##  JOURNAL OF ETHIOPIAN LAW

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December 1965
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The Jomral of Ethiopian Law was inaugurated by His Imperial Majecty Haile Selngaie I in the summer of 1964 a日 ant important btep in the development of Ethiopia*s legal gystem. Subsequently, the Board of Editore of the Journal has invited thoee who are interested in the continuation and expansion of the Law Journol's activities to express their gupport by beeoming Patrong of the Journal. The following perions have become Patrons of the Journal of Ethiopian Law:
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## REPORTS

The following are seventeen decisions of the Suprame Imperial and High Courts of Ethiopia and one decision each by the Laborr Relations Board and the Tax Appeal Commission of Ethiopia. It is important to note that in those casea heard before mixed benches of both Ethiopian and foreign judges, sepan rate opinions are written in Amharic and in English. These oplnione are not translations of one amother, but are independent judgments based opon agree. ment among the judges ar to the principlea and final ontcome of each case. In addition, dissents from the majority decisions are published in several of the casea immediately after the majority opinion in Amharic and in Engliah.

Dates in the Amharic version of the judgments are in the Ethiopion Calendar miless otherwise indicated; in the English version, they are is the Gregoriso Calendar unless they are followed by the letters "E.C."




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 EX9:

# SUPREME 1MPERIAL COURT 

## Div. 6

## GERESOU LOLLO v. THE ATTORNEY GENERAL

Griminal Appeal No. 519/56
Penal Lave - Extenunted Iomielde Gross provacation - Causation - Arc. 544 Pen. C.
Criminal procedure - Appeal - Pleid of auildy - Epidence - Art. 105 Grint. Pro. C.
Evidence - Plea of guilfy. ${ }^{*}$

On appeal againat the High Coart's copriction and mentenct of appellant based upon hig plea of gailty to a charge of extenuated howicide, appellant agked for gequital on the pround of selt-defence.

Held: Appeal allowed; cetwiction and sentence quashed.
I. A homicida eonciction trased golely upon the gaily plea of a yonag and ignorapt accrued capnot etand, absent any afidence that bis admitted actions actoally eaged the denth of the detemed.
2. Deapile an accusal'ı ples of gailty to homicide charge tha appeal wart may
 thor thet he canat the dothof of the deaved.

Megabit 29, 1956 E.C. (April 7, 1964 G.C.) ; Justices: Mr. G. Debbas, Ato Mengesha Wolde Ammuel, Gramatch Tesseman Negede: - This is am appeal against the conviction and sentence of the High Court (Firat Criminal Division) dated 6th February, 1964, in Criminal Cnse No. 371/56, whereby the appellant wat convicted under Article 524 of the new Ethiopian Penal Code, and sentenced to three years imprisonment.

From the record of the case, which it a matter of a few lines, it appears that the appellant was acensed, onder Article 524 of the Ethiopian Penal Code, of having caused the death of the deceased, following gross provocation, by way of extenuated homicide. The appellant, without trying to be dishonest, admitted all the trath to the trial court, and said that as he was passing by after mianight on the critical night, the deceased heat him suddenly with a broken bottle, and the appellant, being so provaked, and shocked, retorted by throwing a stone at the deceased. Both appellart and deceased did not

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## Journal of Ethioplan Law - Vol. II - No. 2

Enow each other, Tharee months after the critical night, the dereased passed away, and the prosecution alleged that he died as a resalt of the blow he received on that night from the stone thrown by the appellant. The trial court convicted the appellant on the atrength of his own plea of grilty under Article $\mathbf{5} 24$ of the Ethiopian Penal Code of 1957, and sentenced him to three yenrs inprisonment.

The appellant now appeale against the sentence, pleading that he was acting in self-defence agatost the blow received from the deceased's bottle. He aska for acquittal. It is undeniably trwe that the arguments of the appellant are not quite atisfactory; but the respondent, represented by Ato Negsa Testemma, showed no objection to the amendment of the judgment of the High Conrt.

It is evident beyond the least shadow of doubt from the records of the High Court, that the Court convicted the accused of having killed the decessed solely on the strength of his own plea of guilty. There are many accused persons who are so young and ignorant that they do not realise the conseqvencen of their admitting the trath. Such a young boy of about eighteen years confegsed before the Court that he threw a stone at the deceased, after the latter provoled him by hitting him with a bottle; and that the deceased died three months later. There is no evidence whatsoever in the court record that the deceased died from the wound he received from the stone thrown at him by the appellant on the critical night. No evidence is available to the effect that the deceased passed away as a result of the blow he received from the stone on that eritical night, Under the circumstances, although the deceased passed away, we-are not aatigfied that he really died from the blow of the stone that the appellant threw at him atter be provoked him. The court of first instance should have given conaideration to this important point and not simply accepted the plea of guilty anid jailed the appelant for three years molely on the strength of his miserable confession which amounts to nothing bat telling the trath bat not confessing that he caused the homicide.

Under the circumstances, whereas the respondent himself showed no objection to an amendment of the judgment of the High Coart, and whereas we are not aatisfied that there is evidence beyond the least thadow of a doubt that the appellant did literally carse the death of the deceased, after three monlhs from the date of the accident, and whereas there is no expert evidcace to the effect that the deccased died as a result of the blow he received from the stone thrown at him by the appellant, we hereby see no justification to convict the appellant. We allow the appeal and quash the conviction and order the immediate release of the appellant, unless detained on any other charge. Delivered in opec court this 7th day of April, 1964.

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Div. 1 A

# TEFEFA SEBHat and ESKIAS SEbHat v. bahta tesfaye, araya ABAY. ASGEDOM KAHSAY and WAGAYE WOLDU 

Civil Appeal No. 629/57

Cfot Procedure - Prescripthaf - Interuption - Proc. Mo. 97 of 1948.
Propenty - Usticaption - Family Properfy - Art 1168(1) Ctip. C.
On onder from the Imperial Thilot, referring an mpenl from a judgmemt of the High Cpurt deciding that appeilams' elaim to land in the poisestion of the reaponderte war burred by retpondents* prool of eiwnemip and by preacriptinn;

Fold: Judempent nffirmed

1. Apt. 77, Prot. No. 97 of 1948, propide that the interruption of prescriptiton is con*
 for thret yedra.
2. Art 1168(1) Cly Co providey that family property mif be acquired by umef uion, milem:
E. the property cobsiets of land;
h. the lew of preteripition la unknown in the arta;
c. the lud it in the potsastion of members of one family;
d. the plintiff and the defenciatis are the demendats of common anceptor who once owned the land,
 - daim for family land may be berted by prepeription onless mado by it bafly member who hate bees shesal and who has cone home.

Guenhot 28, 1957 E.C. (Mny 5, 1965 G-C.) ; Juntices: Afenegus Kitaw Yite cekn, Balambarass Tessema Wondemeneh, Ato Taddease Tekle Giorgis: - Enitially, the appellants had instituted proceedinge against the reppondents before the Tigre Taklay Gizet Court on August 27, 1957, wherein they tleged that laad which had belonged to their mother, Foz. Medhin, was unlawfully ocer. pied by people not deecended from her and requested the court to evict them.

The defendanta arged that the land had not belonged to Woz. Medhin, hut rather to their mother, Woz. Teekawie, and that it had always been in their prosegsion. Then they cited the law of prescription of July $1^{-}$, 1948 , and moved Lhat the suit be dismissed.

The Court disregarded the defendanta* motion, tried the cance on itn merith, nd found for the plaintiffs by majority decision. An appeal was lodged to the

High Court and the lower tourt's decision was reveraed. Thereupon the plaintiffe applied to the Imperial Chilot, which examined the two courts ${ }^{3}$ conflicting decisions and ordered the Supreme Imperial Court to try the case.

The plaintiffs, present appelliats, produced wimesees to prove that the land belonged to Medhin, and the defendants, present respondents, did likewise to prove that it belonged to Tekawie and iatroduced docamentary ewidence as well Moreover, they produced witnesges to prove that the dispute was ectiled both amicably and through legnl proceedings in 1940 , that they partitioned the land, and that they have been in powiession of their respective holdingre ever since.

The plaintitfs have failed to prove their claim since $\operatorname{sll}$ the witnesses they produced onfy teetified that they had heara people say that the land formerly belonged to Wox. Medhin. Not one withest testified that he had heard people say that it belonge to Woz. Medhin now.

The defendants claimed that it was Woz. Teekawie's land and their witnerses have teatified that the land in dispute did formerly belong to her and that she was the common ancestor of both partics. The testimony of Fitawrari Abra. ha is of particular importance He teatified that the firat perton to setule on the land in diappte was Shom Agame Wolda, who manied Woz. Tsekawie and gave her this particular piece of land. She had two sons by Shum Agame Woldu, ramely Gebre Amink and Wolde Abzgi. The plaintiffis - and in fact the Fitawrari's wife as well - are descended from the former, while the defendanta are descended from the latier, and they owned the land jointly. He added that the sande land was the subject of litigation in another case in which the inhabitants of their locality claimed that the deacendanta of Gebre Amlak did not own it However, they proved that it formerly belonged to Woz. Tiekawie and the conrt ruled that they were the Iawful owners. Some time later the pretent reapondents sued Gebre Amlak's descendants for a share of their common anceator's land and judgment was given in their favour. The land was partitioned by a settlement whereby Wolde Abugi's descendants were allocated one-third of Woz. Tsekawie's land and the res! went to Gebre Amlak's anccesoors, the pre sent appellants.

When asked to explain how he knew that Shum Agame Woldu had given the land to Woz. Tsekawie, Fitawrari Abraha replied that it way part of the folklore in their locality. Moreover, he said he knew of the ditapute hetween the present appellant" and those people who had claimed that it was "Jiraff Gotit" laxd, and the suit institnted by the present respondents for a share of the land in 1940 .

What ia more, one of the appellants" witnetses, a Fitawrati Wolda, testified that Gebre Amlak's descendante managed to defeat the other villagers' clainn by provigg that the land formerly belonged to Woz. Taekawie. Thus, his testimony tallies with Fitawrari Abraha' and givea the evidence introduced by the respondent more weight.

Jorranal of Efitoplas Law - Vol II - No. 2
In the 1940 proceedings, the present rerpondents admitted that both thry and the present appellantis were Woz. Teekawie's descendants, but they argued that Emperor Yohannes, who could make grants of land and withdraw them at any time. had reveted Gebre Amlak and transerred all the land to Wolde abzgi. The Conrt diamizerd tharir claing and ordered the partition of the land into two enual halwe. Howrer. as said earlier, arbitrators intervened and it
 and one-third to Woldce thagiv, and ever ance 1940, beth parties have been in nosesesion of their respective shares. The elders who helpen settle the disputr have corrohorated the Conrt's finding and documentary evidence was introduced to the same effert. Thng this Court is satix[ied that at the ontset the land belonged to Woz. Tsekawie and not to Woz. Medhin and that the appellante" rlain mut be dismissed.

Although the respondents have aldeated the appellans" claim on other mrounds. they have not abandoned the fefence of preacriptinn they raizel at the beginning of the suit. Hence, this Court must give ita raling on that quention as well.

The appellants contend that the law of preseription does not apply to the land in dispute and that they are not barred by it.

The present suit was instituted on Ausuet 27, 1957. However, they had also instituted one in 1944 wherein they rlaimed sole ownership of the land, hut they did not parsize it any firther when thr Court ditmissed their claim in 1945. Thns there is a pap of $1 \underline{2}$ pears between the two actions. Nouf. Article 27 of the 1948 Proclamation provides that "the interruption of prescription ia considered as not having taken place if due to not having dilizently pursued big rlam in the court the case remnined dormant for a period of three years." Fence, the time expents the 75 year precriptint period. giner it fackomet from 1940 which $i$ - the ycar the respondents took possession of the land.

It is conceded that in some places the law of preacription is inapplicable
 Article 1168 of the Civil Code. It provides that "the pogessor who han paid for 15 congecative year: the taxe relating to the ownership of an immovable shall hernme the owner of such immorable:
*Provideal that no land which is funtly owned by nembere of one family in actordance with eutom may be acquited by asucaption and any member of such family may at any time claim such land."

The provision in the second paragraplı is pertinent to thia case. This prowision was promulgated no as not to dierupt some long standing custome in some parts of the country. But the 15 year prescription period is inapplicable only if the following conditions are present:
j) The canse of the suit must be land and no other immorable;
2) The law of preacription must be noknown in the area:
3) The land mazet be in the posgession of membert of one family;
4) The plaintiff mast, by reference to the family tree, prove that he and the defendants are the descendante of a common ancestor who owned the land at the outaek.

The first and second conditions are easily satisfied; the dispute revolves around the third condition. The phrase ". .. land which is jpimtly owned by members of one family ..." restricts the scope of the prowision to land which is in the possession of some member of the family and exelndes all persons not related to that family.

Now, the appellants did not sue for a bhare of Woz. Teekawie's land, but on the contrary, clisin that the land in the posemion of the respondents uked to belong to Wox. Medhin, and that they as her anceessors have exclusive title to it. It is clear from the phrase "land which is joiatly owned by members of one family..." in Article 1168:1), second paragrapin, that a claim is not barred by preseription only on the condition that it was inherited from some common ancestor and has been owned jointly or individually by members of the same fanily. In such a case, Article 11681) provider Lhat the law of prescription doea not bar a member of the fenbily who hat been absent for a long time from claiming his share of the land from his relatives, provided that he is entitied to a share and that the law of prescription is unkmown in matters pertaining to land in that particular part of the country.

As ponted out earlier, the present appellants claim that the land formerly belonged to Woz. Medinin, while the repordens' position is that it belonged to Woz. Teekawie. Hence, the dispute involves two families and not members of one family. Article 11681]) provides that, even in an area where the law of prescription is not used, a claim is not barred by prescription ouly whed the clainn is made by a member of the family who has beco absent and hat come home. This exception does not cover those cases that involve memberg of different families.

The failure to bar by preacription auits that are brought against a family or individual whose ownership of certain properiy has gone uncontestod for a long time would breed nothing bat annecessary litigation and obstruct peasants from attending to their farming. It ia axiomatic that a court cannot posibly arrive at a fair decision by relyigg on witnesges who testify that they have heard people asy that a certain piece of land used to belong to a certain person centuries ago. In fact, the law of preacription was enacted to meet exactly that problem.

Thus, the law of preseription would have been aufficient to defeat the ap-. pellanta" claim, but the respondents went further nod traced the title to the land and explained under what circumatances they came to own it,

At the start of the case, some of the respondents argued that they ahould not have beer made partien to the suil becauke their land falls under the "Jiraff

## Jourial of Ethioplan Law - Vol. II - No. 2

Gotit" category. They should not have been joined as defendante, but at the appellants' claim hat been dismissed, there is no need to go into the merits of their allegation.

For the above reanons, the Supreme Imperial Court affirms the High Court decigion and imposes E $\$ 20$ more on the appellanta in court conta and damages.

Delivered in the presence of both partien on May 5, 1965.




















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# SUPREME IMPERLAL COURT 

Div. 7

## AZANAW ALEME v. SINGER SEWING MACHINE CO. LTD.

Civỉ Appeal No. 1240/56

Trademarkia - Exclusite we - Regintration,
Unfair competifion - Traderatarky -- Arts. 132, 133 and 134 Camm. C.
On appeal from a judgment of the High Conrt ordering the defendant to remova kis crademark on the grogad that it is on similar to thut of the plaintiff at to cane confotion and thue conatitate unfair eompetition.

Held: Judgment reverged and mit ditmisted.

1. A persen may monopolise a trudemark ind liave ather batinesmen berred from asing it only if he fa the firsi pereon to have that trademark registered with the athoritien empowered to regiater auch trademarls; the mere luet that a person hus uged a trademork for a long time ia not nufficient.
2. In the gbsence of legisharion propiding for rademark registration, ragitraion mart be made according to current practive with ilhe ministry of Commerre and lndastry.

Sene 14, 1956 E.C. (June 21, 1964 G.C.); Justices: YiceAfenegus Hagos Tewolde Medhin. Dr. W. Buhagiar, Ato Mexgeabs Wolde Amanuel: - The Supreme Imperial Court, having examined ohe judgwemt given by the High Court in Civil Case No. 260/56 and having examined appellant"s oubmistiona and documentary evidence, and also having examined respondent's opposition to the appeal and defence, and having carefully studied and examined all the legal objections and interpretations of the law as given by the litigamts, delivers the following judgment.

The statement of claim submitted to the High Court by the respondent's counsel in Civil Gabe No. 260/56 reads an follows:

1. The petitioner is the owner of the trademark depieting e capitai " $\boldsymbol{B}^{\prime \prime}$ with a wroman at a machine and the English wording "Singer Sewing Machines", applying to sewirg machines, their parts and attachments (Exhibit P/1),
2. The frademazk in question, together with 15 other trademarles of the petjitioner have been dnly recorded at the Consulate General of the United States of America at Addis Ababa since December 17, 1930; publication to that effect was made in the newspaper of that time Enown an Cowrier d'Ethiopie, dated December 26, I930, whereby notice
was also given to the publie that legal proceedings would be taken agaist anyone infringing the said trademark in Ethiopia.
3. The respondent, who was a previous employee of the petitiones, pablished a coutionary notice in the Ethiopian Herald on Febraary 20, 1964, whereby a trademark similar to that of the petitioner was pablished which tends to mislesd the consuming public into the belief that the gooda which the respondent intends to markat are actually the goods of the petitioner (Exhibit P/2).
4. In particular, the following degrees of similarity are immediately apparent and constitute a cause of unfair competition:
(a) Buth trademarks show a capital " S " with a sewing machine as the matn mark; in particular, the projecting ends of the letter "S" are identical and conspicnous.
(b) Respondent"s description in writing reads "Sheba Sewing Center" as againet petitioner's description of "Singer Sewing Machines"" This shows that respondent has intentionally used the name of Shebs in order to ntake use of the capital " 5 ".
(e) Both trademarks are for sewing machines and mpare parta in which petitioner has been operating for over a century.
5. The above degrees of aimilarity will, in their cumulative effect, confuse the public and create unfair competition to the great prejadice of petitioner, within the provision ${ }^{*}$ of Articles 132 and 133 (2) (z) of the Commercial Code-
6. As eimilarity is the tent of unfair competition and as the respondent is evidently guilty of axch onfair competition:
(a) A perpetaal injenction should be granted enjoining and reatraining the defendant, his agents, servants, employees, attorneys, successors and assigns and those in active concert or participation with them from using the traidemark pablished under Exhibit $\mathrm{P} / 2$ afore said (Article 2122 of the Givil Code and Article 134/2) (b) of the Commercial Cade).
(b) The defendant should be ordered to ohange his trademark.
(c) The above remedies should be without prejudice to the petitioner's rights under Articles 134 (1) (a) and 134(2) (a) of the Commercial Code.
(d) Regpondent should be condemmed to pay the costs of the present action including court and advocate fees.
In reply to the petition, the present appellant, Ato Azanaw Aleme, sabmitted his opinjon as follows:

The gist of the petitioner's claim dated March 9, 1964, is that he should be allowed to monopolise the European letter " $S$ ".

1. I, the defendant, have eatablished a trading businesa enterprise by the name of "Sheba Sewing Machine School" in accordethe with the pro-
visions of Articles 22 and 88 of the Commercial Code which gives me such right, and by virtze of Articles 47 and 48 of the Revised Connti" tution of Ethiopia by which the Emperor has given freedom to Ethiopians to establish and carry on trading husinessea.
2. The defendant has never used the plaintiffrs trade name Singer Sewing Machine nor infringed his trademarl wherein a foreign lady ig seen sitting under a sewing machine.
3. Petitioner, apart from saying that it is the owser of 15 trademarks under paragraphs 1 and 2 of its petition, has clearly admitted by ite application dated March 9, 1964, the fact that it is not registered with the Ministry of Commerce and Induatry as required by the Commertial Code.
4. The petitioner has over the past yeara monopolised the varions businesses in which he is interested in the Enapire and it is indeed his in. tention to continue to monopolise them. This intention of the part of the petitioner is clearly manifested by paragraph 2 of the atsiement of claim aubmitted to the Court, wherein the petitioner claimed that he has the exclusive right to use 15 trademarks for a period of 34 yeara starting from December 26, 1930. This contention of the petitioner in null and void by virtue of Article 117 of the Commercial Code. Neither she Commercial Code nor the law in force before the Cude authorizes the use of 15 trademarkg for a single business. The defendant therefore prays that the Court decide against the pettioner on this issue in accordance with Articles 115 and 116 of the Commercinl Code.
5. If it is the pelitioner's clear intention to atate that no one in the Empire should be allowed to begin his trademark with the capital letter " B ", what will happen with those trademarks which have been depicted by the letter "S" previourly, to wit Sinclair - "S" Sheba Book Shop " 3 ", Sabean Corporation - " "S", and the S.A.C.A.F.E.T. Company, importers of Fiat oass - "S". The defendant therefore prays that the honourable Court order the petitioner to cite the relevant Civil Code articles in hii petition and that Order File No. 260/56, instituted in the Court, be closed.
In light of the allegations of both parties and the evidence brought for$m$ ard on hoth sides the High Court fornd for the plaintiff. In its opinion it dcalt at length with the ibsue raised by the use of the letter "S", concluded that the plaintiff was entitled to monopolise it and ordered the defendant, present appellant, to remove the signa displayed on the door, walle and windows uf his shop.

The Supreme Imperial Court has carefally considered the dispute caused by the letter " $S^{\prime}$ " which is claimed to be the trademart of both parties. In the opinion of this Coort, the entire case is based on two legal provistons:
(a) the law on regiteered trademarks and sole ownership;
(b) the Commercial Code provisions intended to prevent unfair commercial competition
It does not help to approach the dispute in light of the law on registration of trademarks and sole ownership because there is no such law in Ethiopia. And since we must resort to equity to arrive at a solution, we are compelled to determine who registered this letter " S " as a trademark first by consalting the register kept by the proper authorities. Under the law, or whore appropriately, in equity, a businesiman may monopolise a trademark and bave other businesgmen barred from nsing it only if he was the first person to have that trademark registered with the authorities empowered to register such traderairks. The mitr. fact that a person has mach a tradenark for a long time does not entitle lime for wim ther be io the sole owner und that athers are prohibited from usiner it, unless he was the first ferson to have the trademark regiso tered and restaved for his exclusive uic. In the abeence of any legislation on trademarks, loth equity and the spirit of foreign legislation on the aubject, and the practice ahroad. dictate that we study the registers to determine the riyhts of both parties, surich atudy discloses that the appellant, Ato Azanaw Aleme, was the first person to regiater the said trademark with the Ministry of Commerce and Indusiry pursuant to the current practice in Ethiopia.

In addition. the statement submitted by the adracate for the Singer Conr payy indicates conclusively that it had not registered with the proper authorities the trademark of which it cleins to be the sole owner and on account of which it institnted this suit. Thia Court cannot understand ite reluctance to register it in accordanec with the trage of the country.

Therefore, the action brought by the advocate for the respondent company alleging sole ownership and rerfuenting the enforcenent of it cxelnsive owncrobip is null and widd under the law and in equity.

Moreover, the reswondersl company'; advocate, in answering questiona put to him by ilu Suprene Imperial Court in its eession of May 6, 1964, said that the suit was not brought on the basis of the traderaark, as such, but rather to rurb unfair conmercial competition. Ife eited Commercial Code Articles 132,


These Articles provide as follows:

## Article 132. Unfair monthercial competition.

A trader may claim damages under Article 2053 of the Civil Code from any person who rommits an act of competition which amounts to a fanlt.
Article 133. Caser of unfair competition.
The following shall be deemed to be acts of unfair competition: .. .
(2) ial any acts likely to miglead customers regarding the ondertaking. products or commereial activities of a competitor.

Article 134. Effect of unfair competition.
(1) The court many, in cabes of unfair competition:
(a) order that damages be paid by the unfair competitor; ... the court may in particular:
(a) order the publication, at the cont of the unfair competitor, of notices deaigned to remove the effect of the misleading acts or statements of the onfair competitor, in actordance with Article 2120 of the Civil Code.
The only evidence the respondent company's advocate produced to support his allegation that the appellant had been guilty of unfair commercial competition under the provisions reprodnced above, was the aforementioned letter "S". Altherigh the respondent has not registcred the said "S" letter to be a trademark of the Singer Sewing Machine Company in the Empire of Ethiopia, he was asked by the Court to prove that he was asing the asid letter " $\mathrm{S}^{\text {" }}$ as hin trademark. He produced various trademarks used by the Singer Company, which show that it never used the letter "S" alone as its trademark, but osed it with a woman shown sewing wishin the framework of the letter and the worda "Singer Sewing Machines" written along the contoars of the letter.

In light of the fact that the Singer Company never used the letter "S" alone as its trademark and that the appellant placed the Queen of Sheba's crown over the letter, wrote "Sheba Sewing Center" following the optline of the letter and depicted a sewing machine at the eenter of the letter, the respondent company ${ }^{*}$ claim and its request to the Court that the appellant be prohibited from using the letter "S" is nothing more than an attempt to harass a competing businessman under the guige of the law.

The advocate for the Singer Company has not adduced any evidence to prove that the appellant has engaged in anfair commercial competition. Conequently, the element of the offence, according to the articles he cited, which are reproduced verhatim nbove, are not satisfied and the Supreme Imperial Court hereby dismisses the suit,

For the reasons given above, we find the High Court'a decision in Civil Cate No. $260 / 56$ in conflict with the law cited and based on no evidence, and it is hereby reversed. There is not even a remote similarity, either in appearance or arrangement, between the trademarks uned by the two parties; the possibility of confusing customers does not arise, because the two trademarks are diztinctly different. Therefore, this Conrt rules that the appellant, Ato Azazaw Aleme, is entitled to use the trademark he had daly registered with the Ministry of Commerce and Industry. The respondent company shall pay the appellant $\$ 150$ to cover conrt costa and the damagea it cansed him by inatituting a suit withonk good cause.

A copy of this decision should be sent to the High Conrt to notify it that its decision has been reversed and to have it execrite the new decision.

Majority decision given on July B, 1964, in the presence of the appellant and the respondent's adrocate.

## Azanaw Aleme y. Singer Sewing Machine Co. Ltd,

## MINORITY OPINRON

Dr. W. Avhagam, diseenting:- This is an appeal against a judgment given by the High Court on May 16, 1964, by which the appellant was ordered forthwith to remove from his business premises and to cease to use in any way whatever the distinguishing mark, or trademark, of which a sample was published in the Ethiopian Herald of February 20, 1964. This distinguishing mark congiste of a expital "S" entwined around a sewing machine with a crown over the " $S$ "; the words "Sheba Sewing Center" are written within the "S".

The respondent company also deals in sewing machines and one of the trademarks used in connection with the husiness is a capital " S " with a European lady aitting at a sewing machine. The respondent company considered that there was similarity between the two designs such that it created confosion and amonited to unfair competition to the great prejudice of the respondent company; for this reason the respondent mompray broush ato action in the High Court against the appellant, praying that the appellant, his actwants, agents, employees, attomey, enchesors and askighs, ath those in active concert and participation with them, be enjoined and restraited from using the design complained of and this in ceme of thrtele ( $\$ 412$ ) lat and (b) of the Commercial Code.

The grounds of appeal of the appellent are lemghy and contain maters which are completely irrelevant and undesirable; the Court refer: to the comments made about the Bigh Court or individual members of that Court. Sulymantially, however, the grounds of appeal are that (a) the respondent company: is not a company registered in Ethiopia while the atsociation of the appellant is; (b) that there is no similarity between the feiga of the appellant and that of the respondent comjany, anil (c) that the respondent company cannot be entitled to a monopoly in the besincsis of sewing machines, and he cannot monopolize the letter " 5 ".

As regardi registration, it should be stated that the respotudent company has been registered in Ethiopia under the law in force at the time, that is, the Federal Crimes Proclamation (Proc. No. 138 of 1953, as amended); evidence to this effect has been produced before this Court; for this reason the respont dent company is not prechedecl from bringing an action by reason of Article 1 of ARTICLE F of the Decree to Provide for the Registration of Business Enterprises (Decree No. 27 of 1957, as amended and renumbered Proc. No. 184 of 1961). Furthermore, it may be added that that Article precludes a non-registered company from bringing an action "upon any contrect made by it in Ethiopia;" it does not sem that the Article precludes the bringing of all actions. Be that as it may, there is no question in the present case that the appellant company has been registered in Ethiopia, although its head office is in the United States of America.

Before proceeding further it is important to mention that this case is not based on the infringement of a "registered trademark"; there is no law in Ethiopia for registration of trademarks, It is true that the appellant has brought efidence to thow that he has registered the said design with the Ministry of

Commerce and Industry as a trademark; bat unless and until legislation in enacted for the registration of trademarke and for the protection of such regir tered trademarke, the actual registrations that are at present accepted by the Ministry of Commerce and Industry are of no legal effect and consequence. The prosent case is based on "unfair competition" as explained in Articlo 133 (2) of the Commercial Code; the first paragraph of Article 133 provide3 that any act of competition enntrary to honest commercial practice shall constitute a fault: paragraph \{2| lays down what acts are deemed to be unfair competition, and owe of these acts is an act likely to mivelead customers regarding the undertaking, product, or conmervial artivities of a competitor. The question before the Court in the present case whether the act of the appellant in using the "S" with the machine and the crown, when the reepondent company has been using the " 5 " with the lady at the sewing machine as described above, amounts to an act of unfair competition in that it is likely to mislead customers regarding the undertaking, product or commercial activities of the respondent company.

When there exists legislation for the registration of trademarks, the gist of an action for the infringement of a registered trademark is that the defendant has used, or is using, on hiz goods, or in connection with his business, a mark which belongs to the plaintiff by virtue of registration. In default of anch legialation, the law still protects a trader by means of the action for onfair competition; now unfair competition may be committed in various way and meank, and one of them is by using or imitatimg a mark, design or name which is used by a competitor in the same type of business. The law recognises the right in any pexson, who has been using a particular mark, name or design in connection with his buainess or goods to prevent others from using auch mark, name or design so as to deceive the public into thinking that the busineas carried on by auch person or the goods sold by him, are the business and goods of other persons. The essence of the action for unfair competition is that the defendant has wrongfully represented to the public, expressly or impliedly, that the business carried on by him or the goods sold by him are the businees or the goods of the plaintiff. The remedy which the law affords is based on the theory that the plaintiff has acquired in his business a reputation and goodwill which is his property and which the law protects from appropriation by another, and alad partly upon the theory of protecting the pablic againat fraud, in the sense that the public thinks it is daing business with or buying the goods of one person when it is dealing with another person.

It is not contested that the respondent company has been using the design " 8 " with the woman at a sewing machine for many years, both in this country and elsewhere: in fact the respondent compang many years ago, on December 26,1900 , published in the newspaper of that time, the Courrier d'Ethiopie, a cops of the trademark (the letter " 3 " with the lady at described abore) regie. tered in the United States of America with the aaral notice that action would be taken against any person who infringes that mark. The appellant has formed an associstion called The Sheba Sewing Center duly regintered at the Mi-
mistry of Commerce and Industry and in connection with his business he used at a design the letter " $\mathrm{S}^{\prime}$ " with a bewing machine and a crown on top of the "S". Now it is true as the appellant submitted that no person can monopolise and use as an exclusive design a letter of the alphabet; but a letter of the alphabel can be used in wery different wayg; and it is also to be remenbered that what the law is trying to protect against is the confusion that may arise between one person and a competitor in the bame type of busineag; the appellant has referred to such businesses as Sheha Book Shop, S.A.C.A.F.E.T., Messro. Sinclair, and Sabean Corporation; in axch inatances the initial "S" could not possibly create confusion and amount to unfair ompetition because none of these businesser deal with sewing machines; if they did, the position might be different.

In the present case there is no question that the letter "g" used by the appellant as the firgt letter of the word "SHEBA" is of exactly the same design as that of the respondemt company; it is the satoe in all respecte. But the appellant states that while the "S" of the respondent company has a foreign lady sitting at a sewing machine, his "S" has only a machise with, on top, the crown of the Queen of Sheba. But the question is: "Is the ' S " of the appellant likely to mislead customers into thinking that his undertaking is the undertaking of the respondent company or into thinking that the appellant is dealing with the goods of the respondent company?" In deciding this question the test is tot whether confusion has actually ocearred hut whether the Court is of the optnion that there is a probsbility of confusion arising in the normal course of trade. In considering the probability of confusion the Court should not be guided by the fact that it has had the opportunity of seeing the two designa side by side and the fact that it has had pointed out to it during the trial the points of resemblance and difference between the two deaigna. In considering whether the desigh of the appellant is duch ma to cause comfagion or deception, it must be remembered that the two designs are not seen side by side by the prospective cutomer. Although there may not be confusion when the two designs are seen side by side, the Court must take into consideration that the proppective customer does not see the two designs side by side and that there is a probibility of memory confusion when the two designs are not seen simultaneously. There is no queation that the main characteristic of the two designa in this case is the letter " 8 " with particular typographical characteristics (the asme in both cases); the "S" of the appellant and the "S" of the respondent company both have a sewing machine incorporated in the "S" bat that of the respondent company has a lady siting at the wachine; further more the " 5 " of the appellant is surmoumted by a crowin. Notwithetanding all these different detail, bowever, the main chargoteristic and the principal feature in the desiga which attracts the eye is the " S ", and this with the sewing machine (in one form or another) is, in any opinion, likely to create confai sion and amount to an act of unfair competition within the meaning of Article 133 (2) (a) of the Commercial Code.

For these reasons, I would dismisa the appeal and confimm the judgment of the High Court.


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## SUPREME IMPERTAL COURT

Div. 1 A

## SOLEL BONEE LTD. v. MENGISTU TAYE

## Civil Appeal No. 1147/56

Obligations - Extracontractaral tiability - Liabilty for the actions of athers Dittinction befmeen employee and independent contractor - Arts. $\mathbf{3 1 3 0}$ and 2134 Civ. C.

On appeal from a Judgment of the Bigh Cant awning damage to respondent in payment for atome quaried from respondent's land by appeilanat'p mab-contifactor athd uted by appellont in the consirnction of a roed.

Held: Jndgment repersed and retapondent's claim dioniseed.

1. A contractor ia not Gable for the farlt of an independent anb-contractor, regardlesp of the fact that the contractor makes pre of materiale ampplited by the sub-contractor und which are the exbject of the fand, Art. 2134 Cir. C.
2. A perion who contracts with another to find materinla and anpply thein at his ourn cont and upen hie own rebpontibility, to abtain the necestayy lisenses and permits himpetf, and to be paid for what he nupplits, is an independent contractor and not an employene within the meaning of Arts. 2130 and 2134 Civ. C.

Hamle 11, 1956 E.C. (July 18, 1964 G.C.) ; Justices: Afenegra Kitaw Yitateku, BIatta Bekele Habte Michael, Ato Tadderse Tekle Giorgis: - Solel Boneh Ltd, contracted with the Highway Anthority to build a road and then sub-contracted with Mr. Kalos in connection with building the road. Mr. Kaloa, on the basis of this contract, quarried stone from the land of a privite individual, Balambarass Mengiztir Taye, to be used for the road.

The respondent, Balambarass Mengietu Taye, itmituted a case in the High Court against Solel Boneh Ltd. claiming compensation for the valne of the atone and land taken from him and for the remalting danagea.

The defendant, solel Boneh Litd., contended that it had contracted to pay Mr. Kalos for the eupply of stoncs necessary for the construction of the road and as no relationship, contractral or otherwise, exiated between it and the plaintiff, it could not be held liable to pay damages clatined by him. Defendant then handed over to the plaintiff the document ewdencing the agree ment between it and Mr. Kalos.

The High Coart did not accept the coatontion of Solel Boneh Lad., axid decided argainst Solel Boneb, ordering it to pay E\$5940 to Balambarass Mengiatu Taye.

The appeal is against this judgment.

The argument of Solel Boneh is based not on a question of fact, but on a question of law. It is not denied that Solel Boseh had comracted with the Highway Anthority to build a road, and that it is, therefore, the main conzractor.

It has been ancertained by defence witarsses and from the contract that Mr. Kalos was quarrytig and azplying atone to Solel Boneh.

Apart from receiving stones from Mr. Kaloa, Solel Boneh did not directly quarry or take any stones from the respondent's land. It has not been denied that SoleI Boneh built the road with the atones it took from Mr. Kalos acconding to its contract. Therefore, the question is whether Solel Boneh is responsible to the respondent. Is Solel Boneh liable to pay the value of the stone that was taken from the respondent's land and given to it? The High Court has aaid thaf, since the appellant made use of the stone quarried from the land of the reapondent, the appelant must pay.

But it is necesgary to recognize that although Solel Boneh is the main contractor and Mr. Kalos is a aubib-contracter, Mr. Kalos in an independent person who must fulfill his own legal obligations.

The fourteenth clause of the contract between Solel Bonch and Mr. Kaloa atates: "The sub-contractor shall be responsible for finding the appropriate quarries and for obtaining and securing the meeessary licences and permits for exploitation of same at his own cost, and without in any way iovolving the contractors."

Clase nine of the contract fixes the priee to be paid by Solel Boneh to Mr. Kalos. Therefore, Mr. Kalos is an independent worker mader Article 2134 of the Civil Code, hit not an employee governed by Article 2130 of the Civil Code. Article 2130 would have applied if it were Solel Boneh who was quarrying the stone and Mr. Kalos was a hired labourer doing such work for him.

Since Mr. Kaloe is an independent contractor who has agreed to find atone from any place upon his own responsibility and to be paid for what he sopplies, he is an independent worker, or contractor, under Article 2134 .

Civil Code Article 2134 states: " $A$ person shall not be lisble for the fanita or offences committed by another while earrying ont work which be has asked him to do, where the author of the offence is not subject to the former's authority and is to be considered as having retained his independence."

Mr. Kalos was working an abib-contractor and thus was not directly under the supervision of Solef Boneh but rather contracted iedependently under his awn freewill Civil Code Article 2134 clearly states that contractors like Solel Boneh are not responsible for their unb-contractors when the relationabip is as it wat in this case.

