LEGALIZATION OF THE PRINCIPLE OF PRECEDENT IN ETHIOPIA

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ABRAHAM BELAY

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CHAPTER ONE

THEORETICAL BACKGROUND

1.1 Historical development of Precedent

Case law grew up in England, as Jens points out because of the accident of the early English Judges being Normans. They were foreigners of England and they were bound together by an Esprit de corps (team or group spirit, or strong feeling of shared beliefs and values which made them respect each other's decisions, especially when these decisions dealt with matters which were strange and unfamiliar to them. Esprit de corps involves feeling of fraternity, pride and honors in the group to which one belongs. The Norman Judges had a strong sense of brotherhood and discussed their cases when they met and started the practice of following each others decisions.[1]

Where the best argument in favour of a particular case was the decision of a brother judge in a similar case, they begin to take notes of cases and in that manner law reporting came into existence. Law reporting became an established practice in this manner, and this enhanced the development of case law, i.e., looking for legal rules and principles from preceding judgments.

The growth of case law in England was also accelerated by the reaction that set it against the reception of Roman law. Local laws were found to be unsatisfactory with the advance of civilization, and the remedy of introducing Roman law was attempted. But English lawyers and judges resorted to the fiction that "there was no legal problem that could not be solved by the application of customary laws, and that every judge carried about in his brain a complete body of such law of amplitude sufficient to furnish principles which would apply to conceivable combination of circumstances".[2]

It is possible as Maine points out, that the judges were influenced by Roman law principles, and that they borrowed from Roman law, but they did not rest the authority of their pronouncements on either the Roman law but on the fiction that their judgments indicated the custom of the land. It was always as indicating the custom of England, and not as an authority, that these decisions were acted upon and followed during the 13th and the 14th centuries.

Soon however, this fiction was dropped, and decisions began to be followed for the sole reason that they came from judges who were delegates of the King entrusted by the King himself to administer justice. During the time of James I official reporters were first appointed, and case reports facilitated and enhanced the development of case law. [3]

1.2 Definition

Precedent the making of law by a court in recognizing and applying new rules while administering justice and a decided case that furnishes a basis for determining later cases involving similar facts or issues. [4]

1.2.1 Elements of Judicial precedents these are:-

1.2.1.1 Doctrine of Stare Decisis

The English system of precedent is based on the Latin maxim: "Stare Decisis et Non Queita Movere", stand by what has been decided and do not unsettle the established. The idea is that by following precedents, which are the previous decisions of judges, fairness and certainty will be provided.

Precedents can only operate if the legal reasons for past decisions are known. Therefore, at the end of a case (civil) there will be a judgment in which the judge will give not only the decision but also the legal reasoning which lies behind it.[5]

1.2.1.2 Ratio Decidendi

This is the legal reason or principal which lays behind the decision and it is this ration which will provide the precedent for judges to follow in future cases. The remainder of the judgment is known as the Ratio Decidendi:[6]

1.2.1.3 Obiter Dicta

"Other things said by the way."

These comments do not form part of the ration (reasoning) and are therefore not part of the precedent. For instance, sometimes a judge will speculate on what his decision would have been if the material facts had been different.

Sometimes, part of the Obiter Dicta may be put forward in future cases and although it will not form a binding precedent it may help to 'persuade' a later judge towards a particular view in the law.

It is sometimes difficult to distinguish between ration and any heading as the judgment is usually in continuous form without any headings specifying what is ration and what is not.

There may also be a number of speeches at the end of a case, depending on the number of judges sitting and how they have individually arrived at their judgment. This can mean that there is more than one ratio.[7]

1.2.2 Different Types of Precedent

1.2.2.1 Original Precedent

If a point of law has never been decided before, then whatever the judge decided will form a new precedent for later cases to follow. Donaghue v Stephenson (1932) snail in a bottle case - negligence. As there are no past cases for the judge to base his decision on, he is likely to look at cases that are closest in principal and he may decide to use similar reasoning. This way of arriving at a judgment is known as 'reasoning by analogy'. [8]

1.2.2.2 Binding Precedent

This is a precedent from an earlier case, which must be followed even if the judge in the later case does not agree with the legal reasoning. A binding precedent is only created when the facts of the second case are sufficiently similar to the original case and the decisions was made by a court which is senior too, or in some cases the same level as, the court hearing the later case.[9]

1.2.2.3 Persuasive Precedent

These are not binding on the court, however a judge may consider such a precedent and decide that it is the correct principal to follow. In other words, he is persuaded that he should follow it. They can come from

a. Courts lower in the hierarchy.

   In this case the law lords followed the same reasoning as the Court of Appeal in deciding that a man could be guilty of raping his wife.

b. Privy Council Decisions

c. Obiter Dicta Statements. This is particularly true of Obiter in the House of Lords.[10]

1.3 Some Practice in Other Legal Systems

1.3.1 Common Law Jurisdiction

Common law countries such as Britain and United states of America do not have the power of Cassation which is exactly the same as the cassation system of civil law countries. The legality of judicial action is the primary concern of the supreme courts of many of the civil law jurisdictions. In contrast, in Common law countries just mentioned the three powers - the power to control of the legality of judicial action, of administrative action, and of legislative action - are often lumped together and given to their respective regular courts, particularly to their supreme courts.[11]

The judicial function which examines the legality of lower court decisions, we will briefly describe the powers of two selected highest courts of common law countries (USA Supreme Court and the House of Lords of England) in reviewing the legality of judicial decisions.[12]

At the apex of the federal judicial pyramid is the Supreme Court of USA whose main objective is to provide a uniform interpretation and application of the law of the federal government. Apart from its power to review all decisions of the federal appellate courts, the court has jurisdiction over decisions of the highest state courts when these courts have decided a question of federal law.[13] The Supreme Court's jurisdiction over state courts is continued to reviewing decisions of the highest court of a state involving a controlling question of federal law.[14] A federal question is controlling if the supreme court's reversal of the state court's determination of that question would necessarily reverse the entire judgment.[15] A litigant submits a written

petition for 'certiorari;' 'as of right, showing why the case should be heard.[16] And the other party may submit a written response in opposition.[17] The justices would then consider the documents and vote on whether 'certiorari' should be granted or denied.[18] The grant of 'certiorari' is not a matter of right, but only judicial discretion[19] and it will be granted only when the case contested involves a controlling federal question. When 'Certiorari' is granted a lower federal or state court is directed to send up the records of the case for review.[20]

In the court structure of England, above the courts of appeal there lies one last and very much restricted path of review to the House of Lords. If the matter of law involved is considered to be of a sufficient importance (or general public importance), appeal may be lodged to the House of Lords.[21] A matter involved in a petition is said to be sufficiently important if its consequences will likely to touch not only the parties to the case but also third parties.[22] For example, this is the case where a well established precedent is to be set aside. Apart from the general test of 'general public importance; there are no specific criteria laid down. In addition to containing a question of general public importance, in order for a case to be reviewed by the House of Lords (a) it should previously have been reviewed in the court of appeal; (b) the litigant should secure leave from the Court of Appeal but where leave is denied by the court he may directly petition to the House of Lords itself.[23] When the request is granted, all the members of the House of Lords do not of course sit in a mass body for the purpose of hearing a case. In stead a small, highly skilled and distinguished group of judicial experts constituted as the legal section of the House of Lords is responsible for this task.[24]

1.3.1.1 Some East - European Countries

In this section we will briefly consider the powers of the cassation courts of Poland, Rumania and Russia.

