer, he may not sue the seller and tell him to retake the object but the seller must agree to a reduction of price for the defect which existed before the sale... If the buyer was aware of a previous defect in the object and could have sued the seller for this defect but failed to do so, his right to bring an action is cut off.*

This is congruent to one of the cardinal rules of modern sales law, which imposes on the vendor the obligation to supply warranty against latent defects. Our Civil Code has it that the seller's warranty obligation is due where the thing sold does not possess: (1) the quality required for its normal use; (2) the quality required for its particular use expressed in or implied by the contract; or (3) the quality or specifications agreed upon in the contract(see Civil Code Arts. 2287-2300). In relation to this K. W. Ryan, in his introductory book on the Civil Law, argues that this rule has its roots in ancient Roman law and that present day Civil law has done little to bring a change to it. He contends that the Digest of the Justinian Institute provided these remedies for all kinds of sales although it originally developed from measures that used to be taken in relation to sale of slaves and animals in ancient Rome as prescribed in the Edict of Curule. He goes on to say that "if the seller failed to declare any of a large list of latent defects at the time of sale, the buyer could at his option bring an actio redihibitoria for rescission of the sale; or an actio quanti minoris aestimatoria for reduction of the price. These principles have also found their ways in modern international contracts instruments such as the UNCISG (see Section III, Arts, 45-52 for details).

### e. Section Four: On Things that are not subject to a contract of sale

This Section of the *Fetha Nagast* provides a long list of things that cannot be subjected to sale, including free persons (as opposed to slaves), charitable legacies, deposits entrusted to one's custody, things that cannot be delivered to the buyer, dead animals, flesh half-eaten by animals, things slain as sacrifice for idols, properties communally

owned and water flowing through public domain. This has also much to do with the old Roman law adage of *res extra-commercium* which holds that certain things are always out of the scope of private transaction and are not thus susceptible of being traded. In Roman law too, any contract of sale involving a free man (*Liberi hominus*) or a *res extra-commercium* such as those constituting the public domain (*res publicae*) is invalid. It is worth noting the provisions of Articles 18 and 19 of the Ethiopian Civil Code in this context in relation to the invalidity of acts on the integrity of the human body and also Article 1454 of the same on the inalienability of properties designated as constituting public domain in which it is stated that "property forming part of the public domain may not be alienated unless it has been declared no longer to form part of the public domain".

### f. Section Five: On improper practices in sale

The rules of the *Fetha Nagast* on improper sales practices are meant to provide the ethical standards for sale and purchase, including those related to unconscionable dealings, the making of excessive profits, price manipulations and unfair trade practices. Just to quote one rule, the *Fetha Nagast* provides that:

> *It is forbidden to say to someone who bought from another on condition of trial: "Cancel the contract you have made and I will sell it to you at a cheaper price or at the same price he offered to you and my goods are better than his".*

May we, in this regard, remind ourselves of the provisions of Article 2056(1) of the Civil Code in which it is stated that "whosoever is aware of the existence of a contract between two other persons commits an offense where he enters into a contract with one of those persons thereby rendering impossible the performance of the first contract"? It is likewise provided under Articles 132 and 133 of the 1960 Commercial Code that any act contrary to honest commercial practices constitutes a fault and entitles the victim to claim compensation from the wrong doer.

### g. Section Six: On Modification of a contract of sale.

Needless to state, a contract which has been duly consented to is binding. *Pacta sunt servanda* goes the old Latin adage. In sales law too, it is improper to make a unilateral variation of the price or modification of its terms. Taking the validity of this postulate, the *Fetha Nagast*, however, provides that where the thing sold is found to have a defect, it may be sold at a lower price than was originally agreed to. The buyer may also avail himself of the same right of reducing the price where a part of the object for sale is missing whereas he may totally rescind the contract if the object is completely destroyed. This is more or less the case in modern law. In our law, for example, it is specified in Articles 2344(2) and 2345(1) that a contract may not, in the ordinary course of events, be cancelled where the defect is of small importance; or where the sale relates to delivery of several things or a collection of goods and part only of these goods have been delivered. In such cases the buyer is entitled to a proportional

reduction of the price. In a similar approach, Article 50 of the UNCISG also prescribes as follows:

> *If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of delivery…*

### h. Section seven: On assignment of obligations in a contract of sale

Most Civilians agree that the Roman law rule of *delegatio* embraces both the transfer of obligations from one debtor to another while the creditor remains the same; and the transfer of rights from one creditor to another while the debtor remains the same person. The latter gradually came to be designated as *assignatio*. This is what we find in the provisions of Articles 1962-1967 (on assignment of rights) and Articles 1976-1972 (on delegation of obligations) of our Civil Code. The principle of assignment is thus an act whereby a creditor transfers, in whole or in part, the rights that he has against a certain debtor with or without the consent of the person liable to answer for the claim. No consent of the debtor is necessary in our law, though. Logically speaking, delegation is the converse of assignment. It is a state of fact in which the debtor, with or without the knowledge of his creditor, entrusts his obligation to perform a contract to another debtor.

Both assignment and delegation have now been adopted by most jurisdictions, although with some variations as to their application. They have also been made a part of international contract instruments. The 2002 Principles of European Contract Law, a model contract law developed by the Commission on European Contract Law that operates under the auspices of the European Union, has devoted two chapters (Chapters 11 and 12) on assignment of claims and substitution of a new debtor, alias delegation of debts. These Principles recognize that a party to a contract may normally assign a claim under it. They also accept that "a third person may undertake with the agreement of the debtor and the creditor to be substituted as debtor, with the effect that the original debt is discharged". The same rules have also been elaborated in Chapter 9 of the 1994 UNIDROIT Principles of International Commercial Contracts.