Solel Boneh does not have any contract with the owner of the land from which stone was quartied. Solel Boneh'e contract was aigned with Mr. KaIos. Muat Solel Boneh pay twice for the stones he receives, once to Mr. Kalos and

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a second tine to the hand-owner? When the respondeat saned for the value of the atones need by Solel Boneh in its construction, Solel Boneh showed the respondent the contract he had with Mr. Kalos, which stated that it wat not reoponsible. At this time, therefore, the land-owner must have known exactly the pereon who was quarrying the stones from his land. Solel Boneh. in showing the contract to the rospondent, tried to help the respondent not to make an ortor in filing anit. But the reapondent, rather than suing Mr. Kalow, preferred to sue Solel Boneh.

The High Court, noting only that it was Solel Boneh who used the atone: for constraction, gave its decision in favour of the reppondent.

If a peran gives a contract for the construction of a house, can it be sald that the owner of the stoses and sand used in building the house may claim from the owner of the house for the walue of such materials?

This is not possible. It is trae that, if thert is an amount which the owner hun not paid to the contractor, the owner of the materiala may claim from the person on. whose bebalf the work was done to the extent of the amount due by him to the independent contractor.

Therefore, we do not find the jadgment of the High Court to be in ton formity with the law. For these reasons, the Supreme Imperial Court has dibmined the claim of Balambarasa Mengista Taye againat Solel Boneh Ltd; re verting the judgment of the High Court, the Supreme Imperial Court holds that Solel Boneh is not Giable to pay Balambarau Mengistu Taye.

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## ESTATE OF BEYENETCH ABA NEBRO

Civil Appeal Mo. 227/56
Succestions - Form of Will - Customary Law - Capucity of Testator - Interast of
 Fefha Negost.

On eppeal from a fudgaent of the High Cont denging a petition tor the invallatano of a will.

Feld: Juderment affirmod.

1. A will made prior to the eoming inta foree of the Civil Code is valid according to customary law it it is read in the present of the testator and witnesses, althomg no mention of this formality is made in the will itgelf.
2. According to costomary law only the last page of a will mast bear the deceased's thumb priat and the witnesser nignatures.
3. Artar 881 and 884 Cif. C. require that $a$ holographic will hat not a publige witt, be signed by the testator on every page.
4. A will cannot he invaliduted becruar the cestator was physically weak when the mill whe made.
5. A will leaving property to monagtery cannot be said to benefit witnesses of the will tome of whom are attached to the monastery.
6. A testator may eife preferentint treatment to one of his descendants.
T. La eutomary lam a teltator in not required to justify the disheriton of beirtathew.

Tekemt 12, 1957 E.C. (Octoher 22, 1964 G.C.) ; Justices: Afenegus Kitaw Yitateku, Blatta Bekele Hahte Michael Ato Taddesse Tekle Giorgis: - The present appellants were plaintiffs and the respondent was the defendant in the High Court. The cause of the dispute is the succession to the property of Woa. Beyenetch Aba Nebro.

The three appellants hape asked for the invalidation of her will drawn on November 19, 1957 on the following grounds:-

1. The said will was not signed on every page and certain words theretn were erased or crossed out;
2. Wox. Beyenetch was not sane when she had the purported will drawn op;
3. The said will was not drawn according to her wishes but in the interest of those who helped draw it;
4. Woz. Beyenetch" alleged will revoles the "Ilquina" willed to Alema-
yehu - Woz. Aster'a father - and incorporates the land be inherited from Fitawrari ABa Nebro.

The appellanta argue that the land willed to Alemayehu by Fitawrari Aba Nebro devolves upon his daughter, Wox. Aster. and should not be included in Woz. Beyeneteh's succession. The rest, they contend. should be divided equally among thenselves and the respondent.

The respondent, on the other hand, maintaina that the will was valid beenme (1) Woz. Beyenetch was sane when she made her will, (2) the will was sigwed by the testator and witnessea, ( 3 ! there is no gift earmarked for the witnesges, (4) Woz. Aster is unworthy of succeeding Wox. Beyenetch be cause her father, Alemayehu, had tried to kill Wox. Beyenetch with a gur. Finally she denies that Wox. Beyenetch's will revoked Fitawrari Aba Nebro' a will.

In light of the three appellants' request for the invalidation of the will, we will first consider its validity and then decide whether the succersion of the depeased is testate or intestate.

Since the will was made in 1957 , it means that it was made before the comaing into force of the Civil Code. Titic XXI and Title XXII of the Civil Code were enacted to help coorts decide what law to apply in a specific situathon where there is a conflict between the repesled and newly enacted law.

Article 3355 provides that, "Wills made prior to the coming into force of this Code (September 11, 1960) shall he valid where ( $s$ ) they were valid under legislation repealed by this Code or (b) they comply with the requirement of thit Code." Thus a will is valid if it meets the requirements of any one of the two sub-sections of this Article-

In most respects the provisions of the Civil Code on wills are a carryorer from costomary law.

Aecording to Article 880, there are three typea of wills, namely (s) public wills, (b) holographic wills and (c) oral wills. All of these were known in the Fetha Negast anta customary law. Woz. Beyenetch't will comen under the firt category. In connection with that Article 881 rans as follows:-
(1) A public will shail be written by the testator himself or by any person under the dictation of the teatator.
(2) It ahall be of no effect unless it is read in the presence of the testator and of four witnesees, and mention of the fulfitment of this formality and of its date is made therein.
(3) It shall be of no effect unless the tertator and the witnegses immediately sign the will or affix their thumb mark thereon.
And Article 41 of the Fetha Negast provides that, "A will may be made in writing or orally. A written will shall be walid if it is written by a eribe,

## Estate of Betenetch Ada Nebro

the liquidator or the testator himself in the presence of seven or five witnesses if possible, otherwise three or two will do."

But ender the Civil Code the will is not walill if it is attested by lese than four witnesges. No less than five witnesses were required by our customary law. unless the timee were such that one could not gather that many witnesaes. Bnsically Article 881 (2) of the Civil Code is similar to our enstomary law, but there is one important difference in that "(the will) shall be of no effect unless it is read in the presence of the testator and of four witnesges and mention of the fulfilment of this formality and of its date is male therein." Formerly the will would atill be read in the presence of the teatator and the witnegees, but no mention of this formality was made in the will, nor could fatlure to mention it be a catue of nullity.

Woz. Beyenetch made her will in the presence of her father confessor and six other witnesses and the list page of the will bears her thumb print and the witnesses' signatures. Thus her will is in accordance with both customary law and the Civil Code except for the faet that no mention is made that it was read out in the preaence of the testator and the witnesses.

As pointed out by the appellent't advocte, only the last page of the will bears the deceased's thumb print and the witnesses' signatures, but this can be do caune for nullity. In the firat place that was the aceepted practice in customary law and secondly - as provided by Article 884 - it is only a holographic will that must be gigned on every page. But Article 881 merely provider that "the testator and the witnesses (mast) immediately sign the will or affix their thumb mark thereon," and mowhere is it gaid that the will is of no effect unless it is signed or thamb-printed on every page.

That along with the fact that, contrary to their allegations, the will contains no ersaureb, cancellations or worde written over others defeate the appellanta' first ground for appesl.

Let $n s$ now proceed to the second ground of appeal. The witmesser who sttested the will teatified that thic deceased, sitting propped op in bed though very weak, dietated her will to one Araya Mammo and that she was perfectly sne. Some of the appellanta' witnesses said that owing to the fact that she could not take in any food, her voice trailed off once in a while. But the will cannot be invalidated on the atrength of that alone, hecause it does not prove that the was notorieasly insane when she dictated her will. They added that she died of atomach ulcers in the monastery of Debre Libano.

We concur with the High Conit opinion and bold that the deceased was sune when she dictinted her will.

The third point raised by the appellants is that the will was drawn in auch - way as to henefit the witnesses. Admittediy some of them were attached to the monastery of Debre Libanos, but since she donated the land and house at Yela to the monnatery, we fail to tee what personal benefit the witnettes conld derive from it,

For all the above reasons we find the three appellants' request for the invalidation of the will groundlens.

We will now consider Woat Aster's request separately. Het position is that the will is void because it includes the land and other property her father, Alemayehu, inherited from Fitawrari Aba Nebro. Moreover she claims ahe is entitled to a share of the deceased's property because the was not explicitly disinherited by the deceased.

Though Woz Beyenetch succeeded to the bulk of her father's property, it has been proved that Fitawrari Aba Nebro left some of it to Alemayehu. The Fitawrari's will runs as follows: "If your fate is similar to mine, pass down the 'Ilquina' to Alemayehu. But if he does not obey yoin, dissjpates his inheritance or does tot look after the welfare of the family, appoint one of your other children." It goes on to specify what land, animals and household goods he left his grandson, none of which form part of the deceased's succession.

Woz. Beyenetch's will reads: "Since I inherited all of my father's property and he bade me bequeath it all to one of my children, I hereby bequeath whatever I owd and my 'Ilquina' to my daughter Askale Mcehesha."

Woz. Aster"s contention is that the "חquina" devolves upon her because her father, Alemayehu, had Geen appointed "aleka" by Fitawrari Aba NebroBut Alemayehu oould have earned the "Mquina" only if several conditions were fulfilled. The first was that Woz. Beyeneteh's fate be similar to her father's or, to spell it out, Alemayehu would have to survive her, just as she survjved Fitawrari Aba Nebro. But he died long before she did, hence the "Ilquina" could not be transmitted to his daughter.

Moreover Fitawrari Aba Nebro bade Woz. Beyenetch bequeath her property to one of her other children if she did not find Alemayehu obedient etc. and she willed it to Woz. Ackale.

Therefore the will csmot be invalidated on acconnt of the "Ilquina."
And now for Woz. Aster's seeond claim wherein she argmed that she is entitled to a share of the deceased's property, because she was not disinbexited in so many words.

If a person diea intestate his children are the first to be called to his succession, but if one of his children is dead and is aurvived by descendants, he shall be represented by such descendants. Ato Alemayehr was shot by the Italians in 1936 and is survived by bis danghter, Woz. Aster. The deceased's will makes no mention of Woz. Aster and that has given rise to the argument that she must represent her father in the succession.

Woz. Agkale pointed out that she had proved in the High Court that Alemayeha was unworthy of succeeding his mother and that the Court had found the will valid. Documentary evidence in the form of an order iasued by Azaj Workeneh on March 7, 1934, wherein he ordered the arrest of Alemayehu and one Wolde Tsadik for robbing Woz. Beyenetch was introduced in the High

Court. Moreover witnesses testified that once Alemayehu tried to kill his mother with agun, that they never got along well and that she used to curse him contantly,

Woz. Aster tried to rebut that with the costents of a petition arbmitted to His Majesty wherein Woz. Beyenetch begged Him to restore to her the hand she had aigned away to the Italians so as to save heraclf when they threatened to kill her five months after she had mnsuccessfully pleaded with them to spare Alemayehu in exchange for her land. Eut this petition written to recover her land does not prove that the pardoned Alemayehus because she did not expressly atay in her will that she had pardoned him.

The deceased was within her rights when she disinherited her daughters, Banchi Aymolu and Asamenect, and her granddaughter, Aster, and bequeathed al] the property she inherited from ther father along with what she aequired herself and the "Ilquina" to her daughter, A.kale. A testator may give preforential treatment to one of his successors. In the present case, Woz Askale suoceeded to the bulk of Woz. Beyeneteh's property and nothing much wit left to the appellants. Be that as it may, they cannot contest the will on that ground.

In fact, what the deceased bequeathed to her two daughters, Banchi AymoJu and Asamenech, is roughly equivalent to what Ato Alemayehu inherited from Fitawtari Aba Nebro and was Iater transritted to his daughter, Atter. Thus it can be said that the three appelfants got an equal share of their grandfather's succession.

However, Wox. Aster did not claim a share of the land bequenthed to the three sisters, Banchi Aymolu, Asameneeh and Askale Meshesha; rather she moved for the invalidation of the will and for a new ditribution of the deceased's property. But there is no legal ground that justifies the invalidation of the will.

The "Ilquina" did not devolve upon her, because her father proved himself unworthy of succeeding his mother. Anyway, neither the deceased's children nor her grandehildren can challenge her partiality towards Woz. Askale. The decensed was not required to give reanons to jutify the diaherison of her heira-at-law, as provided by Articles 937 and 938 of the Civil Code, becasae only customary law is applicable to this case. In customary law the disherison holds good unless the deceased pardoned his heir and called him to his aucect sion.

For the abope reasons the appeal is diamissed and the High Court decinion affirmed.



















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Div. 7

GIOFRE RENATO v. PAUL RIES \& SONS (ETHIOPIA) LTD.

## Civil Appenl No. 1114/56

Contractual obbbations - Commercial aravellers - Termination of cancract - Compmanation - Arts. 39 (1), 42 and 43 Comm. C.

On appeal trom fudgment of tha High Cout dimisting appellant"a claim for compentation for sermination of his contract at a commercial wayeller, under Art. 42 Comm. C. , $^{2}$ on the groond that appailant carried on a private businets an tha side and therefore logt his righr to compenagtion onder Art. 39 (1) Comrn. C.; appellani maintained thit rempondent Was aware of the privite brimess and comented to it.

Held: Judgment atfroned and appenl diamissed.
Uniess otherwise provtded in the contract of employment if commerchal travellers or repreaentatives engage in their own private businees on the gide, they lope their right to
 of arich outside activities.

Tekemt 26, 1957 E.C. (November 5, 1964 G.C.); Justices: ViceAfenegus Hagos Tewolde Medhin, Kegn Geta Gebre Hanna Kitaw, Ato Mengesha Wolde Amanuel: - We have given the following order after examining the record and argaments submitted by hoth parties.

As indicated by the introdnctory passage of the appellant's application, this is an appeal against the High Court order given on February 24, 1964 in Givil Gate No. 28/55.

The respondent company does not contest the fact that it had hired the appollant, Giofre Renato, as a commercial traveller. Later on it dismissed him from his job and the appellant inatituted Civil Case Mo. $28 / 55$ in the Bigh Court to collect compensation for dismiassl as provided by Articie 42 of the Commercial Code

The respondent company argued that the appellant was not entitled to any compensation because, part from serying it as a commercial traveller, he aloo carried on his own private business on the side. Thus, as provided by Article 39 (1) of the Commercini Code, he lost any compensation due to him under Articles 42 and 43 . The High Court supported the defendant"s argument and diamissed the case in its order given on Febrasty 24, 1964.

Except for the fact that his pleading is more detailed, the appellent atill relies on Article 42 which prorides as follows: "Where the irader terminates the contract without good canse, commercial travellers and repretentitives
who are bound by antrat entered into for an undefined period of time shall he entitled to fair compentation fixed in accordance with Artiele 2583 of the Civil Code."

In its atatement of defence, the rempondent company argaed that this provision is epplicable only to those cases where the travoller is a fan-time employee devoting all his time and akill to the serviee of the employer. but that it is not applicable to cases aimilar to the present one where a person carrite on his own business while serving another as a commercial traweller becanse in that case Article 39 (1) provides than he loses the compersation he could claim tuder Artiele 42 .

Article 39(1), cited by the respondent company, prowides that: "Unkest otherwise provided in the contract of employment, commercial travellers and representatives may not carry on private husiness. Where they carry on private buninesn, they shall lone their compensation an prowded in Articles 42 and 43".

Therefore, although both parties presented the two provistons in the light most favourable to them, these provitions raise no difficulties if they are viewed objectively,

Article 39 (1) apecifies the conditions of employment and service that must be met so that the commercial travellers and representatives mentioned in Article 43 may be entitled to claim oompensation. It provides that in the absence of any agreement to the contrary in the contract of employment, commercial travellers or representatives may not engage in their own private basinesh, and that if they do, they lose the compensetion they could claim nader Articles 42 and 43.

The appellant adnaits that he carried an his own private business, bnt argued that he is atill entitled to compentation, hecanse, despite the absence of any agrecment in writing, the respondent company was aware of Lis activities and did in fact consent to it.

Neither the literal interpretation of the provision nor the legishative intent is ausceptible of any such interpretation. Thus, the High Court's order in affirmed and the appeal is dismissed.

The appellant shall pay the reapondent E\$5̃0 adyocate's feea and court costs Let a copy be sent to the High Court to notify it that its order hat been .ffirmed.



































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# JOG. HANSEN \& SOEHNE (ETHIOPLA) LTD. v. MESFIN DEMISSIE 

Civil Appenl No. 160/57

Citid procechure - Burden of proof - Appoth - Latowr Relations Boerd - Ats. 34 Coart Procedure Rules.

Admuntstrative law - Burden of proof - Labaur Relations Boand - Cowrt Procedure Rultan*

On oppral from a deciaion of the Laboar Relthions Board whith held that the reasons given by the oppellaint enployer for ditangaing qu employee were not nufticient to juatity the diamianal and ordering that the teploye be reinatated.

Held: Affimed,

1. While the barten is on the platntiff in a procending before the Labour Relntions Board to fatrodace exidence in mppori of his claim (Art, 36, Conrt Procedmet Roleb), where he does not do so but the defendent tntrodecen ovidence parportedly in comeradictiep of the plaintiff's claim, it it not a procedural error queh ae to require reverual for the Boarui to dacide in tefour of the plaintiff without requiring the plaintill fise to subrait exidence.
2. Where the Lahotar Relationa Board held that the reasong piren by an employer for dibmjaing an employee wert mot anficient to justify the dismianal and tive employer appoalod from the Board'g deciaion only on the procedural ground that the Board erred in fatling to require the employee to mbenit opidanct, the merits of the Brard's decition are not hafore the Coart on appeal, and in is not for the Conrt to say whether the Board was correct in bulding that the reasong given by the emplopel were insuffitin.

Tahsat 6, 1957 E.C. (December 15, 1964 G.C.) ; Justicea: Afenegus Kitaw Yitatekn, Dr. W. Buhagiar, Ato Taddete Tekle Giorgis: - This is an appenl againet a decision given on October 2, 1964, by the Labour Relations Board which held that the respondent was diemisaed from his employment by the appellant company without good reason. The appellant ia sppealing against that deciaion not on the merita of the case bit on a point of proceduce and that is that the Board was wrong in calling upon the appellant to prodace evidence in defence when the respondent had not attempted to prove the allegations on which hid case was based as was incumbent npon him ander the Coart Proce dure Rules and in particular onder Article 36 of those Rules.

The respondent's case was that he was disaissed from his employment becarse he was a member of the employees' asociation of the appellant com-

- Thos Lahour Relations Board decition from which this appal whe taken appeara at p. 348 .
pany. It is correct as the appellant submitted, that ander the rules of procedure the plaintiff must prove the allegations on which he bases his claim; if he does not or if he adduces evidence which does not prove the facts on which the claim is baged, the defendant may gobmit to the court that there is no case to answer and that the plaintiff's claim should be dismissed. In the present case it has never been contested that the respondent was a member of the employees' association and it has not been denied that the respondent has been dismisacd. On these unconteated facts it was for the respondent to show that his dismigsal was connected with the fact thit he was a member of the employeea' association; no anch evidence was adduced by the respondent ind the Labour Relationg Board did not ask for such evidence but colled upon the appellant to produce the evidence in defence. The eviderce of the respondent might have consisted in stating that he did nothing which justified his dismissal or that he knew of no reason why he ghould have been dismissed except that he was a member of the employees' association; he might also have been subjected to crossexamination by the appellant. The fact however remain that althongh the respondent did not adduce such negative form of evidence, it cannot be said that the Labour Relations Board did not have before it the evidence, as adduced by the appellant, to show why the respondent was disminued. On awch evidence the appellant tried to show that the respondent was dirmissed not because he was a member of the employees" astaciation hut for reasona which justified the dismisgal of any employee. The Board, however, did not accept the reasons given as heing good reasons for the dismissal of the respondent. Whether the Board was right or not in reaching such a decision it is not for this Court to say as there is no appeal on the merits of the case but only on the point of procedure, and in the circumstances of this case this Court does not consider that there has been a miscarriage of justice on the ground that the rulea of procedure were not atrictly followed and for these reasont the appeal muat be diamissed.

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# SUPREME IMPERIAL COURT 

Dit. 5

## HIGHWAY AUTHORFTY v. SOLEL BONEH LTD.

Civil Appesl No. 670/57

Contractual obifgationts - Admitistrative contracts Specific performance . Trbitraton - Arts. 3131,3194 and 3525 Civ. C.

On appeal from judgnent of the High Comit ordering the Highway Anthority to comply with a clange of its contract with Solel Bonch Lud Lhat provided for unbinition of all diopultes under the contract to arbitration.

## 

Art. $\mathbf{3 1 9 4}$ Chy, © does not prevent che courta frome ordering administratife anthoritiep 10 eomply with contract elarace providing for anbmigrion of digpates to arbitration.

Guenbot 6, 1957 E.C. (May 14, 1965 G.C.) ; Justices: Vice-Afencgus Abe dje Debalik, Blatta Bekelo Habte Michael, Ato Kassa Beyene:- This an an appeal from the High Court's decision given on February 25, 1965 in Civil Case No. $242 / 57$. The crux of that decision was that according to Article 3194(1) court cannot order sdministrative anthoritits to perform their obligations, but that it can order specific performance in procedural mattera. In legal terminology the word "obligation" means performing what one contracted to do. In the case at bar, the plaintiff has already performed its obligation and ita request is that the defendant be ordered to refer to an arbitrator as provided in the contract. The defendant's argument that Article 3194(1) exempts it from being compelled to gabmit to third party arbitration has no legal basis. Hence it should aubmit a proper statement of defence.

The appellant conterds that in Iight of Article 3194(1), which provides that "the court may not order the administrative authorities to perform their obligation," the Conrt should have only awarded damage and granted its motion to dismiss the case, hut that it distorted the interpretation of the provision and ordered the present eppellant to defend the case on its merits, Thus, the appellant mover that the High Court decision be quashed.

On the other hand, the position of the respondent" advocate is that Article 3194 (1) hat no bearing on the fispute because the plaintiff has already accepted the road the reapondent contracted to construct. Hence, there iz no reabon why it should not refer to an arbitrator and the High Court decision ahould be affirmed.

As poinned our by the appellant's advocate, Article 3194 (1) does indeed provide that "the court may not order the administrative authorities to perform their ohligation." In order to determine the meanizt of the word "obligation" in the legal context and to find out whether an agreement to refer to an arbitrator falls within its scope, we must study Article 3194 (2) on Which the advocate for the plantiff relies mont to make his case. It reads: "The conrt may, however, make an order for the paymeat of dambeen unlest the administrative anthorities prefer to perform their obligations." Before interpreting the word "obligation", we must explain under what circumstances "damages ${ }^{7}$ are awarded.

An we nee it "datnages" is compensation awarded to a party who saffered a detriment dwe to the other party's fatlure to perform his obligation. Under this definition the present case does not involve damages, but merely a dispute over the plaintiff's refusal to refer a dispute to an arbitrator, pursuant to the contract. The Court could have awarded daznages to the plaintiff and exempted the defendant from performing if the canse of the dispute had been the performance of it obligation. However it mexely involved a request to the Cant to order the present appellant to refer to arbitration. In that case there wat absolately no reason to ayrard damagen, becausc an asseasiment of the lors inrurred is a prerequisite to awarding damages.

The respondent delivered the road to the Highway Authority and asked it to refer to an arbitrator to assess the extra costs the respondent had incurred. The appellant'a refusal to comply on the ground that no court can order it to refer to en arbitrator is untenable.

Article 3131 helps even more to elucidate the High Court"s interpretation of the provision. Sob-section 1 of this Atticle providea that "Contracts concluded by the State or other administrative authorjties shall be governed by the providiont of this Code which relate to contracts in general or apecial contracte" And sub-aection 2 reads: "The provisions of this Title shall supplement or replace such prowisions where the contract is in the nature of an administrative contract".

Since the Civil Code provides for arbitral submiscion from Article 3325 onwards, and the articles on administrative contracts do not prohitit referring to an arbitrator, by rirtue of Article 3131 (2) the rules concerning arbitral submissions are supplementary provisions. Therefore, the appellant's argament that the angite word "obligation" in Article 3194(1) exomerates it from referring to an arbitrator is not valid. We cannot arrive at an interpretation of the word "obligation" other than that of the High Court.

For these two rensons, the High Court's decision is affirmed and the appel diamiled.


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EBRE 1 IFET DEBASSAI $\%$ LA FONDIARAA FIRE INSURANCE CO. Civil Appenl No. 134/56

## LA FONDIARLA FIFE INSURANCE CO. q. GEBRE HIFET DEBASSAI

Civii Appeal No. 1375/55

Contracturl oblifationt - Arbitation - Arbitral atubmithion - Apperl frem Mant
 1715 Civ. 6 .

On appeal by both parties from an order of the Hizh Coart apholding an tribitral award ulat foond that an eucident had otcorted to the iasarod track within the terma of the
 sequential damages due to an onreasonable delay in the repairing of the rehteit.

Held: Ordow of the High Conft and whitral award altured to prowide for compenembon for conmequential damegean due to lores of ase of the track tor a period ol one ytary mind 13 dify

1. An arbitral apuafd can be sel aitde by tbe conrth, in spite of a chath in the arbizfl submianion to the effect that the decision of the erbitrators shall be fianl and that the partien ghall have no appeal ugiant that decision, whenever:

- the arbitral minnisaion or the award has heep jmproperly procured, at, for eximplt, where the arbitrator is deetived or material eridence ia frandritanty eqneesled; or
b. the arhitrator or umpire in suilty of migeondict.

2. The exprestion "minconduct on the part of the arbitrator or atnpire" ia of widr import; it includet, on the one cxtreturt, bribery and corrsption, and on the other, mere mistala as to the acope of the amhority conferted by the smomision (mony other examples of misconduct ere given in paragraph eeven of the judgment).
3. Where an inamame company accepts an accident report ind acte according to it and ouly : year later triea to nroid respompibility under the ingryance policy an abitrator acta within hia athority when he requiret the inamince compang to prove thit the report wres faler.
4. Althongh a clater of an inmarance policy that escladea sompezation for len of ate of the rehicle inamed in a valid clame, it dows not exclode liability for logs of are of the

5. Nokice moder Article 1772 of the Civil Code is nol a prerequisite to a rhim for compengation for logn of ust when an iorurance company hast entered into a contrect fith - garage providing for repair by a apecified dete.

Sene 2, 1957 E.C. (Jone 9, 1965 G.C.) ; Justices: Afenegus Kitaw Yitateku, Dr. W. Buhagiar, Ato Taddese Tekle Giorgis: - These two zppeals srise out of an insurance policy which Ato Gebre Hiwet Debassai (hereinafter referred

## Geber Hiwet Debassai f. la Fondiara Fite Inserance Co.

to as "the insured") took out from La Fondiaria Fire Insarance Co. (hereinafter refercel to as "the insurarce conpany") for the insurance of the insured's truck used for the transport of merehandise. The ingurance was against the rinks normaly ineluded in such insurance policies. The inamance was not against all risks and for the purposes of this judgment it is anfifieient to mention that one of the risks insured againet was "]ost or damage to the truck and accessories thercon resulting from aceidental colbision or overtaraing or collision or overturning consequent upon mechamical breakdown or consequent apon wear and tear but excluding accidental damage to tyree unless the truck is damaged at the same time." The estimated value of the insured truek is declured by the insured to be E $\$ 20,000$. The policy contains the noual exemptions from liatility and we need mention here the exemption from liability for "the consequential logs sustained by the insured for lose of the use of the track." The policy provides also for arbitration in case of dispute arising between the insured and the insuramee comprny.

During the instarance period the insured alleged that the insured truck sustained an accident and he duly reported anch accident to the imatarate tompany and submitted a claim for compensation; the accident was alleged to have taken place on June 20, 1960. The diappate was at first submitted to the High Court, but the matter wat referred to arbitration as provided in the insurance policy. Eventazly, and to be exact on June 30, 1961, a nubmiseion of arbitration was prepared; two arbitratore were appointed, one for the insored and the other for the insurance company; because of certain terms in the anbmission one of the arbitratore could in the absence of the other arbitrater give an award by himself this point was the ambjeet of a decision by the High Court and this Courth. The remaining cole arbitratar, Mr. Sobhi Kronfli, gave his award on March 30. 1963. The insurance company appealed against that award on various grounds to the High Court. The High Court on July 22, 1963, gave an order holding that the arbitrator had exceedeli his jurisdiction in award. ing the in=ured $\mathrm{E} \$ 24,500$ as damages for a period of 2 years and 6 day at the rate of E $\$ 1,000$ per month for loss of the use of the truck and the High Court set aside that part of the award.

The frement two appoals are appeals againat that order of the High Court.
The insured is appealing agninet that order on the groond that the quebtion of setting the amount of damages, including damages resulting from lon of use of the truck, was within the jarisdiction of the arbitrator in accordance with the terms of the submissiod of arbitration, and that, therefore, the High Court was wrong in interfering with the award of the arbitrator. The insurance company in appealing agninst that order on the ground that the arbitrator has disregarded the conditions of the policy in that (a) the inswed did not prove that an accident had taker place within the menning of the risks of the policy which provides for collision and overturning and (b) the arbitrator allowed damates for loss of one of the truck when the policy excluden specif. cally damagen realiting from loss of une of the truck.

The refevant terms of reference of the arbitration were:
${ }^{4} 13$. The Board of Arbitrators' duty is to amicably settle the dispate taking into consideration the Terme, Provisions and Conditions of the Ingurance Policy as far as not inconsistent with the Civil Law of the Empite, taking into conaideration the letters exchanged by both parties, the offer and the contract of Messra. G. Montissori who contracted with the mecond party - La Fondiaria Insurance Co. Ltd, to bring the vehicle to Addis Ababa to repair it and hand it in good running order in same condition as it was when the accident occorred. The Board of Arbitratorg will albo decide in their decision what part of the expensec and fees ench party will pay, i.e. fees paid to the Court, but not the advocates.
14. The decision given by the Board of Arbitrators unanimonaly or by matiorty shall le considered as final by the parties and the perties ahall have no right so appeal against that decision or any part of it..."
The first point to be considered is whetber in view of the provision in clanse 14 of the submission for arbitration there could be an appeal to the High Court and whether the High Court was wrong in interfering with the deciaion of the Board of Arbitrators. There can be no question that although in the arbitral submisaion it is agreed that the award shall be finat, there are occasiong (and this has been the constant practice of these Courts) when the award or part of it can be challenged in a court of law. The Civil Code has no provition on this point and neither have the cxisting cules of civil procedure; this is a matter, however, which should be considered in the enactment of a new Civil Procedure Code. Generally, however, it may be said that the ground on which an award can be set wide are -
(a) that the arbitation or award has been improperly procured, ator example, where the arbitrator is deceived, or material evidence is fraudalently concealed;
(b) that the arhitrator or ompire misconducted himelf.

The expression "misconduct on the part of the arbitnator or umpire" is of wide import; it ineludes on the one hand bribery and corruption and on the other a mere mistake as to the scope of the suthority conferred by the sabmission. It is difficalt to give an exhanative defintion to the expretion misconduct ${ }^{\text {" }}$ but a few examples may be given: thrs misconduct occura if the arbitrator or tupire, a the case may be, fails to decide all the matterg which were by the anbmission referved to him; if by his award he purports to decide matters which were not in fact inciaded in the submission; if the awnal ia incon sistent or is uncertain or ambiguoas or is on its fate erroneous in mattere of law or even if there is some mintake of fact which is clear beyond any rensonable doubt; if there has heen irregularty in the proceedinge, an for enample, where the arbitrator failed to give notice to the parties of the time and place of meeting or where the arbitrater refued to hear the efidence of a moterinl
witness, or where the reference being to two or more arbitrators, they did not act together: if the arbitrator or umpire failed to act fairly towards both parties, as for example, where the arbitrator heard one of the parties and refused to hear the other, where he took instructions from or talked with one party in the absence of the other, or where be has taken evidesce in the ahsence of one party or both parties or promised to hear certain witnesess and then made bis award without hearing them: if the arbitrator or ampire acequires an interest in the subject matter of the reference: or if he takes a brihe from either party. As regards an error in law on the face of the award, it is to be mentoned that in order to be groand for setting aside the award, the error must be such that there can be found in the award, or a document incorporsted therewith, some legal proposition which is the basis of the award and which is erroncous. If a specific question of law is submitted to the arbitrator for this decision and he decides it, the fact that the decision is erroneous does not make the award bad on its face so as to permit of its being set aside; and where the question referred For anbitration is a question of law, the decision of the arbitrator cannot be set aside only becanse the Court would itself come to a different conclusion; but if the arbitrator has proceeded illegally, as for example, if he has decided on evidence which was not admissible or on principles of construction which the law does not countenance, there is error in law which may be ground for settixg aside the award.

Having established these principles let us consider first the objections to the award rajed by the insurance company. Theoe objections may be ammarized as follows: it is submitted that the arbitrator went out of the terms of reference of the arbitral submission because aceording to such submission the arbitrator had to decide the diepute between the partiea according to, inter alia, the policy of inelurance; this policy of inamance does not eover all risks (as the arbittator meems to have assamed - see the second paragraph of the award where it is atated: "Ato Gebre Hiwet insured the track with the Insurance Company against certain fees in reference to the said policy as for any accident to the truck.... ). In the first place, the ineurance company states, thene wae no accident at all for which the insurance company could be liable; secondly if there was an accident as reported by the insared, then such accident was not such as to be a tikk covered by the insurance policy; and thirdly if there wan an accident amoanting to a riak covered by the insurance policy, then the arbittrator was wrong in law in allowing damaget for loss of uge of the truck hecaure ander the insmrance policy there is an exemption from liability for mach Asmages.

If this is the case, then clearly, in accordance with the primeiples laid down above, the arbitrator has been guilty of miscondwet (such word being ased in its general meaning) in that either he disregarded the terms and conditions of the jusurance policy which under Article 13 of the arbitral submiosion were to be taken into conaideration in settling the dispute or he has wrongly interpreted the legal effects of such terms and conditiona.

The first objection of the insuranee company is that there was no accident for which the company is liable under the policy. The facts on this point are as follows; when the alleged accident oceurred the insured made a declaration in which a description of the accident was given as follows:
"while the truck wat on its way to Dembidonlo Ghimbi on June 20, 1960, at 18:30 hrs. p.m. and while it was proceeding on the road alang the river Bir-Bir owing to rain one of the wheels was slipping thus cataing the truck to go back and fall into the adjaceat river" :
The insurance company accepted this declaration and arratigenents wete made for the transport of the track to Addis Ababs and for the necessary repairs by the insurance company. At a later stage the ingurance company meems to have bad some doubr about the veracity of the declaration regarding the aceident and started to make certain investigations; during the proceedings of arbitration they sabmitted that there was evidence to how that the damage to the track was caused by the negligence of the driver and not as a reanlt of the accident as described by the insured; the negligence of the driver consitited in that the driver tried to cross the river Bir-Bir when the water was too high. This evidence, according to the insurance compony, consited of a witness who had given a statement to the Police at Ghimbi on Joly 4, 1961. The arbitrator gave the insurance company the opportunity of calling the witnesses, but they were not produced (apparently because they could not be found); in those circumstance, the arbitrator rightly rejected the allegation of the insurance company becarse the atatements of the witnesses were made before the Police and there waz no possibility for the insured to cros-examine them. For these reasons thercfore the insurance company has no good reason for objecting to the finding of the arbitrator that there was an accident.

The second objection of the insurance company in that the accident, as reported by the insured, wat nor a risk which is covered by the in:urance policy; the reason for this is that the poliey covers loss of or damage to the trock instared resalting from any accidental collition or orertaraing or collition or overtarring consequent upos mechanical breakdown or consequent upno wear and tear" - clause 1 of the policy. Now, it is aubmitted by insurance company, in the present case there was no colliaion and there was no overtorning. Furthermore, it is anbmitted that the policy does not cover damage resulting from flood and in the present case the damage was cauked by the flooding of the river, (as a result of heary rains) where the track got atack after getting to the bed of the river. With regard to the flooding there is nothing in the award which shows that the river did rise, after the truck got to the bed, as a reanlt of heavy rains As regards the collision and overturning it is to $\mathrm{b}_{\mathrm{e}}$ poted that the insurance company accepted the declaration describing the accident and aceepted sach cireamatances as amounting to a riak covered hy the insorance policy so much so that preparatione were being made to bring the truck to Addis Ababa and carry out the necessary repairs; it wai only much later, about a year later, that the insurance company tried to avoid reapomaibility.

## Gerfe Hiwei Debasga v. ea Fonilaria Fire Insuhance Co.

and this whs when they had some indieation or suspicion that the declaration made by the insured was not true. In these circumatances, the insurance company scoepted by their corduct that, atthough there may not have been collision or overturning of the truck, the accident was a risk covered by the policy. For thene reasons this objection of the insurance company is unfounded.

The third objection is that the arbitrator was wrong in allowing damagea for loss of use of the truck when under the insurance policy there is an exemption from liability for such lose. Now in clause (b) of the Proviso (dealing with exemptions from liability) of the policy it is stipulated that "the company shall not be linble to make any payment in respect of consequential loss sratained by the insured or loss of use of any vehicle described in the selhedula hereto". In this comection it is important to mention that the policy contains also the following conditions:
*4. In the event of loss or damage to any wehicle deacribed in the schedale hereto the complany may at its owt option repair, reinstate or replace auch vehicle or part thereof and/or its accessories or pay in cash the amonat of los or damage and the liability of the company ahall not exceed the actral volue of the parts damaged or lot plus the reasomable cost of fituing and in no case exceed the insured's estimate of the value of such vehicle... at the time of loss or damage whicherer is the less."