In Poland, the Supreme Court is the Supreme Supervisory authority over judicial decisions.[25] Cassation in Poland is referred to as extra-ordinary revision or supervision. The extra-ordinary revision can be lodged with the Supreme Court by the Ministry of Justice, the Procurator General or the President of the Supreme Court.[26] The party to

the proceeding, is not authorized to do it. The party may, however, ask the Minister or the Prosecutor General to lodge such a revision.[27] The basis for an extra - ordinary revision in civil cases is where there occurs a "glaring violation of the law which is understood to mean a judgment of appellate court which contains error of law affecting materially the out come of the case.[28] In penal cases, on the other hand, the basis of an extra-ordinary revision may be any objection that the party can raise at lodging the revision with the court of the second instance.[29] This shows that the Supreme Court can entertain issue of fact since in the first appellate court a party could raise error of fact. The Supreme Court has also the power to issue directives to inferior courts on matters of the administration of justice and of judicial practice; for the purpose of unifying the interpretation of law by the lower courts it has the power to explain provisions which cause doubts or the application of which brought about discrepancies among judges.[30]

In Romania, with its three divisions - civil, criminal and military chambers, the Supreme Tribunal is at the apex of the judicial structure.[31] The Tribunal has a fundamental task of supervision of the judicial activity of all courts in the country. In the discharge of this task, it: (a) hears demand for correction, whenever the decision contested has been rendered by one of its divisions (such a demand for correction is heard before the plenary sessions; and (b) gives instructions concerning procedures for lower courts, with regard to the just application of the law.[32] Review by way of supervision is not limited to question of law for questions of fact are some times reviewed and new evidence to some extent is admissible.[33] Like the case of Poland the Supreme Tribunal will have a power of revising the decision attacked and of substituting its own decision and further review is initiated either by the Procurator General or the President of the Supreme Court who frequently acts upon the request of a party.[34]

Turning to Russia, the Supreme Court is divided into three specialized panels: one each for civil, criminal and military matters.[35] It exercises the Supreme judicial supervision over the legality of the judicial function of the ordinary and special courts functioning within the judicial system of the state.[36] In order to ensure the uniform

interpretation and application of the law, it also gives guidance for the courts under its supervision.[37] It is said that review by the Supreme Court on ground of error of law is not another instance of appeal in the judicial hierarchy, but rather a review of the case to correct an error of law committed by a lower court in its final decision. [38]

1.3.2 Continental Law Countries

Many of the continental law countries such as France, Italy, Egypt, Japan and Germany have supreme courts referred to as cassation or revision courts. Some of these courts do have merely the power to break the force of the validity of a judgment and send it back to a lower court. Whereas the others have both the power to quash the judgment and substitute it by their own new judgment. The Cassation courts of France and Italy fall into the first category. While Japanese and German revision courts fall into the latter category. First let us consider the case of France and Italy.

At the pinnacle of the regular courts of France stands its court of cassation ('court de Cassation'). It consists of two chambers: one civil chamber and one criminal chamber.[39] The former is sub-divided into social commercial, civil and screening chambers; each of these chambers is composed of sixteen judges of whom eleven must sit in order to dispose of a case.[40]

The screening chamber also known as the chamber of Requests receives and evaluates all petitions and requests for review, conducts a preliminary inquire into the merits, dockets those it considers to be worthy for review by the court and rejects all others.[41] This chamber does not guarantee that each of the court will actually contain error of law. If, one its face, the application seems serious, the chamber sends it to either the criminal or commercial or civil chamber, as the case may be.[42] The chamber to which a case is referred to is supposed to annual the decision when it contains a violation of law.

A Violation of Law Includes:

I. Erroneous interpretation of a statute or of an executive decree having statutory force. This contemplates an error which has been inadvertent on the part of the lower court or represents the court's deliberate view of what under the circumstance is legally sufficient,[43]

II. Lack of jurisdiction of the person or of the subject matter.[44] The judgment rendered by a court which does not have jurisdiction is put aside even if the lower court has decided the case correctly;[45] that is, even if review could not bring any difference in the outcome of the case. This is defended as follows: the lower court's action is ultra vices and the legislature, by apportioning judicial power among the various level of courts, has expressed an important policy the higher the court the more competent and experienced the judges are.[46] So, a court defeats, the theory concludes this consideration by assuming a jurisdiction which the law-giver has not conferred upon it.[47] This idea is objectionable. Firstly, there is no practical significance for a case to be entertained by a cassation court if the lower court has correctly decided it even if the latter assumed a jurisdiction it did not have. Besides, the worry would be pointless in cases where the court which has assumed jurisdiction is of the same level as the one whose jurisdiction is usurped. To this one may add that the higher one climbs up in the ladder of judicial structure does not necessarily mean the more competent the justices are. Yet this objection itself can be objectionable since, if accepted it may lead us to confusion; this is so because a litigant could institute his case in a court he pleases than in a court he is suppose to do so.

III. Usurpation by the court of authority belonging to the executive or legislative departments of government.[48] France has a body which reviews administrative legality referred to as Council of State and another organ which controls the conformity of laws with the Constitution.[49] So in case where any regular court enters into a province which belongs to either of these bodies, error of law is said to have been committed by that court.[50]

IV. Breach of form to which the law has attached the penalty of nullity;[51] and

V. A conflict of two judgments in last instances between the same parties and involving the same subject matter.[52]

If the chamber which dwells upon a case decides that the lower court has committed an error of law in light of the above illustrative listing, it will quash the decision and send the case back to a new court of the same level as the one whose decision is quashed.[53] This new court the court of rehearing has jurisdiction over the whole dispute. On the point of law that was submitted to the court of cassation, it may adopt the court's point of view, in which case the litigation is terminated and the new court's decisions is final.[54] If the court of rehearing, however, refuses to follow the court of cassation, as it has the right to do so for the doctrine of precedent does not apply in France a new petition to that court can be taken.[55] In such a case, the dispute comes before the whole Court of Cassation sitting together ('chambers reunites'). Where all the Chambers of the court sitting together quash the decision against which the second petition is brought, it again sends the case back to a court of the same level.[56] On the point of law which the Court of Cassation has decided, this new court must yield before the opinion of the 'Chambers reunites'.[57]

Any decision of any court whatsoever can be brought before the court of cassation, without regard to the amount in controversy, as long as the decision involved has exhausted all the available appeal or is not appealable to another court.[58] The amount in controversy in the case could be too small since a case that seems to be a trifling matter can raise basic issues of law on which the court of Cassation can usefully speak so that the people throughout France will be subject to the same law and judged in the same way.[59]

As a rule, the Court of Cassation considers only questions of law and leaves all factual questions for determination by other courts.[60] It is said that it is impossible to reach the court of Cassation by complaining that the lower courts have made a mistake of fact, such as having incorrectly evaluated the amount of damage suffered.[61] There are exceptional cases where the court set aside the principle. That is, it intervenes whenever it desires to intervene, without too much concern as to whether the

question to be considered ought strictly speaking, to be called a question of law.[62] On this point French scholars disagree. Some say that since the very purpose of the institution of cassation is to maintain or bring about uniformity of law in France, the role of the Cassation Court should be to zealously guard the purity of the distinction between questions of law and questions of fact.[63] Some other French writers say that the principal problem is the practical and applied meaning of this abstraction. The link between the two is always difficult to find out.[64] This latter group of scholars also get support from practice of the court. The distinction between fact and law is sometimes conceived by the Court of Cassation in away that may be theoretically difficult to explain.[65] There are just two primary factors that limit the over-extension of its jurisdiction. The court may fear a loss of effectiveness through over exposure and its own procedures prevent it, for example, from taking evidence freely.[66]

When we come to the Cassation court of Italy ('corte di Cassatione') it has four sections - two criminals and two civil.[67] Seven judges sit at a hearing.[68] At present the total number of its judges is about eighty.[69] The court of Cassation serves the same purpose as its French Prototype, that of maintaining the exact observance of the law, the unity of the national law by annulling judgments which must be finally decided by appellate courts and having contained error of law.[70] Concerning the remand of the case and the force of the decisions, the same rules apply as in the French law.[71]

As opposed to the cassation system of France, the Italian one does not have a screening section which has the power to investigate into the merit of a case, hold preliminary 'exparte' hearing and reject when it considers the application is an unwarranted. This function in Italy is taken over by an associate judge designated by the Chief President of the Cassation Court. This designated judge does merely have the duty to conduct preliminary research on the record and prepare a written report which he/ reads at the first hearing but he does not have the power to reject the petition.[72] One may query about this difference. In France, the remedy of Cassation is not a right; it is merely considered as an extra-ordinary proceeding whose importance is primarily to the legal system by unifying the law and by keeping the judges away from the province of the French legislature.[73]

CHAPTER TWO

2.1 Sources (System) of Modern Ethiopian Law

The two major religions in the country Islam and Christianity served as the sources of some basic principles of the Ethiopian laws. For example, the Ten Commandments served as some fundamental penal law and contract law principles. Take the principle that you shall not intentionally injure any body. The same can be said of the Koran.