Although the *Fetha Nagast* does not have rules on what we now understand as assignment in modern contract law, it has a clear provision on delegation of debt. To this end, the last Section of the Chapter on sales has this to offer:

> *An assignment of debt is not valid without the consent of the assignor and the debtor but the consent of the assignee is not necessary.*

The *assignor* and the *assignee* are what the Civil Code refers to as the *delegator* (the one who transfers his obligation to another) and the *delegate* (the one who assumes the obligation of the original debtor after the delegation), respectively.

Way back from the days of Roman law, both assignment and delegation have been widely in use both in trade and in other transactions. Every day, many people make use of them, mostly without even being aware of the complexity of the transaction involved. A very notable example of assignment in this regard is the use of cheques and other negotiable instruments, although there is quite a distinction between an ordinary assignment and assignment in the case of these instruments. This shows the truism that just as in the case of a tangible object, a claim is also a transferrable commodity. In this connection a jurist has once noted thus:

> *If we were asked – Who made the discovery which has most deeply affected the fortunes of the human race? We think, after full consideration, we might safely answer – The man who first discovered that a debt is a salable commodity.*

With that, I conclude my rather hasty and brief attempt to draw parallels between the Sale of Goods Provisions of the *Fetha Nagast* and the jurisprudence of our time pertaining to the Law of Commerce, the modern *Lex Mercatoria*. With one basic question though! Leaving the spiritual aspect of the *Fetha Nagast* to the faithful so as not to mix it with the secular one, aren't these and other related legal principles material enough for inclusion in our academic discourse?

## III. EPILOGUE

Finally one may ponder as to why I had to labour on something that is a little boring and dry a subject matter as this one in an event of this type. It is a fairly sound concern, I agree. But it has very much to do with the love story and career development of the speaker. The first love encounter of this gentleman is not with a high school sweetheart or with the girl next door, as is usually the case with young people. Nor was it with one of the most wonderful and caring women one can ever conceive of. You may probably try to guess as to who this adorable lady is. Do not go too far to speculate. I will tell you who she is. She is W/o Almaz Asrega, the spouse of the speaker. But even she cannot claim to be the first love of the person now talking before you. May be to your surprise, the first love of this man, a love which is still unabated, was rather with a law book, the 1960 Civil Code of Ethiopia.

This love has its origins way back in the nineteen-sixties when a skinny elementary school student used to be instructed to copy court cases by Teshome Retta, a tall good-looking gentleman with a charismatic personality. Teshome was a High Court clerk at the time and also one of the first butch of evening students enrolled in the Certificate Program of the Faculty of Law of the then Haile Selassie I University. Over the years, the encounters the boy had had with many of the court cases and legal materials kept on growing by the day, and so was his love with the codes, especially the Civil Code; so

much so that he started cherishing the day when he too would join the Law School and be immersed in the fascinating world of the law. That was how he went to the Law School in 1973; that was why he joined the Ethiopian judiciary as a young graduate, and that was also when he came to familiarize himself with the *Fetha Nagast*, one of the elder cousins of the Civil Code. That skinny boy has now become lucky enough to be elevated to the altar of professorship (*merigetnet*); whose dear father was the Teshome Retta I told you about, may he rest in peace.

Thank you very much for your patience!!

*Ethiopia Le-zele'alem Tinur!!!*

## Annex- *Short biography of Professor Tilahun Teshome Retta*

Professor Tilahun Teshome was born in Addis Ababa on the 19th of November 1953. He completed his elementary and high school education in Addis Ababa, passed the Ethiopian Schools Leaving Certificate Examination with Great Distinction and was awarded prize from Emperor Haile Sellasie in 1972. He also holds a diploma in Accounting which he earned with Very Great Distinction. He joined the Addis Ababa University in September 1972 and graduated with the degree of Bachelor of Laws (LL.B.) in 1979. He worked as a legal expert at the Commercial Bank of Ethiopia until March 1983 after which he served as a judge of the Special High Court and then as a judge and presiding judge of the Supreme Court of Ethiopia for nearly ten years. Professor Tilahun was engaged by the Addis Ababa University as a full-time faculty in January 1993 and has taught several courses both in the undergraduate and graduate programs of the Faculty of Law. He has likewise supervised numerous LL.B. and LL.M theses both at the Addis Ababa University and for universities outside Ethiopia. In addition to the many assignments he was entrusted with by the University Administration, he has served as the Dean of the Faculty of Law from 1996 to 2001, Secretary of the University Senate and its Executive Committee for more than four years and as the Editor-in-Chief of the Journal of Ethiopian Law for several years. Professor Tilahun has extensively written and published on the different aspects of Ethiopian law at home and abroad, including his widely read book on the Basic Principles of Ethiopian Contract Law, the copy right of which he donated to the Faculty of Law.

Professor Tilahun has worked as a consultant to a number of Governmental and Non-Governmental organizations and has served in leadership positions in many professional associations, civil society organizations and private enterprises. Among many others, he is a member of the International Board of Trustees of the African Child Policy Forum, the African Law Association, the International Society of Family Law and the Ethiopian Bar Association. He has presented study papers, conducted trainings, drafted laws and provided legal consultancy services for different organizations. He had been awarded grant as a research fellow at the Northwestern University in Chicago, U.S.A. and the University of Bayreuth, Germany. He has also been active in the provision of arbitration services to individuals and the wider business community.

Professor Tilahun has been awarded certificates of merit and appreciation from organizations at home and abroad, including the Addis Ababa Chamber of Commerce, the Mayor of the City of Detroit in the U.S.A. and the American Bar Association.