It is also to be mentioned that soon after the accident the inarance company excrcised the option to carry out repairs to the track but sueh repain were delayed. It was on Jpme 12, 1961 that the insurance entered into an agreemotri with one Moatinsori for the earrying ont of repnirs which were to be completed not hater than August 15, 1961. This agreement was made a few days before the date of the arbitral submistion, which wat Jane 23, 1961, and such agreement between the insurance company and Montiseori was a matter which was to be taken into consideration by the arbitrator in settling the dispute. It is also to be mentioned that there was correspondence hetween the infurance company and the insured which was also to be taken into consideration. There was also a letter sent by the arbitrator to both parties in which certain issues were settled and to which the parties agree; the dispote, however, was clearly to be settled according to the insurance policy, the Civil Code of Ethiopia, and the Montinsori contract and correspondence mentioned. Also there is no question that the arbitrator was given the power, subject to the shove conditions, to specify the period or periads during which compensation for logs of ase of the truct should be paid. The conclusion of the arbitrator on this point war That compersiation was payable at the rate of $\mathrm{E} \$ 30 \mathrm{a}$ day for the period from the date of the accident until the day on which the aruct was anctioned by Messra. A. Bespe \& Co. as being in fit state of repair and in good running order; from thia period the arbitrator exeluded a period of 3 monthe and 20 days which is the time considered necessary to complete the repairs of the track. (This period of 3 monthe ard 20 dafs was the period of 2 months arigi-

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natly agreed to by Montisori plus another period of 1 month and 20 daph which the arbitrator considered neceseary in riew of certian mattera which arose in the conrse of reparations.) The period reckoned by the arbitrator during which comperation for loss of use was payable amounted to 2 years and 6 dayd. Now, it is true the insurance company exercised the option so bring the track to Addis Ababs and to carry out tho mecessary repaira, bat this undertaling does not, by itelf: amount to an obligetion to pay compenstion for loss of use of the track and thin for two reasong, namely, (a) because it in clearly atated in the policy that the company is exempt from linbility from loss of use of the truck consequential apon an accident and (b) because even if the option amounted to an obligation to carry out repairs, thear noder Aricle 1772 of the Civil Code the insured conld not invoke non-performance of the contract by the insurance company except ofter the company had been placed in defmult by requiring the company by notice to carry ont the robligation nader the contract. And there ie no evidence before the Court or before the arbitrator that the ingared had placed the company in default by notice given. In view of thin provision of law and the insurance policy there was no liability at this stage for compensation for lose of ube of the truck. The position is, however, different under the contract entered into hetween the company and Mortimaori, which contract was also a basie for the ettlement of the dispute; in this contract Montiseori medertook to complete the repaiss within a definite period of time (which original period of tame was later extended by the arbitrator, the parties consenting) . Under this contract it was not necesang for the ingured to place the ingurance company in default because under paragraph (b) of Article 1775 of the Civil Code no notice in necestary when the debtor has ansormed to perform an obligation within a fixed period of time. In view of the Montigenri contract the insurance company became liehle for damages gratained by the insared as a resalt of the non-fulfillment of the obligation. Now the period which the arbitrator beld to be reasonable for the carrying ont of repairs was 3 months and 20 days; acoording to the Montimorit contract the repaire were to be completed mot later than Augost 15, 1961, with the extennion of one month and 20 days, the date of completion should be October 3, 1961, and it is from this date that the ingurance company ohould be held linble to pay compensation far low of use of the track. net under the prolicy but umder the agreenaent with Montistori. The eloaing date of the liability has heen found by the arbitrator to be the date on which Messra. A. Besse and Co. ganctioned the truck to be in a good state of repair and in good romming order, which fir October 17, 1962. The period from October 5, 1,61 to October 17, 1962 is one year and thirteen days (1 year, 13 days).

With regard to the amount awarded by the arbitrator on this noconnt the inarance company whmitted that there was no eridence before him to enable him to come to the concluston that the loss sustained by the insured amounted to $\mathbf{E} \$ 1,000$ per month. Now it is true that there was no evidence on this point but this Court considers that E $\$ 1,000$ is not an onressondele amonna though it may not conform exactly to the profit made by the innared by

## gebri Himet Debasgai v. la Fondiabia Fibe Insueance Co.

the use of the truck; for this reazon this Court sees no reason for interfering with the monehly rate 3 found by the arbirrator. The amount, therefore, to which the insured is entitled for loss of use of the track is E $\$ 1,000$ for the period of 1 year and 13 days, that is $\mathrm{E} \$ 12,433$ and in this respect this Court alters the award of the arbitrator and alters the order of the High Court.

As regards the appeal of the insured, who claims that the High Court was wrong in interfering with the award of the arbitrator because it was within the jurisdiction of the arbitrator to decide the question of damagen inclading damagea revolting from loss of use of the truck, this Court bolde that the High Court had jurisdiction to enter into the matter for the reasons set out above in thin judgment in dealing with the objections of the insurance company and the appeal of the insured is allowed in so tar at the High Court was wrong fin disallowing all the damaget as awarded by the arbitrator and in so far as this Court hold that the amount of damages to which the insured is entitled for lows of use of the truck is $\mathbf{E} \$ 12,433$.

The insurance company shall pay costs to the insured of $\mathrm{E} \$ 200$ and ench party will sufain the court foe paid for this appeal.




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## HIGH COURT

Addis Ababa, Como Div. No. 1

# MESFIN ZELELLEW * THE MINISTRY OF PUBLIC WORKS AND COMMLUNICATIONS 

Civil Cate No. 301/55

> Cobimon carrier fegulation -- Licencing power - Lintitation of compention - Tromsport Board - Arts. 21 (itia) and 21 (iii) Proc. No. 35 of 1943.
> Administrulipe lave - Lirencing potcer - Trantport Board.

In tin action to enjoin the Ministry of Pablic Works and Comannicazions from Limitiar the petitioner's busei to atix trips per month on the Addis Abaha-Jimma circuit.

Held: Injonction granted.

1. Althouth Art. 21 (dii), Prot. No. 35 of 1943, empowers the Transport Boand to net up timetablea for the operation of pagenger bnses licemed by it, this power may be exercised
 be used an a mean of limiting compefitiod among bus operatora.
2. The Transport Basid sbould considar the adequacy of bua tervice an a tiven roate before lifenzing additiousl boees for the ronte, Art 21 (ifin). Proct No. 35 of 1943, bat it may not correct ita mistake in granting an exeesfive nomiber of licensea by imposing new
 tion of the wipences.
3. A deciaion of the Trangport Boand interfering pith private arrangements between bas owners, regalating eompotition hetweed them, in unawful wbere the private arragements do mot upett dfective norving.

Sene 12, 1955 E.C. (June 19, 196 G.C.) ; Judges: Mr. S. Stephensoa, Ato Kebede KeleI, Captain Eyassu Gebre Hawariat: - The petitioner is the owner of two motorboses and holds walid licences for their use in pablic passenger transportation on the Addig Ababa - Jimma road.

By a letter dated Apri 20,1963 , Exhibit P/1, the Ministry of Public Works and Communications informed the petitioner that the Tramsport Board had decided on April 11, 1963, that in the foture he was entitled to derve the Addia Ababa-Jimma circuit only gix umes per month, that is, three times with each bus, instead of eight times per month as he had been until then.

The petitioner now claims that the decision of the Tranaport Board wag without any legal basia and prays that the Ministry of Public Works be enjoined from preventing him froto making eight tripa per month as hitherto.

The Minitry maintanins in defence that the decision was lawfolly given and that the petitioner has no valid objection to it. The Ministry contende that the reatriction in the number of trips the peritioner is allowed to make with his buses is within the righte reserved to the Transport Board under the conditions upon which the liceaces were granted.

The Transport Proclamation of 1943, Proc No. 35 of 1943, declaref in Article 21 (iii) that the Transport Board, when approving the issae of a licence, may inposee any conditions it thinke fit and that it may require the lipencing officer to cancel a licence for a breach of any condition. The printed application forms that were used by the petitioner when he applied for hia ficences contain the following clauses:
"In the cyent the above described vehicles will be licenced as public service vehicles I hereby promise and agree that such vehicles will be operated only over routes, on the time shledales, for the fares approved and in accord with the conditions laid down from time to time by the Tramsport Board."
The licences actually isened to bim costain clanses to a similar effect.
It followa from this that the petitioner would be bound to observe any timetable set up by the Transport Board to ensure an effertive and regular mervice of the circuit in the interest of the public. It shomld also be clear that lhe must comply with any amendmentr in existing sehedules that the Board had considered fit to make from time to time with the said purpose in view.

The representatives of the Ministry produced in coart the timetable by which the petitioner is allowed to serve the route only six times per month. The timetable shows that wher bus owners licenced to use their buess in patsenger transport over the same route were also restricted in the number of trips they were allowed to make. It might seem to follow easily from this that the petitioner cannot complain if the Board icemed it neassary to reduce the petitioner's number of trips in order to sitt up an effective timelable.

Such a conclusion, however, would not give sufficient attention to the real Eround tor the Board's decision. Cicarly, the Board has approved too many Licencea for passenger buses ofi the limma circuit. There are at present 19 valid licences for this siagle circuil. It ieems quite safe to say that the Board, in apuroving so many liesmes, has made an error. Article 21 (iia) of the Iransport Preclamations provides that:
'In the cast of public ancyice and commercial whicleas The extent to to the following:
"In the case of pubic service and commercial vehicles: The extent to which the route in respect of which the application is made is already served."

## Megfin Zelellew y. Mintstet of Public Works and Communchtions

That the Board has overfooked this beneficient proviaion is quite clear from the remark of one of the Minigtry's representatives in Court that: "People apply aud we gramt."

The isutie of the cose is in sight. The time ochedule has been set up by the Board not for the aingle purpose of ensuring a regular and good service in the interest of the poblice, but chiefly to regulate and restram the competition between too many licences. There is no doubt on this poim. That the Board, in reatricting the petitioner's number of trips, has been motivated by a desire to obtain what it may have deemed a fair dietribution among the bos owners of the trips over the route is evident from the letter, referred to anowe, that was addressed to the pertitioner by the Ministry, and it is openly admitted by the defence that such a distribution of trips formed the real grout for the decision to restrict the namber of tripa and the resulting timetable.

We have now reached the true ignue. The reatrictive tifuetable was not set up for the salke of setting up a time schedule, but for the sake of regulating private competition. Neither the letter, nor the spirit, of the Transport Prodismation allows the Board to impose on licence holders a condition based on such a groand. Regalation of existing private competition in mot the concern of the Traneport Board.

The dietinction may be subale, but it would appear that no objection cond be raiged to a condition inberent in a timetable that, having due regard for the interests of the public, in a reasonable way obviated unnecesary scramble for paengers. But let wa take an extrente example. Suppoze that a licence was granted to use a velatele as a pablic service vehicle on a route which could easily support daily mervice, and the Board there imponed the condition that the licences could drive only once a month. That would be equivalent to depriving him of the benefit of his licence, bud the condition would olvioualy be unlawful.

Let us consider the case of the petitioner according to this eriterion. He has liceacee to gerve the Jimma route in passengef transportation with two buses. Even allowing for layovers for repairs and the like he could make many more than gix trips per month withoat the leag difficulty. With only aix trip a month; ie is prevented to too great $n$ extent from using his buses to capacity. The condition imposed apon him amounte to nothing lese then a virtual deprivation of his litencea. It cannot be a lawful condition.

The reatl might have been different if the petitioner had applied for licences to use the bases on the ronte on a part-time basis, and had heem granted his lioences with that understanding, but that ia not the case at all. The petitioner hes no other nae for his hoses than to drive them in public pasgenger transportation orer the Jinme route, and that was quite clearly understood when he applied for and wat granted his licence. The situation might aloo have looked different if the Transport Board had allowed the petitioner to operate bis bumes on other routes when they were not used on the Jivimat route, hot the

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Board han not done thin Rather, it han maxply demanded that the broot ftand idle for the grester part of the time.

That full and unrestrained competition on this circoit, gince there are too many lieenoe holdert, might lead to failmre for some bas owners, maybe for the petitioner, in not a point to be considered by the Court. The individunl bus owners should have conaidered that possibility when aequiring their busea and applying for licences. The 'Irangport Board conld, and shonth, have congidered it when approving licencea. The error of the Board in approving too many licences cannot, however, be remedied by the Board afterwards by pto veating the licenceen from making uae of their licences. What the Board can do is to refure to grant additional licences and to caneel exiating lifencen where lawfol occasion to do to arises, at for inetance when a bas becomes unteryiceable.

It should finally be mentioned that in so far as the decision of the Tranport Board interferea with a private arrangement betweon bus owners, regulating competition between them, the Board't deeiaion is also illegal, provided that such arrangement does not apset the effective servise of the route, which there is no indication that the arrengement did

In view of what is memioned, the Court holds that the injunction must bo granted. The petitioner appears to be satitied if allowed to drive eight trips per minth with his two buseh as previously. It is, therefore, sufficient for the Court ta enjoin the Ministry of Public Works and Commanications froup preventivg the petitioner from driving thone eight tript per month.

The Conrt need not consider the manoer in which the Miniatry has etet np a timetable for the circait in view of this injonction.

The respondent, the Minietry of Poblic Works and Commanications, whall reimburse the petitioner, Ato Meefin Zelellew for cobrt foen paid, according to rectipt, and with E $\$ 200$ for other copte of the case.

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#### Abstract

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# SINGER SEWING MACHINE CO. LTD. v. AZANAT ALEBE 

Civil Case No. 260/56

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\text { Unfair competition - Trademarks - Arts. } 133(2) \text { and } 141(2) \text { Comm. C.* }
$$

Phintifi, a manafacturer of tewinit machines, broaght sait to obtain an order restratining defendant from asint a trademark the same af that of plantifif. Defitedamt, a seller of apwing machines argued that the trademarks are not similar and that plaintiffs trademark, althoagh published in a local newspaper, was not registered.

Hetd: Jadgment for plaintiff; defendant ordered not to make nse of his trademaric and to remove all buch trademarks from where they are posted.

The nge of a trademark or distingoishing mark which is likely to create confasion in a manner prajadizial to another trader who has been usine an identied trademarli constitutes unfeir competition and is tarbidden by Comm. C. Arts. 133 (2) and 141(2).

Guenbot B, 1956 E.C. (May 16. 1964 G.C.); Judges: Mr. S. Stephenton, Capt. Eyassu Gebre Hawariat, Blatta Yishack Tefferi: - In this case the plaintiff, Singer Manafacturing Conppany, is the manufactarer of Singer Sewing Machines. The aad company has been anthorised to sell sewing machines and epare parts thronghout the Empire of Ethiopia. Moreorer, the said oompany Gives lessone in the use of sowing machines. To carty ont these commercial actiwities the eaid company has a trademark of its own, The pleintiff has presented as Exhibit P/I the trademark which is the subject of this case. Defendant also hat produced a similar trademark in order to confuse people. This constitutes an act of unfair competition; the said trademark has been published in the newspaper. Defendanit also poted the trademark on doors and windows Plaintiff has requested the Court to stop these anfair activities under thig file. The plaintiff has produced as Exh. P/2 the notice published in the Ethiopian Herald on Fehruary 20, 1964. The defendant has admitted thrat the trademark shown in the newspaper is his own. In addition to this the plaintiff has produced the original trademark in an album: the Court has examined it and given it back.

The defendant could not produce a clear statement of defence to the charge hrought against him. He declared generally that the trademarks are not similar. He even bronght in a point outside the issue by saying that the trademark of the plaintiff is not registered. This argument is not applicable to this ease because. since the head office of this company is in America, it has registered

[^2]its trademark there, and this trademark has been known all over the world for many yearb. So for thia reason we did not accept this argument.

Plaintiff company, as a manufecturer of sewing machines, has apread ita products in the world market. Since the said trademark is the property of the company it is known all over the world. So, also, since plaintiff company has operated for a very long time in the Empire of Ethiopia this same trademark is popalar in the country.

It has been revealed aloo that defendant had been an employee of plaintiff company for inany years. Plainziff hes rented another building and uransferred its husiness. Defendant occupied the same old building of plaintiff company and was carrying on the same kind of activity as his previous employer. Plairtiff company has hhown to the Court its different trademarks. But, the defendant has declared orally that he hat got a trade mark which is white and red. The Court has examined the trademark of the defendant and it has been found an tecurate copy of plaintilf company'a trademark, hoth in the letter and the colour.

The situation has beem more confusing for the public due to the occopation of the same old building of plaintiff company by the defendant, and hia pasting of the tredemark on doors and windows.

In principle, the defendant is a retailer who buya sewing machines from other companies and aells them; wheress pleintiff company aells ita own products. Plaintiff company has designated its own tredemark in order to differeatiate itself from other companies and it has been known all over the world by this name.

The defendant as a retailer shonld have ueed a different trademark inotend of uging that of a manufacturer of long standing. The defendant by doing this has entered into an unfair competition driven by malieions ill-will. By thit very act he has also confised the public and corsumers. He has aloo taken unfair advantage of the repatation and trademark of plaintiff compsiny. In other words this act has been devised to sell a cheaper quality of goods at the expense of the good name of the company by using a similar trademark and at the same time confusing the consuming public. In fact, such acts shoold have been examined by the department concerned beforc such trademarko are exposed to the pablic.

Art. $133(2)$ and Art. 141(2) of the Commereial Code forbid anfair competition where the distiagaishing mark is likely to create confusion in a manper prejudicial to another trader having used an identical distingaishing mark.

Haring examined the trademarks submitted by the plaintiff company and the long usage of the seme trademark hoth abroad and in Ethiopia prior to its usage by defendant, and haviag anderstood the intentional use of a similar or confusing trademark by the defendant in order to mislead the public, we
have ordered Ato Azenaw tleme not to make use of the trademark published in the Ethiopian Herald on February 20, 1964, heginning from May 16, 1964, the date on which this judgment is delivered. We have also ordered defendant to remove the posted trademarks, If defendant faile to remove the said trademarks immediately, the Execution Office has been authorised to remove the anid marke through the local police.

It has heen ordered also that a copy of this judgment be sent to the Execution Office in order to enable that office to sell the property of the defendart in case he fails to pay $\mathbf{E} \$ 100$ costs and court fees by receipt preseated.

We have tonamimously giver this judgment reserving the right of the plaintiff to proceed with the case if it has a civil or criminal claim ugainat the defendant.

This jufgment is given thin 16th day of May, 1964, in the preaence of counsel for plaintiff and defendant at the First Division of the Commercial Court.

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# HIGH COURT <br> Addis Ababa, Civ. Div. No. 1 

## H.E. LIJ ARAYA ABEBE ч. THE IMPERLAL BOARD OF TELECORMONICATIONS OF ETHIOPLA

Civil Case No. 232/56

Constitutianal lase - Expropriation - Due process - Rearoactioty of Rer. Const Arts. 43 and 122 Rev. Connt - Art. 6 Proc. No. 114 of 1950.

Property - Compansation for expropriation - Art. 147 Cit C.

In an ection ta retoper E $\$ 5,000$ as compentation for trees felled hy the Mintiry of Posts, Talegraph and Talephones, parsuad to Art. 6 of Proc. IKo. 114 of 1950.

Feld: The defendant Ministry in not requiret to pay comperstion for fellige the trees

1. Art 1478 Civ, C. deals with the takiag of postescition of jmmowable property and does not apply to the fellizg of trees hy a governmedt minisury whert the tainistry has not re moved the trees from the owner's land.
2. The felling of treet which interfere with telephone fervice, pergmant to Art. 6 of Proc. No. 114 of 1950, does not conatitate a deprivation of prope-ty withant dae prorest of Jaw, even thoogh there is no provision for compentation of the owner, because the enactment of Prec. No. 114 by itself satiafies the requirement of Art. 43 , Rer. Const.
3. Art 6 of Prac. No. 114 af 1950 is not void as comtrary to Art. 43 Rev. Canat, Bedute it is only legishation enacted anhsequent to the promalgation of he Rep. Consh. Which is nall and rold if contrary to the Constitation, Art. 122 Rev. Connt.
4. The power conferred on the Minitiry of Posta, Telegraph and Thelephones hy Art. 6
 ath the Minhatry may not carry the felled trees ewoy.

Sene 1, 1956 E.C. (Jume 8, 1964 G.C.) ; Judges: Dr. W. Buhagiar, Ato Yosef Telle Michael, Balambarass Alemayu Retta: - In this case the plaintiff is claiming the sum of E $\$ 5,000$ as compensation for trees fefled by the defendant athority.

The defence pleaded by the defendant is that it acted in parsmance of Article 6 of the Maintenance of Telephone Services Proelamation, Proc. No 114 of 1950 , and that no compensation is payable. This Article provides an Hhow:
"Where in the opinion of the Ministry of Poet, Telegraph and Telephones any trees are doing harm to the telephone services, the Minisury shall, by notice to be deltivered to the Woreda Court require the owner to remore such trees. If the person so notised faila to comply the Mixistry of Posts, Telegraphe and Telephones shall have authority to have their own personnel fell or lay down the trees."

It is not contested by the plaianiff than a notice under Article 18 was received by him; in fact be replied to such notice stating that if it is decided that the felling of the trees is helpful for the public utility, his right ahould be reserved in accordance with Article 44 of the Revised Constitution of Ethiopia and umder Article 1478 of the Civil Code and that compensation be paid. Article 44 deals with expropriation and probably the plaintiff wanted to refer to Article 43 of the Constidution which provides that no one is to he deprived of property without due process of law. Article 1478 of the Civil Code deala with the taking of poesession of immovable property under the general heading of "Expropriation"; this article of the Civil Code is not applicable to the circumstances in the present ease.

The queation to be decided is whether when the Ministry of Posts, Telegraph and Telephones ang in pursuance of Article 6 of Proc. No. 114 compensation is payable or not for any inconvenience or darrage that may be suffered by the owner of the trees. There is no question that the right of the Ministry is limited to felling the trees which are doing harm to the tefephone services; the Ministry has no right to carry away the trees felled. It is not contested by the plainiiff that the Ministry felled the trees and left them on the land, although it is alleged by the plainiff that some of the tree werc later found missing. Now it is true that, as the plaintiff pointed out, the Constitution provides that no person shall be deprived of property without due proces of haw, but in the present case the due process of law is the enactment of Proc. No. 114 and this Proclamation does not provide for the payment of compenantion for any damage sustained as a result of the felling of trees by the Minisiry of Posts, Telegraph and Telephones when the trees were not felled by the owner after notice had been delivered to him in accordance with Article 6 of the Proclamation. The Proclamation is a special measure introdaced in the general intereat of the public, that is the telephone services.

The phaintiff referred to Article 122 of the Revised Conatitation and stated that under this Article any law contrary to the Constitation in mall and vodic
he argues that the Proclamation, which does not provide for compensation, is contrary to Article 43 of the Constitution. What Article 122 provides is that any future legialdion, decree, order, etc. that is inconsistent with the proviEions of the Constitution is zull and void; that Article does not affect any legialation, order etc. that was in force at the time the Cowatitution was promulgated. The Constitution was promulgated in 1955 and Proc. No. 114 was cnacted in 1950.

For the above reasons, this Court holds that no compensation is payable when the Minsetry of Ponts, Telegraph and Telephoner acts in acoordance with Article 6 of Proc. No. 114 in felling trees and plaintiff's claim must be dismiseed

The plaintiff ehall pay E $\$ 100$ coots to the defedant authority and the Execution Officer shall exectite the order for snch costa if the platitiff fails to pay.


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## HIGH COURT

Addis Ababa, Civ, Div, No. I

# MARPL 'S RIDGWAY \& PARTNERS LTD. 7. THE If ${ }^{\text {TAND REVENLUE DEPARTMENT }}$ 

Civil Cape No. 406/55

## Cind procedure - Controlling Iont

Tomotion - Lonferm contracts - Conditional payments - Aronual tar mesempont Procedtory - Arts. 36 (e) and 55 Dec. No. 19 of 1956; Art. 55 Prope No. 173 of 1961.*

On eppeat frum $A$ decistion of the Tax Appeal Commission, which held that the texpryert fncoman tax bubility ghond be determined from the paymenta and expensen thown on its bools of account open though the paymente wort received noder a horgterm cotbratt and becance the payments were conditional, the taxpayes'e profit on the contrett cond mot defuitely be fatarmined until the contract wita completed.

Held: Decinion roversed.

1. Where e coptract in to be parformed over more than a siogle tat year and pipment mede during fte performanco are only conditional until it is complewed, no income tar it das whth reqpect to much paymenta mint the conditione attached to them hape hean tesolved and the tarpayer's profit on the contratt ean be definitely deterrined.
2. The requirement that ineome chargeable under Schefals $C$ be declared atemmily, within 30 day of the end of the tan year, Art 36 (c) Dec. No. 19 of 1056 applies where atoposhle income can he dotermined eath year, but it dobs not apply to fineome darived from lonsterm contracts, where the taxparer's income cantrot he definitely deterimined until the tontreet't completion.
3. An appen from a deemion of the Tax Appesl Commüstion mast be fled whin 30 Quy attar the delivery of the notification of aspengenent of the tax to the taxpayer. Art. 55, Art 55, Dee, Mo. 19. 1956; Art. 5.5 , Froe, No. 173 of 1961.
4. An to mattert of procture, Proc. No. 1 J3 of 1961 replacer Doe. No. 19 of 1956, Fhete the procedding take place abisequent to polification of Proc. No. 173, ofen thong


Stue I, 1956 E.C. (Jume 8, 1964 G.C.) ; Judges: Dr. W. Buhagiar, Ato Yosef Tekle Michael, Balambartss Alemayu Rettat- This is an appeal against a decissong given by the Tax Appeal Commision on July 26, 1963, holding that the appellazt is to pay tax according to his hooks of account on the income mede by the appellant, subject to dedmotion of expenses incurred in the wrork producing the income; the right of the appellant was reserved to submit an

* Soe, for precent lew, Arth $55(\mathrm{~h})$ und 12 (a) Proc No. 173 of 1961. Ereopi for precin] provisions for a tramailional period. Proc. No. 173 of 1961 expreasly resciaded and replaced Dec. No. 19 of 1956 and Dec No. 54 of 1959 af of the drate of pahlicition of Proe. Ne, 176 in the Nagitt Gavath, which urat Jone 2, 1961.
appeal eventually if and when he does not agree with the allowatee for exрепses.

The appellant company has mendettaken, under a contract with the Imperial Highway Amhority the conntruction of the Colubi Rond in Harar Provinee. It is not contested that auch a contract exista, which contains certain terus and provisions as implicated in he contract copy which has been subunited to the Court. One of the terms of the contract is that the work was to be completed within 36 months from the date of the execution of the contract, that is, not later han October 1963. and that for certain reasons the work was delayed until 1963; in other words the contract between the appellant company and the Imperial Highway Authority was not a contract to be porformed wholly within one asesgable year of income but was a long term contract.

The ycar of aseesinent in the present case is the ycar 1960.
The groutd of appeal is that the Tax Appeal Commission was wrone in law in holding that the appellant company should pay taxes on unfinished work and on suppesed profits when the work undertaken had not been com. pleted and the final result not knownt it is enhmited on behalf of the appellant that the profits doperded on the final determination of the Engineers of the Imperial Itighway Authority or on awards to be given by arbitratory in cose of disputes as provided in the contwact. It is aubmitred on behalf of the arpellant company that the Tax Appeal Commistion was wrong in liw in basing its decision on the provisinne of Article 36(r) of the Incane Tax Decree of 1956 iDecree No. 19 prblished in the Negarit Gazeta No. 1 of the $76 \mathrm{t}_{\mathrm{h}}$ Yearh, Decree No. 19 of 1956, which lays down that declaration of income shall be made in respect of income chargeable under Schenule C annually within 30 days from the end of the year for which the tax is due.

In his reply the refondent raised the question whether the appeal of the appellant was jodzed in time. There is no ground in this plea because both under Artirle 55 of Decree No. 19 of 1956 and under Article 55 of Proc. No. 173 of 1961 (and the latter Proclamation applies on this point as the matter i* are of procedurel the appeal is to be lodzed whin thing days of the delivery of the notification of aseeraneat of the tax to the taxpayer: in the present eave the notification is dated July 30, 1963 (ask shown in the photocopy submited by the appellant) and the appeal to this Court was lodged within thirty days of that date.

On the merits, the respondent submitred that under the law the accounts of our ycar eanoot be transferred to another year and that therefore the aypel, lant cannot be relieved from the payment of tax for the yoar 1960 becanse of an expectation of a lose in the future: and companies like the appellant are to pay tax every year as preseribed by Article 36(c) of Decree No. 19; the respordent further summitted that if the appellant meets a loss in the
futare, as feared, the appellant shall be free from payment of tax. The appelland, it has been submitted, has been taxed on profits derived in the year 1960 and therefore the appeal is groundless.

The diffeulty in this case arises from the fect that the ineonte tax leginla. tion makes no provision for long tern contracts, that is, contracta in which the final total loss or profit on works undertaken cannot be determined withim the accouning period or the year of assessment; the profit or loss can only be determined at the end of the contract and sabject to the special terms and conditions in the contract. In sach contracts, called long terni contracts, there is normally a provision under which payments are made pexiodically as the worl is progressing, with a deduction of a percentage to cover any contingeney for bad work in the performance of the work which is not according to specifications, and cubject to checking by engineers regarding the quality of the work which may be rejected as not heing in accordanee with the apecifications and consequently to refund of any money that may have been arlyanced during the progrese of the work and to claim for damages that may arise as a resalt of bad wark. Such conditions and terms are normal in long term contracts like contracts for road building or the construction of publie buildings like a city hall or of private buildings. like a houe block of flats. In these cases, it is impossible to determine what is the assessable income in one year, as the profits do üot drpend on the money that has been adyanced in one acconntable yeat athd deducting the expenses incurred in that year; in view of the terms and conditione of the contract, any money paid to the contractor is only a conditionsal payment on which there may or there may not be a profit $\dagger$ to determine the profit or loss that may result, the whole contract fur the whole period with the terme and conditions of the contract must be takes into consideration.

It is true that the present income tax legislation provides for the making of declarations of ineome anoually and for the payment of tax annoally; and this is clearly intended to apply to cases where it is possible to determine the sasessable income annually as in the case of any ordinary business or in the case of persons receiving a salary or in the case of a peroon who exercises a profearion or in the case of a landowner whose income is derived from rents; bit for reasons which have been set out ahove, the existigg provisions cannot apply to long term contracts. In other words, in this reapect the ineome tax legialation is behind the fast economic progress that is tereloping in Ethiopiz where wonk of great enterprises is beiug undertaken which cannot be completed during the period of one financial year or year of ascessment.

In the prosent case the appellant has been keeping regular books of aocomm and the Tax Appeal Commission has decided that the appellant must pay tax according to anch booke. These books naturally show the payments that have been made in respect of parat of the road of Colabi built during the Fear 1960, kut guch payments mast be considered in connection with the terme

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and onditions of the contruct. This the Commission has falled to do. If we look at the contract, we find varions provisions which indicate that the pryments made cannot in any seme be conoidered as final payments. Thus we find in the contract the following ternas: clase 2 of the General Provisions of the Contract enables the engineer at any time to make dhamges in the drawinga and/or spmejications of the contract, and in case the parties fan to agree about the adiustmentie necesary, the matter is to be sabmitted oo arditration; clense 3 of the same General Provitione provides for termination of the eontraot in case of defaylt and for damages for delay in the performamee of the contraot; clanse 4 proviles for partial payments at the end of each month for worls completed and materials delivered, aubject alwwy to the right of inspeotion and examination and test by the engineer as provided in clacae 8 , partagraph (c) of which specified thrat in case work is formd defective or nonconforming in wuy material respect the contractor is to defray all expensea fot the inspection and examination and of satiafactory reconstruction.

It is clear that under anch terms anty parment made in the period of amy one fear can be only a conditional payment thet is, why ach pasyment in ant ject to ary dedmetion or defraving af costs that may more necesency after inspection and examination by the encineer for the work performed sand masterinle supplied durime that year, and the result of the inspection and examination by the engineer i: not necessavily kiown within the zame year. For the te reasons it is impossible as stated above, to reach a conclosion to the stsessable troome for the year durizg which the conditional payments are made.

In nuch circumetancen there sre, in the opinion of thris Conft, two poomble solutions to the problem created by the present state of the income tax legina. tion, namely -
(a) to congider long term contracte owe task job over a period of yeare and to assese the taxable income sfter the whole job is completed; it is then possible to have a clest picture of the profita made and loses anstained on the whole contract; or
(b) to attribute to any particular acemonlating period (year of amese memt) such proportion of the entire profit or loss which han refolted. or which it is estimated will result. from the complete performanee of the contract as is properly attributable to that accounting period having regard to the extemt to which the contract was performed in that period.

The solution at paragraph (b) may not be of easy application in practice and may have anfaronable results to the general revenue and to the taxpayer except and unless the whole matter of azes-ment daring the accounting periods is revised at the end of the rontract. Taking all the above into consideration and particularly this present state of income tax legialation, which makeo
no provitions for long term contracten this Court is of the opinion that, withont prejudice to the submisaion to the income tax authorities of yearly declarationa, the assasable income cannot be determined except at the end of the contrect and that therefore taxable income should be aseas at the end of the cortract and tax in pryable at the end of the contract.

For the above reasons thic Court reverses the decision of the Tax Appeal Commision and tolds that the taxable income is to be assessed at the end of the contract between the appellant company and the Imperial Highway Authority and tax is payable eceordingly.

The respondent shall pay the appellamt court fees of thiz appeal socording to receipt and cost of E\$100.







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# HIGH COURT <br> Addis Ababa, Admin. Div. 

## X w. THE MINISTRY OF POSTS, TELEPHONE AND TELEGRAPH

Civil Caze No. 292/56

Admininfative lmar - Righr to independent adjudication.
Cituil procedure - Exection of judements agaikt the poterniment
 the Minidry from making further dednctions from his pef.

Held: Order cranted.
Tha phanciff subeequatly egain petitioned the Coart, alleging that the delominat hat refuged to comply with the Court's first order arad seeking a further order directing the deferidant to eomply with the fitst order and alna to repay the deductions already made.

Hetdi Order granted,

1. No ant whall be deprived of lifa, liberty or property without due procen of law. Art. 43 解ev. Const
2. An adranissative praceeding in whieh a gaverament mipiqry mdjadicatem ftr own elaizn and wea executes the renulting order doen not affare the opposimg party due procern of lew.
3. An ndminiatrative order of a gowermment ministry wbich withoolds a patt af the pay of ont of itg tmployets in ordar to setifify a clain which it has apainat the emplopet, the clajm not traving bean independently adjadiented, ta not numinable at law.
 Yinitry's bank ecconat,

Sene 26, 1956 E.C. (July 3, 1964 G.C.) : Judgen: Ato Belatchew Asrst, Ato Wolde Mustic Yihdega, Ato Makonnen Getahun:- After a study of the document, we have given the following order. No one thall be deprived of his life, liberty or property without due process of law. If one panty claims that another owes him something, he has the right to bring an action against him in court, but no one can be parly, judge and executor in one and the ame case. It is very razely that an administrative decision deprives a pervon of had property. Bat we are not of the opinion that an administrative decision which deprived a person of his monthly galary woald be sustainable at law.

If every time a defendant claimed that his employees were at fault, he were to be the sole judge of such claims, then it cannot be baid that the power of the courth and the rights of individuals are affegurded.

Therefore, the defendent is bereby ordered not to deduct fromi the pay of the plaintiff hereafter.

The plaintiff can inatitute a suit against the defendant to recover the pay which hes already been deducted.

Defondent in hereby ordered to pay the plaintif's experses in the filing of this rait.

The erectation officer is hereby ordered to execute this order accordingly.
Makaran 27, 1957 E.C. (October 7, 1964 G.C.) : Judges: Ato Tefferi Deategn, Ato Wolde Mussie Yihdego, Ato Deneke Ashenaf:- A letter dated August 5, 1964, Ref. No. 3036/56, from the Execution Office, and a statement of clain dated September 17, 1964, from the plaintiff, are attached to the file. In the letter mentioned above, the Execution Officer stated that while his office whe execating the order given on July 3, 1964, the advocate for the clefendant. after receiving the execution letter, asked for contimuance or the ground that he had applied to the Ministry of Juatice for an injunction againat the order of the Court. Plaintiff, on the other hand, asked that he should be paid from the defendmat's bank account. The Erecation Office then requested an additional order to carry out the execution according to the request of the plaintiff. In his statement of claim mentioned above, the plaintiff alleged that the defendant had refased to pay the sum of E $\$ 125$ - plaintiff's expenses incurred in the opening of this file. He aleo alleged that the defendant had failed to abide by the order of the High Court and had continuel to deduct from the plaintiffis monthly pay, which deduction now anounted to ES480. Plaintiff therefore respectfully requested the High Court for an order agaitsis the doiendant, the Ministry of Posts, Telephone and Telegraph, for the payment of the plaintiff's expenses and deducted salary and also that it he re-trained from making further deductions from the plaintiff's pay. The plaintiff wasked to introduce evidence supporting his allegation that a deduction from his pay was made after the order of the High Court was given. He then introduced a letter dated July 25, 1964, Ref. No. 09499/122/30 and addressed to the accounting department, a copy of which was given to the plaintiff. He aleo introduced two receipts dated Augut 6 and September 3, 1964, for the payment of the sum of ESt80.

## Additional Order

The file shows that following the order given on July 3, to the effect that there should be no more deductions fromi $X$ 's pay, the defendant Ministry was ordered to pay the plaintiff's expenses incurred in the opening of the file, Defendent not only failed to pay the expenses but aloo failed to abide by the order of the Court, and the sum of E\$480 was deducted from the plaintiffs pay after the said order was giver. Stating the difficulty it faced in executing the order, the Exeention Office has acked for an additionial order to carry out the execntion mpen defendent'u hank eccount. Plaintifl also has prayed the Court

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for mindintional order to restrain the defentmon from making further dedwctions from the pleintiffe mary and aloo for a phyment of the $\mathrm{E} \$ 480$ and courl experses from defendant's bant aceomit.

Therefore, it is bereby ordered that plaintiff be paid from the defendemt's bank account, the sum of E 8480 deducted from his salary and slso his expenses incorred in obtaining the previous order. It is also ondexed. as was prowided in the previons order, that there shall be no farther deduction from the plais tiffs aslary anless such deduction is ordered by a court following a proper filing of a suit. Failure to abide by this order and a further deduction from the plaintiff's salary would entaill grave comecquences for the authorities concerned, A copy of this order shall be sent to the Execution Office to carry ant the execation nccouding to the given order.













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## HIGH COURT

Amarn, Civ. Div.

## X v. TABOTU GEBRE TINSAYE

## Civil Appeal No. 167/56

Slaths - Arts 721 and 748 Cir. C.*
und a theim hor maintermere by a wornan tan respeat of her child,

Held: Appeal allowed.
 paterniky will arafice to ostmblikh that liect.
2. No lagal bond exituts betwoen a chill andita futhor where the chald ba the outcome of an wet of proationtion.