There are a lot of conflicting views on the historical source of the law book that became the basis of the Fetha Nagast. According to legends, the law-book fell from heaven during the reign of the Roman Emperor called Constantine. As to this version of the story of the source of the Fetha Nagast, its source was not attributed to human action. It originated from God. At a certain point in history and at a certain place God just dropped from the sky.

There is another conflicting version. This version came from church tradition. For church tradition, 318 Orthodox bishops assembled at the council of Nicaea in 325 A.D. and produced the law-book at the request of Emperor Constantine. So according to the second view, the source of the book is attributed to the Roman Emperor and the effort of the Council of Nicaea.

The more modern view is that the Fetha Nagast did not fall from the sky. The Council of Nicea did not prepare the law-book. The Fetha Nagast is rather a literal translation of a well-known Coptic nomocanon originally written in Arabic. Nomocanon was written by Ibn of-Assal in 1st half of the 13th century. Ibn-at-Assal was a Coptic Christian scholar lived under Islamic rule. In writing the law book, the author was influenced by Roman law and Islamic law.

Zaria Yaiqob (1434-1468) had the book brought from Egypt and translated into Ge'ez from an Arabic text. In the 1960's, the Fetha Nagast was translated into Amharic. Note that the name the "Fetha Nagast" was given to the law book only after Emperor Zaria Yaiqob had brought it to Ethiopia.

The Fetha Nagast influenced the 1957 Ethiopian Penal Code. For example, the Fetha Nagast focused on the intention of an offender. The Fetha Nagast considered intention as the primary requirement for a person to be held criminally liable. The Fetha Nagast quoted the Bible on the issue of the degree of intention. Our Lord has said in the Gospel that he who knows much shall be punished much but he who knows little shall be punished little. The issue of death penalty and flogging in the 1957 Penal Code came from the Fetha Nagast. The 1931 Penal Code of Ethiopia got close inspiration from the Fetha Nagast. The preamble of the 1931 Penal Code of Ethiopia stated that the Fetha Nagast served as the primary source in the preparation of the code. The Fetha Nagast also served as legitimacy tool. The 1931 Penal Code of Ethiopia appealed to the public to abide by it by stating that its provisions came from the Fetha Nagast.

The Fetha Nagast was translated into Geez from Arabic the mid 15th century Religious persons, applied, interpreted and explained the provisions of the Fetha Nagast. In the process of the applications of the provisions of the Fetha Nagast, religious persons in the church came up with different methods of interpretation. One method is interpretation by listing. The second method is contextual interpretation. The other mode of interpretation is spiritual or policy-based interpretation.

You can mention the cases of the book entitled "Zekre Neger" written by Blaten Geta Mahateme Sellassie. This person was a secular writer. This book includes a summary of a lot of statutes. It appears that the drafters of the Ethiopian codes written in 1960's used Zekre Neger as one of their sources.[1]

The Ethiopian laws came from multiple sources. The reason for such several sources is the fact that Ethiopia has been the meeting point of different legal values and institutions. You can conclude that the following are the sources of the Ethiopian modern laws: Islamic law, cannon law, Anglo-American law, Italian laws, Civil law, Customary, International instruments, The socialist legal tradition and Comparative law. The Anglo-American law influenced the Ethiopian legal system in the period immediately after the liberation of Ethiopia from Italian occupation. In particular, in 1940's, a numbers of statutes originated from England. Several English legal experts

also assumed important positions in the administration of justice in the country. Italian laws affected the Ethiopian legal system during their military occupation. The Italians planned enacted laws to apply to the territories Italy occupied in east Africa including Eritrea, Italian Somali Land and Ethiopia. Socialist law impacted Ethiopia from 1975-1991. In the course of these 17 years, Ethiopia borrowed a huge quantity of socialist laws from the ex-USSR. International treaties also served as the other sources of the Ethiopian modern laws. The concept of source is used in a historical and material sense. The term refers to the origin of a given rule; the document referred to in writing a legal rule.

2.2 Historical Back Ground of Precedent in Ethiopia

In the year 1900 E.C. Atse Minilik organized Minister's council, the ministry of justice had been recognized as Judges, principal and gives him to act as a Judge. However the kind Jurisprudence as not acceptable until 1928 E.C. any person can appeal to the king or higher court. But the higher court had not be established by law. The 1923 E.C. constitution did not say a word about king or higher court except judges can decide in the name of the Emperor. The corner stone for modern judges of 1934 E.C. of the treaty of Ethiopian and English government, Latelon Proclamation No. 2/1934 E.C. did not decree about Zufan Chilot. Even after the proclamation on the Emperors duly principle public grievance or chilot hour on the court decision can be heard unitied Zufan chilot and his Imperial Majesty's Chilot is an appellant who has exhausted his rights of appeal from making a petition to his Imperial Majesty's chilot for a revision of the case.[2]

Atse Sera't means presidential jurisprudence. Atse Sera't means case law; rules decided by courts. In the year 1908, for the first time, Emperor Menelik II had court judgment recordings recorded. In 1950's, Ethiopia came up with the Digest of Ethiopian Old Judgments. The Digest included the most important court judgments in a condensed manner. The roots of the judgments included in the Digest were decisions of emperors, the Zufan Chilot, the Fetha Nagast and consular courts. The

Digest was prepared in order to help the preparation of the Ethiopian modern codes of 1960's.

Ethiopia had had many statutes before the country wrote her codes. One of those statutes was the 1930 Nationality Law. This law, for your information, is still applicable. There are generally two nationality principles. One principle is Jus Sangunis. The Jus Sangunis states that a person gets the nationality of a country if he/she is born into an Ethiopian father or Ethiopian mother. The Ethiopian Nationality Law of 1930 adopts the principle of Jus Sangunis. The other basic nationality principle is that a person gets nationality of a country where he/she is born. In addition to the nationality law, the country had had some other statutes. To mention some of them are: Company Laws, Loan Law, Bankruptcy Law, Business Registration Law and Banking Law. The drafters of the Civil Code and the Commercial Code used provisions of these statutes.[3]

2.3 Legalization of Precedent in Ethiopia

2.3.1 Legal Frame Work

The Ethiopian `Federal cassation- court can review the decisions of the Federal Supreme Court delivered both in its appellate and original jurisdiction.[4] Therefore, the Ethiopian `Federal Cassation Court is located at the apex of the Federal Government of Ethiopia does have four tiers of courts?

Is the above premise itself always correct?