Hedar 8. 1957 E.C. (Nov. 17, 1964 G.C.) ; Judged: Ciptinin Eytagu Gebare Haweriat. Dejoamatch Idrit Lejamt, Fitawrari Suletman Bhdieen:- Thia in an appenal against the judgment of the Keren Awrejs Count which affirmed the decision af the Wored Court whereby the present eppelnart was dechered to be the father of the rempondent's child and sdjuidged to pay a maintenance


The finding of the lower court was hased solely on the mother's teetimony under oath in accordance with the custom ther exinting.

The Awraja Court in ite judgment libronred on the momption that the appellamt had actnowledged the paterrity of the child. It held that by virtne of Articlea $\$ 07$ and 808 of the Civil Code the constand failare of the rppel to reply to the sevoral lettere written to him by the reapondert revealing that a son has heea borm to him is a tacit acceptance of pateruity. We are, however, of the opinion that the Articles ao cited are itrelevant to this case.

The mandatory propisions of Article 748(1) of the Civil Code require that neknowledgment of paternity be clcar and in writing. Any acknowledgment thort of that, euch as a lacit or oral acknowledgment, is legally ineffective.

In addition, the Awraja Court wras of the opinion that the child had the statue of being the eppellant's child. Filintion by possesgion of the etatne of

[^3]
## X y. Tarotu Gempe Tingate

rhild is based on evidence that the father has troated the child as his onn and that the child is regarded as the child of the man by his neighbonss and society. Possession of statns must therefore he prowed by witnesses-

The present dispute involves a very different legal issue.
The respondent has revealed to this Court that she earns her fivelihood by prostitation and has admitted that the receives other men for the parpose of havinx sexual intercourse with them. It has been well entabliphed that by virtue of Article 721 (3) of the Civil Code children born ont of such relations have a Juridical boud onlv with their mother. So also does Sob-erticle 1 of the tame Article provide that relations absliched between a man and woman onside of wedlock or outside of an irresular union shall have no juridical effect attached to them. In view of the movision of Article 748(1). which clearly states that an acknowledgurent of paternity has no effect umless it is made in writing, and aloo having regurd to Article 721. which expresty provides that no legal effect shall be attached to parenthoud outside of wellock or outside of itreqular union, to hold that the responident'g claim has a logal effect attached to it is in our opinion to violate the clear provisions of the Code.

The intention of the legilature in enacting this law was to restore dignity to the family and preserve the social order, to discourage adultery and prootitution. and it is the judges' duty to carefully interpret the law in light of thia policy, a poticy of relatively high importance that camot be igrored or Hightly paned over.

An action for deplaration of paternity conld only be institated where the mother has been a victim of abduction, rape or duress and the child was coneeived as a resolt. For all these reasons, we hold that flitation could not be proved by producing witnesses. Neither should a dispute be adjudicated in accomdanee with contorrary lav but in ncoordnace with the Civil Code. We, therefore. Aismiss the claim of the respondent and unast the Awrajs Court's judgment. We onder that a copy of thit judgment be sent to the Awraja Court to motidy them of the reversal.

Delivered on this 17 th day of November, 1964, in the presence of both parties.

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## HIGH COURT

Addis Ababa, Admin. Div.

## BERNADONI GIUSSEPE V. THE INLAND REVENLE DEPARTMENT

Civil Appeal No, $457 / 56$

> Adminiztratire law - Appellate administrativa triburaly - Procedure - Tar Appeul Cornanimus.

Taration - Admindatrative procedure - Art, 56 Proc. Nio. 173 of 1961,
On appeal from a decision of the Tax Appeal Commizaion, whith reduced the petitioner':

 aspesgmeni is mestrined,

1. An administrative decision $n 0 f$ baged on proper proeedare is contrary to the law and therefore roid.
2. Appellate adminisirative tribunala are roit empowered to decide matters not caised by either party,
3. Where the deciston of the Tax Appal Commiseion faits to show that either the Inland Revenue Department or the taxpayer had requetted that a fine be imposed on the
 173 of 1961.

Yekatit 15, 1957 E.C. (February 22, 1965 G.C.); Judges: Ato Tefferi Desalegn, Ato Wolde Mussie Yihdego, Ato Asayegn Adal:- Our examinntion of the file reveals that the appellant alleged:-

1. The decision of the Tax Appeal Commission that the appellant should pay a fine of E $\$ 3,768$ was erroneous and not sustainable at law, hecause it was based on neither the allegations of the appellant nor on those of the reapondent In other words, the respondent did not akk that the appelliant be required to pay an additional E $\$ 3,768$ with the tax.
2. The appellant did not appeal to the Commission on the groend that he was requested to pay a fine.

Therefore, the appellent prayed that the Court quash the decision of the Tax Appeal Commission as regards the sum of E $\mathbf{W} 3,768$,

Respondente divocate alleged in his statement of defeace that according to the first assesment the appellant was directed to pay the sum of $\mathbf{E} \$ 29,160$.

## Bernhgon Gibsfepe v. the Inifine Revenue Depaptnent

But because appellant disagreed with that aszesiment, he appealed to the Tax Appeal Commission. Wlecreupon the Commission reduced the asesintint tio E $\$ 22,608$ including the E $\$ 3,768$ fine. Since the Tax Appeal Commozion took this etep within ila power given under Artick 56 of Proe. Vo. 173 of 1961, resprondent argued that appeflant cannot contest that power of the Commision.

The High Court is aware that its duty on appeal is not to enter into the merits of the assessment but to decide on questions of law which arise on apm peal.

Appellant alleged that his appeal wab based on a question of law in that, white it was true that the Tax Appeal Connuianion has the power to vary the asgessmeat, this power can be cxerrised ouly when eiltire the Jnland Rucnate Department or the ofher party appeals for an inercise or a reduction of the assessment. Otherwise, the Tax Appesl Commission has no power to decide points which ate not appealed.

We have found appellant'e allegation to be sustainable at law as a matter of procedure.

Any decision should be based on proper procedure-
Departments having appellate jurisdichon should consider and decide only matters which are sppealed. Thoy alould not decide matters which are not appealed and thereby confer a right upon a party who has stayed at home without taking any appeal to them. If they do confer such a right, ihey are not following proper procedure and therefore their decision shoald be reviewed according to the law.

We have understoad that the appellant appealed from the decision of the Commistion and sought to have ils decinion reversed on the groumd that it had followed an improper procedure in reaching its decizion.

Basically, appellant was required to jiay the 3 min of E $\$ 29,160$ in tax, for the year 1962. That there was no fine attuched to that reguest was shown by notice No. 374/46.

The eppellant also appealed to the Comuission on the ground that he did not agree with the astessment, but he did not appeal on the ground that le wes fined.

From the facts we have gathered, the Tax Appeat Commission, being awate that the Inland Revenue Department was wrong in :timessment, has on the one hand reduced the amount to $\mathrm{E} \$ 18,840$, but on the other hand it has fioed the appellant without any appeal from either party.

But since it was not stated in the decision on whose regregt the fioe was imposed, the decision is found to be baied on improper procedure.

## Jouknal of Ethiofian Law - Yol II - No. 2

Ar we have previousty stated, respondent'e advocate in his stavement of defence alleged that Article 56 of Proc. No. 173 of 1961 has empowered the Tax Appenl Commission to reduce, increase or annul an assessueut and make further consequential decision thereon.

In reality, the law if followed in its proper sense simply explains the euthority of the Commission to decide on points of appesl, and it does not give the Commision the power to raise new points and give decision on them.

If the Commission could do this, it should aot have been called an Appeal Commiogion bat rather a Commission of first instance, whose duty would have been defined by the law as a first inatance assessor.

Therefore, the decision of the 'Tax Appoal Comulissiun delivered on Jane 15, 1964, as regards the fine in the sum of E\$3,-66 was not based on any point raised on appeal It was based simply on the Commission': own view of the case. We think that it is therefore contrany to the law and thas void. Hence the decision of the Conemission as regards the fine is quashed and the rest of the decision as regards the assesement eustained.

Since, after a reduction of the fine, the Inland Revenue Departmen: ight to collect the tax in reserved, it shall receive a copy of this judgment to be notified of the decimion.

Delivered on Februscy 22, 1965.


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## HIGH COURT

Addia Ababr, Adminn Miv.

# MULUGETA AYELE f. THE LNLAND REVENLE DEPARTMENT 

Civil Cate No, 423/56


#### Abstract

Adminitrative Lav - Appellaie odminitrative tribunaly - Prepadura - Tax Appeai Commisnion.


Taxation - Asessment by estimalion - Adminitratiwn procedura - Arts. 40 and $\$ 6$ Prec. No. 175 of $1961 . *$

Appeal from a deriaion of the Tax Appeaf Commistion which matained the Inland Refenae Department's aseeqnaent of the appellant'a lax by entimation and in addition increaped the angesmen on its own molipl.

Held: Drecigion incepming the assessment equeshed und the uppellant tappaper directed ig pay the any eneosed by the Inland Revenae Departonent,
 to anmen incoma tax lishility by entimation if it finds the tarpayer"s atcount books untelieble.
2. The Tax Apparl Commiagion is empowered to increase or reduce tox assesament at the reqpest of the Inland Revenre Department or the taxpayer, imi it may annoril an ageagsmanl if it is proved that the Laxpayer had no intomen Art. 56 Proc. No. 173 of 1561.
 undmr Art 56 of Proc. No. 173 of 1961.

Megabit 10, 1957 E.C. (March 19, 1965 G.C.); jutiges: Alo Telferi Desaleaci, Ato Wolde Massie Yihdego, Ato Asayegn Aliat; In his originai appeal to the Tax Appeal Commistion, appellant alleged thit he lwiand Reveane Departprent accepted only some of the acoombs kept by him, arbitrarify rejected the rest, and made its final assessment on the bais of extimation. In accordance with Article 58 of Proc. No. 173 of 1961, this present appeat was lodged from the decision of the Tax Appeal Commiasion, which also accepted appellant's book of accounts in part and rejected the rest. It also impused a fine on the appellant on ita own motion without it being requected to do a by the Ialand Reveaue Department. Plaintin further aileges that he had kept proper accounts to show the profit he earned in 1901 and requested tbis Court to quash the decision given by the Tax Appeal Commiesion and order de

[^4]Inland Revenve Department to make ita asbesment on the basis of what was shown in his books.

In its statement of defence, the respondent deparment alleged that the appellant had submitted the supposedly properly kept books to its tax aseesor, who discovered that E $\$ 1,148,906,662$ worth of sales were not recorded in the books - a fan that indicates how many more unrecorded sales have not yot been discloged. Moreover, it argued that the steps taken by the Income Tax Anthority were in accordance with Article 40 of Prec. No. 173 of 1961, which provides that the Authority may axes the tax by estimation if it finto the re conde and books of accounts kept by the taxpayer onsceeptable. And Article 56 of the same Proclemation authorises the Tax Appeal Commission to increase an assernment made by the Income Tax Authority if it deems it just. Accordingly, the respondent department requested this Court to affirm the deciston given by the Commasion and applied for its execution.

The tax asseseed by the Inlamd Revenue Department was E $\$ 11.300$ but the Tax Appeal Commission increased it by $22,821,50$ and ordered the appellant to pay E\$74,121.50. The appellant argoed that the tax should ont have been aseesed bv estimation, but on the basis of the accounts he kept. He then requested this Conrt to quash the decision of the Tax Appeal Comanision and order the respondent department to asgess the tax on the bavis of what is recorded in his account hooks. He even produced a oopy of a decieion of the Supreme Imperial Court in a gimilar ease and azked for a decision along the same liner.

The firat ground of appeal must be digmised since Article 40 of Proc. No. 173 of 1961 empowers the Income Tax Anthority to aseess the tax by entimation if it finde the taxpayer's acoum books nareliable.

However, this Conrt finds the Tax Appeal Commission's deciaion arbitrary becanee it may exercise the power vexted in it by Article 56 of Proc. No. 173 of 1961 only under certain coosditions. It may increase the tax if the Inland Revenue Department claims that it is too low: it may reduce the tax if the taxpayer proves that the assegsment was too high, and it may anmul the assersment if it proved that the appellamt did not earn anything. But ander no circumetances may it increase the essesment on its own motion. Such a decivion is comparable to condemning a person who appealed from a sentence of ten years smpribonment to death.

For the above reanoms the decieion kiven by the Tax Appeal Commisaion on Augusa 5, 1964, is quashed. The sppellant ghall pay the tex agessed by the Inland Revenue Department. The partiea shall hear their own costs, but the respondent ahall pay court fees according to receipt.

A copy of this deoition shall be sent to the Execution Office.






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## LABOUR RELATIONS BOARD

## EMPLOYEES' ASSOCIATJON OF JOS. HANSEN \& SOEHNE $v$.

## JOS. HANSEN \& SOEHNE

## Re: The dixmissal of MESFIN DEMISSIE

 210 of 1963.

Cifil procedure - Burden of proof - Labour Relations Board.*
totion by the employest ensoristion of the reppondent company to bave former emplogee of the company reinstoted to his job. The omploytes' astortation alletert that the em-
 misoal therefore was trilawfol under Art, 30 (c) Prode, No, 210 of 1969,

Held: The respondent company in ordered ta relnstate the dmployee.


#### Abstract

 for being t member of the employees' association, contrary to Art. 30(c) Prot. No. 210 of 1963 , where the employed is a member and secretary of the assoriation, the etion unat  of hir allemation.


Makkarm 22, 1957 E.C. (October 2. 1964 G.C.) : Members of the Board: Blatm Tirfie Shumiye, Blatta Kifle Igri Yindigo, Ato Yilma Heiln:- The employes* aseociation of Jos. Hansen \& Soehne (Eth.) Ltd., Iodyed with chis Board an application dated July 14, 1964 under File No. 5/7/11-29/56 in which it is stated that the employer Joe Hanten \& Soehne, first served a letter, of discharge on its employee. Ato Mesfim Demiscie, when he came back from Kampala, where he had attended a training seminar in the fieh of "Labour Relations". After that the employer transferred him to different sections and complained that be was not capable of handling the work and that he did not coroperate with the employees. Finally, the emplayer diemiseed him comtraty to Artiole 30(c) of the Labour Relations Proclamation, Proc. No 210 of 1963. The applicant therefore petitioned the Board to examine the matter and order the return of the employee to his post.

As per instructions issued to the employer, Jos. Hansen \& Soehne, the respondent sobmitted a written reply dated August 5, 1964, inserted in File No. $5 / 1 / 11-31 / 56$, and also made an oral staternent as follows: The reason for the discharge of Ato Mesfin Demisie is evident from his perional file, from which

[^5]it cen be that he failed to comperate with the other employees or with his immediate expervisors. As a result, he occosionally war warned, but he did not improve. Furthernore, when Ato Mesin was preparing to leave for Kampala he was requested by the company to park in the company's garage the vehicle which he had bought from the company on credit and for which he had not paid the full price, but he did not comply with that request. It appeare algo that he was drangferred to the Simens Section, where he was unable to meet the requirtments of the work. The employer concloded its anbmiasion hy adding that the employee was working in the "Sheba Club" late at uight, at a time when he had to rest as a result of which he came late to work and was paxalyzing the operation of the whole section, which gave ample teason for his disminsel. The entployer aserted that these being the reasora for his diseharge, hir being a key member of the association had nothing to do with the steps takea by the company.

The Board then adjourned the case six times in order to study the merits of the matiter and to decide.

At the hearing on Angust 14, 1964, the Board examined the written and ornl anbmisqions of both parties and ordered the employer to submit to the Board on Augrst 25, 1964, all documentary proof in support of its defence.

On the hearing date of August 25, 1964, the employer submitted the following docmentary evidence to the Board.

1. The letter dated December 27. 1962, addressed to the employee, refars to a previous letter dated December 4 and notifies the employee of his dimisanl from hie work to of Febraary 28, 1963, for being absent from his job many times.
2. The letter dated Novenber 8, 1963, addressed to the exployee, in a warning letter in which he w2e notified concerning his working at the "Sbeba Clobn daring late hours and in which he was fold to stop that wort or he wonld be diseharged.
3. The letter dated November 19, 1963, eddresed by Ato Mesfin Demiasie to the company in reply to the letter mentioned in item 2 above, gives an explanation to the effect that one has to work overtime in order to improve his living stendard.
4. The letter drited December 3,1963 , eddressed to the employee, in in additional warning letter acking him to quit hie work at the "Sheby Club."
5. The lerter dated February 17, 1964, addresed by the company to Ato Meefin, in a lenter in which the employee wat asked to hring and part bis car in the compsoy's garage until he returned from Kampale.
6. The letter dated April 15, 1964, sent by Ato Mesfin from Kampmila to the company, is a letter in which he explefned the importance of his traiaing

## Jounala ar Ethrophy Laff - Vol. II - No. 2

to the busaness of the company and smid that the car in question wat kept by his wicle in good condition.
7. The letter dated May 29, 1964, addressed to the employee, is a letter by which the company dicharged Ato Meafin as fropl July $31,1964$.
8. Then by a letter dated July 6, 1964, the company told the canployee that he was tranterted to the Simens Section and would work there until he improved his condent; it further informed him that hit dismisal as of July 31, 1964 was cancelled pending furiher contideration by the company wntil Amgat 31, 1964.

The Board then granted an number of adjournments to permit the employer to produce any other decumentary proof or witnesses in this matter, and firally the employer oflered as ins witness Mr. Keller, chiel of one of the sections of the company. The ctarloyce objected to the testimony of thtit witnes. saying that the witness wat his adversary ant wat one of the reasons for lis rincharge. The Board, having in mind it ability to miefla the evitemee of this witnese allowed him to give the forlowing sworn statement.

The witness stated in slort that he cance to know too Mesfin when Alo Meafin was working umber him at the Stores Dcpartmont. He said that althoagh Ato Mesfin was co-mperative in the beginnitur he later ergaged in bad conduct which was not in line with the comproy's rules, such as coming late to work, being a bal exanuple to the other entployes. and disagreeing with his workmates. The wicoes furthor stated that Alo Mesfin was giten writen and oral warninge concerning tivese mattere, but that hi aid not improve his conduet or diecipline fimzelf.

Then the employer informed the Beard that it had mo other documenty or winesses to be heard in this case. The Board asket Ato Meifin if he wanted to produce witnesser on his part, and he said that lie would not produce witnesses nor sulbmit documentary evidence since the evidence sthmitted by the employer had proved his case.

Being aware diat it is the chuty of the Board to bring tho acraployer and the employee together to settle their differences amicably without seeaking the intervention of this Board, warious adjoarnments were given in the hope of such a solution, and both parties were repeatedly adfized to zettle the matter by themselver. But the parties told the Board that they could not reach ayy agreement and asked the Board for a decision. Accordingly, the Board examined the final submissions of both parties, dated September 23 and 28, 3964, and hereby gives the following dectsion.

1. Becnose the applicant, Ato Meafin, is a nember and secretary of the employess' asociation, the Board cannot grant the cmployer': requeat that this maiter be clozed on the groand that the enpleyee has failed to prove his alllegntion that he was dismissed only for being a mernber of the employees" association.
2. The documents (Exhibits 19) are Jeturs by which the employer dizcharged the employee for working at the Sheba Club at night tinte; for not being on good terms with his supervisor: and workmates; for coming inte to work; and for having failed to terp the car in the compary"s garage. In the Board'a opinion, the said letters do not contitust good reasonsf for the employee's dismissal and, therefore. they are not considered sufficient evidence that the dismissal was justified.

With regard to the question of the tinte that the employee is said to have wasted, the employer, ahhough having heen aiked to produce, canot present the timebook to prove oo. The emaployer ako failed to prove that any amount had been deducted from the employec's salary for coming to work late. The employer was again a-ked to prove by a medical certificate that the employee has cansed certain damage to the company's work by having been ill and coming late to work as a rosult of working at the Sleba Club late at night, but the employer faifed to produce any surl evidence. The comployer waz asked to call as its witnosies enployees of the company other than Mr. Keller to prove that the employec wiss not on pood terms with his workmates, hut the employer said that it had no other witheses. The Board cannot rely on the evidence given by Mr. Kelter as 10 the conduct of the employee or his coming late to work, siuce Mr. Keller, in his own statemuent, admitted that although he was the extyloyee's immediate suprervisor, he has nut kept any record of the alleged bad conduct or taken any step against the employee at the time. The employer on ita part cannot produce any other evidence to show that the employee was dighiarged for good cause.
3. Having examined the documents subatited by the employer and the employee, the Board has concluderl that the differences between the disputing parties arose at the time the employeer atwoction was formed and their dis agreement became worse when the enuployet began his preparation to leave for Kampala for training in the field of Labour Relationa Considering the fact that the employer tranaferred the employet to a new technical section and then complained of his imability to cope with tho wort before he witi given adequate training; end considering the fact that the employer dzocharged the employee three days after he returned frora Kampal: and withots good rosion; and considering the fact that one of the reasons for the dismisal of the employee was that he failed to produce for afekeeping the car he had purchased on credit, the Board is of the opinion that none of these ground a conatitute good cause for the discharge of the employee and that the employer hat treated the employee's case urfairly.
4. Therefore, the Board ie of the opiaion that the employer has diseharged the employee without good cante, which act is contrary to Article 30 (e) of the Labour Relations Proclanation, Proc. No. 210 of 1963, which states "that no employse ghall be discharged for being a member of an employees' nseorjation without good cause". We therefore have decided that the omployee should be reinstated and that he is entitled to all of his previous fighta,


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# MULUGETA ATELE v. THE INLAND REYENUE DEPARTMENT 

## Tanation ${ }^{*}$


#### Abstract

On appeal from the Inland Hevenue Department's matobment of the appollant'i income tex liahility.


Held: Amensment increated to E $\$ 14,12150$.

Hamle 29, 1956 E.C. iAgut 5. 1964 G.C.': Memberg of the Commission: Ato Haile Leul Habte Giorgis, Captain Eyben Gebre Hzwarint: Ato Assefa Hawax, Ato Wolde Amanuel, Ato Verga Fents. Haj. Abubaker Sherif: When asked how much profit lee made on a "quintal" (l000 kge! the appellant answered that it varidd from ES 1 . 00 to E 50.75 . But, he added, not even that, heratse there were limes when he sold at a toss. Anyhow, he said, his experses and profit were faithfully recorded in his books, athd the Inland Revenue Department rejected the gerounts he kept so as not to ind lade lis expenses and thereby lower the asessment.

The lnland Revenue Depariment's defence was that side from the E $\$ 4,234,000$ worth of sales shown in his hooks, the mpellayt had sold F 42,536 worth of grain and flowr to A. Mikos, E $\$ 935,215$ werth of the bame tiean to $P$. Sarria, \$256,137.05 worth of grain and flour to the Associated Oil Factories and E $\$ 41,800$ worth of grain and Hour to Ato Woube Makonnen. Sn support of ita allegations it subminted the list of these sales to the Commiesion. The appellant said that he had no further evidence to introduce and requested a decision on the busis of the evidence already introduced. After due deliberstion the Commission disposed of the matter as follows:
"Though the Inland Revenue Department rejected the accounts kept by Lie appellant, there was no controveris as to the tacome. It has been extablizhed that the yearly sale was E $\$ 74,390,137$, and at the rate of $15 \%$ the appeliant"s profit amounts to E\$65, 832.95 . Now pursuant to the power vested in this Commisaion by Article 56 of Proc. No. 173 of 1961 , we have raised the tax to be paid by the appelatat to E $\$ 4.212 .50$, the amount he deposited when he lodged the appeal to be included therein."

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## ARTICLES

# THE PENAL SYSTEM OE ETHIOPLA By <br> Steven Lowenstein <br> Faculty of Law; Haile Sellaswie I University 

## I. The Legal Setting

Before the advent of the beventeenth century, the penal law of Ethiopia wat primarily a matter of diverge customary practices, although both the Church, ${ }^{1}$ concerning moral matteta, and at times, an Emperor, at other timen, more localized kings, exforced what might be termed peral satuctions concerning those matters directly aftectigg their power.' No integrated hody of peral segialation existed, however, until mome time in the seventeenth century when the "Fetha Nagast" or "Law of the Kings" wan introduced into kithiopia.

The Fetha Nagast is a sophiticated compilation of legal prescriptions concerning both religitous and aecular matters writen in approximately tho thirteenth centory in Egypt as a gaide for a Christian population Living withiv Mloslem mociety. ${ }^{3}$ Uriginally written in Arabic, and incorporating law from the Old and New Teitament togeber with Roman, Canon and some Moslem precepls and the propeeding of the early councile of Nicata and Antioch, it wan tramalat in Ethiopis into Ce'oz, the ancient Ethiopic languager, and applied throughout Christian areas of the country by the Church.' An in com-

This artick in appearing concarremily in Milner (ed), Penal Symems of Africa (1965).

1. The Echiopian urthodox tharch, tounded in the toorth century on the doctrinet of
 1955. 起 chat period of Ethiopian biatory, the empure was retrieled to the central and

 Tht Gowerment of Ethidopia 101 ii. (194f).
2. Hrwin the iall of the Axvonite kingdom, Etwiopian higtofy has vacillated between centraJized contral memming from a eapinil eity and itr raling Emperor, and tho conktnal re-emerotence of Localixed kings and centara ul power. The Einperor tectipeh, evar today, the Ambarip Litle of "riequa Nagat" menning "Kinf of Kinge". Soe "The Chroniele of the Emperor, Care lisqob (1434-1468)", 5 Ethiopia 0bserver 152 (1961); The Ghronicle of Briede Morfon (1469-1478) 6 Bthopid Obxerter 63 (1969) ; and
 Ethiupia 115 fif (1961).
3. The Fethe Nepast is reputed ly Ethiopitn traditioc to have been written by "Throe Handred Sagei", thit is, the Selar Meeti, the \$12 Fathere of the Church. See Graren, Introduction, Le Code Penat de FEmpire dEthopid (Centre Francais de Droit Compaŕá, 1959) ; Ambiric and Engilib Lamalations, 1 J. Eth. L. 207, 264 ( 1964 ).
4. Perham, op. cif. at 139
 Indimp publiabed in Naples in 1936 by the acholar, Igaskio Guidi, An Englich trannlatien



## Jodianal of Ethioplan Laf - Vol II - No. 2

mon in early criminal legislation, the penal sections of the Fotha Nagast tend to blend with the religious cast of the catire work. Neverthelesz, the concepts of penal liability set out in the law were quite advanced for their time.:

The Fetha Nagast togetuer with customary taw particularly in non-Chrietian arcas of the Empire remained the applitable penal law of Ehhiopia until November 2, 1930, the day of the coronation of Haile Sellassie I, when the first modern, codified law, the Penal Code of 1930, was promulgated. The new f'enal Code, wlike the Fetha Nagast, set out precise punishments for specitcally detined crimes. Punishment was asessed in relation to title and wealu and the individual perzonality and motives at the ollender. The most rigarous punishonents were meted out to offenders of tite and weallh white vecreastagly severe penalties were prowided for thowe whose crimes were atributable to "Lawlessness", "pride", "envy", "treachery", "revenge , "intemperance", quarrelsomeness", "carelessmess", and "bulyying. The tenal tome of 1950 was said to bave been based upon the Fetha Nagask," an azeertuoi quite necossary
0. The Fith thagast io composed oi two parts the lirsi dealiny with religious matiers, the becond with cint itha bustanly religrous uature o: the woris permeater even the civil
 Heserwed tor wae who Denim the Highst Goc, blazphemes Hum and Worahips Uhere."

 (eliap. XLYIL:

Pora 1A: Cobcerning one who hat wo intention to kill of to beat anothar, his intention, it jact, beiag directod to the killiag of a wald animul or the beating of $u$ hear. It such an induiduad huppens to kill a human boimg the consideratago of
 necident may pectur an when ons shoots an arrow at a bird or a wild animal that
 not to kill a parson, ... shall be jadged 2 ; one who kided invaluntarity mand his guilt in leate than und who murdera another, similar cated are uhode ibuowng topplang wallh, ill-natured stintes, tuats whach kill, muzes and camela which kyck and oxen which wumd people by abe of harna when the owner doee not-take dne eare or provile proper warmag. Ihe Hosatc bw at the end of the chaptex corroaponding
 ureal withuat covering it or who make atepg tor externat use without bailding a reillof. The seconct part concerne people whe do not know that thay can canse deall, at oue whic, with intention to bext a beash beats a man aceidentally whom bo did not bee or shoots in a desert or leta a wall fall npon gameone thinking thor it wat ctrong. The panighnent of the man who beats or ahoots is to be exiled; the man who bad no ill matured alave or dangerous beaste nor was the well in the atreet nor atepa delapidated has no responaibility beyond giving the gervant or the betals to the relatives of the imjured person." Trams, Abbe Pandos Tandan.
日. The follawing raprosentative provitionit among tho Code's genagil principlea eito for apuhority not ondy the Fetha Nagat Ent the Bible iteelf;
"15. Our Lord has eaid in the Gospel that he wha known mach phall be puniabed much but be who knows litule thall be poushed litule. (St. Luke 12:47).
16. The Three Handred, knowing that it is not right to pasish actording to tha extent of the wrong bat etcording to the amount of understending heve distingrished between a sentence passed on thild, is dranken person, a mid. than and morgelful pergin and the sertence patsed on a grown person of

## PENAL System of Fthiopia

for its public accepance at the time; a comparian of the two latry, however shows considerable departure, particularly in ine Special Part of the Penal Code which specifically prescribed each crime and its penalty. Athough the Penal Code of 1930 was considersbly more sophisticated than the earlier Fietha Nagant, it remained rather wagae and formalintic, lacking well defined goneral principles and a comprehensive approach to the disposition and treatuaent of offenders.

It hecame apparent in the $1940^{\circ} \mathrm{s}$, after the liberation of Ethiopia and with the enactment of a number of proclamation: in the penal area, that a new, camprehensive peral code to meet the modern needs of developing Ethiopia world have to be drafted. Professor Jean Graven, Dean of the liaculty of Law and President of the Court of Cassation in Geneva, Switzerfand wias commisefoned to draft auch a penat code. Work wa begun in 1954; at Avantprojet in French was presented by Professot Graven to the Codification Counmisaion, which was composed of distinguished Ethiopians and foreigners, and after considerable disenssion and the molding of a final text, the Code was trangated into Amharic and English and presented to Harliament. The new Code went from Parliament to His lmperial Majesty for approval. what promulgated on July 23, 1957 and came into force on May $5,1958$.

The Penal Code is sompobed of 820 articlea comstituting both a Penal Code and Code of Petty Offenses. The Code is a modern, adraneed law which draws upon the legal tradition of Ethiopia ${ }^{10}$ while incorporating many of the most recent inmovalions in continental systems. Clearly, the primary foreign source of the Code is the Swiss Penal Code of $193 \bar{I}_{\text {, together with the pre- }}$ 1957 Swiss jurisprudence. ${ }^{11}$ There are, of course, econdary sources: primarily

Inill underatanding, and ecourdingly the code in meank sa agree wish the Faik

9. Amharic and Englinh are the official lnngages of the Codas and of the Negarit Gazrta. The Amharic tert, howeyer, is the controlling lav in cube of diserepancy. Art, 125 Rew. Constitation of Ethiopia, Proc. No. 2 of 194\% G.C, Stct, 22. The oripinal texts af both the Fenal and Cifil Coden are in Franth. The difficultien of interpretiog and reconeiling lhere linguiatic texta can, I am enre, he readily imugined.
10. The legal traditiona of Eahiopia that have been retained by the Code are primatrily tho deterrent and expiatipe functiona of puaikhment, the death penatiy and flogpiog. A aumber of Speciri Part offense and feveral tentral principles, arch as repentance mistaks of haw, and agravatiog and extenusting circumstances alahough not hy any meana nofamiliar in Earapa, draw alfo npon Etbiopian tradition Graveri, op, eit. at 27 A., Eng, trans. at 288 ff.; see also J. Graven, "Vers an Nonveau Droit Pinal Edriopien: de la Plas Ancienna è la Piua Rézente Legialation du Monde" 8 Revtee Internatiannia de Criminafogia et da Police Technique 250289 (1954); J. Graven, "LLEthiopie Moderne at la Coditication du Noaveau Droit" 72 Revie Pénal Suisse 39740? (1957).
11. Atter careful comparion of the General Parts of tibe Ehhiopian and Swipa Penal Codep in Frearth, it is quite clear that the Ebiopian Code ig grounded upon the Swiss. Dopartares are minimal and can manally be traced to the prositiona of Swies treatited and jurityrudence, See F. Zurcher Code Páral Suipe, Exposi des Motify de FAvant projut (Framech tramation, A. Gatier, 190B) ; P. Logoz, Comptentaire du Code Pbnol Sutise (1942); Thermana mad von Overberix, Scheseiserishes Stra/gesetsbuch (1940); and Hufter, Letrbuch des Schweixerischen Strofrechts: Allgemeiler Tail (1926).

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 Penal Code of 1951 in relstion to military offenses, and more generally the Codes of Norway (1902), Italy (1930), Brazil (1940), and Greece (1950).:s

Aside from notes taken during the disumsions of the Codification Commiōion ${ }^{1 *}$ there is virtually no legielative history for the Penal Code. The Jrafter has nol made available any travaux preparatoires that may exist, nor Las he witten an exptication de texte; the records of Parliament are for the wost part similarly unavailable. Questions arise as to how anbingoun profi:Lone within the new Code should be interpreted. Article 2 provides that isterpretation shall be in accordance rith the "apirit", "legialative intent" and "purpose" of the Code. Acide from wril-itcerited tenets of conde interpretation and teanual analysis, the qucition rewains as to whether Swiss treatiets and jurisprudence should be considered, in those instances in whicii the Swino prorision is is clearly the source of the Ethiopian, as quasi-legishative intent for Imposes of determiniu; the meaning of an arlicle within the Ethiopian Code. Although the spectrim of opinion rubs from complete adoption of Siwis jurisprudence, if not with binding etiect at least with persusaive elfect, to total dioregard of possible Swiss sources, the writer believes that a middle position is hoth possible and sound. In the absence of legialative history and olitial guidance with resurect to the use of swize materials, if it appears from compraisun of the relevant provisions, that the Swiss Penal Code was cloarly the eource of the Ethiopian, the meatiug altributed to the Jwiss provision should be atri* buted to the Ethiopian provision unless sound reasons relating to Ethopian legal tevelopment or specific nceds of the country can be given to justify departure from what can be asiumed to have been the drafleris and, wherefore, es there are few ayailable debateă, the legialature't intent. In a zense this would create a presumption in favor oi pre-195i Swisa interpretation rebuttable by remeuns going to the different legal and socinl needs of Ethiopie. Such a posithon would allow for sume degree of certainty of interpretation together with control of posible judicial arbitrariness, and yet for the quite different himory and eurrent developnent of Switzeriand and Ethiopia. Perhapa an example will be helpful. Article 29 of the Ethiopian PenalCode conceraing 'Jmposibili. $y^{\prime \prime}$ permits a judge to reduce putishment if at offense can be said to have been "absolutely impossible". The meaning of the wordz "absolutcly impon rible" is unclear. There is no Irgislative history on the subject and rather thau
12. The tripartite division of the French Penal Code inta offennes, misdemanan and contraventions has been abandoned in the Ethiopun Code for a aimpler bi-partite division into penal wfeuses and petiy offensea.
13. P. Grafent An Jntraduction to Euhiopian Criminal Law 4 (1965., A strong argumeut Lus been made by Mr. S. Tedeschi in a book to be publiabed in 1965 that the Iulian Penal Codo is an imporlatt Emropean source.
14. Thene noter were taken by M. Philippe Craven, the son of the drafter, in Fiench add are at yet onpublished.


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allow frudge mimply to create mesning for the term, it is axggested that pre1957 Swise soarces should be consulted if similar langrage is used in the Swins Code. The words "absolument impossible" do appear in the relevant Swiss article, ${ }^{16}$ and after consulting the Swiss jurisprudence and treatises ${ }^{15}$ oue learns that "absolute" is set off agrinst "relative" imposeibility with certain types of cases falling within each category. It it maintained that the Swiss interpretation of these words should be adopted unlese good reazons to the contrary exist. Now it may be felt in Ethiopia, despite the objective impossibility of an offemse, that an individual who attempts to commit an offense and is prevented by an absolute imposibibilty of which he had no knowledge, is subjectively quite as dangerous as one who, through better fortme, is able to complete his offense Further, it may be thought that it ia quite ncees;ary in fostering the development of rehabilitation in Ethiopia to treat such indivicheals in the sanue manner it they had completed the oflene. These rescoms would militate for a very narrow interpretation of "absolute" to limit ube of what amounte to a partial defense of impossibility. Such reasons would oilset the presumption in favoar of Swisa jurisprudence and allow for flexibility within a rapidy changius legal aftem.

The theory behind the Code's enactoment was to have both a nationally unifying force ard a guide for the progreasive develuphent of the Dthiopian people. Lf, bowever, a code of law is distant from prevailing social values, it may remain to a large extent unapplied and serve to undermine the yory values being sought. ${ }^{18}$ The question ariees, therefore, th to how the codes may be brought into eloser relationship with developing social values. The inception of the new faculty of Law is quite important in this respect Within ten to fifteen yeara a good number of well-qualified lawyers who bave been trained in the theory of their own codes and the problems inherent in their application will be produced. These men will staff ministerial legal positions, the courts, a growing bar and the upiversity law teaching staff. They will belp inmensely in popularizing the new haw and seenng to its application, but this will not be enough. Contrary to practice on the Continent, legislative cunsmittees charged with the redrafting of the codes will have to be constandy at work to keep the codes abreast of a rapidly developing society. Further, a balanced position should be worked out with respect to judicial interpretation

## 16. Art. 23, Code Peragl Suinse.

 JT 1953; RO 83 IV 132, JT 1958 2; M. Waiblinger, "La Tentatiqe, III" Fiches Jurdiques Sukses, No. 1291, Oct. 1967.
18. Many of the concepts ineorporated within the Code are gew to Ethiopés in particular, the ideal of rehabilitation which pervades the Codo, the provigions concerning the treatment of jnveniles, bobeent to offensen, probation, conditional release and numerana Special Part offenaep. Other principles saph ze those governiog jurisdiction, altempt
 widely comprehended.
of the codem. There must be anfficient diagretion to allow accommodation to changing ways, panticularly with respect to forcign-inapired law, and yet, soficient certanty and structure to allow for prediction of legal comsequences and prevention of potential arbitrariness on the part of judges. Throngh these means it is hoped that the new codes of Ethiopia will, in time, become increasingly related to functionimg inatitutions and reaponsive to the changing needa of the country.