This premise is wrong as applied to the current court structure of Ethiopia. The cassation court may not be considered as a fourth level of court. To start with, a first glance at Art 80(1, 4, 5 and 6) of the FDRE constitution shows that the Federal Government has opted for three-tier courts. Secondly, Art 80 (1) of the same constitution states that the Federal Supreme court shall have the highest and final judicial power over federal matter.[5] Besides, Federal Court Proc. 25/1996 explicitly speaks about the existence of three levels of courts: Federal First Instance by the Federal High Court and Federal Supreme Court. Still further, ten Minute, of the

Constitutional Assembly refer revision In cassation by the Federal Supreme court as "Yeseber Chilot " connoting a division of a court which breaks a decision, but not a court.[6] This is not without its precedent; since the year in which this country transplanted remedy in cassation (1987), the body carrying out the task of review in cassation has been referred to as "Yeseber Chilot" and has been within the Supreme Court.

If the Federal Cassation Court is not a separate level of court within the present hierarchy of court, then what is its position? It is a division within the Federal Supreme Court and thus it may be rightly referred to as the cassation Division of the Ethiopian Federal Supreme Court. One may oppose to this designation on the ground that the proclamation establishing Federal Courts does not make reference to such division. Civil, Criminal and Labor of the Federal Supreme Court. The writer admits that this article does not explicitly mention about a cassation division. Yet the division is established implicitly both in the constitution and the subordinate legislation setting out the structure of the Federal Courts. How implicitly? The present constitution gives to the federal; supreme court both cassation and appellate jurisdiction under its Art 80 {1, 3 (a) and 6.}. Coupled with this is the first instance jurisdiction conferred upon the same court in accordance with Art. 8 Proc. 25/1996. This proclamation has yet come up with three divisions which are supposed to deal with civil, criminal and labor cases in their first instance or appellate jurisdiction. The question is: which division should review cases by way of cassation? A closer reading of Art 21 and art 22 (1) of proc. 25/1996 shows that there is a Cassation Division. The title of Art 21 itself says "Division with not less then Five Judges" And Art 21 (1) in part reads;" The President of the Federal Supreme Court may … direct a case to be heard by a division with not less than five judges sitting …" (emphasis added). As has been mentioned, the Minutes of the constitutional; Assembly also makes reference to "Yeseber Chilot" time and again.[7] Thus our Federal Supreme Court will have or has four divisions: Civil, criminal, labor and cassation.

Cassation Division of the Ethiopian Federal; Supreme Court than of the power of a court. One will not consider this as an idea defining common sense if one notices that a court will have certain jurisdiction and this jurisdiction may be distributed between

or among its divisions, if any. Therefore, the Ethiopian Federal Supreme Court does have original, appellate and cassation powers. Accordingly, this jurisdiction is shared amongst its four divisions.

A reader may be curious about knowing what makes the Cassation division distinct from the remaining three divisions. Unlike the other divisions, it dwells upon all sorts of cases, that is, civil, criminal and labor. As opposed to the rest of the divisions, the Cassation Division could entertain cased coming from military courts.[8] Moreover, since cases to be reviewed by this division are considered as serious, three judges are supposed to screen the same. And once these judges refer a case to the Cassation Division, then at least five judges are expected to review it for the expectation is that the more the number of the judges the greater there will be discussion and therefore, the higher the probability of discovering the error said to have been committed by the lower court.[9] Still furthermore, the criterion for review in Cassation is rigorous because a case should contain a basic error of law in order for it to be ripe for cassation. Finally, the other divisions are relatively more permanent than the Cassation Division in the sense that this division is constituted by the president of the Supreme Court when a case is referred to it by three Supreme Court judges. And thus judges are not assigned for the sole purpose of making review through cassation. To this effect there is also the statement in the Minutes of the Constitutional Assembly: "... ¾cu` ‹KAƒ G<MÑ>²? ¾T>kSØ dÃJ" K?L Y^ ¾K?K¨< ›KSJ'<" S ¨p ›Kuƒ ... vÖnLÃ õ/u?ƒ u¦¨×Ö Ç™‹ ¾T>SW[ƒ" ..."[10] One may object to this final point by pointing out that a judge could be less efficient since he may be sick of working in Criminal or Civil or labor Division of the Supreme Court over along period of time. As a result of this, the President of the Federal Supreme Court is given, inter alias, the power to transfer judges of the Supreme Court from one division to another.[11] Thus since there is this possibility, the Cassation Division may not be considered as unique or distinct from the other divisions of the supreme Court in this regard.

2.3.2 Power of Cassation Division of FDRE Supreme Court

One of the main issues to be considered when one deals with courts is their jurisdiction. This term jurisdiction as a concept overlaps with the term power.

Nevertheless, power is very much wider than jurisdiction, for the latter refers to the power of courts specifically with respect to affecting its function of settling case and controversies.[12] For the purpose of this paper, jurisdiction may be defined as "the power of a court to hear and determine a case."[13] The words 'a case 'are used to convey material jurisdiction of a court. In other words, they are employed to mean offenses and civil matters, whether they can be quantified in terms of money or not. Therefore, automatically excluded from this definition are the area of Ethiopia in which the case is to be tried (local jurisdiction)[14] and the power of judicial review, cases containing constitutional issues.

The main issues from a sub-article from FDRE constitution and another sub-article from proc .No. 25/ 1996. Let us reproduce these provisions Art 80(3) [a] of the constitution states "Note with standing the provisions" of sub-Art 1 and 2 of this Article: (a) The Federal Supreme Court has a power of Cassation over any final court decision containing a basic error of law Particulars shall be determined by law" [emphasis added]. Art. 10(3) of the proclamation just referred to stipulates "… the Federal Supreme court shall have the power of causation over final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction' [emphasis added]. In addition according the federal courts proclamation re-amendment proclamation No. 454/2005. Art 2(4) "Interpretation of a law by the federal supreme court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels. The cassation division may however render a different legal interpretation some other time.

2.3.3 Problem with Cassation the Federal Supreme Court Over Federal Matters.

The principles on which the jurisdiction of the Ethiopian federal courts are erected, the civil as well as the criminal jurisdictions of the same courts are enumerated under Arts 3, 4, and 5 of Proc. 25/ 1996, respectively. The jurisdiction of these courts extends to those matters listed in this proclamation and other relevant federal laws. This is so because, as in the case of USA federal courts, our federal courts are of

limited jurisdiction. In other words, the jurisdiction of the state courts extend to those matters not given to the federal courts.

The present sub-section attempts the other side of the questing posed and attempted under the preceding sub-section (sub-section 3.2.1). To put it in other words, what is the jurisdiction of the Cassation Division of the Federal Supreme Court over Federal matters as opposed to over state matters? This question would better be tackled it he considered it from the point of view of the various courts where from cases should flow or should be expected to flow to the Cassation Division of the Federal Supreme court.

To start with, applications should come from the Federal Supreme Court. How and when? As per Art 10(2) of Proc. No. 25/1996. The Federal Supreme Court seems to have "Cassation power over final decisions of the regular divisions of the Federal Supreme Court" Read in conjunction with Art. 8 of the same proclamation, the words, "regular division" mean first instance or original. These are:[15] Offenses for which officials of the Federal Government are held liable in connection with their official responsibility subject to international diplomatic law and custom, offenses for which ambassadors, consuls as well as representatives of international organizations and foreign states are held liable, and application for change of venue from one Federal High Court to another or to itself.

Under Proc. No. 25/1996, there are basically two articles defining the cassation powers of the Federal Supreme Court: that is Arts. 10 and 21. None of those articles point out that the Federal Supreme Court has Cassation power over decisions rendered by the Federal Supreme Court in its appellate jurisdiction in clear terms. Yet Art 21 (2,b) of the proclamation under scrutiny states: the Federal supreme court has cassation power over "cases relating to a provision of law having cases a fundamental difference in interpretation amongst divisions of the Federal Supreme Court". This provision perhaps presuppose the existence of sub-divisions and a given provision of law is interpreted by the sub-divisions significantly in different manner in deciding a case which might come before them by way of appeal. Thus the Federal Supreme

Court in its appellate jurisdiction where the circumstance jurisdiction where the circumstance just discussed arises.

Nevertheless, this is not satisfactory. Does the Federal Supreme Court have cassation power over those final decisions rendered by the Federal Supreme Court in its appellate jurisdiction without causing a fundamental difference in interpretation of law amongst its division? As per Art. 10(2) of proc. No. 25/ 1996 the Federal Supreme Court has cassation power over final decisions of the regular division of the Federal Supreme Court (emphasis added). What does the underlined phrase mean? One may make a guess; the phrase seems to be used to convey both the appellate and original jurisdiction of the Federal Supreme Court since currently this court is accorded to a first instance jurisdiction. Yet this same phrase is used to mean only first instance jurisdiction sub-article 3 of the same article Art 10(3) OF Proc. No 25/1996. The giver has become inconsistent in employing the phrase under consideration. This latter sub-article thus casts doubt on the correctness of giving dual meaning given to the phrase "regular division". The following may be a possible way out. The Federal Supreme Court has appellate jurisdiction over (a) decisions of the Federal High Court rendered in its first instance jurisdiction; (b) and decisions of the Federal High court rendered in its appellate jurisdiction in variation of the decision of the Federal first Instance Court. The idea is that the Federal Supreme court must have cassation power over these decisions irrespective of the fact that the Federal Supreme Court has confirmed or reversed the decisions of the Federal High Court. One ground being in the preceding sub-section, we have arrived at the conclusion that when Art 80(3, [a]) of the FDRE Constitution states that the federal Supreme Court has cassation power over "… any final court decision…" it means any federal court or any state court. Secondly, Art 12(3) of Proc. No. 40/1993 states that the central Supreme Court has cassation power over final decisions of the Central Supreme Court rendered in its appellate jurisdiction. This point is relevant because although this proclamation was abrogated and replaced by Proc. No. 25/1996, this latter proclamation has repealed only those provisions of law as are inconsistent with it. To this may be added is the goal of cassation in visioned by the framers of our constitution: to bring about uniform and correct

construction of laws by reviewing any court decision in the country as long as that decision is a final one.

Cases are expected to come to the Cassation Division of the Federal Supreme court from the Federal Supreme Court in relation to delegated matters. It is stated time and again that the jurisdiction of the Federal First Instance Court is delegated to the State High Court. Similarly, the jurisdiction of the Federal High Court is delegated to the State Supreme Court Decisions rendered by a State High Court exercising the jurisdiction of the Federal First Instance court are appeal able to State Supreme Court. Furthermore, as per Art 80(6) of the FDRE constitution decisions rendered by a State Supreme Court on Federal matter are appcalable to the Federal Supreme Court (emphasis added). This constitutional sub-article needs clarification and in some sense even interpretation. Understood as it is, this provision may mean two things: firstly, those decisions delivered by state supreme courts in exercising the jurisdiction of the Federal High Court are appeallable to the Federal Supreme Court. There is no objection to this sense of understanding Art 80(6) of the constitution. This is so because the state Supreme courts in exercising the jurisdiction of the Federal High Court supposed to act in the shoes or on behalf of the latter. Therefore all what has been done by the state Supreme Court is assumed to have been done by the Federal High Supreme Court. And as per Art 9(1) of Proc. 25/1996, the Federal Supreme Court has appellate jurisdiction. In these sense, it is clear that cases are expected to flow from state supreme court to the Federal Supreme Court and then to the Cassation Division of the Federal Supreme Court Whether the Federal Supreme Court confirms or varies or reverses the decisions rendered by the state supreme court in exercising the first instance jurisdiction of the Federal High Court.

2.4 Problem with Cassation Division of FDRE

Even though the Writer of this paper intended to hold interviews with persons related to the research paper, the concerned persons were rather unwilling to agree with the proposal of the Writer. Consequently, the Writer gave questions he deemed necessary to law professionals having prepared the questions on 50 copies. However,

the professionals responded are only 30 in number. These persons gave their opinions regarding the matter and I have stated the major points raised as appropriate to this paper.

- To the question " Are there situations where the decisions of Cassation division are not implemented or executed? If such situation is evident, explain the reasons that can be attributed" The answer is such that the decisions of cassation division may not be executed provided that judges and litigating parties at the lower court are unaware of the fact that the issue under scrutiny has already been determined by the division at the supreme court.
- The other question is "is the cassation division authorized to revoke or over rule the binding interpretation of the law rendered previously by it self?" and the response given is such that the division is authorized under Article 2(4) of Proclamation No. 454/ 2005 to give a varying interpretation on the same issue of law in another matter. In this respect, the division is authorized by law to revoke or annul a decision previously rendered. This, according to the law professional giving the opinion, would make it difficult to differentiate between the revoked or overruled and the new interpretation.
- To the question "Are there problems encountered to execute the decision of the Cassation Division?" The answer give was such that the decisions rendered by the Cassation division are not evenly distributed to the justice organs and legal professionals through out the country. Moreover, problems related to language barrier are witnessed. The reason is such that the region have been authorized by law to undertake justice activities using their own languages. In this connection, the decisions made by the cassation division are written in Amharic. And the most determining factor is that the people have lesser awareness than required. Further, the new procedure completely changes the practices that have been adopted for quite a long time. All these together make it difficult to execute and adhere to the decisions of the division.
- To the question " which of the decisions of the division have proved to be controversial? What is the reason?", the response was such that contracts not

registered by authorized organs, cheque guarantee, the decision concerning Article 10 of Labor proclamation number 377/96 have been controversial. According to the responses, these decisions have gone far to the extent of disrupting the stable daily interaction of the society. According to the Writer of this paper, the reason for the controversy in regards to unregistered house sales contracts emanates from the fact that most of the houses do not have maps. In addition, the authorized organ can not make registration of contract for houses that do not have maps or ownership books. Further, the division is witnessed to make changes up on the decisions previously made by itself on the same issue. All these have proved to be controversial. The cause of such irregularity is that the court seems to have varying stances on similar issues meaning the court does not have a uniform outlook on the same issue. In this respect, there are some Lawyers who claim that the court does not adopt a uniform interpretation procedure.

- In regards to the question whether the respondents assume the publications of the Cassation division from No. 1 up to 4 are apt to the required standards, the response is not affirmative. The reason attributed is such that its not possible to understand the reason of the litigation as well as the analysis of the law except for the concept of the decision. The Writer of this research paper upholds this opinion.
- In this connection one legal profession was interviewed on reporter newspaper and he responded as follows: "we do not see many research works except for law journals published by the Supreme Court. We are not aware of the outlook of the judges at the Cassation division regarding the leading policies, philosophy and concepts of the country. We do not witnesses any paper or article presented, be it academic or otherwise, by this persons in regards to their principles in leading the justice organ of the country. Except for asserting their decision of interpretation of the law, we do not witness detailed analysis of the law take in to consideration the economic policy and the political system (the Federal Governance) of the country. This is why he believed that the court has been empowered before it proved its self of its capacity to provide binding interpretations of the law. As far as he is concerned I think it is difficult to predict the decision that may be rendered by the division. Even though I tried to predict some issue in regards to the binding

interpretation, I failed and I have terminated my endeavors. Because detailed decisions are not rendered that would be compatible with the power of leading the justice organ of the country, it is very difficult to understand the principals adopted by the court. I am hopeful that this stance would be rectified. I presume that the court may claim that a number of persons are entertained by the court and that it is not easy to provide detailed analyses. With out disregard to this fact, the court has been empowered to shape the justice system of the country. Considering this immense responsibility, I believe the court should do all at its disposal. This court has the power to shape the decisions to be given by courts of different levels at regions, Federal Courts in Addis Ababa and Diredawa as well as other cases referred to the court for review by administrative organ. In line with his responsibility, the court leads to gear its decisions in a way that would clearly show its outlooks towards the economic policies of the country."[16]