## II The Purposes of Punishment Within the Penal System

Until recently retribution and deterrence seemed to dominate penal philosophy in Ethiopia. The Fetha Nigast had already to sone extent moved beyond a rudimentary uze of the "lex talionis" by partially individualizing purishment to fit the personal guilt of the offender, but had retained a number of rather crude punishaments and a large clement of retributive theory. The Penal Code of 1930 further individualized punishment by relating it to the aubjective factorn of interst, motive and personal status, yet there was no expressed interest in the reiorm of criminals. There was, however, in this earlier Code considerable concenn with the welfare of injured parties. Article 18 of the general principlea might well be atwdied by many modern penal legislators:

If there be a poor man who has no money with which to pay a fine to the courl and damages to the injured person on account of abuse, askanlt or berious injory, the judge shall pay the money to the injured person from the fines which he keeps as a special fund and shall imprison the person who caused the injury and make him work and so cause him to pay the damages and fine. But the Government in under no obligation to pay from any other oource than the money from fines which is kept.
Although the earliex emphagis on retribution is beginning to change today, certain strongly retributive institutions remain, the moet obvious of which is flogging. Mutilation had becn disontinued a number of yearz ago; flogging has, however, been retained in the Penal Code of 1957. ${ }^{19}$ The drafter had excluded flogging from his original Avant-projet, bat the Codification Commission and Parliament reinttodoced the penalty. The strongest arguments given in its behalf were that it is in harmony with traditions of purishment, that its use is restricted to very repugnsat crimea axd that it has a strong deterrent
19. Flogging wat elso wn enemerted pumighment in the Peral Gode of 19an, brat whth the prowiso in Art. 3 (PL E );

The sentence of flogging is atill in use with a few other governments. Thuagh is he certainly our parpoisa that the suntence of fogting shall in the fature be abolighed in our combiry, for the present we have strittly reserved the sentenco of floffing. no it has hitherto been adminitiered, for the panishment of those who have eommilted some great erime which yet doer pot deserve sentence of death.
effect ${ }^{20}$ After much debate tin Parfiament it was finally included within the Code as Article 120A ${ }^{11}$ and applied ondy in instances of Aggravated Theft (Art, 635(3)) and Aggravated Robbery (Art. 637(1)). The infliction of flogging is limited to malo offenders between the ages of eighteen and fifty and may not exceed forty laslies to be carried out under medien supervition; the flogging may be stopped at any time that the doctor corsidere health to be in jeopardy. A decree was issued in 1961 extereding the punishment of flogging to seven other offenses which the decree categorizes as "offensen to the disturbance of publie opinion." ${ }^{*}$ The decree stateg that the High Conrt may aubstitate fogging for the penafty provided and that it in to be inflicted in accordance with Article 120A, but not to exceed thitty lashes.

Capital promishment herl also heen retained by the new Penal Code. The Code provides that it shall be executed by hanging and may, in the discretion of the conart, be carried out in public to set an example to other: (Art. 116). In the past, tradition and public sentiment in Ethiopia have tended to consider murder a family matter to be disposal of either by payment of "tylood money" or revenge on the perpetrator, often in the same manner in which he had killed hia vietim. These feelings were so atrong that it has beem reported that after mactment of the 1930 Penal Code, a member of the murdered man'p family was allowed, in a prescribed place, to pall the trigger which carried out the court's sentence of death ${ }^{33}$ It mitst be noted, however, that the death sentence may not be inflicted on pergons noder the age of eighteen or of limited responsibility (Art. 118), and beth traditionally and under Article 59 of the Revised Constitution of 1955, wo sentence of ileath can be executed withont the confirmation of the Emperor. Aocording to the Prison Statistics of 1956, E. C. ( $1963-64 \mathrm{G} . \mathrm{C}$ ) , 977 persons were held in prison under sentence of death while only thirty-mine death sentences were execated. Although thia may partially he fine to inefficiency in obtaming confinmations, the more likely reason is the goite traditional leniency of the Emperor in the ase of his pardon and ampesty powers. ${ }^{24}$

Although retribution and particularly deterrence remain quite promounced pablic values today, the new laws are moving toward more modern and
20. Procepverbal of the Codification Comunterion, April 9, 1964 G.C. p. 3 ; Precerdines of the Senata, Hamite 2, 1949 E.C. (July B, 1957 G.C.), faal reqolution, Hamle 8, 1949 E.C. (July 15. 1957 G.C.).
21. It is the only article with an "A" indicating Parliamentary finelution.
22. Dearee No. 45 of 1961 G.C. Wider Art. 92 of the Fiviset Congtizaton of 1955, deacreen hatiteg the effect of law may be pased by His Imperial Majosty clone withoat action by Parliamerat. Art. 92 proxidet that this is to be done only in "case of emergency that trise when the Chambera are not sittlig." Parlinment has the power to apprope or disapprove decreat in cheir next weaion, bot has pot sin acted on this Decrot. It premumbly, therefors, retulnitits firise an then.
23. Perham, op. cif. at 142 ff.
24. Annal Report of the Primen Depmerment, Minigtry of Interior. See text atompanyiag tiote 33, infra, with reapect to the Euperer's nower of pardon and amntaty.

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Fumane disporition of offerders, The Revised Constitation of 1955 among other protections for criminal defendants, provides that-"puntishment is personal" and that "no one shall be gubjected to cruel and inhuman punishment" (Arta. 54 and 57). The Penal Code of 1957 introdwes the concept of rehabilitation into Ethiopia while also retainith deteryence as a basic primiple. His Imperifl Majesty's Preface to the Code statest
. . . New conceptr, not only juridical, but aleo those contributed by the aciences of goctology, paychology and, indeed penology, have been developed and must be taken into consideration in the ellaboration of any criminal code which would he inspired by the prinelples of justice and liberty and by concern for the prevention and anpprearion of crime, for the welfare and, indred, the rehabilitation of the individual accuged of crime. Punighment cannot be avoided aince it acts as a deterrent to crimes; as, indeed, it has been said. "one who witnespes the punishmezt of a wrongdoer will hecome prudent." It will serve as a lesson to prospective wrong-doers.

Article 1, setting out the object and purpose of the Code also stresses both rehabilitation and deterrence as the underlying purposes of punsinhment.

Nomerona articles of the Corle are dexigued to implement the new conrept of rehabilitation. The judge is efiven broad digeretion in his ctovice of penaltys and is apecifically cautioned by Article 86 to calculate entences in the following mamer:
The penalty shall be determined aceording to the degree of individual
guilt, taking into account the dangerous diaposition of the offeader.
his antecedents, motive and purpose, his personal circtumtancea and
his standard of edracations as well as the gravity of hid offence snd the
circumstances of ita commiscion.

The criteria ahowe enumrtated wo directly to rehabilitation of the offender. The Conde prowides for aumended sentences probation and conditional release and states in words that catch much of tit new opirit: "conditional release must be regarded as a means of reform and social reinstatement" (Art. 206). The Come farther sets out specialized penalties for juveniles derigned for their reform ${ }^{*}$ and prowitions for the confinement of irresponsible persons for indefinite doration, althourh provision is made for jadicial review (Ant. 136). Treatment for an indefinite period allows the priuciple of zehabilitatican full play, unlike ordinary penalition which emphasize, if anythiag, deterrence, as they are graded solely on the basis of legialative determiatation of the
25. See text aceompanying notes $29+32$, infon.


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serionmess of the crime: a man ready for release before the set number of years must remain confined; one likely to recommit his crime numt be released when hid momber of yeart expires. It must be remembered, however, that both rehabilitation and deterrence are atated purposes of punighment and may at thes equfitict with each other.

First steps have now been taken toward applying the rehabilitative provisions of the new Penal Code; last year the first prisoners were given condttional release. Sorne difficulties have arisen, however, due to differences in approach between the Ministry of Interior, controlling the prisons, and the Ministry of Jatice, controlling the courta. This division of responsibility for the courts and for the prieons almo raises other issuec. Pre-sentence reporta prepared for judges by the police xemain in court files: the prison administration is given acceme to the type of sentence and number of years imposed, but not to the full backgronnd of the offender. Post-gentence clasificition within the prison कptem conforma to the sentence and therefore, to the crime commfited tather than to the rehabifitative needs of the individual offender. Congiderable reorientation of both judicial and penal practice is necessary before the rehabilitative Ideala estahlished by the Penal Code of 1957 can be sobotantialy implemented.

## III. Adult Offenders

The only awailable statigtics concerning the number and type of adult offenders in Ethiopia have been collected by local police departwents and contralized in the Public Prosecution Section of the Miniotry of Justice. These figures are incomplete and, more than likely, rather inaceurate ahthourf they are probably reliahle enough to uncover broad trends. ${ }^{\text {t }}$

In 1954, E. C. (1961-62 G. C. 1, the last year for which gtatistice are available, 25,551 convictions are reported, 8,146 of which are attributed to crimen agaisat preperty and 4,562 to intentional bodily harm. The number of crime against property in probsbly greater than indicated as figurea are not given for the reputedly large number of offenses againet the possegion of immovable property (Arta. 649-652). The greatest namber of offemses were committed in the prowinees of Shoa and Harrar which

[^7]is to be expected as each has a concentration of urben peppulation. Sertistics are too sparse and anrelinble with reapect to adult crine to anpport more than the most tentative hypotheses as to crime causation. Crimes agninist property may be partially explained by poverty, unemployment due to rapid urbanization, and the traditional higb value attached to land ownership. A strong concern with honour and status among personz with volatile personalities may be one of the factors underlying the high rate of bodily injury offenses. Basic criminologicai and paychologiesi investigation in Ethiopia $\frac{1}{2}$ orgently needed before intellifemt plamaing of crime prevention and the rehabilitation of offcunders can begim. ${ }^{2}$

There in considerable diacretion, under the Penal Code of 1957 . in the disposition of adult offenders. Each Sperial Part article which sets out the elements of a apecific crime also eatablisbes the discretionary boundariee within which a judge must sentence the convicted offender. ${ }^{29}$ Book Two of the General Part provides the hroader principles governing pomishment and its application.

The Code establishes three basic forms of principal purishment: fine. simple imprisonmert and rigorous imprisomment. The amonrt of fine is determined by reference to the offender's personal situation and his degree of guilt (Art 88). Time may be allowed for payment, but in defarlt a fine may be succesively converted into lahour, goons seized or simple imprisonment iurposed (Arts, 91-98). The Code ala makes provision for restitution to the injured party within the crinsinal process (Arts. 100-101) st

Simple imprisonment, which may extend from ten days to three jeare. ie intended for less serions offenses sa mencure of safety for the public and panishment for the criminal (Art. 105). The court may, however, substitute compulsory labour for simple imprisonment when it helieves such to be con-
28. Stadies coneerning tha canation of crime in other conntriss have. I feel, only limited relevance to Ethiopta, coumtry long isolated and thas with a uniqus hivetorical ami nocial development.
29. The following are aeweral disporitary provisiona within the Special Part typieal of the breadth within the Code:
 exceding five yeard or in lest terious caseat, with dimple impritonempf for not leas than thre montios.
Art 621 - Incest - is pumishable with wimple imprisonment for not lemg than thret months ... with rigoromp inpprisomment not expeeding theo years, Tho congt may is andition deprive the offender of tie fomily rights.
 Eftetn yetro
The jadge in howewt, riven sump guldance in determining senterse within thate
 ting and Aggratating Circempternes.
30. See almo Criminal Protedure Code Arts 154-59.
ducive to the reliabilitation of the offender (Art 106) . Alanorong impritonmeat, on the other hand, is applicable to oflenuen af 4 -wery grave naturp and designed for punislment, refubilitation, strict confinement, and the specizl protection of society. Risornus imprisonnent is normally for a perimi of frour one to thentr-five yearz bert may he for life when expressly a providerl (Art. 107!. An offender may be romdinionally released upon ןrobation when he has served two-thirds of his enmence if both prison officials and the court feel thet his hehavior has improved anil offerg gronod for the expectation of continued amprofement on probation (Artz. 112 90:'.

If the court frets that none of the establizhed penaliten will promote the reform of the offemder, and the offon=e for which he was convicted is puninhable with fine compulsary lahour or simple imprisonment. the court may sut pend sentenee and place the offorsiner on probation (Arts. 194-95). The period of probation zulst be between wo and five years in learth and both security and rules for good conduct are to be set tim ench vase (Arts. 200-03). Probstion thas not yet been practically imptemented in Ethiopis.

In addition to the principal punishments, the court may apply, together with such punishment, a secondary penalty despite the fact that the Special Part offene does not make provision for any secondary punishment. These proaltiea indude primarily: flogging, ${ }^{\prime \prime}$ reprimand, apology. deprifation of civil, family or professional rights, and digmigal or reduction of rank in the arnoed forces. The General Part article provifing for each secondary penalty seta on the parpose of that penalty and the instances in which it nasy be imposed (Arta. 120-27).

Further, when the cour deemis it neessary, it may apply, together with a principal punishment, what is termed a "general measure". There are a number of general measures designed for prevention and protection which include inter aliat repogrixance of good behavior, the seiaure of dangerous articles suspent sion and withtraval of licenses, prohibitione from or obligalions to resort to certain places and supervision and expalsion of aliens (Arts. 138-60).

The Code provides for special measures with rejpect to recidivists irresponsible persons and young persons." Habitual offenders who show "ingrained propensity to evil doing misbehavior or ineurahle lazines: or habitustly derive livelihood from crime" are to be interned upon comimission of a further offense not punishable with more than tive years imprisonment. Internment is to take place in special institution for indefinite duration of not lese than two nor more than ten years; at any time after two years, the court, upon recommen. dation of the director of the instintion, mey grant conditional release (Arts. 198-32). Financial handicaps have prevented the implementation of thete pro-
51. Set lezt tecompanying noter 19 - 22, muprs.


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visions althongh recidiviste are segregated in central primons where possible Irrespunible fiersons, on the other hand, are to be treated in suitable ingtitur tions and if not dangerous may be treated as out-patients. Confinement is of indefinite: duration but must be reviewed by the conrt every two years. When tatiee for the miazure has disapreared. the administraive authority numst apply to the court far termination of treatment and the cowrt muet release the findiFinlal to the andervision of a charitable organization for at least one year (-trts. 133-37\%. Inadequate institutional and prychiztrie facilities have as yet prevented wide application of the above prowisions.

Offender: who have been incarcerated may, at any time be granted sovereign prardon or ammery (Art. 35, Revized Conilitution; Arts. 239-240. Penal Condel. It is quite traditional for Hi; Majesty, on the anniversary of Hia coronation and other important holitays, to uec these powers liberally. Ia 1956, F.C. r $1963-61$ G.C. priogn statistics shomed 120 full pardone and 1,184 reductions uf sentence. ${ }^{35}$

Therr are approximately one lundred prisons within Ethiopia, one in cach Awralja anrl a central prison for each Prowisee. ${ }^{34}$ In addition, a farm camp ha: been csiablishod at Ruthi capable of accommodating 450 prisoners. Aecertinir to the figures of the Ministry of Interior, 17.459 persons were incarcerated in the your 1956. F.C., an increase of 2,089 over the previous year and 5,068 over the year betore ilat. ${ }^{35}$ There were only twenty-seven persons inhprisoned for lifes while 3 , B6t wreived sentences of rigorous imprisonment for more than five ycars and $\overline{2} 111$ simple imprisonnent for less than five yesra A large number $\overline{-}$-191. were in prison pending judgment

The central prison for Shoa in Aldis Ababa is the mast adranced prison
 inulitionment and three of sinuple imprisonment; prisoners pending judgment and those imprisoned for life or awaiting execution are segrewated from normal prisoners and do not take part in the programs of the prigon. Rehabilitative planning i: minimal an the Priann Adminixiration receives no background his torio- priffiemmers from the judiciary and doea not itgelf attempt to conatruct them.

Progranns of efementary elucation, keveral correspondence courses and limited library facilities arr provided for the prison population, $95 \%$ of whom
33. Annual Roport of the Prison Department, Miniasty of Iaterier, 1956 E.C.
34. Eritrea, however, continues to administer its prisons meparately.
35. Annual Reports of the Priton Department Minissry of Iaterfor, 1954-1956 EC. For tightly different Ggares, ene StatiuienI Abstratet 159.162, Cantral Statfetical Offire, Im perial Eihiopian Goferiment ilobit. This rise in the namber of prisoners may be autributable to more complete reports from provintial prisoas in the pant two years.
36. Much of the followidg factual material has been obtained from officials in the Priton Administration, Ministry af Interiot and from my own observation after several winity to the central prisan in Addis Ababa, See also Amdarateliew Tesfayp, ${ }^{\text {ato }}$ Correction in Ehiupia" in 3 Carrent Projects in the Precestion, ControL und Treatment of Crime and Delinquency 7.9 (1963)
are illiterate when they enter prisoment A vaing of wirk pmarams lave been intitatel whidh ollus for training in skills. primarily farming that will he
 hren paid for their work n: earning sechemes have mot yet lyen estahlished. Such a scheme is contomplatad howerer, in a remath ilrafted lriant: Prowlamation whiell would divile cenumeration fur work hane into thre seprate aw.

I.ark of funds has kept liousing in purer comatition ran in the Addes Abrba prison and has preventel the hiring and traiming of alempate ataff. Recreation nal, licalilo and therapeutic facilitios are limited and no prodram for altro-cure fras been patablished. Fivinners are roported to the hitter and to feel that their
 rilities and for the nost gart provide only limited opportusity for work A brginning is heing made with these problema as reathonsithe officials realize the need fur frat prison administration and the importance of careful planniag if the prineiples establisluci in the Penal Code are to be effectively imple. mented.

## IV. Young Offenders

As with adolt offenders, atatements concerning juveuile delinquener irl Ethopia can at best be tentative as there are very few aceurate reeotds and no comprehenive studics of the problen. An analysis of the case history maverial contained ir the files of the Traininy s. hool and Kemand Home of AdliAhaba provides, however some indication as to trends in juvenile crime

Tho more infortant anefunions that nay be drawn from this material are smonarizel in a recem report to the Minitity of Nalional Community Dexe-

3i. Ato Chanyalen Tesheme, "Menoranium on the Iuprokement of Prisom Administra, tion* 1.
38. It is hoped bat the Prisons Prorlamation will conre before Parliament daring itg tur-

 its enatronent will effect a number of urlugnces und be quile helpfirl in reguIarizing administration.
39. Ato Chanfaleon Teshome, op. cit. at 2.
 presented by J. Riley. Tinited Maions romaltith, as a Final Report to the Ministry of

 Ethiopia" 〔l9t1 and Foweini her Beghal Woured, "Sonte of the Ganaca and Cobitiont. ink Fartors to the Making of Juspile Delinquents and Prostitules" (1961); sete alder Andargatehew Teflaye, op. cit. at 9 . Il.


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lopment ${ }^{41}$ The incidence of jurenile crinue i concentrated primarily in in few major citiea and although light, in increasing at The most heavily committed offenseg are petty theft and vagrancy althongh the atthorities hare now decided not to take action with respect to vagrancy except in cases of orgent meed.4 The age group of twelve to sixteen years constitutes the largeat portion of male, "\}zvenile offenders and only $18 \%$ of these offendere come from familiet having both parents. Low income, illiteracy and uncmployment are also common fac1ots related to javenile crime in Ethiopin.

It in not within the scope of this paper to deal with the causation of juyenile crine, hat a few fraitful areas for invegtigation might be ouggested. The rapid migration to urban areas. especinlly Addis Ababs, with the conerguent fisassociation from family and often elourch. togother with the introduction of western educatiomal and conomie talues ir likely to have caused considerable nomative confusion to which adolescents are particalarly prone. This has led to the breaking down of the traditional authority structure and patterne of social stratification, which has inerezed the posibilities of juvenile crime. The ismily has heen profoundly alfected by these changes, and in Ethiojia where familiew have Iraditionally been rather angtable, ${ }^{4}$ crime by young precons is likely to liave deep peychologiral roott. Porerty, unemployment and limited cducalional oppoctunities may also be substantinl causes of juvenile crime, particularly with respect to the high incidence of thef. The fact that jurenile crime is an low as it is in Ethiopia can be pertially attributed to the continurd atrength of traditional institutions. Recench is badly needed to corroborate or refute these teatative hyotheses and to introduce others an that a sound framewry for comprehensive and creative planiteg of guvenile crime prevention and treatment can be developed,

The first law dealing with juveniles in Ethioping was the "Vagraney and Vagahondage Proclanation of 1915, "t This Proclamation provided tor the drtention of persons below the age of eighteen yenrs if found wandering abroad without regalar emplogment or lamful residence.4 but the enathont of the
42. There are no metarate figarea to to the rxtent of javenile delinquenry. Oothide of Addia Ababy, Amarta and Dire Dawa thore terms to be wify little jurenile crime, whirh it gonarilly dealt with mafficially by the police. See Riley, ibid. n1 21-22.
43. The Country Statement of EAhiopis aubmitted to the Social Defence Mecting in Mon-

 the lat sear dne to the newly adepted policy. Rility ibid at 9.

45. Proce No. 89 of 194; G.C. The Penal Code of Ethiepia (1930) does concert iteelf with juqwiles in pessips, net Arts, 21, 150.
 Sect.

## Pexay Ststrm of Ethiopla

Penal Cade in 1957 repenled this earlitr lerishation. ${ }^{14}$
Uuder the Penal Code- infante who have not attained the age of nineta are deemenl not to be criminally renomible: offene: commited by auch in-
 Children between the ages of nine and fifteen are refetred to as "young peramb:" and are not aubject to the nodinary penahie: applicable to adults (Art. 53). After a determination of guilt, sentener is a suested taking into account the age. claracter- degree of mental and amoral development of the young perion and the educational value of the musasures to be applied ith. ath. The court may use one of the weazures from a prescribed lizt. the most important of which are: almission to a curative institution. supervised education by -relatives, guardian. adopting family or charitable institution, rejrimand or admisaion to a corrective institution (Arts, 161.69). In special circumstances the coturt may require the payment of a fine, corporal puaishment or even imprieonment if the offense committed is normally punishable with ten or more Years rigorous inprisonment and the offender appears incorrigible 1Arts. 170-73). Mesures for treatment or *iprrisel education are terninateci only when the medical or eupervisory authority think it is necessary or when the young offender reaches the age of eighteen. In the case of young persons sent to corcretional institution- the commitment i. for not prss chan one year nor more than five years; only in exceptional case- may it extemd beyond the sge of eighteen yeari (Art. 16.7. The Code furlifr provides for conditional release (Art. 167) but lack of an organized probation ty,tem bas prewnted implementation of this provision. The Penal Code aleo establishes a calegory of offenders between the age: of fifteen and eighteen. and although ordinary $\mathrm{p}^{\text {ne- }}$ naltiea are applicable, the court nay, in essesing sentence, take into acconut special mitigating factors (Art. 36).

Before 1961, young offenders were taken before ordinary adult rourts where the offense committed was of more imporinnce then the welfare of the
47. The Penal Code of $195^{7}$ expresty reperta "the Penal Code of 1930 and all prorkmations amendine the same". Althorgh Art. 3 retain\# "polire regolations and apecial lowe of a
 tare to legistation amandiag the Penal bode al l930 than a spectal law of a penal inture. The new Pend Code ragulates the arem of ragrancy 1 Art, 47 I . Dongerous Vagrancy and the legialature probsbly intended, therefore, although it did not expressly wo atate, to repeal eflier legiulation dealing with wagraney. See Consolidated Lam of Ethiopit, Inatitate of Publit Adminiatration, whirb lials the lagranry and fagabondage Proclemation an impliedly repealed by the Penal Code of 195i. In 1\%51, howerer, the Javenile Ditision of the High Court did coaviet two jureniles under Art. 8 of the kagrancy
 E.C. (1961 C.C.), in Lowenstein, Materials For the Study of the Penal Lave of Ethiopta 189.90 (1965).
49. The Freach text of the drafter of the Penal Code statex ${ }^{\text {ten" }}$ years: "Len diupprition
 wolna," The game, translation erior has heen made for tach age mentioned in the rection on yount offenders
child. In 1961. a survial tribunal of three High Comrt judge: was conatituted to hear juvenile cates tinder the new Criminal l'rocedure Colr: the court funelioned until December. 1962 whori a perial jurenite rimer was etalti-turd by order of Hi- Majesty to at twier a wreh in Addi- Abata. 'The Jitector of Sopial Drfense in the Minitry of Sational Community Developmont lia- been appointed a Woreda Court judge for purpmiey of hearing cares in the Jivewile Cumart. In the proninme, young offenders are aill hearll befure adult courts.

The Criminal Procedure Code of 1961 sets out special procedural rules in cases concerning young perems (Arts. Ithe8). These rules provide for an in-

 ing ten years of irath, amplaint is ratil or the acrused and if atmitted, convintion may follow, If not admithed, a letaring is huch at which all witnessen are interrogated by the javenile julge and by the infirme. who is pither a lawyer or gearilian, A prohation report is prefaret lyy unt of two probation off-

 A* thete is as yet un hone for wirls they are umally rethervel to farente or


Thu anly institufion in Ethispria concerned with the rehabilitation of juvemite offeruters is the Training sulowlaml hemand Ifone establishod in 1942
 Driaun Admini-1ratiom of Ihe: Ministry of Interior but moniment with the growing philosophy of education and ediabilitatint. it was in 1964 transferred to Ilte Divi-ion of Social Wr-lfare in the Ministre of Naliomal Gommunity Derelopment.
'The intilution proviles acconmodation for one humirel boys either committel or on remand whoe agen mom adntimion range from niac to eighten
 a number of teachers who provide elemrntary education through the Ministry ul Eduation. A-ide from some aradetwie training and a =hall anount of theraby and rese work prowideal hy the [robation officerv. the boys do not re reeive juy guitante and conseling due to the lack of l.rainef personmel. The






51. Yobag offendere in the provinuea are setil to kegrequted bertions of grisons whare nueh facilities exita.
 mad imelfo on remand. Riley pp. cil al $\mathrm{It}_{\mathrm{t}}$

## Peval Sistem of Ethiopla

organization of the sohool and its planning tend to he loose. cquipment and housing relatively poor and staff inaderfuate. ${ }^{3}$ There has been alnost no aftercare or follow-up of juwenile offender- Theste, who are now responsible for the school are in wrupathy with the principdes of rehabilitation, however, and are beginning to make headway, A comprichenve reorganization and development plan for the school las recently been prepared in the Ministry of National Commanity Developmeat and there is every hope that it will soon be int plemented. ${ }^{\text {s }}$

The Second Five Year Development Plan 1963-1967 G.C. includes a stafement in prameiple that the Empire will unulertake "the rehabilitation of youth so that delinquency and vagrancy among teen-agers is controlled amu such youths are thelped to beeome useful members of society. ${ }^{73}$ New legislation is now badly needed to realize this illeal. ${ }^{\text {f6 }}$ The Social Weliare Division of the Ministry of National Community Development is iniliating and comrdinating efforts in this field and is presertly drafting a comprehensive Child Welfare Act. The police force has recently opened a special department dealing with juvenile aifaiss, and the Municipality of Addis Ababa and zuch organizations as the C.M.C.A. and Sronts have begun to form community cemeriz clubs and other facilities to provide activity and trainirg for youths. Alhomari Hithiopia has been slow in realizing the necessity of preventing juvenile crine and caring for young offerdera, it is fortunate to bave established a good beginning before the problem has assumed serious proportions.

## V. Conclusion

The above is a brief outline of the penal system of Ethiopia. Although a good deal more detail could be added with respect to written law, wery littic, indeed, is known of the day to day functioning of the system. As has been seen, there is considerable disparity between the principles and ideals set out in the new preitive law and their application withim the penal system. Both basic regearch and expanded educational opportunity are very mach needed if this gap in to be substamially narrowed. A good start has beem made and enconragement can be taken from the growing awareness of the existence of these prohlema and the desire on the part of ruany in Ethiopia to see to their evenlual solution.
53. Se Rilloy, dem, ted Singh, "Addiy Ababa Home for Joverile Delinquents" (1959).
4. Riley, ibid., Cbap. II.
55. (Addis Ababa, Berhanena Selan Printing Press, 1962) 301.
56. See High Courh Javenile Division, Crim. File No 322 /53 supra it nole 50 where the Conft at the end of itt opinion states:
*The Court eansidera that a resumé of this jodgment shonld be pent to His Fucellency, the Minister of Interior and His Excelleney, the Minster of Justice, through the Prasident of the Hish Court, togecher with explanations of the difficulties with which that Jovanile Conrt is faced fa dealint with juveniles ander tha anisting legichation"
































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# CODE AND CUSTOM IN ETHIOPIA 

By Professor George Krztezurowicz<br>Faculty of Law, Haile Sellessie I University

## Introduction

Ethiopia"e juristic development presents, in most respects, a striking contrast to the reat of sub-Saharan Africa. Only Ethiopia baid its own abcient code of law. Ethiopia alone evolved a umique legal aystern related to its tradition and to both continental and common law concepts. Also extremely original is the pace of developrient inn, reapectively, Ethiopian public and private Law. Indeed, while in the constitutional field, Ethiopia can be distinguished from most of Africa by the caution and gradualness with which its political structures evolved from the traditional Ethtopian concepts of government, ${ }^{2}$ in the ephere of private law the reverse is true: in another contrast to most of Africa, the recent reform of private $l_{\text {aw }}$ in Ethiopia was sudden ard total The reward for the gradualness in Ethiopian constitutional development has been a political stability amique on this strife-torn contiment. As to the reasons for the abruptness of our private law reform, they are disensged below.

It is now generally admitred in Africas that the diversity min the communal features of tribal custom in the fielde of land tenure, family law and zucoession, and its voids in other areas of law (eg. contract) hamper trade, inverment and social progres. The necessary modernization of Africele private law structures has etarted or is overdue. It is hardest to achieve in the above-named fields of law, wherein tradition is strongeat and elaborate. Granted this, by what mathods ehould private taw be reformed; should there be a legal evolution, or a juristic revolution?

The expert drafter of the Ethiopian Civil Code, Professor R. David, has dechared himself in favour of and has followed what may be called the "revolutionary" approach. He explained his attitude as follows:

The development and modernization of Ethiopian necestitate the adoption of a "ready made" system ... in such a manner as to asoure ns quickly as posaible a minimal security in legal relationa.

1. This paptr is largaly baced on G. Krzeczunowics, "A Nem Legtalitive Approach to Cutomary Law", J. Ebh. Studies, vol. L, to. 1 (1963), p. 57, which is out of primt. The Lrt. tar article what never poblithed in a liuw journal or in tho Amharic langange.
2. Cf. G. Krsectanowics, The Fegine of Atembly in Ethiopia," J. EJK. Stradies, wol. I, no. 1 (1963), p. ${ }^{79}$
3. For the inat decede conall, eff the semeral igroo of Journal of African Lasp and of Recluil Pangri.


#### Abstract

We [Europeant] obrerve the stability of our private ]sw, and we believe with difficulty in the efficacy of laws which pretend to impose on private tudividuala amother mode of conduet than that practiced by them ... This position is not that of the Ethiopians... While afeguarding certain traditionsl walues to which she remains profoundly atinched, Ethiopin wishea to modify her acructrres completely, even to the way of life of her people. Consequently Ethiopianta do not expect the new Code to be a work of conmlidation... of actual customary rules. They wieh it to be a progranit envisagang total trumformation of wocient and they demand that for the mogi perth in set ont new rules appropriabe for the society they wish to create, [further arguments are omitted].*


The nhove view has been subutmatiolly expported by this writer:
No doubt the practical non-existence in Ethiopin of customary rales on certain matters (eg. in conirect lawi and the fact that in other mattere (eg. in family law) moat cubtoms are uncertain or vary from place to place, group to group and time to time made it inconceivable even to coneider the iden of a mere legishative comeolidation of all such customany rules af are fonnd to be followed in practice. Law could not be simply "foumd" and affirmed in Ethiopia. It had to be "mate" by rational choice from oational and foreign sources. A homogeneons legal system far this Empire could only be created by a conscionaly reforming effort. In the Emperor's words... the primary requirement was the tomodernization of the legal framework of Our Empire's social structure." The tenets of those historical and sociological schools of jurispraderce which strest that law grows primarily from custom through an organic nod-deliberate procees seem valid... only in circumstances of relative atability. They are hardly appropriate for those mencient gociaties which, sa in Ethiopis, are auddenly exposed to the impact of a violently competitive ortaide world. In such circumstances, the aim of our Code was, rather than to aanctify existing practices, to offer a mified legal model for the society to come. AAs cvincell by the Fethn Noquast, sach reforming sims are not novel in Ethiopian history.) ${ }^{4}$

The legal role of Ethiopia's traditional customs has thas dwindled and is now reduced. It has, bowever, not disappeared and may be restarched with profit. We ehall attempt in this paper to determine, by amalytical procese the
4. R. David, "A Civil Code for Ethiopia", Tulane L. $\boldsymbol{R}_{\text {, wol }} 37$ (1969), pp. 188-89, p. 193.
 Applicability", J. Afrleurt La, woL. I [1963), pp. 173.74. Such reforms perhipg owed their suctese in Ethippia to the traditionsl sutitade of. at the mont, bare tufferante toward those customary rulen which did not erecord with chrislian ideals and equity (contrabing with the andibrerning reverence which was accorded to ancestral custome in other parts of Africa). It seemas that foreign interest in the usagea of Efbiopita Eociety has failed to trandorm this soundly didfident atitude into one of enthmizm for "Eintoquary low"!
domain of custom under the Civil Code. We shall 乌iscrus, in turn, the Code's repeals provision, the factors explaining it, and the five outlets for custom eubsiating tuder the Code. This will be followed by a conclnsion

## The Repeals Provision.

Among the matters considened by the London Conference on "The Future of Law in Africa" (Janiuary, 1960) figured the problem of judicial and legialative adaptation of customary law to existing needs. The methods of gredral adnptation therein presonized seem atrikingly at varimce with the ail-out re peali contained in the comprehensive Ethiopisan Civil Code of the same year (1960), whose Article 3347 (1) resds as follows regarding "Repeals";

Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.
The above Article repeals prior law and custom whether it be contra or prater legem. It might have been legs destructive of tradition and castom to replace the sweeping terms "comcerming matters provided for tin this Code" by the terms "inconsistent with the provisions of thia Code." Such terms would have restricted the repeal to what contradicts the law, without affecting what would merely supplement it ${ }^{-7}$ As it stands, this tabula rasa repeal of the legal past is without precedent in Africa and can only be likened to the French law of Ventose 30, Year XII, on which M. Plantol, in his Civil Law Treptise, ${ }^{6}$ coms ments as follows: "That atatute, irr promulgating the Crvil Code, repesied th its entirety all the old law... No other repeal is comparable to this colosal operation..." But while the French Civil Code merely finslized a mature isternal ewolution, the Ethiopian one imports unfamiliar Iegal concepte from abrosd. So it may indeed be expected that its effecte will sometimes be "...staltified where the people tivemselver persist in doing a thing which they are supposed by legislation to have ceased from-doing... ${ }^{\text {No }}$ Such persistence if generalized, could undermine the public order; disputes might be settled prevalently out of court and law. One aim of this paper is to show that this need not necessarily or overwhelmingly happen. Indeed, there are certain (1) traditional, (2) actasl and (3) technical factors aupporting and explaining the Ethiopian choice of a comprehensive codification with all-out repeals. These explanatory factors are discussed below.

## Explanatory Factors

6. See An, Allot (ed.), The Future of Lers in Africa (Landon, Buterwort, 1960).
7. Or coarre, the same result, had in been desised, could have been attained by not enaeting any general reperia clange ta less detirable method in a society not conferamat with the concept of "implied" reptals),
8. M. Planiol oud G, Ripert, Treatise on the Civit Late (1th ed 1999) (Tramalaiog Lovistand State Law Inslitute 1959), vol, 1, mo. 227.
9. Alloth op. cil. rate 6, at p. 33.

Ethiopia caninot be considered in a purely African costomary content. Its tradition embodiea elements of Mediterranean (incorrectly called "Wettern") civilization, with its Judeo-Christian and Greco-Roman componente. Constantine and the Nicaea council loom large in Ethiopian lore. The kingdom of Axum was an ally of Justinian. Above all, chere is a tradition of one basic authority and law at the centre, which preserved this empire through centuries of tribulation. Codification is no new concept here. The Ethiopian Christians' ancient canon and civil law was comprehensively formulated - possibly in the 16th century - in the Ferha Nagast (Law of the Kings), drawing nearly all ite precepts from the monophysite mother church at Alexandria. The civil law part contains, among others, elements of East-Roman law. Feaders interested in this topic will find introductary information and further bibliography in R.R. Canevari's Fetha Nagast, Milano, 1936. ${ }^{\text {º }}$

Now let us pasg to actuality. Though codification, in its comprehensive aspect, is a familiar concept here, the venerable Fetha Negast has become so outdsted az to be rarely invoked. Prior to 1960 Ethiopian civil adjudication was based mainly on equity (including persuasive foreign precedents) and cus tom, the latter being varied and uncertain. Save for Eritrea, ${ }^{11}$ Ethiopinn cuatomary laws were not rednced to writing, though descriptions of social customis have appeared, e.g., in travellers' reports and in the ethnological bulletins of the University Coilege of Addis Ahaba. ${ }^{2}$ The tribal and local variations of legal ctustoms are legion. Their progressive unification by gradual processes might take generaticns, while Ethinpis's survival and progress in a non-lessurely age require speedier tolutions, So rightly or wrongly, a short ept was taken in enacting the present Ethiopian Civil Code with its sweeping abrogation of the legal past. Thits most unusual method includes, however, deviees for safeguarding some continuity. The new teckinique, of interest to the lawyer, will be dit cussed helow at length. It is hoped that the distinguished experti) who drafted the code on continental lines, will be willing to add his mises an point, if any.

To start with, it may le in point to quote from His Majesty the Emperor'4 preface to the Ethiopian Civil Code.