- As to when the decisions of the Cassation division are executed, the legal professionals stated that this is a difficult situation that has not been dealt with so far. Further, it was said that no directive has been issued in this connection. The reason is such that the court does not have a uniform stance or attitude towards similar issues, according to some Lawyers. The division is also criticized for falling to adopt a uniform procedure and philosophy in interpreting the law. Laws that are issued by the parliament are implemented as of the date they are published on Negarit Gazzeta and the powers vested upon Cassation division in pursuance to Proclamation No. 454/2005. However, issues that are pending are entertained by the provisions of such proclamation and the outlook of the society in regards to such issues is rather diverse. There are comments forwarded, in respect of the proclamation, that the effectiveness of the binding interpretations seems to be applicable once they are disseminated in writing. This seems to be reasonable as the professionals and lower courts get acquainted with the interpretations when they are provided in writing. The Writer of this paper agrees with this comment.
- Concerning the question whether the decisions rendered by the Cassation division are in compliance with Article 55(1) of the Constitution, commentaries given revel that Article 55(1) of the Constitution provides that the House of Peoples

Representatives is empowered to issue legislations that fall within the jurisdictions of the Federal Government. However, Proclamation No. 454/2005 is applicable upon Regional Courts as well. This seems to be incompatible with the said provision of the constitution. The reason attributed to such assertion is that regional states have their own constitutions. They also are empowered to issue laws in their own languages. For example, there are family laws, income tax proclamation and turnover tax laws issued by some regional states in their own work languages. As per Proclamation No. 454/2005, the Cassation division of the Federal Supreme Court is authorized to give interpretations of the laws issued by the Regional States provided that litigations are ultimately submitted to this division. The work language of the Federal Supreme Court is Amharic. Hence, all petitions submitted to the Cassation division of the court are required to be written in Amharic Language. In this connection, litigating parties shall be required to have the entire file translated in to Amharic which, according to the Writer of this paper, is creating unnecessary expenses against the society.

- As per the opinion of a legal professional interviewee interviewed in Mesenazeria Newspaper, the outcomes of the legal interpretations given by the Cassation division are as powerful as legislation. What needs emphasis on this point is whether the interpretation is in line with the law. Passing this border line is unauthorized. As the binding interpretations may have their own social repercussions, the court needs to make time limitations as to the applicability of the binding interpretations. Of course, it is not the mandate of the judge to determine as to when the effective date is to commence. This is rather the power vested upon the legislation. However, what makes the decisions of the Cassation division unpredictable is the fact that its stances are not uniform. After having determined that unregistered contracts are not sustainable at law, there is a situation where such contract was accepted consequent to procedural incompliance.[17]

The Writer of this paper believes that the effectiveness of the binding interpretation is as good as legislation. To substantiate this assertion, it suffices to consider the decision of the Cassation division published on the 4th publication of the law journal in

the matter of Mrs. Shewaye Tesessma, the applicant, Vs Mrs. Sara Lengane et al, the respondent, by Cassation Case No. 20938 dated April 19, 2007. This case shows that the Cassation division seems to have issued law rather than rendering interpretation of the law.

Generally, I have included these as problems related to decisions of the Cassation division in the form of binding interpretation of the law in this paper of partial fulfillment of the degree program.

CHAPTER THREE

Analysis of Some Precedent Judgments of Federal Supreme Court Cassation Division

The Federal Supreme Court cassation division has authority to interpret laws in accordance with proclamation No. 454/2005. In this regard once the cassation division render decision on the interpretation of law, the decision is binding the lower court at Federal and Regional Levels. On the other hand, some times the cassation division rendered controversial decision on the interpretation of law the writer of the thesis attempt to show the controversial issues that the cassation division rendered decisions on the inter pretation of revised family law and labour law as follows.

CASE 1

Ca/F/No 20938
Miyaziya 11, 1999 E.C.

Marriage Decision

W/ro Shewaye Tesema Vs W/ro Sara Lengne

The Federal Supreme Cassation court has given contradictory decision to that of the Revised Family Code proclamation No. 213/2000 article 117.

The case started at Federal First Instance Court that the applicant W/ro Shawaye Tessema appeal at cassation court that the defendant was a spouse of the deceased Ato Yilma W/hana to be reversed. The reason is that the lower Federal First Instance Court assured with evidence that the defendant was a spouse of the deceased dated Genbot 15/1999 E.C. decision and no evidence appear at court that spouse was divorced.

The applicant appeal at Federal High Court but decision conformed as per civil procedure code article 337. The applicant application is to reverse this decision.

The applicant basic application is that defendant has divorced itself this and concludes marriage before 1977 E.C. for she has no other marriage before. Thus this should not be concluded as divorce. As witness not allowed testifying the truth who knows that

the marriage was divorced. The deceased has passed away on 1998 E.C. but defendant describe at court's that in 1981 E.C. which shows that spouse question is raised after 14 years.

The defendant reply to the above saying that the marriage is assured and the marriage should not be decided as divorced. The marriage between the applicant do not proof that the first marriage as void defend at born two children from other person and deceased passed away in 1981 E.C. will not cancel the marriage.

The cited year 1989 E.C. by the applicant will not bring any alternative conclusion. Thus the lower court decision should be confirmed as there is no legal ground that disproof the marriage.

The cassation court has observed their argument with relevant laws. As evidenced from the file both the applicant and defendant had concluded marriage with the deceased. The defendant spouse is evidence from marriage certificate concluded on 6/6/1972 E.C. from life history of the deceased file at the office of Coffee Market Enterprise, so also, pension from date 19/1974 E.C. The applicant also had concluded marriage with the deceased at 1987 E.C. and her spouse was assured by evidence.

On the other hand the applicant during her initial application at Federal First Instance Court investigation the defendant summit orally to the court the deceased and the defendant stayed at marriage up to 1985 E.C. after 1985 E.C. they disagree and the defendant came to Addis Ababa after words the deceased married W/ro Shewaye and went to Agaro. In addition to this the marriage with the deceased did not dissolve as described orally.

As we observed from this, the defendant had marriage with the deceased, however, because of disagreement amount themselves the marriage can not continue and started their life separately. The defendant marriage is said to be that the marriage did not dissolve, but her justification to court the marriage have divorced. The court accept that marriage divorce as per the law, on the other hand how should be clarified that on both spouse condition can be proofed. The reason that marriage divorce should be distinguish for that marriage had divorce. On the case of appeal the

defendants argument is that the divorce with the deceased is not ascertained by the plaintiff. But the relation of the defendant with the deceased is that other relevant evidence can show their relation of marriage is divorced and both of them started their different life, the deceased had married with the present applicant, and the defendant knows their marriage too. The case being evidenced that the defendant because of her earlier marriage is a spouse of the deceased decided by the lower court is not the right translation of the law.

The Judgment of the cassation court is as follows:- The Federal First Instance Court under file No. 4796 decided on Miyazeya 18, 1997 E.C. is cancelled.

- ✓ W/ro Sara Lengane (the defendant) is not a spouse of the deceased Ato Yilma W/Hana. Both of them as to costs can have their own.

Conclusion

The writer of this paper can understand from this decision, the cassation division on the power given to interpret the law has violated the Revised Family Law Proclamation No. 213/2000 of Article 117 divorce and its effect which says:-

> "Only court is competent to decide on divorce, decide or approve the effects of divorce in accordance with Article 83 of this code"

As the writer observes, the cassation division interpretation of the above article, which is clear and does not need interpretation, is no a mere interpretation of the law but as promulgate new law.

CASE 2

Labour Court Decision

- ✓ When employment contract is disputed concerning accumulated salary to be paid for not worked, the Federal supreme cassation court has given two binding different decisions at different labour courts.

Frehiwot Erqie Vs Ethiopian Telecommunication Corporation under file No. 21730 dated 11/07/99 E.C.

Applicant W/ro Frehiwot appealed to cassation court on the Federal High Court decision dated Genbot 19, 1997 E.C. under file No. 01990. In her application Nehassie 16, 1997 E.C., accepting that the repayment terminated her contract of employment with unfair labour dispute, with labour proclamation No. 377/96 E.C. article 43(5) is silent about the accumulated salary that should be paid to her.

The cassation court has listed their oral discussion on Sene 19, 1998 E.C. and has an issue whether or not a cumulated salary should be passed with silent or not?

The Judgment of the Cassation Court is as follows:- Applicant on time of suspension dated Megabit 23 until Nehassie 20, 1996 E.C. 4 months 28 days including on time contract termination Nehassie 21, 1996 E.C. until restarted Tir 16, 1997 E.C. 4 month 25 days and other expenses and costs to be paid to be decided by the Federal Instance court as per civil code Article 343(1).

- ✓ On the other file Commercial Bank of Ethiopia (CBE) Vs W/ro Alemitu Moges as heir under file No. 24153 dated Megabit 26, 1999 E.C. the Federal First Instance court under file 10440 dated Yekatit 28, 1997 E.C. The employee work is terminated unfairly, thus, 6 month salary should be paid and return back to work. CBE appealed to Federal High Court but decision sustained. The case appealed to Federal Supreme cassation court. The issue was whether or not the employee reinstate to work is fairly or not? Since the employee has passed away, then, the issue is terminated because of her death.

Decision

The Federal First Instance court under file No. 10440 dated Yekatit 28/97 E.C. decision and Federal High Court under file No. 38002 dated Sene 22/97 E.C. decision is reversed.

When a contract is terminated unworked salary should not be paid.

Conclusion

The writer of this paper can understand from, this two decisions are observed each one contradict in order to implement the cassation decision at lower courts.

CHAPTER FOUR

Conclusions and Recommendation

4.1 Conclusions

The cassation court is not new to Ethiopian jurisdiction, starting from earlier our country was Administrated by different rulers. Even though, Ethiopian follows written law until appellate jurisdiction of supreme Imperial Court an appeal was seen by the emperor who has power as per civil procedure code of, 1995 Article 322, Rulers after the emperor was following the same procedure by deleting article 322 the last power of the emperor by producing cassation court as a top appellate jurisdiction with a power as final judgment of each case. The decision of Cassation Court binds only the parties on the individual case not other similar cases.

Recently, as proclamation No 454/2005 is promulgated decision given by five judges can bind lower Courts and others should follow this too as per the decree. As I believe, because of this, precedent seen in Common Law Countries is also given to Cassation Courts Law interpretation in Common Law Countries judges has the power to promulgates Laws. Laws as promulgated by parliament in an area not covered can be given different opinions. Thus, in order to make is straight forwards the decision, countries final decision of courts on interpretation of laws procedure is said to be precedent. Similarly in their countries other courts follows this procedure too.

However, Cassation Court decision of interpretation to become straight forward is applicable and encouraging but cassation Court Interpretation of Law on other time, similar issue decision new law interpretation can be given as promulgated in the decree can bring problem in working procedure, because this cancellation right of the former interpretation can be given with out detail analysis, in similar condition can be canceled. Beside this, at judges and other, lawyers cannot distinguish the new law interpretation from the cancelled ones. The cassation court aim of one way of straight forward laws interpretation can not be fruitful.

So also, when cassation court gives law interpretation can be seen that detail analysis do not give on fact of Law. This does not bring new idea for different lawyers and law students who would like to develops their knowledge, can not be educational and supportive. In addition to this, the Federal Government Language differs from others regional state. Thus, Federal cassation court interpretation should be translated in to other languages in which similar problem can be seen. Therefore, the Federal Supreme Court should give proper attention and find possible solutions for the problems.

4.2 Recommendations

4.2.1 Decision of Federal Supreme Court cassation division books from publication volume No. 1 up to 4 containing binding interpretations of the law are sold in the premises of the Supreme Court only. This makes their accessibility to judges of various levels, law professionals and lawyers rather limited. However, since recently, the court is endeavoring to make the books accessible to some organizations and educational institutions. Without disregard to the fact that this is a commendable effort, there is, however, a situation whereby persons who are interested to purchase the books do not know where exactly they can find them. However, the Writer of this paper believes that it is advisable of these books are accessible to the public at Berhanena Selam Printing Enterprise where the Negarit Gazzeta is found for sale. The other alternative is such that it is advisable for such books to be distributed by the Regional Supreme Courts having been translated in to the regional work languages. It is the recommendation of the Writer of this paper that the law books be translated to the regional languages whereby the courts may allocate budget for the translation of these books. This shall have the dual benefit of facilitating the opportunity for the society to understand the contents of the books in their own languages and to save the golden time of the courts when cases similar to that of the binding interpretation are faced. Moreover, this would support the justice system by facilitating the use of a uniform interpretation of the law.

Hence, it would be a dispensable obligation of the Supreme Court to duplicate its decisions in sufficient copies and to disseminate such copies throughout the country.

4.2.2 Under Article 2(4) of Proclamation No. 454/2005, the Cassation division of the Federal Supreme Court has been empowered to hear cases with at least five judges presiding and that the interpretations of the law rendered by the cassation division would have a binding effect upon all levels of courts be it in Federal or Regional levels. Moreover, the Cassation division is authorized to adopt varying interpretations on a similar issue of law at other times. Even though the endeavors of the Supreme Court to adopt uniform lines of interpretations of the law, the empowerment of the Cassation division to vary the interpretation of the law recommended by it self previously by a new one, to the extent of adopting a conflicting version, on a given issue of law would be rather unacceptable based on the governing principles. Moreover, this would open the door for coming up with a conflicting remark on the interpretation of a given provision as recommended, or imposed, by the Cassation division.

In addition, the authorization vested upon the Cassation division to vary interpretation of the law, ordered by itself previously, would have the effect of being unaware of which interpretation is governing or enforceable and which is not in a situation where the decisions of the Cassation division are not evenly distributed throughout the country. Further, the intention of the Cassation division to put in place a uniform and binding interpretation of the law throughout the court would not be effectively put in to practice. Discriminatory procedures would certainly be in place by executing varying decisions on similar issues of law.

Hence, the Cassation division should adopt procedures whereby decisions must be rendered secondary to wide ranging researches so as a varying interpretation would not be recommended at a letter stage.

4.2.3 The decision passed by the cassation division of the Supreme Court in regards to registration of contract has brought about annulment of the customary practices. Executing the decision of the Federal Supreme Court cassation

division in this regard may bring about significant economic crisis against the society. The renowned legal professional has recommended the taking in to consideration of the following three situations in providing binding interpretations of the law. These are:

1. Consistency and uniformity
2. Coherence
3. Consequence

The Writer of this paper believes that the court needs to take in to consideration the inhabitable social crisis that may follow the implementations of the interpretations. Therefore, the effective period of the newly adopted interpretation should not extend to issues concluded in retrospect and should only concern the future.

4.2.4 The applicability the interpretations rendered by the Federal Supreme Court Cassation division is also upon regional court has stipulated under proclamation No. 454/2005. Hence, cases that were under litigation at the regional courts would be entertained in Amharic language at the Federal Court. This entails that the persons concerned are required to have their file translated in to Amharic Language from the Regional Work Languages. This would certainly cause expenses against such persons, situations should be facilitated so as cases would be entertained at the Federal Supreme Court using the Regional work languages.