The rules contained in this Code are in harmony with the well-established legal traditions of Our Empire..., and have called, as well, upon the best systems of law in the world. No lato which is designed to define the rights
10. A complete amonted English translation of the Fethan Nagat by Abba Paulos Tasdan will be published in the near futare by the Factily of Law, Haile Sellowste I Univerxity.
 ing recent work in this field is F. Ostini, Trattato di Dirito Constutudingrio dell'Eritred (Asmari, Cortitere Eritreo, 1956).
I2. Also, c.f, in varions ixspeg of Ethiopir Obyerver, and in Amharic bodky by Ealambary Mi:htena Sehasie Wolde Makkal,
13. Professor Réne David, the renowned comparativist of the Upiversity of Parie Law Faculty.
and duties of the people and to set ont the principles governing their mutual relations can ever be effective if if fails to reach the hearts of those to whom it is intended to apply and does not respond to their needs and customs and to natural justice.

This most wise and generous pronouncement seems, primta facie, incompatible with the abovementioned "repeals" provision. To cite again:

Unless otherwise expressly provided, all rules whethet wristen or customary previously in force concerming matters provided for in this Gode shall be replaced by this Code and are hereby repealed.

But a closer anslysis will reveal five avenues along which traditional rulea and customs are or may be preserved. These outcts for cuttom are: 1. incorporation ${ }^{14}$ of castom, 2. reference to custom, 3. filling code vacuums, 4, judicial interpretation and 5. part-legal outlets. We shall dizcuss them in turn.

## Outlets for Custom.

## 1. Incorporation of Custom.

A large core of Ethiopian customary law is preserved through its incorporation into the Civil Code. In this way, formulated custom becomes general statute law. The very nature of this method precludes its application to local customs. But even within general custom, the codifier's approach was diecriminatory. Below, is a tentative oxtline of the Ethiopian legilator's sensiblo standards of choice in this field. The choice is all-important lecre, since under the "repeala" provision whet is not jneluded in the Code is abrogated.

The Codification Commission's and Parliament's records are not yet published. But we can slready assume - judging not merely from hearsay but from the very results of the codification work - that the "general" cuatom of the land (its "common law") has been more or less ineluded in the Elitopian Civil Code where: (a) 站is sufficiently "genera" as to be practised by at least a majority of the hightand population; (b) it ia not repugnant to the natural justice which permeated that ultimate old authority, the Fetha Negnat; (c) it is not contrary to imperatives of social and economic progress (the retention of retrograde practices in land transfera ${ }^{15}$ is provisional and non-uniform: it concerns local customs): (d) it is sufficiently clear and articulate as to be capable of definition in civil law termst The incorporated custom has indced been molded, togethier with "received" fareign colntions, into the technical
14. Father than "condification", ainco the enstotas are not intare bul were reahared to fit in with solations received from abroad, or "consolidation", which lerm would, it addilion cuggest it retention of past incidencer of custand.
15. Civ. Cen Arts, 3363 -67.
frame of civil law concepts, categorie and classifications. ${ }^{16}$ Litcidentally, the nbove fonr requirements are somewhat implicit in the Emperor's cited preface, which shows apprecistion of (a) traditional "customs", (b) "natural justice", (e) "needs" of the recipients and (d) legal clarity."

The mentiomed atandards of choice eansed the Civil Code\% Book on Obligations and the saparately enacted Comncrial Code to be overwhelmingly foreign in origrin, as in these essentialiy modern branches of law there was an understandable lack of indigenous rules responding to the set requirementes. On the contrary, in the traditionally cultivated branches of law concerning family, land and succession, many fitting general customs have been preserved through their inclusion in the Code.

It would be beyond the scope of this paper to attempt an enumeration of the Code-incorporated general customs (as distinct from "received" kaw). Several of them concern personal and fanily law, which is now one for all, whatever the particular family customs held by distinct groupa. As this uniformity has been widely warned against and is unique in Africa, the devices mitieating its impact on dissenters will be stressed throughont this paper. Some fine points of law are involved in the question whether - on the face of the oweeping "repeals" provision - the distinct personal status recognized to hoo lems in a prior procedural proclamation ${ }^{\text {14 }}$ must be deemed abrogated with the rest of past civil law and custom. I do not feel catitled to pronounce on this question (which has political implications). It zeems provisionally solved - in favour of Mosledss - by the continuing factual recognition by state courts of the jurisdiction of Kadis Councils applying Moslem personal law. Clarifying logislation might follow in due time.

By way of example and by number, here are a few of the Civil Code antr cles which seem to incorporate, wholly or partly, an important customary role: 560 fi., $652,725,849,852$ (implying exelusion of spouse from intestate inher;tance), $1168,1170-79,2067$ with 2113-14, 2142.

## 2. References to Custom.

The "repeals" provision under discrasion abrogates, within the Code's wide ambit, all past customary rules "unlese otherwise expresty prowided," that $i s$, save where the Code itself expressly refers to custom. The Code repeals what it has not incorporated or included by reference. Legislative provisions,
16. Incidentally, this cauted some inarperable difficalties in tramgations from the Codas French master drath into the uncongerial official langugee of Ambaric (anthoritative) and English. Ambaric lacka legel terminobagy, As for English Iegal terms, they do not fit in. See G. Krzeextrowich "Ethiopisn Eergal Education" (s.v. Language Prohicm), J. Eth. Studies, vol. I, no. 1 (1963) + pp. 69.70.
17. The relovarit quotation belng: "It is ensential that the law be clear......"
18. Kadis and Naihas Cometia Proclamation, 1944, Proc. No. 62, Neg. Gas. yeas 3, mo 9.
far from supplementimg custom, are not even aupplemented by it. ${ }^{\text {th }}$ And the Code only in few instances refers to custom. It may be instructive so summarize those instances. They coneern varying local customs, as distinct from the general ones dicussed above. Clearly, where an epproved cuotom is geweral, it need not he referned to but is "inconporated" in the Code.

Below is an illumfating list of the Ethiopian Civil Code'e rare referencer to local ukege. Their rarity reflects the prevailang trend for unification. We whall quote or outline them under the headinge Family, Sucemsion, Property, Contructs, Torts.
Family
Art 567. - Form of betrothal.
The form of hetrothal shall be regulated by the urage of the place where it is celebrated.
Art. 573. - 2. Moral prejudice [cansed by breach of betrothal].
(2) In establishing the amount of indemnity and who is qualifibed for requiring it, the court shall have regard to local custom.
Art. 57. - Various kinds of marriages.
(1) Marriages may be contracted before an officer of ciwil status [anch officers are nom-existent in the countrybide; cf. Article 3361 on nmperaiom of the introdmetion of civil statns regieterel].
(2) Marriagos oontracted according to the religion of the parties or to local cuatom ${ }^{24}$ shall ailso be walid under this Code.
Art. 580. - [Customary marriage resulta from such rites ag, under a commuunity's roles, constitute a pernament union.]
Art. 606. - Marriage according to custom.
(1) The conditions on which a marriage according to custom may be celebrated and the formalities of such celebration shall be as preseribed by kocal custom.
Art. 624, - [The conditions and formatitien of costomary marriage may be sanctioned by eustomary fines or damages. 1
Arts. 807-8. - [The leqgal ohligations of maintenance between relatives by blood or marriage in the direot hime, and betwoen foll and halt brothers and sit ters, are assessed having regard to local customs.]
19. It remains to be seen whether this exclution need apply to fatare customes. The Cade repeald only thate "prewiengly in force." But what will give "force" to futare entistoms Their force ntay be mainly persuasive in that they influense the jodgen in their interprepation of lawg (cf, infro, our remarks on the conter of "Judicial Interpretation"). How dilfereni is this French - Ethiopian approach from, egs, the Swzo Civil Code which. so far from repealing eustom, clearly enjoins its applicution proeter legem (Art. 1)!
20. Paradoxicaly, members of the national emablished church marry more often in cuptmaty than in relfigions forma.

Note: It hass been stated that several of the Codeincorporated geveral customs are found in the framily law. We now see that the latter shoo containa some references to local castoms. These provide a weloome aritigation of the law's impact on groaps of distinct family crstom. Other cushioning devices coram mores fantiline will be described below s.v. "Pere-Legal Outlets".

## Succession

Note: The law of succession contains no references to cumbon, no that divitiot customs of inheritance have now mo independent validity and oan sarvive only by being followed in testaments or in compromiees. The law of intestate inheritance - while incorporating the general customary rule of powterna paternis, materna maternis (Art. 849 ff.) - digregards local veriations in the order of intertecy. Local practives may, in torn, diseregard that law - through effecting those customary compromiter deecribed below s.v. "Para-Legal Outlete".

## Property

Art. 1132. - Definition [of "intrinsic element"].
(1) Anything which by cuatom is reganded as forming pant of a thing ahall be deamed to be anin intrinsic element thereof [for the purpote of desl. ings in such thinge - Art. 1181].

Art. 1168, - Principle [of nsacaption].
(1) [establishee a fifteen year period for landuacquisition by adverse posbeasion] Provided that no lamd which it jointly owned by membere of one family in accordance with custom may be sequired by uencaption and that any member of anch fanily may at any time climen ouch land.
Are. 1371. - Rights of way and rural servitudes.
[They] shall be of such extent as is recognized by locel chatom.
Art. 1489. - Principle [of commonal exploitation],
Land owned by an agricultural commanity such a a village or tribe ohall be exploited collentively whenever ench mode of exploitation conform to the trodition and custom of the community conoermed.
Art. 1490. - [providing for future codification of guch customs by charters.]
Arts, 1496.97 - [giving further recognition to customary modes of connmunal exploitation.]

Note: Procedures for progressive revision of auch "moden" (ralon) are facilitated by Articlea 149899.
Arts. 3363-67. - [retaming the cuntomary practices as to tramefere of righte in
land erga omnes, for long an land registgation prowisionser are not in force].
Note: In a few developing aress the costomary practice already in regietrotion. Contracts
Art 1713. - Contents of contract.
The parties ahall be bound by the terms of the contract and by such incidental effects are allached to the obligations cancemmed by eustom...
Note: This important recoggrition of "onhyentional neages" bardly calls for comment, eince it is peint of most legal syetemes. Its specific applisations in Ethiopia axe most frequent and interesting in lesto of hatd: we Arts. 2983 (2). 2990(1-2), $2997(2), 3006(2), 3013(3)$.

## Torzs

Art 2116. - Custom.
(1) In fixing the amoant of the fair compersation [for moral injury] provided for in the proceding Articlee, and in atablithing who is qualified to act as representative of the family, the court ghall have regard to local usages.
(2) The court may not disregard unch usages umbes they are amachronistic or manifestly pontrary to requon or morsle.
Note: Thin refenence to local mage supplements incorporatod gencral custom on moral injury.ty The latter includes (Art. 2113) what was ance, with lewt sophistication, called blood money, with this batic difference: the "blood" montey of old did thop penal proceedinge, which our "moral" compensation doera rodt

## 3. Filling Code Vacuums

The disecussed "repeals" provision abrogates all prior customary rules "concerning matters provided for in this code." A contrario, customary law may apply to matters not prowided for therein. But in the fields covered by the Code, custom doee not eren supplememt particular legal provisians. Otherwite, the legislator would have repealed only those rules igeomesistent with the enacted ones, and not all rulea in pari materia.

As pointed ont, in matters lying beyond the Code's ambit, costomary law is preserved (where not incomesistent with other legialation). But the Ethiopian Civil Code, with its 3,367 articles, is so comprehenaive that hardly any fisting field was left out. So far, only owe occors to me, in relation to a chain of legislative omisaions: the Civil Cade says nothing aboat co-operatives, except for the moneysaring ones; such "warving" woperatives are merely aubjected (Art. 405(1)) to "the provieiones of the Commercial Code" which (Art. 212),
21. Title $\mathrm{X}_{1}$ Civ, C
22. Civ. C., Ara, 2105.15.

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in turn, subjecta them to posible entatmenth, whigh have not existed so far, bat are in tife procese of enactment at the time of writing. Now, in this country, verions groups co-cperatime throngh mutual savinge, lowne, ete are customary (e.g. the Ekub). Most of their rules seem to have originated among the Gurage tribes. Thetr desaription is beyond the range of this paper. ${ }^{33}$ But it is submitted that anch rules did fill a code vacuum and thus conld have been applied autonomoushy, apart from using the concept of monventional usage under Art. 1713.

## 4. Judicial Interpretation.

The Ethiopinn codes are of contionemual type- In pure contimental theory, judiciad interpretation is no soturee of binding law, which ommot be jutigemade. Bint appeal courta being guandians of contimaity, the pernunaive force of their judgments is suoh that, as M. Plamiol pats it, ${ }^{23}$ "in fasct the anvount of lnw established [in Frazuce] by decisions of the conurts aince 1804 is considerable." Arad continuental law treaties, jut as the conamon law ones are owerwhelmingly based on case law. The latter will be created by Ethiopism highor courts wheth, in order to decide a case, tihey will have to apply code rules whose meaning is dieputed hefore them. For this reason - after having discussed inoorporation of ctrobom, reference to cinstom, and eode vacuums - we cet ond judicial interpretation as the fourth legad avenue along which Embiopian customary law may be preserved.

This avenue becomes of overriding importance when we consider the Emperor's preface to the code. The Ruler's pronouncement is of legal significance, emanating as it does from He who shares the topreme legislative power under the Ethiopiam Constitution of 1955.25 His preface, 形 quoted supra s.w. "Explanatary Factors", elearly shows that, contrany to whet the sole "Jepend" provigion would suggest, a breal with tradition and custom was not contemplated. There cari be no better evidence of the legishator's intent which, woording to continental doctrine, should guide our interpretationas of revent law. A break with legal tradition mot being imtended, it is indeed submitued that Ethiopian courts should, where appropriste, sengo customary meanimgs to the Code's phrsseology.

In doing it, they mont aet discerningly. Article 1733 forbids interpretation of contracts and, a fortiori, statutce whose provinions are cless. Many Code articles are clear, or fully clarified by the conteat or the French mastertext. Amotige those thiat, bring lew clear, or too general, admuit of more tham one meaning, we must fritingaish. Customary meaning (1) shonld be amigged to Code texts fincorporsting prion custom or referring to it (e.g. in family law) and (2) ahoodd not be undiscermingly sesigned to texts representing "received" law, ts these may lose sense and consithency unlesk imterpreted through their dootrives of

[^9]origin (e.g. in obliggetions law). Beang borrowed from "the beat aytems of law in the world" (Emperor's prefine, op. cil.), such texts were intemded to mema here what they meast there-

We ahall now exemplify the above propositions:
(1) (a) In the section an References to Custom, we quated Article 1168 which exeludes usucaptions of land held in customary joint ownerthip by "members of one family", who can always clain such lend. The term "family" without qualification usually means in Europe "single" family (parents with childrea). It is axbmitted that here the term "family" must acquine the customary meaning of an extended mass of personi desconding from an even remote comamon amoestor from whom the undiwided property originated; thiz allows each such person at all time to clatm the joint tand or his share in it. Inoidentally, Artiole 551 (2) spems to set a limit to such claims by implying that the claimant (who challenges the usxcaption) must not be 昭parated by more tham seven gewert tions from the amoestor concerned.
(b) The zo called "irregular mion" (Art. 708) between man and woman has, in common with marriage, the following two effectr: the praestantio paternitatis with respeet to childaen conevived or horn during the unton (Arte 715 and 745), and the man's liability for the womam's household debts (Art. 714, cf. Art. 660). By virtue of Axticle 709 (1) such irregolar mions arise where the hehaviour of the man and woman is "analogous to that of married people" Now, should such analogy be extended to eover behaviour typical for those customary mions oalhed badomoz, in which the woman is temporarily hired for all-round duties nomewhat aimilar to those of a regular, permanent (cf. Art. 580) wife? Here affirmative decisions may eatisfy custom withoant being legally masound. They may create procedents in anigning a (limited) eignifisante to badamox ynione. Thus in euch unions, credit will be obtained, and off-springs' filiation affirmed.
(2) ( m ) The degenerate proctice of "artificinal insemimation" being unknown to Ethiopien cumtom, the meaning of this term for the purproee of Avticle 794 (dealing with the effect of such insemination on child disowning) must needs he drawn from its fareign u*age.
(b) Much of the Code's "received" controct haw is abutract and makes Iittle sease unless explained through its Romanistic doctrines of orizin
(c) Bot this is needless where the contruct kaw is olear; eqg, wheh familiar rule as "Offer or acceptamse may be mude... by aigms nosmally in use..." (Art 1681) - mesms quite obvionsly that
whatever be the cuatomary concluding handahake or drink ete., it seabs the acceptance (the rule actrally amoursinit to one of those references to custom discussed in a prior enction).
Whether the courts will or will not choose to accept our tuggetions, it it essential that they be coneistent and do not wary their interprekationa, as this int lieu of case law wonld prorluce lawlessiess. Case reponting in this Journal will help to ensure exch consistency. As to basic rulea of imterpretation under Ethiopian law, the reader is referred to G. Krzecrinnowick, "Statutory Interpro tation 'in Ethiopia", im vol. I (1964) , p. 315 of thiz Journal,

## 5. Para-Legal Outlets

The above discrased "legal" outlets for customary law, i.e., the incorporation of custom, reference to custom, filling codevacumas, and judicial interpretation, to not exhaust the problem of the incidences of costomary rales in practice. There remain for us to examine certain pecnliar "para-legal" ontlets for the factual reappearasce of such customary miles have $n$ u independent velidity 却 terms of the "repeals" prowision*0. We ahnll analyze in turn: (1) provision of family law lewing certatn discretionary powens with marriage parties or arbitrators; ( 2 provisiong of the contract of compromise, giving indirect samotion th varions customary arrangements; (3) the ontlet "Astociations".

## (1) Family Lau.

It hat been shown that the impact of the miform famity law on groupt of distinct custom is mititgated by references to lowal usage. Here we shall expmine two gereeral devices cuahioning that impaet through sametioning the traditionad inter-familial autondiny in marriage affairs:
(a) Wishin an elastic frame of banding eubetantive law, the Code vesta a largely diacretionary ${ }^{2}$ legal jurindiotion in the contomary "family arbituatony" (the marringe witnesses). They decide an marriage dieputeses and on the granting of and the personal and pecuniary effects of divorce, which is prononnced by them legally out of coart.3' Their decisions are withont appeal save by special impeachment (Art 736).
 article, perbapa comiats in tha ahsence in our Code of a concept of void tarariage Even bigamona marriages, prohibited by Art 5.B5, can only he "diagolved" on application of eporae or propector (Art. 612), whint the latter hardly ever bothert and the former (whe fa patishable suder Fen. C. Art. 616) dares to do! The swreping conservences of thin "loophole" with reppect to tactuat preservation of castom eall for a field efady rather than a diecosation in thie papar.
27. See. en Ef Art 695 (2).
 at that customary figure, tha Nagar Abbat ("father of the casa") or preegreed arbiter of marringe who may nleo be tifst witnebs" und/or guarantor of the marringe compact.
29. See CIT. G. Arts. $666-82,691-95$ and hatillly, Art. 727-2t.

## Code And Custom In Ethiopla

Betrothal witueses timilarly arbitrate betrothal disputes (Art. 723). This opena a back doos, in fact if not in theory, to loeal customs which are "repealed", that $i$ in, not referred to by the Code in the express way required by the "repenls" provition. Repealed cuatomary law may thus re-appear via compubsory arbitration.
(b) Articles 627 and $632-33$ provide another para-legal outhet for family castoms. They allow the epouse or tponses, either jointly (befpae marriage) or through the family arbitrators (during marriage), to fix or vary both their personal status in the marriage and itg pecuniary effects (the Code rules it these respects being, save exception permioaive - cf. Art. 634). Clearly costome of no independent validity will permeate such marriage arrangements, which must, however, respect the masdatory legal dutiee of support and cohabitation.so One effect of this gystean is that, contrary to a world-wide principle that personal statios is not in commercio, the eporses may set somewhat freely even "thair reciprocal rights and obligations in matters concerning their persomal relationg" (Art. 687 (2), which righte the family arbitrators may later modify (Art, 632 (2)). Such marriage arrangement or modification may for ingance, contrary to a mon-mandatory rule provide that it is the husband who "is bound to attend to the housebold doties" (cf. Art 646) (an improbable conjecture). Or, that it is the wife who chooes the common reidence (cf. Art. 641). Prima facie, a marriage arrangement could alo cancel the duty of fidelity provided by Article $64^{31}$ or, in accordance with some customs, limit sach duty to the wifest But our Peral Code makes anch inference inadmisable; nader its Article 618, adultery is a punishable offence.
Ethiopian marriage may thus be viewed as a status whose proximate incidences may be partly fixed by the parties entering it, possibly in accordance with cnstom, and whose remote incidences and/or termination by divarce are made dependent on arbitral decisions which are also open to "exstomary" influences. "Pare and inimple" reference to cuatom is, however, prohibited (Art 631 (2) ).

## (2) Compromise.

We have diecussed the legal jurisdiction of family arbitrators (marriage witneases). But more matters may be affected by factaal arbitration by elders, ${ }^{3}$ which is neither compulsory, nor usally contractasI in terms of Arts. 3325-26, but in which customary disputants often cannot belp but concur, effecting a compromise. For example, inheritance conflicts may be thas adjused by the "repealed" costomary rules, the resulting arrangements being valid as contracta
50. Aris. 636 and 640. Set mise mendialory Ard. 638-39.
 fication commisarion: eve Corrigehda of Ethinpian Civil Code.
32. Which would roo prevent edititery from being a cation for quick divorce wader Arte 668-69.
33. The 00 - colltod sempariff.

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under the Code's regrolation of compromises, ${ }^{34}$ which are mande unsestilable by Article 3312, regarding the "Mistake of right," to wit:
(1) As hetween the parties, the compromite shall have the force of res judicata without appeal.
(2) It may not be contested on the gromd of a mintake made by one or botih of the pantinea concerning the xights on whith they have compromised.

Consequently, a purty'e igrorance, which is bound to be ommon, of Codo law *e to the trae extent of the zighta (e.g. succession sights) compromised by bim does not invalidate the compromise applying customaty rules. Rules repealed in law may thus reappear in fact. They will not bind quat cutotomary rules but qua legal compramise. They are not a fit stady objoct for the lawyer, but for thite ethnologist. The same is true of the customaty rales spplied para-legaily in marriage. They have no independent validity but biod qua murriage contract or qua arbitral decisionh, as ahown above
(3) Associations.

It is possibiz to recognize centain tratitional ngegrede, blood, worship (Art 407) or other customary groupinga as valid "ponprofit" associationa (Art. 404). If this ever happens, their rules will uaturally bind not que custom bust qua legal memoranda of azsocintion (Art. 408). The point may often be practically irrelevant because "legal" proceedings seem needleas, indeed anwelcome, in most such tribal groupinge.

## Conclusion

The Civil Code's "repenls" provision severely limits the field of legal upphication of custom in Ethiopin This limitation is the outcome of the sperific tredition and conditions of the country which resulted in a atrong unification tremd. Nevertheless, and apart from the just diseused para-leyal ortlets for custom, analysis has revealed four legal ontlets for customary law. The legal ontlet of enstom-incorporation is now frozen, barring further supplementation from outside. The remaining three legal outlets, to wit, Code-references to custom, Code vacuaus and judicial interpretation, safeguard a minimura field for study of customary laws. There is, of course, no "minimum" for the ethnologist who wtudies usage irreepective of its binding force in law. But the Janyer ig, in his researeh, regtricted to what is sanctioned at atate level. Furthenome, thourh the can attempt, where appropriate, juridical analyses of the sthnologist's materinl, his proper source for research is cowart reports of cases wherein binding anstom is proved or noticed, or customary interpretations sanctioned. The Fthiopian Cifil Code being recent, and a reporting system not yet developed, there are no such case reports yet on the izsues discuss-
34. Civ. C. Arta. 3307.24
ed in this paper. There is thus little soope for hew research in raported cases, This explaina the rather shatract character of ny argument, for which I brg forgivenes.

Doubts have been expressed by erainent lavyers ${ }^{35}$ on the practicability of a moiform Ethiopian codification of civil haw including that of family, land and succesion, wherein custons are strougest. This feat, unprocedented in Africa, is now achieved in Ethiopia by the techniques discused above. It would be premumptrous to minit detailed prognostics on the futare measure of stacess of that gigantic piece of legigletion with its sweeping repeak and all-embrecing content, A new legal tunic, oven from the beat jural tailors, is boand to scratch the social hody. It is to be hoped that the Ethopian judiciary,-using the indicated outlets for custom in a consistent way and reporting decisionse relevant theroto, will succeed in mitigating the haribness and incentituden of transition from the ancient to the new ways.st
35. E.g. Oatifil, op cita nats 11, it por 8 .
36. At the time of going to press we were shown Professor Vanderkindenta pamphlet "An Introduction to the Sourcen of Ethiopian Law", apperrint in Yol III No. 1 of the Journal of Ethiopian Lazo. The historical atud bihliographical aapects of Profewsor Vanderlinden's work are mery waluathe Some of his legral amilyzer ate less so. In Part I, dealtug with Custom, Professor Yurderlinden dibcusses onr earlier paper, of which thig miticle is but a developmem (see rate 1 , supra). His diacnaion incladed some rather inaccurate referencos to and umwarranted conaluctions of the Cipil Code With moped to the enforceabitiry of enstomary taw (and of Morlitn lam: see Pant IV) in Etbiopiat, our loarned colleague reaches minggerated nonelunions which, in outr view, are quive incormpatible with the law on the books and nontrary to, both legislaftye intent nud fudicial decisions-

Profegior Yanderinden sems to advocate the atacy of custotno for the eake of edvamering the law. But his attempt, if followed would amoust rather to porting the logal chock back" for the sake of gtradying curtoms! In order to prevent sume untowad nesnit, we shall commert on this mator sat soon as epace to dwilloble in the Jowrnal of Ethiopian Latp. Such comment will not affect the meationed great imerith of Profepeor Yandarlinden's wort is ids major sappect.

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## CRIMINAL JURISDICTION IN ETHIOPIA: A COMHENTARY *

by Hobert allen Sedlar, Facolty of Lawy Haile Sellwosia I Uniweraity
(Title I. Chupter FI, Seetion 2 of the Pemal Code and Book I, Chapter 1 and Book 1 4 , Chapter 2 of the Criminal Proedure Code)

## I. Introduction

H. Tha Fifat Elemant: Pergans Subiect to the Penml Code
A. Principal Jurisdiction

1. Personts subject to Effiopia's principal jurisdiction
a. Offences commitred in Ethiopitu
b. Offences committed in a Joreign country umainat Exhiopin
e. Offences committed in a foreinn courtry by Ethiopian officials enjoying immunity and by nembers of the Ethiopion Anmed Forces
2. Limitations upon the exercise of primcipal intisdiction
B. Subsidiary Jurisdiction
3. Persons subject to Ethiopin's subsidiary jwrivdietion
a. O/fences contmitted in a forsign country against international lan or unithersal order
b. Other offences commited in :x fingign coumtry
c. Offences committed in a foreign colntry by members of the Arnted Force:
4. Limitations upon the exercite of anbsidiary furishliction
C. Stmmary
5. Principal jumidafituion
6. Subsidiary jurisdiction
III. The Second Elemenf: Jurisdiction of Court
A. Jurisdiction over Offences
B. Lecal Jurisalterion
C. Summery

## I. Muroduction

There are two elements infolved in Ite ceverise of crimanal jurishichion by the Ethiopian courta. The first clement deals with perions subject to the Penal Code of Ethiopia. All persong subjent to the Penal Code of Ethiopia are subject to the jurisdiction of the Ethiopian conithe and they may be tried Lere for violations of the Penal Code. Title I. Chapter II Section 2 AArts.

- The purpose of this commentary in to provide explantory treatment of thit anem of law. It is not intended to be adetailed analysis of all the legal problem that may arige amd it doea not contein a dizentaion of tates and secondary material.

11-22) of the Penal Code covert the question of what persons are arbjeat to the Penal Code, and hewor to the juriadietion of the Ethiopian coman,

The seeond olement denle with the jurisdiction of courts. It must be netermined which court in Ethiopin has jurigdiction to hear the ease and in which area of Ethiopia the case must be tried, e.g. should the cose be tried trefore the High Court ritting in Addís Ababe or he Awradja Court of Debr* Berhan Awradja or the Woredn Court of Guellele Foreda. These questions are covered by Book I, Chepler 1 and Book IV, Chapter 2 of the Criminail Procedurt Cadt. (Arts. 4, 6, 7 and 99.10 t .

## IT. The First Elenuent; Persons Subject so the Penal Code

Whether or mot a peran iz subject to the Pemsl Code depends on il) the place whore the offence whe eomatiterl. 12) the notionality of the accused sad (3) the Eind of offence that has been oommitted. In certain circumstances an accused is taid to be subject to Ethiopin's principnl juriadiction; in other circumstances although he not aubject to Ethiopis' principal jurisdiction. the is said to be gubject to Ethiopia's subsidiary juritdiction. The conditions fer the exercise of jurisdiction differ depending on whether the accused it subject te Ethiopia's principal or zubsidiary juridiction. Mont significantly, where a person is subject to Elhiopia's principal juriadiction, discharge or anquittal in a foreign country does not prevent a prosection for the same offence in Ethiepia; it dees en if he is enly eubject to Ethiopin's subsidiary juriedietion.

## A. Prinaipal Jurisdiation (Pexal Code, Arks 11-16)

Primipal jurriadiction exints af of an accused who it (l) charged with the commistion of an offeree in Ethiopia, (2) charged with the comminsion af eertain offencea mpainst Ethiopin in a foreign country, (3) charged with the comminion of an offence in a foreigu country where he possesges impus. nity from prosection by virue of bio statua an Ethiopian officifl (4) charged with the commostion of certain offences in a foreign conatry while a nember of the Ethtopian Armed Forcea. Firat we will consider when an nocused is subject to Ethiopia"s principal jurisdiction; then we will conaider the conditions for the exerciee of principal juriadiction.

## 1. Persons subject to Ethiopia's principal jurivdiction

a. O/fences commitied in Ethiopia (Penal Code, Arter 11, 12)

Aricle 11 (1) prowides thas the Code applicable to any perton who eommite enty offence sperified in the Code on Ethiopian territory. Territery cemitete of land, ner and ait.

EXAMPLE: A national of Kenyn while qisiting Ethiopia, allegedly rapes another Kenven in violation of Article 589. Since the alleged offence wat committed on the territory of Ethiopia, the noenoed io anbjeft to the Code and pany he riod in the Ethiopian centes for a violation of Artiele 389.

EXAMPLE: While a Sudan Ainway flight is pasing orex Edtiopis, a Sudznese national abourd the flight allegedly asault; s fellow passenger, who is also Sudanese. Since Ethiopian ain apoce is Ethiopian territory, the alleged offence waz committed on Ethiopian territory, which oubjects the accused to the Penal Code, and he may be tried in the Ethiopian courts for a tiolation of Article 544.
Certsin persoma such as diplomatic officinls are immune from eriminal prosecution in the country to which they are accredited under principles of public interantional law. Such immunity is recognized under Article 11 (2), and a perton enjoying thiy immunity is not aubject to the Penal Code. and then, not sibject to the juriediction of the Ethiopim courta.

EXAMPLE: The ambassador of a cauntry with whom Ethiopia has dipIomatic relations recklessly drives his automobile in Addix Absbe, killing an Ethtopinan. Sueh eondact would constitate homicide by negligence under Article 526 . Since under principlea of public intennational law, ambasesdory ate net enbject to the penal law of the country to which they afe accredited, the ambassador masy not be tried in the Ethiopisn eourte for a violation of Article 526.
A person who has committed an offence in Ethiopia may hove succesffully enaped and talken refuge in a foreign conntry. In euch a conc the Ethiopian authorities are directed moder Article 11 (3) to request hit extradition so that he may be tried under Ethiopian lair. Extradition in the procest by which. pereen who has committed an offence in one country and has taken refuge in anotiler ia rebarned to the eountry where the offence was eommitted in order that he may nand trial there. Unfortunately, Ethiopia doe not have extradition treaties with wery many eountriek and most countries will not permit anyone to be extradited unless there is atreaty with the comntry requesting extradition. That is the law in Ethiopia; no one may be extradited frosa Ethiopia excopt in mocordanoe with international agreement. Rev. Gonst.. Art. 50. Set dilo Penal Code, Art. 21. In light of the absenee of extradition tresties, Article 11 (3) is not likely to be very effective.

Where extradition aennot be obypimed, Article 12 (1) ditreots the Eibiopinn anthorities to request that the offender be triod in the country of refugc. If that request is homored by the country in which the offender has taken refuge, and he is tried and acquitted there, he cannot be tried again for the
 true if his sentence has beem remitted there or if enforcencmen of the sentence is barred by bimitation. Penal Code, Art. 12 (2).

EXAMPLE: A foreign national nuppected of committing homicide in Eshoppia flees to his home country, where he is apprethended. He in not extradited, but tipon the request of the

Ethiopian suthorities he is tried for the homicide allegedly committed in Ethiopia. He is acquintted and returns to Ethiopia. Since he was acquitted of the homicide charge, he cannot be again tried for that offence in Ethiopia.

EXAMPLE: Same facte ab above except that the Ethiopian authoritiea taske no request that he be tried in the country of refuge. On their own initiative the apthoritios there apprehead him and charge him with the homicide allegedly committed in Ethiopia. He is tried and accasitted. Subsequently, he returns to Ethiopia where he is apprchended. Since he was not tried at the request of the Ethiopian authorities, Article 12 (2) is not applicable, and since the general rule is that persoms wobject to Ethiopia's principal jurisdiction can be retried in Ethiopia though they have been tried and acruitted for the same offence in a foreigm conntry (Penal Code, Anticle 16 (2), to be disctused more fully), he may be tried again for the homicide in Ethiopia.

Where the offender has been conticted following a request under Article 12 and has served out his sentence, he cannot again he pumished in Ethiopia. But if he has heen convipted and has not undergone any of the punishment or has undergone only part of it, if he ia apprehended in Ethoptia, the remainder shall he enforged in Ethiopia provided that enforcement of the pumishment is not barred by Ethiopia's law of limitation. PensI Cede, Art. 12(3).

EXAMPLE: A foreigner has committed an offence in Ethiopia and has fled to his home country, where he is apprehended. Upon the request of the Ethiopian authorities, he is tried for the offence in his home country, convicted and sentenced to one year's imprisonment. Before serving any of the aentence, he escapes and flees to Ethiopia, where he is apprehended. Once it is proved that he was sentenced for the offence and did not serve any part of the sentence, he may be sentenced to one year's imprisonment, prowicing that enforcement of the penalty is not barred by limitation.
EXAMPLE: A foreignet, who has committed theft in Ethiopia, flees to bis home country where he is apprehended. Upon requesu of the Ethiopian anthorities be is tried for the offence, convicted and sentenced to three years' inprizernnent. He escapes before he hat served any part of the sentence. Fifteen years later he is apprehended in Ethiopia. Under Article 234, Pertal Code, enforcement of a penalty of imprisorment for more than one yegr but Iess than ten is extingnished after ten years. Since enforcement of the penalty is harred by limi-
tation under Ethiopian law, he carmot he required to serve the three years imprisonment here.
b. Offences commitred in a foreign conntry against Ethiopin (Potat Code, Art. 13).
This article covers affences comalited in a foreign country that heve their effect in Ethiopia. Not all such offences subject the offender to the principal juridioction of the Ethiopian courts. Only the offences prohibited by Artieles 248.272 (offences against the Emperor and the Empire, thein **fety or integrity, end offence againat Etheippian institutionel and those prohibited by Articles 356-382 (offences against Ethiopian currency and official etale) unbject the offender to Ethiopia's principal jurisdiction. But when such offences have been committed, the offender is subject to Ethiopia's principal juriadiction whether be is an Ethiopian or a foreigrer.

EXAMPLE: In a foreign country, a fareign mational conspires with Ethiopian exiles to overthrow the Empervor in violation of Article 249. In fumtherance of the plot he also counterfeit Ethiopian currency in violation of Atticle 266. Since both of these of fences are viofations of the Articles specified in Article 13. the offender is subjeet to the principal jurisdiction of Ethiopia and, if apprehended here, may be tried for a violation of those articles.
EXAMPLE: In a foreigd countrys a Coreign mational tries to privent the purchase of Ethiopian bords being offered for ade there by falsely telling progpective purchavers that the Ethiopian dollar is about to be devalued. This constitutes re violation of Article 359. Although anch conduct may have a detrimental effect in Ethiopis, since Article 359 is mot one of the Articles aet forth in Article [3. the offender is not subject to the principal jurizdiotion of Ethiopia.
c. Offences committed in a foreign cotatry by Ethiopiant officials enjoying immtunity and by members of the Ethiopiant Armed Forces iPenal Code, Arts. 14. 15)
Ethiopiath officials are suhject to Ethiopia's primecipal jnrisdiotion while abroad; members of the Armed Forces are subject to Ethiopia's principal juris. diction with respect to cortain offences committed while abroad although with respect to eertain other offences they are only subject to Ethicincia"s subgidiary jurisdiction. Except for the offences specified in Article 13, other Ethiopians acting abroad are only subject to Ethiopia's subsidiary juriediction as provided in Article 18.

Lader Article 14, diplomatic, consular and other government offitiala who commit an offence in a foreign country for whieh they carmot be pro-
merated there becnuse they possess immunity under principles of international lw, sre subject to Ethiopia's primeipal jurisdiction and may be prosecnted bere if the offence is punishable noder the Ethiopian Code fother than those -fferees apectifed in Article 13 , which may ton all casos be prosecuted here) and is also punishable under the law of the country where it was eommitted. In other words, the offence most be punishable under both Ethiopian law and the lew of the place of eommisaion. If the offence in puathable only upon complinit under eicher law, proeedinge maty not be intituted in Ethiopin nolens ameh a complaint has been lodged.