Moreover, even though our country makes use of the civil law system, in pursuance to proclamation no. 454/2005, the decision rendered by at least 5 judges at the cassation division of the Federal Supreme Court concerning interpretations of the law, meaning on issues of law, are Precedent. This is to mean that the lower courts or other similar organs should determine on similar issues in the same manner as ordered by the Supreme Court. Therefore, the Writer of this paper and other legal professionals are apt to recognize that our system of law is diverting to the system of Common Law. Therefore, It is my recommendation that the Supreme court cassation division needs to provide detailed and explanation upon decision that error of law has been committed or upon rejecting submissions concerning inexistence of same.

End Notes

CHAPTER ONE

[1] Atsite Elias N. Stebek.St.Marys College Department of Law Summary Notes on Legal History and Traditions April 2004 Abridged Notes

[2] Ibid

[3] Ibid

[4] Blocks Law Dictionary Second Pocket Edition, Seventh Edition, P.P.544

[5] Judicial Precedent Read Elliot and Qivinn, P.P.5.1997

[6] Ibid

[7] Ibid

[8] Ibid

[9] Ibid

[10] Ibid

[11] At site Murdu A.Srur David S.Clark. Opcit; P.705

[12] At site Muradu A.Srur Daniel Jhon Meador **American Courts** (Virigina; West Publaning Co., 1991) P.13

[13] Ibid. P23 See Also Mahlon E.Wilson. ***Federal Courts***

[14] Ibid

[15] Ibid

[16] Ibid P.31

[17] Ibid P.32

[18] Ibid

[19] Ibid

[20] Ibid

[21] At Site Muradu A.Srur Denis Keenana. **English Law**. 10 thed (-.Pitman Publishing 1992) P. 43

[22] Ibid

[23] Ibid. P.44

[24] Ibid.

[25] At Site Muradu A.Srur Attila Racz, **Corts and Tribunais**. (Budapest. Ayademiayiads. 1994) P.10

[26] Ibid

[27] Ibid

[28] Ibid. P.12

[29] Ibid. P.13

[30] Ibid

[31] Ibid

[32] Ibid

[33] Ibid

[34] Ibid

[35] Ibid

[36] Ibid

[37] At Site Muradu A.Srur Terebailas Valdimis, **The Russian Courts** (Mosco Progrois Publishers, 1994) P.24

[38] Ibid

[39] At Site Muradu A.Srur.David S.Clark, The Civil Law Tradition: Europe, Latin America and Egypt Asia (Virginia: The Michie Company, 1994) P.547

[40] Ibid

[41] At Site Muradu A.Srur Rene David and Henery P.Devries. **The French Legal System**

[42] **An Introduction to Civil Law Systems** (New York: Oceona Publications. 1958) P.34

[43] At Site Muradu A.Srur Engelmann and Others. A History of Confinantal Civil Procedure (New York: M.Kullol Publishers 1969) P.768

[44] Ibid

[45] Ibid

[46] Robert Allen Sedler, **Ethiopian Civil Procedure** (Addis Ababa Faculty of Law, 1968) P.27

[47] Ibid

[48] At Sit Muradu A.Srur Engelmann and other **Opcit**. P.769

[49] Ibid

[50] Ibid

[51] Ibid

[52] Ibid

[53] At Site Muradu A.Srur Pen David. **French Law: Its Structure, Jource, and Method** (Addis Ababa, Unpublished, 1968) P.33

[54] Ibid. P.34

[55] At Site Muradu A.Srur Rene David and Henery P.devries, Opcit., P.35

[56] Ibid

[57] Ibid

[58] As Site Muradu A. Srur David S.Clark, **Opcit**., P.548

[59] Ibid

[60] Ibid

[61] Ibid

[62] Ibid

[63] Ibid

[64] Ibid

[65] Ibid

[66] Ibid

[67] At Site Muradu A.Srur Mauro Cappelleffi. **The Italian Legal System**: An Introduction (California, Itanford University Press, 1967) P.149

[68] Ibid

[69] At Site Muradu A.Srur Davids.Clark **Opcit**., P.577

[70] Ibid

[71] At Site Muradu A.Srur Engelmann and Others Opcit, P.824

[72] Ibid

[73] Ibid. P.825

CHAPTER TWO

[1] Elias N. Stebek, Instructor at St. Mary's University College Class Lecture Taken in April, 2004 in the course of Legal History.

[2] Tameru Wondemagew Addis Ababa University Law Faculty Law Student Bulletin P.P. 58

[3] Elias N. Stebek, Instructor at St. Mary's University College Class Lecture Taken in April 2004 in the course of Legal History.

[4] Federal Courts Proc, 1996, Art 10(2) Proc. No. 25 Fed Neg. Gaz., Year 2. No. 13

[5] This Article Merely States the Principle. As Will be discussed Subsequently, there is an exception to this rule.

[6] Atsite Muradu A. Srur The Minutes of the Council of representatives of the Translational Government Miazia 4-25, 1986 E.C. P. 253 - 256.

[7] Iibd

[8] Defence Forces Proc. 1996 Art 32 Proc. No. 27 Fed Neg.Gaz., Year 2, No. 15

[9] Bililign Mandefro. "The System of Cassation in Ethiopia". Hegawinet Law Journal No. 1 (1989) P. 51

[10] Supra No. 6. P.42

[11] Supra No. 4 Art 16(2)

[12] At Site Muradu A Srur Paulclabus, Concepts in Low (London: United Publishers P.80)

[13] Robert Allen Sedlor, Ethiopian Civil Procedure (Addis Ababa: Facallity of Law. 1998) P.19.

[14] Iibd

[15] Supra No. 4 Art 8 (1 and 2)

[16] The Amharic Weekly Reporter News Paper. Proclamation No. 454/2005 of Cassation Division No. 43/846 (Sanaye 1, 2000 E.C.)

[17] The Amharic Weekly Mesenazeria News Paper Proclamation No. 454/2005 of Cassation Division No. 071 (Sene 24, 2000 E.C.)

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24. Robert Allen Sedlor, Ethiopian Civil Procedure
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Abstract

In our world, a law enacts in different ways or traditions that is it depends on different legal systems. There are two legal traditions. The first one is Civil law traditions and the second one is commons law traditions. One of the main differences between the two traditions is the fact that in common law traditions there are judge-made laws while this is not true in the civil law tradition. In common law, they have the doctrine of judicial precedents according to which if the main ideas of a certain cases are the same to the new case before the court; the court has to refer to back to the case and pass similar decision. Through time the system so importantly started in the 11th century begun to be superseded by statutes or laws made by the parliament.

Therefore, now is common law tradition countries there are two important sources of laws, namely: the statutes and case law or court decisions. In civil law traditions, such judge-made laws do not exist, but legislations passed by the parliament are the most important; for the matter, they are the single man primary sources of laws. At this place, it is also important to mention that, codification of laws is the tradition of the civil law than the common law.

This paper focus on Ethiopian Legal System, Ethiopia is followed civil law legal system and all laws enacts by the Parliament. But, in the contrary, the Federal Supreme Court has authority to interpret the existence laws, with not less than five judges, in the cassation division in accordance with 2(4) of the Federal courts re-amendment proclamation No 454/2005. The decision of Federal Supreme Court shall be binding on Federal as well as Regional council at all level. Thus, we can consider such kinds of the Supreme Court decisions as judicial precedents.

The main purpose of the thesis, therefore, is to examine and analyze the laws and practice of legalization of the basic principle of precedent in Ethiopia. Together with, the writer strongly pays attention to identify the major practical problems in the application of precedent and comparing our supreme court decisions with the common law legal tradition. Finally, the Author provides conclusion and attempt to give possible recommendations for the better application of legal precedent in Ethiopia.