EXAMPLE: An Ethiopian abuazsador commiti hemicide by megligence in the coanizy where he is serving. This is a violation of the penal law of the conntry where he meted and is olso a violation of Article 526. Under principles of international lew ombereadors enjor immumity from prosecution in the courtu of the conntry where they are earring. Since the ambamador enjoys immunity in the foreign conntry and aince the act in a riolation of the law of the plece of commizsion and of whe Ethiopian Code, the mimbstedor in eubject to Ethiopin's primeipal jorindiction and may be tried here fer a riohtien of Article 526.
 wiltul injury in the contixy where be it serving. Thia is a violation of the law of the place of commianioti and of Arti. cle 539. Under Artiele 539 (1) euch an offence it pumimible anly on complaint, Doder the law of the plate of tommir cion it it puninhible in the absence of complaint. No com. plaint has been filed. Since Ethiopinil Hw requiret aneh proeerding to be inatituted by complaint and no complefat han been filed. there ean be no prosecntion for this offence. The same would be true if a complaint had to be filed und the law of the place of commision, thongh a eomplaite dit not lirve to be filed uraler Ethiopinen Law.
Afticle 15 deals with offence committed sbroad by memberi of the Ethiopian Armed Forces ontioned there Unlike officiala ebjoying immuminy. not all offerote mommitted shroad by member of the Armed Forces subjeti them to Euhiopin't primeipal jurisdiction. Where m member of the Arpod Ferees commits an offence against the ordinary liw of a foreign commtry be in not subject to Ethiopia's primeiphl jarisdiction. He is sabject to the ordinnsy hat and territorial juriodietion of that coumtry. If he han fled to Ethiopin and extredition is not granted, he fe to be tried under the provisionf of the Eihiofise Code goverang the exereike of subuidiary jurimdictian. which will be diseused sphoequenty.


hat committed a violation of the offences defined in Book III, Titles II and III of the Special Part of the Code (Arts. 281-331), he semains subject to Ethiopia's primeipal juriadiction and shall be tried by Ethiopian military coarta.

EXAMPLE: While atutioned in a toreign country, member of the Ground Forces commits aggravated homicide against a foreign national. Since this is an offence against the ordinary law of the foreign country, he is not subject to Ethiopia's principal jurisdiction and will he turned over to the foreign authorities for trial there. If he esenpes to Ethiopia and it *pprehended here, he is subject to Ethiopis's subsidiary jurisdiction and, assuming there is no extredition, he will bo tried in the High Court for a violation of Article 522.
EXAMPLE: While stationed in a foreips country, a member of the Imperial Bodyguard absents himselif without leave in violation of Article 301. Simee this is a specifieally military offence at deffined in Article 15, he remaing stbject to Ethiopia's prim cipsl juridiction and will be tried by the Ethiopian military coarts.
2. Limitations apon the exercite of principal jurisdiction (Penal Codt. Art. 16).
When a peraon is subjeot to Ethsopia's priacipal jurisdiction, the meath that Eahiopia is the country most affected by the alleged commission of the offence. Consequently, the limitations imposed upon the exercise of subsidiary juridiction (where, by defingtion, Ethiopia is not the country most affected by the commission of the offence), are trot impozed upon the exercise of prit. eipul jurisdiction. Most sippificantly, a person subject to Ethiopia's principal jurisdiction, if feund in Ethiopia or extradited here, may be tried for the offence here, whether or not he was tried in a foreign country for the same offence and if he was tried, thether or not he was discharged or acquited. The only limitation imposed upon the exercise of prineipal jurisdiction is that where the offender has been convicted of the offence in a foreign coundry, any part of the pumishment already served shall be deducted from the new sentence.

In this connection, it should be noted that where the person has been tried shroad at the requeat of the Ethiopian authorities pursirant to Article 12, he is no longer subject to Ethiopis's principal juriediction and that Article 14, which has already been disctused, imposes certain limitations upon the exercife of jurisdiction over government officials enjoying diplomatic immunity.

EXAMPLE: While in Ethiopta, a Kenyan national allegedly rapee another Keliyna. He returns to Kenya where he is apprehended. He is tried for the rape there wand acquitted. He then returns to Ethiopia. lf appreheuded here, he may be tried for a wiolation of Article 589, Dotwithstanding bia acquital
in Kenya. Sinse the alleged offeme was conmitted in Ethiopia, he is erbject wo Ithjopin', privecipal juriediction moder Article 11 (1), and Artiche 16 (2) provides that the disohatge or acquittal of such persont in a fortige sountry is mo bar to a trial for the atme effence in Ethiopia.
EXAMPLE: Some faets as above except that the scoused was convicted of the rape in Kenya and sentenced to three yeara' imprisonment, which he verved. If he in eonvicted here and the court imposes the maximum sentence of tent years' imprisomment authorized by Article 589, it nuwt deducs from the senterce the three yeam alresily served for the same offence in Kenya.

## B. Subsidiary Jurisdiction

Subsidiary jurisdiction existh to an accused who ia (1) charged with effences committed in a forefgn country gainst international law and certain offences againat public health or morals, (2) charged with certain offences committed in a foreign conntry against Ethiopian nationpals and (3) charged with certain teriou offences committed in a foreign coumbry against any perton. It also exists with respect to Ethiepiam charged with certain offences committed in foreign countries and with respect to members of the Armed Foree who commit offences in foreign conntries againat the ordinary law of that comitry, but who escape to Ethiopia (see the prior disememon of Article 15 in Part $\Pi$ (A) (1) $b$, above). As wre quill see. the limitations upon the exercise of subsidiary jurisdiction ate significantly different from thove imposed npon the exercie of primeipal furiodictinn. First we will consider the circumbtaces in which a person is subject to Fthiopin's subsidiary jurisdition. Then we will consider the limitationr mon the exorete of subeidiary juridietion

1. Persons subject to Ethiopia's subsidiary jariadietion
a. Offences committed in a foreign country agoinst interrational law or uniwersal order (Peral Code, Art. 17)
Under this article all persons who commit the offences specified herein are subjeet to Ethiopia's subsidiary jurindiction except Ethiopianis enjoying fimmurtity who eommit these offences in a foreign somptry (they are subjeet to Ethiopia"s principal juriadiction under Article 14) and memberg of the Armed Forees who commit violationg of Articles 281-331 (they are aubject to Ethiopia's principal jurisdiction under Article 15 (2) ) . Also, persons who are subject to Ethiopia" principal juritatiction mater tho provisions of Article 13, of costrse, are not subject to Ethiopia't mbeidiary jurisdietion.

Any perton who, in a foreiga country, has committed an offenee againot international law or an international offence spocified in Ethionfan legishation or specified in an international treaty to which Ethiopia has adhered as subject to Ethiopia's swbidiary juryurdion. Offences against interantional lay are those prohibited by Articles 281-295. The other offences foferred to here
would be found in the legislation in the Negarit Gazeta and the treatiea to which Ethiopia is a party that incorporate penal provisiona.

EXAMPLE : During a civil war in State A, one side interns all foreign nationaks as hostages and periodically executes a number of them. This coustitutes a war crime against the civilien population in violation of Article 282. Singe the Penal Code defiwes this an offence agninst the law of nations, the persons responsible for the takige and execntion of hostagea are anbject to Ethiopia't subsidiary jurindiction and may- be tried here for a violation of Article 282.
In addition, persons who in a foreign country, have committed certain offences against public health or morals as aperified in Article 17 (1) are rubject to Ethiopia': subsidiary jurisdiction. These offencez are the violation of Article 510 (narootics), Article 567 (slave trading), Articles 605-606 (traffic in women, children and young persons), and Articles 669-610 (obscent or indecent pablications or periormancei).

EXAMPLE; In State A. a persor procurea a young woman to engage in prostitution. Sinee thit in a violation of Article 605, that peraon is subject to Ethiopia's subsidiafy jariscietion and may be tried here for a violation of Artiele 605 .
b. Other offences committed in a foreign country (Penal Code. Art. 18)

In order for a person to be subject to Ethiopia's anbsidiary jorisdiction under this erticle, two conditions murt be satigfied. First, the act for which he in charged must be prohibited by the law of the state where it was commit. ted and by Ethiopian law. Secondly, the aet must be of sofficient gravity under Ethiopian law to justify extradition. Ir order to determine whether the set is of sufficient gravity to justify extradition, the court mast look to any extradition legislation and whaterer extradition treaties Ethiopia may have. If the act is extraditable under the provitions of any of the treaties or the legiolation, it in of eafficient gravity to justify extradition within the meaning of Article 18 (1) (b) and thus eubjects the ascused to Ethiopia's eabsidiary jario diction.

There are two types of situations eovered by Article 18. The first is where the crime in committed in a foreign country either by a foreigner against an Ethropian or by an Ethiopian. It is thes situation which we ehall comider first. In order to aubject the accused to Ethiopiat's enluidiary jariodiction, it it only moessary that the eonditions referred to previously be atisfied. As long as the offence in of enfficiont gravity to justify extradition, it sobjects the offender to Euhiopia's subsidiary juriediction (if prohibited by the law of the place of enommisaion and Ethiopian lrw) irrespective of the paniahneant that is suthorized. The questions to be asked in such a situation are: (1) was the offence committed in a foreigh country against an Ethiopian or by an Ethiopias;
(2) is the offence prohibited by the law of the country where it was committeil and by Ethiopian law; (3) is the offence extraditable under any of Ethiopia's extradition treatics or legislation. If the ancwer to each of the three questions is in the affirmative, the accuved is subject to Ethiopia's subsidiary jurisdiction and may he ried here for the commiosion of the offence.

EXAMPLE: In State A. a foreign national intentionally zreads a communicable disease to an Ethiopian, which is a violation of Article 503. This is not prohibited by the law of State A. Since the act is not prohibited by the law of the place where it was done, that perion is not subject to Ethiopia's aubsidiary jurisdiction. The same would be true if the act wete committed by an Ethiopian either againit another Ethiopian or againgt a foreigner.
EXAMPLE: In State A, a foreign national commits homicide in the second degree againt an Ethiopiam, This is a violation of Article 523 and the law of State A. He flees to Ethiopis. where he is apprehended. Ethiopia doea not have an extradition trenty with State A. It does have an extralition treaty with State B. woder which homicide in the second degree is an extraditable offence. The accused is subject to Ethiopia'; subsidiary jurisdiction und may be tried here for a violation of Article 523 sinur (1) the offence was committed against an Ethiopian. 12, the act is prohibited both hy the law of the place of commision and by Ethiopian law and (3) the act i- of sufficient gravity to juatify extradition under Ethiopian law. The same would be true if the act were committed in a foreipr country by an Ethiopian who is not zubject to Ethiopin': principal jurisdiction.
The second type of eituation cowered in Article 18 in the commission of a very serious offeace in a foreipn mountry by a foreigner. The oommision of euch an act by a foreigner against anvone in a foreign cotuntry subjects him to Ethiopia's jurisdiction if (1) the aet is prohibited both by the law of the state of commission and by Ethiopian law. (2) it is exiraditable under Ethiopian law and (3) it is punishable under Ethiopian lato by death or rigorous imprisonment for not less than tern yenrs. The second situation then differs from the first in two respects: (1) it is not necessary that the offence have been committed agaimast an Ethiopian and (2) it is necessary that the offence is sufficiently serions so that it is punishable umder Ethiopian law by death or rigorous imprisomment for wore than ten years.

> EXAMPLE: In State A, a national of that country commits azgravated homicide against another State A national. This is a niolation of Artiele 522 and $i z$ prohibited by the law of State A. Under Article 522 agerawated homicide $i$ punishable by death or
rigorou imprisomacnt for life. The pffender fleea to Ethiopia, where he ia apprehended. Under an extradition treaty with State $\mathbf{B}$ aggravated homicide in an extraditable offenee. The offender is subject to Ethiopia's subsidiary jurisdic. tion since (1) the act is prohibited both by the law of the place of commission and by Ethiopian law, (2) it is extraditable under Ethiopian law and (3) it is panishable under Ethiopian law by death or rigorous imprisonment for life.
c. Offences committed in a foreign country by member: of the Armed Forces (Penal Code, Art. 15 (1) !.
When a member of the Ethiopian Armed Forces commits in a foreign commiry an offence against the ordinary haw of that country, he is not aubject to Ethiopina's principal jurisdiction. But he ta subject to Elbiopia"s subsidiary jurisdiction, and if he is approhended here, he may be tried under Ethiopian law. It is important to remember that he is only subjeet to Ethiopia't subsidiary jurisdiction, since the limitations on the exercies of subsidiary jurisdiction differ from those imposed upon the erercise of principal juriodietion.
2. Limitations upon the exercite of subsidiary jurisdietion (Penal Code, Arts. 19(3), 20).

Under Article 19 (3) it is provided that the punishment imposed under the Feunal Code when the court is excreising subsidiary jarigdiction, ,half nor exceed the heariest penalty prescrithed by the Law of the country where the offence is committed, so long as that country is recognized by Eahiopin,

EXAMPLE: In State A, which is recognized by Ethiopia, a State A national comnits agaravated homicide against an Ethiopian. which offence is profibited by the law of State $A$ as well aw by Article 522. State A haz abolished capital punishment, and the maximam punishmeat anthorized for homicide by State A law is life imprisomment. Therefore, slthough Article 522 authorizes the imposition of the death penalty in casea of aggravated homicide, the Ethiopian court can only impose a sentence of life imprisonment.

Article 20 deals with the effect of foreign trial and sentence. When a pereon is nubjeot to Ethiopia's principal jurisdiction, if he is tried and acquitted血 a foreign conntry for the offence, there is no bar to his trial for the same offence in Ethiopia. But where a person is only subject to Ethiopints subsidiary jurisdiction, Article 20 (1) provides that the person cannot be tried int Ethiopia for the offence if he wars discharged or acquitted for the same act in a foreign oountry.

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EXAMPLE: During military operationg in State A, a State A national and a member of the Ethiopian Armed Fortes allegedly have engaged in looting. Both are captared, tried in State A and acquitted. When hostilities are ended, both return to Ethiopin, where they are apprehended. The State A national be subject to Ethiopia' subsidiary jurisdiction under the provisions of Article 17 (1). The Ethiopian is subjeos to Ethiopia'z principal jurisdiction under the provisions pf Article 15 (2). Since the Ethiopian is aubject to Ethiopia": primeipal furisdiction, he may be tried for a violation of Article 285, notwithethanding the acquiltal for the asme offedee in State A. Since the State A national is only pubject to Ethiopin's subsidiary jurisdiction, he may not be tried again for the same offence in Ethiopia.

Where the offender was tried and remtenced in a foreign country, but did not undergo any or all of his puriahment, it is provided under Article 20 (2) that the remaining part, if not harred by limitation, may be enforced in Ethiopin. This is the same kiad of provision as is contained in Article 32 ( 3 ) where the Ethiopian authorities bave requested the trial of an offender subject to Ethiopia's principal jurisdiction, and he has been tried in the foreign country in which he ha taken refuge. The previous ditcutaion and exmmplea are equally applicable to Article 20 (2). See II (A) (1), above.
3. Other matters relating to the exercise of subsidiary jurisdiction ! Pena! Code, Art. 19 (1) (2!)

Article 19 (1) sets forth certain presumptions with reepert to the corditions neessary for the exercise of zubsidiary jurisdiction. Where the filing of a complaint by the victim is a condition for prosecution and trial either umber the law of the place of commisaion or under Ethiopian law, it is presumed that anch compluint was lodged. It is abo presumed that the offender in in the Empire and has not been extradited or that if he wes extradited, it wat by reason of the offemce committed. Finally, it if presmed that the offence was not legally pardoned and that prosecution is not harred ander either the law of the place of commission or under Ethiopian law. These prezumptions can be rebutted.

Article 19 (2) provides that prosecutions where the acensed is subject to Ethiopia's anbsidiary jarisdiction shall be instituted by the Attorney-General after comerlation with the Minister of Juatice.
C. Summary

## 1. Principal jurisdiction

a. The following persons are subject to the principal jurisdiction of the Ethiopinn courts:
(I) persons who have commitled offences on the territory of Ethiopia (ArL 11);
(2) perans who in foreign country have committed the offencea against Ethiopia that are prohibited by Artictes 248-272 and Articles 366-362 (Art. 13);
(3) Ethiopian officials onjoying immunity who in a foreign country have eommitted an act prohibited by the law of that cotntry and by Ethiopian law (Art. 14);
(4) members of the Ethiopian Armed Forces who in a foreign country have committed the offenees against international law and the specifically military offences that arc prokibited by Artielea 281-331 (Art. 15 (2)).
b. The follotoing principles are applicable to the exercise of principal jurisdiction:
(1) discharge or acquittal in a forejign country if not a bar to further prosecution in Ethiopia except where the person was tried in a foreign country pursuant to a request made by Ethiopian authorities under Article 12 (Art. 16 (1) (2));
(2) where a person hat undergone the whole or part of punishment for the offence in a foreign country, that portion shall be deducted from the sentence imposed by the Ethiopian courta (Art. 16 (3) ).

## 2. Subsidiary juriddiction

a. The following persons are subjact to the subsidiary jurisdiction of the Ethiopian courts:
(1) members of the Ethiopian Armed Forces who have committed in foreign country an offence ageinst the ordinary law of that country and who have taken refuge in Ethiopia (Art. 15 (1)) ;
(2) any person who in a foreign country has committed an offence against international law (Arts. 281-295) or an international offence as specified in Ethiopian legislation and treaties or an offence prohibited by Articles 510, 567, 605, 606, 609 and 610 (Art. 17);
(3) any pexson who in a foreigu country has committed an offence against an Ethiopian national or an Ethiopian utional who in a foreign conntry has conmitted an offence that does not subject him to Ethiopia's prizoipal jurisdiction, provided that (I) the act is an offence under both Ethiopian law and the law of the place of commission and (2) the

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offence is an extraditable one ander Ethiopian law (Art. 18 (1);
(4) any person who in a foreign country has committed an of fence that is panighable under Ethiopian law by death or rigorows imprisomment for not less than ten years prowided that (1) the act is an offence under both Ethiopian law and the law of the place of commission and (2) the offence is an extraditable one under Ethiopian law (Art. 18 (2)).
b. The following principles are applicalle to the exercise of subsidiary jurisdiction:
(1) the punishment imposed shall not be nore severe than the heaviest punishment prescribed by the law of the place of commission (Art. 19 (3);
(2) discharge or acquittal in a foreign eoturtry prevents further prosecution for the same offence in Erhicpia (Art. 20 (J);
(3) an offender who has served only part of his sentence in a foreign country may be sentenced to serve the remainder of the sentence in Ethiopia, if enforcement of the puoishmert is not barred by the Ethiopian law of limitation (Art. 20 (2).

## III. The Second Element: Jurisdiction of Courts.

To determine which court in Ethiopia has jurisdiction to tear a particular criminal case, it is necessary to oonsider (1) what lewel of courts has jurisdiction to bear the case, i.e., ia it to be tried before the High Court, the Awradja Court or the Woreda Court, and (2) in what area of Eihiopia the case is to be tried. The first question is referred to as one of jurisdiction over offences, the second is referred to as one of local jurisdiction.
A. Jurisdiction over Offences (Criminal Procedure Code, Arts. 4, 7, I82 and First Schedule).
Article 4 of the Criminal Procedure Code provides that the jurisdiction of colutb over offencea is to be determined in accordance with the First Schedule appended to the Code. The Minister of Juetice may alter this Schedule by order published in the Negarit Gazeta. Jurisdiction over offences is allocated among the High Court, the Awradja Court, the Woreda Court and Mili. tary Courts. In order to determine which court has jurisdiction ower the offeno, the prosecator should congult the First Schedole with reference to the Article or Articles of the Penal Code under which prosecution is brought

EXAMPLE: The accused is charged with breach of trust in violation of Article 641 of the Peanal Codie. The prosecutor shonld conerilt the First Schedule, whiah provides that prosecution

## Criminal Jubieniction In Ethiofia

for violation of Article 641 are to be brought in the High Contit.

Where the proscction is for an offence not covered in the Penal Coule. e.g. a vielation of a subsequent proclamation pablished in the Negarit Gazeta, the jurisdictioir of the court depends on the maximam penalty that can be imposed for violation of the lew Where the penaly doss not erceed three years of stmple imprisonment with or withont fine, the prosecution is to be instituted in the Woreda Court. Where it does not exceed five years of imprisonment with or withort fine, prosecution is to be instituted in the Awradja Court Where the maximum penalty is in excess of the above, prosecution is to be instituted in the High Conrt,

EXAMPLE: The aceused is charged with the violation of a proclamation the maximum punishment for which is four years of imptisonment. In the opimion of the prosecntor there are mitigating circhanstances, and he does not plan to ask the comrt to impose a sentence of more than one year of simple imprisonment. Since the penalty authorized for the offence exceeds three years of imprisonment and does not exceed five ycars of imprisonment, prosecution is to be instituted in the Awridja Conrt.

It is provided in Article 7 that coarta shall exercise appellate jurisdiction in accordance with the provisions of Article 182. Under Article 182 there are two appeath in eriminal cases ercept where prosecution is instituted in the High Court. Where the case is instituted in the Woreda Conrt, an appeal liea to the Awradja Court, and an appesal from the decision of the Awredja Court lies to the High Court. Where the case is institutod in the Awradja Court, an appeal lies to the Figh Court, and an appeal lies from the decision of the High Court to the Supreme Imperial Court. Where the case is jastituted in the High Court, there is, of course, only one appeal, to the Supreme Imperial Court. It showld be noted that under Article 183, an applicant who has exhausted his righta of appeal under Article 182 may still petition His Lmperial Majesty's Chilot for a review of the case.
B. Local Jurisdiction (Criminal Procedure Code, Arts. 6, 99-107).

Local jurisdiction refer to the area of Ethiopia in which the case is to be tried. If jurisdiction over the offence i- in the Awradja Court, the question is in which Awradja Court the particalar case is to be tried. Article 6 proyides that the courte shall exercise local jurisdiction in accordance with the provieiogs of Articles 99-107. The goneral principle, ambodied in Article 99, is that cver'y offence shall be tried by the court within the local fimits of whose jurisdiction the offence a ondmitted. In this connection, where an offence is trizble before the High Court, which mow site permanently in some of the provincial cepitals, the "locel limits of whose jurisdiction" hould be interpoted to mean

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within the local limitu of the province in which the High Court is sithing Chus, an affence committed in Gojjan Province shmuld be brought before the High Court sitting in Gojjam Province rather than before the High Court sitting in Shom Province.

Where all the operative ovemt involving the offence occurred within the jerisdiction of the court in which it is to be tried, where is no problem. The problem arime when mome of the operative facts occurred within the local limits of the jurisdiction of the more than one court. This situation is eovered by Articles 100-103.

Under Article 100 it is provided that where the act which canged the harn oocurred in one juridietion and the harm resplting from the act ocetured in another, the offence may be tried hefore either the court within the limits of whose jurisidiction the act took phace or the court within the limits af whose juriadictisn the consequences resulting from the act took place.

EXAMPLE: Iz Begemder Proviace, the acelated prepared a shipment of poisoned fruit and zent it to the victim who resided in Gojjam Provisce, monding that the victim should be posoned. The vietim died an a result of eating the poisoned froit, The acepsed may be tried for a violation of Article 522, Penal Code, either before the High Court sitting in Begemder Prowince or before the High Court siting in Gojjam Province.

Certain acts become offences by reason of their relation 80 other offences. For example, Article 449, Penal Code, prohibits soliciting another to give false testimony. This aet is pumbirable, because it can induce the commisinon of the offence of perjury. Article 101 provides that where an act is an offence by reason of its relation to another offence, a charge of the first mentioned offence may be tried by a court within the lotal limitn of whose juriadietion either act was done.

EXAMPLE: In Herrarghe Profince, the acensed parsuadet another person to give false testimony in a trial that is taking place in Shoa Province, and that perdon does give false testimony. Violations of Article 449 are triable before the High Court. Sinee the act of the acetsed took place in Harrarghe Province, and the act constitating the related offence took plate in Shoa Provincey the accused can be tried for a molation of Article 449 before either the High Court sitting in Harrarghe Province or the High Court ritting in Shom Province
Article 102 deals with the situation where, in the broad sense, the place of offence is uncertain. Whete it is factually uncertain in which of neweral local arear an offence was committed, Article 102 (a) provider that it way be tried before the court in any of the local ar⿻at.

EXAMPLE: The aceused is charged with the abduction of a minor in wiolation of Article 560 , Penal Code. Such offences are triable hetore the Awradja Court. The child cannot remember exactly where he was at the time of the abdection, but it is cloar that he was either within the limits of Debre Berhan Awradja or Debre Sina Awradja. The aecused may be tried hefore eithor Awredje Court.

The same is true where the offence is committed party in one local ares and partly in another (Art. 102 (b) \}, where an offence continues to be committed in more than one local arca (Art. $102($ ic) ), and where an offence consiat of different mets done in differcat local areas (Art 102 (d) ).

EXAMPLE: Near the border between Shoa and Sidamo Provincek, the accused strikes his victim three timew with a club and then draga him acrose the border into Shoa Province, where he atrikes him a fourth time. The wictim dies after the fourth blow. The aceused may be tried for homicide before either the High Court witting in Shoa Province or the High Court sitting in Sidamo Province, gince the offence $w$ flardy committed in Shoa and partly committed in Sidamo.

EXAMPLE: The accueed, contrary to law, arrefts a pergon in Sendefa Auradja and taker him to a police station in Sheno Awradja. The illegal restrairs constitates a violation of Article 357 , Pemsl Code Since the illegal restraint contimued when the victim wat taken to the police station in Sheno Awradja, the accused may be tried before cither Awradja Court.
EXAMPLE: The necubed, living in Begemder Province, wenda a letter from there to a perton living in Shoa Province, etating that he in entitled to cettain property possessed by the other perton. The rectued comea to Shoa Province and ohtaing the property from the victim as a result of the fraudulent misere presentationa. This conduct constitutes a violation of Articte 656, Penal Code. The offence consisted of the writing of the fraudulent letter and the receipt of the property as a reatil of the fraudulent mistepresentations. Since the writime of the letter cocurred in Bicgemder Province and the receipt of the property oceurred in Shoa Profince the accused is triable before either the High Court sitting in Begemoder Provinee or the High Court silting in Shoa Provinct.

Where an offence in committed while the offemer is in the course of performing a journey or voyage, Article 103 provides that the offender nay be tried by nny court through or into the limita of whose jarigdiction either the offender, the victim or the thing againat which the offence wat committed par-
sed during the course of the journey. It is not necessary that the offence wie committed in the jurisdiction of the court so long as the offender, the victim or the thing passed through the jurisdietion.

EXAMPLE: The accused and the victim were pasengers on a bas that passed through Guella, Arada, Kehena and Oureal Woredas. The accused boarded the bus in Guella Woreda, assaulted the wictim and left the bus, all while it was atill in Guella Fioreda. The victim continued on to Arada Woreda. Since the victim passed tarough Arada Woreda during the course of the journey, the accused may be tried for a violation of Article 554, Penal Code, in either the Guella Woreda Court or the Arada Woreda Court

EXAMPLE: Goods were loaded on a lorry in Debre Sima Awradja. The Jorry continued through Debre Berhan Awradja and stopped in Sheno Awradja. The accused allegedly committed the theft of the goods while the lorry was stopped. Since the goode were in all three Awradjas during the course of the journey, the accused may be tried for a violation of Article 6isu, Penal Code, in any of the three Awradja Courta.

Article 104 provides that when an offence is committed outside Ethiopia on an Ethiopian ship or aircraft, it is deemed to have been committed in Ethiopia. This article does not specify in what area the case is triahle. However, Article 107 proyides that in the cases under Article $100-104$ the public prosecutor shall decide the court in which the charge shall be filed, and on the filing of the charge, the court in which the charge is filed shall have juriadietion. In ather words, where the case is triable in more than one court, the decision an to where the case is to be tried rests with the public prosecutor.

EXAMPLE: An offence trisble before the Awradja Court is committed on an Ethiopian Airlinea plane while the plane in flying over the Sudan Assuming the acensed is subject to the Penal Code, the case can be tried in any Awradja Court in Ethiopia in the discretion of the pablic prosecutor.

Article 106 deals with change of venue. This is the process by which, for walid reasong, a case is transferred from one court having local jurisdiction to another conrt Application for a change of venue must be made to the High Conat. The tranefer, if the application is gramted, anost be to a court anthorized to try the offence under the Firat Schedule or to the High Court itself. Thus, if according to the First Schedule the case is to be uried in the Woreda Court, the High Court may transfer the case to another Woreda Court or may hear it itcelf, hat it may not tranffer the case to an Awradja Court. The order of the High Court granting or denying the application is not sppealable.

Article 106 sete forth four situations in which the Bigh Court may grant the application. They are (1) where a fair and impartial trial cannot be held in $\#$ snbordinate criminal court, (2) where a question of law of unusual diffieulty is likely to arise, (3) where such an order is necessary for the general onnmanience of the parties or witnessea and (4) where such an order is expedient for the ends of justice or is required by any provision of the Criminal Procedure Code.

EXAMPLE: The accused is charged with the theft of a widow's life savtaga. The theft has caused great resentment in the area. The accused contenda that he was somewhere else at the time of the alleged offence, but that wituessea who could testify to this fact will not testify on behaif of the aceused becnuse threnta have been made agtinat them if they so testify. If the High Court believea thin, it can order the case to be tried before mother Awradja Court or can hear the case itself.

EXAMPLE: The acened is charged with a violation of Article 613. Penal Code, which prohibits the pablic display of writings that "atimulate undaly ... the serual furtinct" Such cases are triable before the Woredn Court. The defendant maintains that the material displayed did not "atimulate unduly ... the sexual instinct" within the meaning of Article 613. The interpretation of "etimnlate ... ondoly the sexual ingtinct" may constitute a question of law of untuqual difficulty, and upon afplication the High Court may decide to hear the case itgelf.

EXAMPLE: Gooda loaded on a lorry that passed throngh Debre Sina. Debre Berhan and Sheno Awradjas were allegedly atolen hy the accosed while the track was stopped in Sheno Awradja. The poblic prosecutor has elected to file the charges in the Debre Sina Awradja Court. The accused and all the witnessea reside in Sheno Awradja. Upon application, the High Court may decide to transfer the case to the Sheno Awradja Court on the ground that this is necessary for the convenfence of the witnesses and the accused.

Article 106 (d) gives the Court the dis retion to order transfer in any other proper case or where another provision of the Code would indicate that trial in a particular court is required.

Finally, requeste for reinstatement are to be brought before the corart that patsed the original sentence, cencellation of which is now toughe. Crimizal Procedare Code, Art. 105.

## C. Summiry

1. The juriadiction of a court over a particular offence is specified in the First Schedule to the Criminal Procedure Code. This schedule determines whether the case is to be tried in the High Court, Awradja Court: Woreda Court or Military Courte 1Art. 4).
2. Ordinarily an olfence is to be tried at the place where it is committed, that is, if it is triable hefore the Awradje Court, it is triable before the Awredja Court within the loed limits of whote juristiction it was committed (Art. 99).
3. In the following circumstances more than one court had local juriadiction. The decision as to the court in which the chargea are to he filed reats with the public prosecutot (Art 107):
a. Where the act and conequenees occurred iu different jurigdictione, the charge may be filed in the court in whose jurisidiction either the wh of the eonsequences occurred (Art. 100):
b. Where ank act is an offence by refoon of its relation to another offence. a thaxge for that offence way be filed in a courl within the local limite of whose jurisdietion either offence was committed (Art. 101);
c. Where it is uncertain in which of sereral locsl areas an offence is committed, where an offence is committed partiy in one local area and partly in another, where an offence is continued in another local area and where an offence consist of seversl act done in diffored local areas, the eharge may be filed in any court having jurisdiction over any of the local areas (Art. 102);
4. Where the offence is eommitted while the offender is on a journey. the charge may be fileal hefore any eonrt throngh or into the loeal linoith of whose jurisdiction the offender, the victim or the thing an to whidh the offence was committed pataed in the course of the journey (Art. 103);
5. An offence committed aboard an Ethiopian aircraft or ship enttide the territorial limita of Ethiopia is triable before any court in Ethiopia before which trisl of the particular affence in proper (Art. 104).
6. Change of venue may be oudered in acsordance with the provinions of Article 106.



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# SECOND ANNUAL REPORT FROM THE DEAN 1964-65 (1957 E.C. 

by<br>Jamey C.N. Paul, Professer of Law and Dean Faculty of Law, Haile Sellicsie I University

## I

## INTRODUCTION

Once again I am happy, at the request of the Editora, to report on the progress of our Faculty of Law during its second year in operation.

My report covers only the academic year 196465 ( $1957 \mathrm{E} . \mathrm{C}$. , , and I will use Gregorian Galendar dates for the benefit of foreign readers of it.

On November 25, 1964, there ocerrred the first graduation of atudemta under the auspices of this Facalty - the award of Certificates in Law to the firat clags to complete that program. For all of ut who attended, this was a moving event. The significance of the occasion may be reilected in these remarks of His Imperial Majesty who, as Chancellor of the University, presided:
${ }^{-}$... The haw of the Empire is now modern, complex amd seientific in the tense that it has heen prepared by experts after careful study. The adminiatration of the law of the Empire increasingly demands bighly trained persons.
In a real sense the development of the ation depends upon the development of our lepgal institutions....
... So the need for persons trained in law is obvious.
... We are pleased to learn that others are following hard upon the footateps of this class. We are pleased to know that soon the number of Ethiopian lawyers holding a moiversity degree to law wilf be virtually doubled.

We are especialiy pleased to see that mony judges and other civil servants and advocates are taking time to continue their education even as they continue to perform their regalar daily duties.
... Ehiopia needs a modern legal profession just as she needs the modern legal syatem she is building. The one cannot exist with the other.

You - all of you who are taking University training in law - are helping in the tatak of building a profession ...."
These words identify our miasion here - to help in the building of a profession which in turn will be a resource for building the legal system. From

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the time of Aristotle to our own day atatesmen and philosophers have atressed the theme that men cannot live in freedom and happiness unless they live under law - under laws framed to secure attainable ideals, inspire men's eonfidence and guard their freedom. But in no modern nation can law serve those ends unless it is framed and administered by men who understand its function as well as its letter and its method as well as its intricacy. In no nation can law win respect unless there is a profession dedicated to public service and to progresive, on-going development of the law as an instrument to execute programs of economic development and social and political change. Thus the study of law at Haile Sellassie I University is, in a very real sense, the study of problems confronting the Empire and measures taken to meet and aolve those problema and the role of the profession in this task. I hope it is not amiss to add wy belief that these initial years, in a unique way, have been intellectunlly exciting for all of us who have been privileged to work here.

## II <br> The Development of Educational Programs During Our Second Year

(1) The Development of Programs of Part-Tinte Legal Education. The past year marked the initiation of the Law Diplona program - a three-year evening course. The entry requirement for this program is liberal: completion of secondary achool, an interviow and passing an English comprehension test, plus profesional experience in law, public administration or some closely related field. The courae is designed for government officials, advocates, prosecutorn, judges and members of Parliament.

We earolled, in September, 1964, about ninty persons in the Diploma course. Approximately fifty-five sat for final examinations in June, 1965. There may well be some further attrition. Bmt for those who have both the capacity and the perservenance for the hard work which the Diptoma course requires, we believe the experience will be beneficial to them and to Ethiopia. The tenchers have expressed a deep sense of satisfaction in working with the stadents, and we hope there will continue to be conaiderable enthusiasm in thit program. Most of the stadents are employed by government, and many directly in legal capacities.

We also enrolled in September, 1964, a new class of two hundred in the Certificate program, which provides instruction for three afternoons a week in the basic principles of the Ethiopian codes and Constitution. The majority in these clages are propecutors, government lawyers, judges and advocatea. Seventy-nine persons were awarded Certificates in June, 1965 and over ode hundred in the class which gradwated in November, 1964.

At the request of officials from the Ministry of Justice in Asmars, we initiated special extension courser in penal law and penal procedure there.

These coares were taught by Mr. Norman Metzger of our staff. The student body of sixty persons was made up of judges, prosecutors and government officials. The Assistant Dean and I visited Asmara several times. In our opinion the project has been successful; the examinations show, generally, a good pertormance; atudent interest hat been keen. In fact the studens have asked for a further year of instruction in the Civil Code and public law - and the award of the University's Certificate in Law. Further, some fifty additional persons have requested the atarting of a new course of instruction next year. We have decided to continue and expand our extension program in Asmara by neeting these requests. Thanks to the willingxess of Ato Amanvel Amdemichael and Justice Negussie Fitawake, additional instruction is being furnished in the fall. 1965, a new class enrolled and the present class continued. A small law collection will be established as a new part of the Asmara city library: wheo resources permit we hope we can build up that basic collectiton of books necensary for elementary legal reference.

We also engaged this past year in a study of the possibility of creating a Diploma level course of instraction in Amharic. This is elearly an urgent objective if University instruction in law at a more advanced level is to be made available to more persons now engaged in the administration of law. The problem which confronts $\mathrm{n} *$ 於 the absence of textbocks and other legal materials in the Amharic Ianguage. The question is whether we can translate a sufficient body of materials to make advanced instruction possible. We have decided to try; the objective is obviously important; we must make a heginning. Accordingly, beginning in September, 1965, we sball offer a Diploma level. three-year evening course, taught in Amharic and nsing Amharic translations of course materials used in the English program. There will be close collaboration between Diploma teachers of the English section and of the Ambaric, and every effort will be made to cover the same ground and apply the same examinations and grading atandards. It will be an experiment - but an experiment well worth the effort.

These part-time programa are decigned to meet urgent manpower needs. There are far too few trained lawyers in the Empire. The shortage of trained personmel, the need to upgrade professional standards and to anpply training to officials in government, in the banks and development agencies who are acting in legal capacities, seems clear.

Hopefully, these part-time progranse will begin to produce a broad-based manpower pool of persons who have had at least elementary instruetion in law. and an increased supply who will have had considerable instruction in depth. which when coupled with practical experience, should provide considerably increased profestional eapacity.
(2) The University LL,B. Program. At the top of the legal manpower training pyranid standa our LL.B. program now begining its third year.

We enrolled a new first year cla3s in that program in September, 1964, of thirty pereons. Nearly balf were from the government. The others came from two years of University training. Attrition has reduced this class to twenty-five and may reduce it a bit further. Generally, however, the Faculty has been pleased with the progress of this class and pleased with the clear improvement of the geeond year LL.B. clasg and the evening LL.B. class now in ite setond year. I congratulate these students on their achievement so far, and their professional exprit.

In the LL.B. program, we are trying of course, to provide hoth the most metensive and the moat relevant inatraction posgible. The task of self-criticiam and re-eramination of what we are doing mast be unending. For this reason the Facolty has engaged in four efforts thia year:
(a) We have bed the bentit of a two week wisit. consultation and external evaluation by Professor M. L. Schwartz of the University of California. Professor Sehwartz 晾an experienced law teacher who has enjoyed visits to a number of Afriean universities. We are encouraged by his evaluation report. External evaluation - prolonged visits by teachers drawn from Europe, Britain and America - is a "must". I hope we can have at least two visitora next year.
(b) A special Facolty committee on academic standards was created The committee focused particularly on the question: what can we do to streng. thed programs entailing written work? It is through written work that novice lawyers learn, that all lawyers operate; it is through constant drill and the development of a tight diecipline in writizg that many legal skills are primarily imparted. After a series of faculty meetings the committee submitted a final report which reflects a faculty consensus. It propose a detailed, threo.year integrated program of writuen work as a basic part of our curriculam: starting with analysis and memorandum writing on elementary problems in the first year and leading graduslly into intersive library research assignments, legizlative drafting, moot-court, and finally, in the last year, the writing of a major research paper of thesis ecope dealing with some problem in an unseuted or developing area of the law. These suggestions are being incorporated in the corriculum. This past year, for example, atudents in coursee on administrative law and penal procedure have written term papers dealing with anch subjecta as "The Right to Baii in Ethtopta" and the "Operations of the National Coffee Board". Many papers entailed both library and field research. The best of them are, we believe, significant contribationa to knowledge of law in Ethiopia, and I look forward to the day when some papers may be pablighed by the Faculty.
(c) The Curriculum Comraittee of the Faculty, throughout the year, has stadied our total program. No two law teachers will ever agree ont details of corriculum. Nor, in my view, should a curriculum ever be regarded as a static matter. However, certain important decisions were made. The Finculty has
atrongly endorsed the senior reatarch-paper (thesis) program discossed abore, and major monnt of aenior time will be devoted to this work. We have also pleed henwy emphais on the "public law" sector of our curriculum, for it in our easomption that many of our initial graduatea may come to be "government lawyers" engaged in conmelling and administrative functions within various ministrien, and many may come to be engeged in the drafting of important legis Iftion or haplementing fules: all mould hare a broad perapective on the reistionship betwrea finw and development policien.

For the framing of law and the admimintration of law are the meant by whith derelopment programa are carried out. The layman too ofeen assumes that the writing and administering of law is a mere technical step in the erecution of government policy. Not ao. If lawyers are not both broadly educated in terme of the goals and problems of important, new national legialation, and capable of disciplined thorongh performance in exerciting the cole of draftoman, connallor and adminityator - if these akills are not marainalled, one may find that the most noble of reforms or changes, deaired at a matter of policy, are as a dead letter in fact. This point is, I believe, too often ignored in conceptions of high level mnnpower neede and in conception of the cole of legal edacation in developing commtries; lawyers must be available and able to fnoction effectively as "engineeas" contributing to the development process. Not only is inatruction mecessary in the general framework of conatitutional latr, the legialative process and administrative procedure, but there must aldo be aome study, in depth, of selected, concrete fields illustrating conerete relationahipa between law, the administrative process and oconomic development. Thna, we are initiating a major senior course, ranning the full year: "Law and Government Economic Policy'. It will focus first on the dovelopment plam, the planning procese and the legal implications of the plan; it will examine problemp of taration - the formulation of revenue pplicy, the writing and interpretation of tax liws and problems of effective tax administration; it will examine government policy and netion in relation to the promotion of commercial development as reflected, for example, in legislation creating goverameat corporntions in the inventment decree, banking legislation and relnted areas of the codes. These are only illtastrative examples of what we hope will be an intellectaally exciting wew departure and one which is highly relevant to the function of legal eduction, here and now.
(d) Pre-legal edication. Pursunat to a mandate from the University't Faculty Conneil we have began the development of a pre-Law programin the Facalts of Arth Under this new procedare a limited number of University atudents will hawe the chance to opt for the prelaw program at the end of their firat Uniwersity year. They will then he permitted to choose from n melection of conrset offered by the Faculty of Arta for their wecond University year - the corriculum is being jointly worked ont. In addition they will have eome orientintion programas designed to acquatint students with the methorl of law foudy
through the examination of a series of selected problems of law in Ethiopin. If their average is satisfactory at the end of the year, they will then move to the Law School for three years of professional study.

Much can he asid for and ngaingt a "prelaw" program. However, our situation presents certajn compelling considerations. First, by dint of circumatances, potably the high cost of univensity education, we are forced for the time being to ser orx entry level of professional atudy at the end of the second univeraity year. This meams that we must do our best to prepare stadents in a very brief time for sophisticated, intenaive profeasional stady. A certain amount of coverage in the social sciences is neerearary; oo is intensive work in developing communication skills.

In my personal view we must ultimately aim at the raising of our entry. level, for in Ethiopia, I believe, heavy demands will be put upon future lawyere. and a broad, solid, general educational base seems wise. However, this is a matter to be judged by farther experience. For the moment we are pleased that well qualified students are opting for law, and we seem assured of an intake from the miversity stream of at least twenty stadents for the next few years.

The almoat total dearth of textbooks, commentary and published court decisions on Ethiopian law cannot be overstreased. Without a great body of such literature, the professional lawyer - the thinking lawyer - workg in a vacuum. These materials are truly the life-blood of any modern, rationsl legal bystem.

Our program, developed throagh an active faculty Committee, has been at the need to produce Ethiopian law books, to meet Ethiopian needs. Toward end the Faculty hab, in ita two years of existence made the following beginaing:
(1) Journal of Ethiopian Law. In cooperation with the Ministry of Justice we have initiated publication of this Joarnal in hoth Amharic and English - and through it publication of court decisions and the beginninge of useful commentary on the law of Ethiopia. The Jourual has now become temiannual and nearly self-supporting thanks to strenoous efforts of members of ite editorial committee to enlarge sales, include advertiging and - moat rewarding - thanks to response to our effort to secure patrons to support publication. The persons who are now supporting the Journal an patrons - $\$ 25.00$ subecribers - are listed at the beginning of the Joumnal. Their help is a most gratifying response to a prblic appeal to lawyers and judges to make publication poosible, I thould also like particularly to note the many loag honrs apent on Journal work by my colleagues, Profestor Redden, Mr. Lowenstein, Mr. Kindred, Mr. Singer, and Mi. Figher. I an also pleased to report that this year four members of the student hody joined the Editorial Staff; their namea appcar on the masthead. They have done fine work. This is the beginning, we hope, of a traditional student editoriad participation which will become a major factor in maintaining the Journal.
(2) Faculcy of Law Publiontion Series, We published our first three boolet in July, 1965. They mre:
Graven, Dr. Philippe. fntroduction to Ethiopian Criminal Law (Articles 1-84 Penal Codel, The first nommentary on the Genensl Part of the Penal Code of Ethiopia iacluding reference to Codification Commission Notes and Swise $\quad$ onrces.

Lowenatein, Steven, Materials on Comparntive Criminal Law as based upon the Penal Codes of Ethiopia and Surizerland, A collection of textual, code and case materials derived from Ethiopianc Swiss and other sources together with noter, quetions and problems designed for reference and tetching of Ethiopian penal law.
Sedler, Robert Allen. The Conflict of Latrs in Ethiopia, A discussion of the historical development and theories as to the nidure of the conflict of laws and the prospective development of that field in Ethiopia.
In addition Profestor Redden has been workitig on an Ethiopian legal form book containing sumple copies, with anotations, of busimesa mid commercial torme, leages, contracts, court documents, etc. Thris shorld be a neful book for teaching purponen, and we bope it will be helpfol in a practical way to the profession.
(3) The Land Tenure Series of Publinations. Before land law and land reform com be initinted and property conrses well-tamght, the current system of land holling must be better known. The Institute of Ethiopim Stadies together with the Faculyy of Law has undertaken to publinh a series of materials on land tenare in Ethiopia. The first two hooks have now been published:
Hurtingord, Dr. G. W. B. (D. Litt, Sentor Lectarer, Sehool of Oriental and African Studies, University of Londonl, Land Charters of Northern Ethiopio, This it a documented examination of traditional sowereign land grants to the Chureh and nobility.
Mamp, Dt. H. S. (Ph. D., Pryal Instithtions Officer, F.A.O. Wtited Nations). Pilat Fiell Study, Chore (Shoa). Thid monograph reports on a field stady of hand temure and reveals the variations in terame which exist within a sauall represemtative area in wouthern Shon and givea a ptoture of a wide range of economic and social pheapmena related to land use. Specinl emphasiz is given to landlord-tenath relationships in the area.
(4) Teaching Materials. The foreige sources of Ethioplan law are extremely diwerse: (a) pettsl law is derived primarily from the Swis code with sobbidiary sources in Yugoslavia, Greece and Brazil; (b) civil and comnercial law from the French and German; (c) procedure from the common law through India; and (d) the Constitution and a considerable body of problio law legislation is patterned in part apon inpportamt Anglo-American sources. The law of Ethiopia cannot possibly be taught from foreign case-
 opia and the country＇s institutions and changing needs The preparation of epparate materials in almost every comrse area is，therefores an essential takk of each Faculty member，Large amomits of mimeographed materials are heing prepared，not only betting ont texts，codes and cases relatimg foreign sources of the law to present－day Ethiopia，but incorporatimg arach Ethiopian materials te we can find and presenting problems，questions and motes designed to er－ courage tudents to develop easential legal skills amd independent thinking． These materiale are naed by atudenta in essh of their conrees，and it is the Faculty＇a hope that as the mineographed couree books beame refined and developed they will be publinhed so that they will be available in more permanent，nable form for members of the Ethioptan legnl profesion as well a law stadents．The achievement of this gool will atoo free fature fority time for other important research projecte．
（5）Other Individual Faculty Confributions，All of the Facnlty have con－ tribeted to a vigorom research program．A few items not mentioned abore are：
（a）Profenor Krzeczunowitz hat contribated articles to the Jommad of Ethiopion Law and has prepared a revised English trmantion of the French version of the non－contractual obligetions articles of the Civil Code This work will greatly facilitate moderstanding of this part of the Code and is a part of his commentary on this part of the Code now in draft form．
（b）Mr．Fisher has pablished a concordance of the Eahiopian Criminal Procedare Code with that of India－illustrating concretely sources and relationships of this law．This is a firet tetp in his work on a Sourcebook of Ethiopinn Criminal Procedure．
（c）Dr．Vanderlinden jast finished a book entitled La motion de code en Europe occidentale du XIIe au XVHIe siecle－Esari de defintition＂；mortiele eatitlod＂Aspects de la jurtice indigene en payt zarde en 1956， 1957 et 1958＂．He has prepaved an article for the Joarnal of Ethiopian Law on＂The Relevance of the Study of Legal History for Better Understanding of Modern Erhiopian Luto＂， and he t⿴囗十心 finishing a book entitiled Counumier manuel ef jurispruden－ ce dur droit surde．＂Since his arrival he has aleo ingtitured our Ethi－ optan Legal Archives Project，described helow．
（6）Unpublished Research Material：The Legal Archive：Project， Teachers of the Faculty of Law have had to engego in individnal researeh to gather materiafe of all sorts helpfol to teaching their conxet in context．Mach of what was mearthed could not be published as an article or a book but it wiss basic beltgeround for elageroom diectetion．All of this information（such as data on the banking aystem，the tax btracture，the invertment decrec，the
badgetary process, parliamentary procedure, etc.) has been collated and preserved in the recently created Archives of Ethiopiar Law where it will he indexed and catalogned in at form acceasible for on-going research work. The Archives, onder the direction of Dr. Vanderlinder, is also a repository for copies of legal docments reflecting Ethiopian legal tradition. The gathering and iranslation of this material and its preservation for furture law scholars in of grest importance.
(7) Soudent Summer Research. Over the long vacation period daring the rainy season the Faculty of Law employed its students on research programs. Daring the summer of 1964 , studeats, with Faculty supervision, andertook a pilot land tenure field study in the Gurage area approximately 100 kma eouth of Addis Ababa and derived valuable information for the course in Property. Other students were set to isolating discrepancies hetween the English and Amharic versiona of the codes so that foreign teachers could to some extent transcend linguistic difficulties, and to tramslating from Amharic varions legal documents. During the summer of 1965 a majer court reporting program was Iannched attempting to uncover valuable cases docided over the past several years in the Supreme and High Courts both in Addis Ababa and elsewhere. My colleague Mr. Kindred has been directing this effort, All cases will he noeed and documented in the Law Library, amd those of conaiderable importance may be edited amd published later in this Law Journal. If enough such cages are uncovered, perhaps this will justify a separate case reporting vehicle. A duplication machine has been parchased so that we can efficiemtly reprodace reports with the ultimate objective of brilding the Law Facuhy library to contain important decided judgenents. Students are also providing personal aseistance to Faculty members on wariots tesearch projects.

Studente are paid to perform this important summer rebearch work; ower twenty-five worked in this program under close faculty unpervision. The experience has provided further legal education to these students, and also supplied them with needed financial help. With adequate finamoing in the future, I hope we can make vacation work a regular part of the Law School program.

## Other Recent Developments Within the Fuculty of Law

(1) Factly Seminars on Law and Economic Development. The Faculty of Law, in cooperation with the College of Businese, held a series of ten informal seminazs on law and economic development during 1964-65. The purpose of the seminars was primarily to stimulate and enlighten members of the two faculties in this vital azea. Outside speakers - mostly government officinla and U.N. experts - were called to make a presentation to each seminar. These speakers represented a qumber of broineses, governmental ministries, members of the Planning Board and University teachers: there were two ar three "experts" at each mession to lead the disenstions, Many sessions provid-
ed frank and interenting discussion. The following topica were discused daring the seminars:

1. Legal and economic frimeworks of development
2. Ethiopin's second Five Year Plan
3. Development of Ethiopian natural resourcea
4. Ethiopian manpower need.
5. Investment law and surcer of investment
6. Credit institutions in Ethiopia
7. Legal and practiry problemar of basinea orgamization m Ethiopin
8. The Ethiopian taxation spstem
9. Land Iaw problema under the Civil Cede and eustowary law, and
10. Labour law problems,
(2) Student Sponsored Lavc Forums. On April 9, 1965, the Law Students" Aspociation atthorized the creation of a Law Forom Committee. The Association charged the Committee with the organization of a eeries of seminars of interest to the Ethiopian legal commanity. The Formm was the first such institution organized by students within the University.

Ato Kebede Kassa, President of the Association, Ate Aleme Demekew, Ato Girma Tadesse, and Ato Fizselhe Bayih were selected and started arganizing a ecries of programs immediztely. $\mathbf{I}_{n}$ the ehort time remaining to them, three very succesfal programs were put together, culninating in the Law Day on the 29th of May.

On May 7. 1965, the Formm Commite sponaored a telk in the Univervity Student Lomage bp Jortice StanIev Work of the Supreme Court of the State of California, U.S.A. Justice Mosk hat been a recent risitor at the Interasnational Court of Jnatice at the Hame and attended semions of the Court concerned with the case of Ethionia and Liberia v. South Africa. He outlined the history and functions of the Couri before addrewing himeelf to the issaes of this cracial enrrent controvers. At the conclusion of his talks, he answered a serieg of guextions related to the role and future of the International Court in maintaining world peace and ingice throggh law.

Two wecks later, in the Facalty of Law, the Forum Conmittee hosted a seminar on the Role of Parliament ir a Developing Country. It was my privelege to serve as moderator and dioenss the legal framework for the Parlisment in Ethiopia. The Hon. It. Girma Wolde Giorgia, Preeident of the Chamber of Deputies, outlined the activities of Parliament in practice from the view of his chamber, while Senator Shasherasha Zewde Otoro. a member of Parliament (and a stadent at ont Facolty too) conmmented on the makeup and rale of the Senate. Woiz. Yaineabeba (alro a student at onf Faculty), a candidate for the Chamber of Depaties in the correat election, conamented on election campaigus and practices in Ethiopia. A spirited quetion period kept the program poing for more than two hears.

## Second Annual Repolt from The Dean

On May 21, 1965, the Forum Committee sponsored its final program for the semester before an overflow crowd of three hundred at Ras Makonnen Hall. The title of the program wat Land Reform: The Tenancy Bill in Parliament. Second year etudems of the Faculty had stadied tenancy problems for a semester in their Property course. Ato Selamu Bekele, a second year etudent, was, therefore, requested to moderate the program and to raise the issues of current concern in the area of tenaney reform. Ato Mesfin Wolde Mariam, Head of the Department of Geography at University College, addressed himrell to crstomary practices and their effect upon agrieultural development is Ethiopia. He was followed by Mr. Owen Cylke, Property Law Instructor ât our Faculty, who briefly outlined the current status of land tenaney legislation, which is wholly contained in the Civil Code. The Hon. Et. Girma. Wolde Giorgis then commented opon the status of the current legislation Pefore Parliament and upon the prospect for further legislation.

In one momth, through three meetinge, the Foram Committee of the Law Students" Association has shown that sturdents of the University can make a constructive contribution to the discussion of development of Ethiopian legal intetitutions. They are to be congratulated in this effort; I hope this marks the beginning of a fine professional tradition here.
(3) Other Guests. The Facuity enjoyed several other distfnguished visir tort in the course of the year. Dr. C. W. Jenks of the International Labour Organization gave a lecture, under our auspices on "Due Process of Law in International Organizations" ${ }^{\text {" }}$ Dean Zaki Mustafa of the Khartoum University Faculty of Law epoke to our students on "Legal Development and Legal Education in the Sudan." Dr. Sear MeBride of the Jnternational Commisaion of Jurists lectured on the Commistion's recent meeting in Bangkak, and "The Role of Lawyers in Developing Natious." Informal seminars were held in my home with groups of students and visiting Judge Charies Farmer of Michigan and Professor A. G. Lehmann of Readiry Univeraty, Professor W. B. Harvey of the University of Michigan alao visited the Law School in connection with research he is doing on international organizations and ecomomic development in Africa. Profezzor M. I.. Schwsitz of the University of California visited us for two weeks as mentioned above: his evaluation report has been submitted to the University, the Ford Foundation, and the Facolly.
(4) Tha Library The law library is slowly growing. This year our collection came to an estimated 7,000 items. We now have the services of a full tinae law librarian. The library is being used by the profession, government and U.N. personnel. It is, I hope, thought to be a law resource for the profession. It is certainly an integral part of the law echool. It is busy throughout the week - and throaghout the long vacation. In Jane we profited from a visit by our consulting law librarian, Profmasor Albert Blaustein, who helped chart our course of development for the future. For two yeara Professor Blan stein has cendered very waluable, indiapensable serviet in the building of our
library. Fortmately, throngh Ford Foatdation help, we are mow able to contintio his eervicea as we contiate the drive to build a library of international distinction.

Addia Ahaba is the rite of the O.A.U. and the U.N.E.C.A. Addis Ababa ia an international capital. The need to develop a significant uscful collection of African legal materials here seemg abvious. Moreover, sizce Ethiopia's Iegal bystem draws from diverse sources and utiquely combines many idens of the world, there is a pressing need to build a basic library collection of Goth civil and common law materials here. In short, we need the fizegt law library in Africa, and I believe, with lwak in secering financial help, we are going to have it.
(5) Fisits Abroad In April, I journeyed to Ibadan, Nigeria, with my colleagues Professor G. Krzeczunowiez and Ato Negga Tessema. We attended a conference of law tenchers in Africa convened to dizcuss problems of the development of legal edraction on this continent. One conclosion, manimonsly adopted by the conference, was the resolution to try to create an maciation of teachers of law in Africa which would sponsor further mecting and provide mach-nceded exchanges annong the various African law echools.

In May, I wan privileged to journey to the Univeraity of Dakar in Senegal with Dean Abraham Demmoz of the Faculty of Arte. We participated in dia= cossions concerning cooperation between French and English opeaking Universities in Africa, A hy-product of this was the opporturity to meet with the Dean of the Faculty of Law at Dakar; we have framed a plan for library and book crecharges and, hopefally, teacher exchanges. If furds can be ohtainted, I hope this project will hear froit in the coming year.

Two of our mtuderits, Ato Selann Bekele and Ato Fasil Nahum wisited neighhoring wiversity hw achools doring our long vanation. Ato Fasil attended claseer at the University of Khartomin; Ato Selamu atteoded clagses at the Facnlty of Law of the University of East Africa in Dar es Salaam. I hepe we may continne such exchanges in the future.

# Appendix <br> STUDENTS OF THE FACULTY OF LAW - 196465 <br> LL.B. Class of 1966 

Ato Ahabiya Abajobir
Capt. Abebe Guangoal
It Aberra Bantiwalu
Lt. Daniel Zelleke
Lt. Eyassu A yall
Ato Gebrebiwet Aregary
Lt. Getahun Dante
Ato Girma Tadesse
Ato Haile Mikael Kelede

Miss Alexandra Hamanfi
Ato Kanaa Guma
Lt. Mammo Mezemtr
Ata Sehul Micael
Ato Selama Bekele
Ato Shemellis Honssein
Ato Yacol Haile Mariam
Ato Yohannes Herony
Ato Zerahrok Aberra

IL.B. Class of 1967 (Full-time)

Ato Abebe Worke
Le. Alemayehu Asfaw
Ato Alemp Denekew
A to Bekele Wolde
Lt. Berhanu Bayit
Ato Fasil Nahum
Ato Figsehn Beyih
Lt. Hailt Makonmen
Ato Kebede Kassa
Ato Kesete Haile
Lt. Mesfin Gebre Kal
Ato Semereab Mikel

Lt. Shimelis Metaferia
Capt. Tadesse Abdi
Ato Tadease Gurmo
Ato Taklou Makonnen
Ato Taye Nigatu
Ato Teame Beyene
Ato Tiname Lissan Lemma
Lt. Womdayen Gebre Medhin
Lt. Yilma Ghizaw
Ato Zegaye Asfaw
Ato Zemene Kafegn
Li. Zeray Habte Selansie

## LL.B. Class of 1967 (Port-time)

Ato Aberra Jembere
Ato Abiyn Geleta
Ato Assefa Tiegaye
Ato Ayalew Zelleke
Ato Beqele Habte Michael
Ato Bukcha Demeksa
Ato Ijjigu Demiasie
Ato Kassa Beyene
Ato Kelede Gebre-Mariam

Ato Makonnen Ennatu
Ato Mebrahtu Yohannes
Ato Memgesha Workeneh
Ato Nabifyelul Kifle
Ato Nega Fanta
Mr. R.H.R. Rajaiah
Ato Seifu Felleke
Ato Workn Tafara

## Law Diploma Class of 1967

Lt. Abera Gobena
Ato Abrabam Tsegaye
Ato Adinew Haile Michael
Ato Aklilu Atlabachew
Ato Akliłu Bete Mariam
Ato Assefa Bekele
Lt. Assefa Hailemariano
Mr. Arakel P. Sakadjian
Ato Bekele Teffaye
Ate Berhann Sahle Giorgis
Ato Birhanzu Kifetew
Lt. Datntew Mintke
Ato Demesse Bekele
Lt. Erdaw-Darge
Ato Gebreyesur Haile Mariam
Ato Germay Zewalde
Capt. Getahun Bekele
Ato Girma Desealegn
Ato Gudet Herou
Ato Haile Wolde Marian
Ato Hailu Wolde Michael
Ato Jemaneh Mekasha
Ato Joeeph Haile
Mr. Joachim Matovu
Ato Kassaye Adam
Capt. Kassay Manfredo

Ato Kefrteque \$1enyazihal
Mrs, Mariea Arvanitopoulo
Ato Mangiste Imru
Ato Menguestu Wolde Arcgaye
Ato Menkir Gabre Mariam
Ato Me fin Ambatchew
Ato Mesfin Fanta
Ato Minesaie Dega
Ato Mulatu Likaza
Lt. Negash T. Mariam
Ato Samuel Worqueh
Ato Sayifu Fayi:a
. Ho Seifu Yetcshavork
At: Seyfu Anage
Capt. Tamru Haile Gabriel
4io Tarekenge Haile Leul
Capl Taye Wolde Giorgiz
in Taye Wondemagegnebu
Ato $\mathrm{T}_{\mathrm{e}}$ faye Alemou
Ato Tirefaye Sahile
Lt. Teibome Beyene
Ato Teshome G. Sellassie
Ato Tredeke Tekle
Cant Welde Hawarial G. Marian
Major Yilma Woldesemayat
Hons. Zewde Otoro

## Certificate in Law Class of 1965 (Graduates)

Fitawrari Abaineh Feeno
Ato Abate Semegnee
Ato Abebe Boreshe
Sgt. Abele Wolde Ghiorghis
Ato Admassu Ewunatu
Ato Aklidu Teferra
Ato Alemu Melose

Ato Amare Tekle Haimanote
Ato Aerat Legesse
Ato Arefa Habte Mariam
I.t. Azzefa Mengesha

Ans Ayencui Wolde Mariam
Ato Ha-kel:: Gedrle
Ano Rekele Otset

Ato Berhane Meskel Tsegaye Capt. Berlane Negata Ato Hexuayene Keduge
Ata Derobe Buta
Ato Endale Wolde Michael
Ato Eshete Demissie
Lt. Feladu Wakenee
Ato Gebre Marian Ambaye
Ato Gebre Mariam Mergeya
Ato Getachew Menilikalewn
Ato Getachew Asfaw
Ato Getachew Menlikalewu
Ato Getahun Wolde Senbet
Ato Gezahegne Wolde
Ato Girma Abebe
Ato Gixaw Bezare
Ave Goitom Beyene
Ato Gossaye Zemedkoon
Ato Haile Mariam Gemeda
Ato Haillematiam Tesfat
Ato Hatlu Brycre
Graximateh Kat:sa Abera
Ato Kebede Chekol
Ato Kefale Wolde Mariam
Ano Kefle Gebre Selmssie
Lit. Ketemina Desti
Ato Legesse Abeb ${ }_{2}$
Ato Lemma Hagos
Ato Lemma Woldesemayat
Ato Makonnen Agonaler
Ato Makonnen Wolde Mariam
Ato Mebratu Gobs

Ato Mechegeya Birata
Lt. Col. Meheret Gebre Selam
Mezenuer Melkeadek Wolde Selagsie
Major Mulatu EndayelaIm
Ato Mulugetta Berihome
Ato Mulugetta Habte Gebried
Ato Mulugetta Makonnen
Ato Negash Tekele Mariam
Ato Negga Bisat
Ato Negussie Abebe
Ato Negusiie Nauteh
Ato Olena Batee
Ato Seffu Aeresi
Ato Shemellis Tefera
Ato Shewaye Lemma
Ato Shewangizaw Wolde Yohames
Atn Sultan Sayid
Capt. Tadesse Engeda
Ato Tadesse Hagor
Ato Tadesse Haíle Mariana
Ato Tadesse Wolde Mekel
Ato Tefera Deneke
Ato Terefe Gesesse
Capt. Tearaye Mengesha
Ato Waleleng Mera
Ato Wolde Demessie
Ato Wolde Micael Gebresb
Ato Wolde Muse Yehadego
Cpl. Wolde Selassie Debela
Lt. Yilma Mengistu
Ato Yilma Tadesee
Crown Sgt. Zewde Haile

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## Certificate in Law Class of 1966

(Addis Ababac, Class A)

Ato Abebe Awngetchew
Ato Abraham Deressa
Ato Abraham Tekle
Capt. Aznare Adera
Ato Andu Alem Belay
Ato Asfaw Yetharek
Ato Ashagere Haile
Ato Astebe Cebre Selassie
Ato Assefa Akale Hewot
Ato Assefa Ayele
Ato Assefs Tegne
Ato Ayalew Desta
Ato Ayele Wolde Hawariat
Ato Bekcle Wolde Yohannes
Ato Belay Getaluan
Lt. Col. Beyene Z. Amanuel
Lt. Col. Debalke Geda
Ato Desalepre Alemu
Ato Endalew Mengeeha
Ato Engeda Gete Worku
Ato Eshete Gebre Mariam
Ato Fcleke Demissic
Ato Fire Hewot Beybeyene
Ato Haile Selassie Bezabeh
Ato Haile Selassic Hagos
Ato Haile Wolde Hana
Capt. Hailu Desta
Ato Kasahun Abebe
Capt. Kebede Senbetu
Ato Lemma Degefu

Ato Makonnen Asfaw
Ato Meqoya Eshete
Lt. Col. Mered Asfaw
Ato Mesgenaw Tarkegac
Ato Mulugetta Yememu
Ato Negatri Habte Mariam
Memere Sahle Dengel Gebre Kristos
Lt. Sebsebe Kebede
Ato Seleshi Deste
Ato Sewasew Enyew
Ato Solomon Dagnatchew
Ato Tidese Abetew
Ata Tadesse Wolde Kidan
Maj. Tamrat Gobeze
Ato Teferra Beyene
Ato Teka Getre Hewot
Ato Tevfaye Bezabeh
Ato Teshome Gelagele
Ato Tewodos Arefe Ayene
Ato Titahun Asfaw
Ato Tilahatr Haile
Ato Tsige Dershe
Maj. Wondemu Gebre Mariam
Ato Worku Wolde Aregay
Ato Wuhe Woldeyes
Ato Yemane Berhan Woldemayehou
Maj. Yeneneh Alemu
Maj. Zerihun Gebre Selassie
Ato Zewde Mezegebu
Ato Zewde Tedla

## Certificate in Law Class of 1966 <br> (Addis Ababa, Class B)

Ato Abebe Asgelette
Ato Abebe Tessema
Ato Admasse Gespesse
Ato Admasti Aserese
Msjor Admassu Gembere
Ato Aga Negash
Lt. Col. Ahmed Aminu
Ato Alemayehou Aga
Ato Alemayehou Wondemu
Ato Alemseged Araya
Ato Alene Wonde
Ato Amare Degefe
Capt. Amare Negatu
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# CURRENT ISSUES CONDITIONAL RELEASE: 

(Conditional releake wider Arts. 112, 206.12 Pen C. ard Arks. $216 \cdot 17$ Grimi, Pro. Co Condibions for releate - Juribdiction ta order release - Procedure for releane)

## INTRODUCTION

Article 112 provides that prisoners sentenced to imprisonment may, on oertain conditions laid down by law, he released on probation prior to the expiration of the term of sentence. Furthermore, according to Article 207, orders for conditional releage aro to be made by the conrte. These general ruled involve the following questions: (a) on what conditions may an oriler for oonditional release be made? (b) which court is competert to make such an order? and (c) what is the procedure for making such an order? Similar questions arise with respect to the conditional release of prisomers sentenced to internment: which will mot be discossed here.

## CONDITIONS FOR RELEASE

Acoording to Articles 112 and 207, no order for conditional release may be made in the absence of the following material and personal conditions:
(A) (i) Two-thirds of the sentence must have been served or, in case of a life sentence, twenty years must have been served; ${ }^{3}$ and
(ii) The prisoner concerned must have satisfied, to the hest of his shility, auch order or agreement at may have been made or enterod into regarding his civil liability for the damage arising from the offence."
(B) (i) Conditional release must be "deserved" by the prisoner concerned, ${ }^{\text {s }}$ and it may not $b_{e}$ deemed to be deaerved unless this prisoner"s conduct "has been satisfactory"' i.e., by his behaviour and work while in prison he gave "tangible proof of hia improvemeat." ${ }^{\text {T }}$
(ii) Since an order for condit. nal releast may not be made unless "it affords a reasonable chance of suceess, ${ }^{\text {na }}$ it does not euffice

2 Arta 130 (2), 131.
3. AtL 115 (I).
4. Art 207 (b).
5. Aut. 206, pert. 2.
6. Art 112 (1).
7. Art. 201 ( m ).
g. Art. 206, para, 2.
that the prisoner should have been of good conduct in priton, It is also necessary that his character as well as the conditions in which he will find himself upon release should be such that an optimistic progaosia may be made.' The risk inhereat in relessing prisoners on probation naturally varies depending on whether they will find jobs after release, receive materisl and moral support from their familiea and the like.
Thete are the only conditiona ppon the fulfilment of which the making of an order for conditional relesse depends. Admittedy, Article I 12 (2) staten that peritentiary regulations will prescribe the conditions for, and manner of, implementing the provisions of Article 112 (1). The fact that regrations of the kiad have at yet not heen made should not, however, be used as an excuse for declining to order conditional releate, since they will got lay down euhotantive requinements different from thoce laid down in the Penal Code. These regulatione will, for instance, prescribe the mininum marky which a prisoner should get before he is eligible for release, the time for which or comditions on which he may be made to live in those labour settements mentioned in Article 112 (1) (second paragraph) etc., so that the decition whether he gave tangible proof of his zmprovement may be made in accordance with precipe criteria. But it does not and it camnot follow that, so long as these criterin do not exiat, a prisoner may not he deemed to have corrected himself and to be fit for conditional relesbe.

## JURISDICTION TO ORDER RELEASE

No anthority other than the court is competent to make an order for conditional relesse. Such an order by its very nature requires a new jodicial deciwion since it affecta a matter which is res judicata and implies the reviston of a judgment in force. Thus the Prisod Administration may not of its own motion release prisonera on probation, even though it considers them to be perfectly fit for relense; its only duty is to ardise the court as to whether an order for release ought to be made in any particular case. Nor do other executive authorities play any part in the decision whether a prisoner should be released, since this decision is within the exchasive jurisdiction of the courts. Any other solution would, in addition to contradietiog the primeiple of geparation of powers haid down in Article 110 of the Constitution, amount to confuning two tieps which are fundementally different; mamely, conditional release and pardon. There in no more reamon for the executive to have a say in the former than there is for the judiciary to have a say in the latter.

The court competent to order conditional release is "the court having pamed the seatence in relation to which such order is to be mode."1s it in not required that this order ahonal be made by the judges who pased the sencence;

9 Art 807 (c).

thate would be no justification for such a requirement even the latter judgon do not know the priponer well enongh to be able to decide whether he in fot to the relessed. All that is required is that the court that geve the final jpitgrent, whoever its members may be when release is applied for, should be satiefied by the prigion authorities that the conditions for ordering relesse 25 folfilled.

## PROCEDURE FOR RELEASE

An order for conditional release nay not be made except on an application to this effect beine lodged ${ }^{11}$ either by the prisoner himself through the prison authoritien (who must submit it to the court even though they do not agree that the applicant should be released; in such a case, their only power is to atate the reasong for their disagreement when the application it considered by the court) or directly by the prison authorities (which should be the practice whenever they are in favour of the applicant being released.) The epplication, by whomsoever made, must give reasons, and the regulations to to drafted under Article 112 will preaumably specify its form and exact contenten; it will them be decided in mecordance with Sub-articlea (2)-(5) of Article 217 of the Criminal Procedure Code (note that the public prosecutor may, for good canse to be chown to the court, object to the granting of the application) ond, if it in graxted, the following rules will apply:

1. The court must fix a probation period not ahorter than two, nor longer then five, yeans ${ }^{4 t}$ and the sentence will not be deemed to have been fully gerved unlen and until this period expires withont any intervening repocetion of the releate order.
2. The court may fix so-called rules of condmet ${ }^{13}$ i.e., rules of the nature defired in Article 202, with a view to leseming the riak of a relnpse. The court may diepense with these rules when it considera them to be unnecessary.

It is often advisable that released prisoners should, in their own interest, he subjected to a oertain amonnt of stpervision, which is normally to be carried out by probation officerg or charitable inatitutions." The fact that the service of anch offecers or institations are not avalable now phould not be involed as a gromed for not releasing prisoners; to refuse release only for this remon would be contrary to the haw, since Article 210 (2) expressly provides that no order for expervision may be made which is unpractical or useless. The Code, therefore, envienges that it may be impossible to supervise relessed prieonera, but it dons not regard this an obstacle to the granting of a conditional relense.

[^10]The reason for this oolation evident if one hears in mind that the court may, on granting am application for release, order "any measure for eecuring the success of the prohation." ${ }^{31 s}$ Thas, if direct aupervision cannot be exercised, there is nothing to prevent the court irom ordering eg., the released pritoner to report to the court or the police at regular intervalz or from requiring a relisble person, whether or not a relative of this prisoner, to vonch for the latter's good conduct or gencrally to carry out the duties of a probation officer. In other words, there is ample room in the Code for supervistion otherwise than hy probation officers or charitable institutions, as she court has full powern to prearithe anf reqnirements it deems necessary in wiew of the prisoner's reformation, so long as these requirements are not inconaistent with the sims of conditional release.

## SUMMARY

No application for conditional relesse should be dimmised by the coart except for want of any of the material or persoral conditions mentiomed mader paragrapha (A) and (B) above. Any ditmiesal ordered on ouber gromade most he considered unlawful; so too, any attempt to atop applications from being eent to conret or any interference with the consra' powers regarding the granting of applicationa, would be umlawful. A prisoner who "degerves" to be released may not be denied the bevefit of what he has earned through hig good condact and his datire to correct himself simply because supervisory authorities are non-existent (since the purpose which the legigatare had in mind when providing for arpervision may be served equally well by different methods to be apecified by the conrt from case to oase) or because his release chould, eq. displease the person, physical or juridian, againat whom he committed hie offeroce
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[^0]:    - Sot aloo Art 134 Crta. Pro. C.

[^1]:    
    

[^2]:    * Seo almo Art. 134 Comm. C. and Artg 2120 and 2122 Cis. C.

[^3]:    * See nle Art. 740 Giv C.

[^4]:    - The Tax Appetil Commiedion decinion from which this appeal whetaten appears . H . $\mathbf{3 5}$.

[^5]:    - The decieipa of the Sppreme Imperial Court on appeal from the Labour Relations Boardig deciason apptart at p. 259.

[^6]:    - The dection of the High Courl on appenl from the Tix Appenl Commintoc't docicion eppottr it p. 340 .

[^7]:    27. Statialict are reported for each of the propincel of Ethiopia except Ertret, which hat bsen sepparately ndminumbreil, under twelve sperifo categories of crime. Convictions
     Indications of dnaceracy are namerous: only ond intentional honichde is reported for Addt Ahaba faring the year 1954 E. C.; figures are given for "buglary" which is ina a crime at onf in the Pemal Code; ingtances of negiligeot homicide and negligent fajnrien are reported by the polite before a cont has determined the exintance of negipeneb, the
[^8]:    
    

[^9]:     120. 8 (I958), p. 63.
    24. Pianial math Rtpart, ap. cit. note 8, 施 no. 14b.
    25. Sma ©. 87 Art. 88, Ref. Cont

[^10]:    17. Jd, et Art. 217 (1).
    18. Ant, (210) (1).
    19. Art. (710) (1).

    14 Art 210 (2).

