National Educational Assessment and Examinations Agency (NEAEA)

National Exit Examination for LL.B Programme Students of Ethiopian Law Schools

Academic Year 2013/2014

Part III: Procedural Laws and Skill Courses

20 March 2014
Time Allowed: 3 (Three) Hours

Instructions:

• This is a closed book exam for all materials except clean copies of the Civil Procedure Code, the Criminal Procedure Code and the Federal Courts Establishment Proclamation which can neither be lent to nor borrowed from other students.
• The Exam has five sections. The grades allotted for each are indicated beside the title of the section.
• Whenever Appropriate buttress your arguments with pertinent legal provisions
• You are expected to allocate your time based on the marks allotted per question.
• Write your answers in the answer sheet provided.
• Switch off your mobile phone.

Please do not turn this page until you are told to do so!

First Name __________________________ Father’s Name __________________________ Grandfather’s Name __________________________
Registration Number __________________________
University __________________________
SECTION 1- MULTIPLE CHOICE QUESTIONS (25 points)

There are 25 multiple choice questions in this exam. Each question carries one point. Choose the best answer and write the letter of your choice on a separate answer sheet appended to this exam booklet.

1. Identify the incorrect statement(s) about the cost of litigation under the Civil Procedure Code of Ethiopia is(are):

   A. The loser party bears cost of litigation.
   B. Both parties may be ordered to bear their own respective costs.
   C. The cost of litigation includes damages due to a party as a result of abuse of process by its opponent.
   D. The cost of litigation is not subject to review by a higher court.
   E. C and D

2. Choose the most appropriate statement based on the nature of civil appeal in Ethiopia:

   A. It is no less adversarial than the trial stage.
   B. Judges are required by law to give deference to the factual findings of trial courts.
   C. All errors of lower courts merit review.
   D. It involves *de novo* hearing.
   E. No errors other than those asserted by parties can be considered.

3. Remand under the Civil Procedure Code:

   A. represents the process by which a court of appeal sends a recalcitrant respondent to the custody of police.
   B. Reversal of the decision of the lower court is a condition precedent for the appellate court to order remand.
   C. Reversal of the decision of the lower court is a sufficient condition for the appellate court to order remand.
   D. Failure of the lower court to consider a material evidence of a party necessarily leads to remand.
   E. All except A.
4. Which one of the following is correct about examination of witnesses in a civil case under Ethiopian Civil Procedure Code?

A. It follows the inquisitorial model.
B. It follows the adversarial model.
C. It normally allows to impeach own witness.
D. There is no restriction as to the form of question a party may put to a witness.
E. B and C are correct.

5. Which one of the following is not a formal source of the law of civil procedure in Ethiopia at the present time?

A. The 1965 Civil Procedure Code of the Empire of Ethiopia;
B. The Constitution of the Federal Democratic Republic of Ethiopia;
C. The Federal Courts Establishment Proclamation;
D. State laws establishing state courts;
E. None of the above.

6. Choose the correct statement regarding the order of proceeding:

A. Plaintiff always makes its opening statement and produces its evidence before defendant does.
B. Defendant always makes its opening statement and produces its evidence before plaintiff does.
C. The order of proceeding depends on the issue framed and the party who bears the burden of proving same.
D. The order of proceeding is not a typical feature of adversarial model.
E. C and D are correct.

7. Which one of the following is true about the law of pre-trial hearing in Ethiopia?

A. It has the major purpose of resolving issues.
B. It has the main purpose of framing issues, if any.
C. It involves mainly examination of parties and not of evidence.
D. Parties are more active than judges at pre-trial hearing.
E. B and C are correct.
8. The correct preposition(s) about consolidation of suits under the Civil Procedure Code is (are):

A. Federal and state matters may be consolidated before federal courts.
B. Federal and state matters may be consolidated before state courts.
C. Consolidation is possible any time before judgment but after evidence is taken if the two suits are pending before different courts.
D. Consolidation necessarily requires joint trial of issues in different suits.
E. None of the above.

9. Which of the following is true about conflict of laws?

A. Conflict of laws forms part of the international legal system.
B. Conflict of laws deals with relationships of public nature.
C. Conflict of laws deals with interactions of purely private nature.
D. Conflict of laws deals with criminal law issues.
E. None of the above.

10. In Ethiopia,

A. the Federal High Court has first instance jurisdiction to see interstate conflict cases while the Federal Supreme Court has similar power to see international conflict cases;
B. the Federal Supreme Court has first instance jurisdiction to see interstate conflict cases while the Federal High Court has similar power to see international conflict cases;
C. Regional Supreme Courts have first instance jurisdiction to see interstate conflict matters while the Federal Supreme Court is bestowed with first instance jurisdiction to see international conflict cases;
D. The Federal High Court has first instance jurisdiction to see both interstate and international conflict of laws cases;
E. The Federal First Instance Court has first instance jurisdiction to see both interstate and international conflict of laws matters.

11. The law that is universally recognized as a governing law with respect to conflict matters that involve immovable property is:

A. The national law of the owner of immovable property.
B. The law of country of domicile of the owner of immovable property.
C. The law of country where a transaction relating to an immovable takes place.
D. The law of country where the immovable is situate.
E. All of the above.
12. Conflict of laws does not deal with:

A. Local jurisdiction.
B. Judicial jurisdiction.
C. Choice of law.
D. Enforcement of foreign judgments.
E. Enforcement of foreign arbitral awards.

13. Identify the correct statement:

A. In countries where foreign law is considered as a fact, the party relying on it needs to prove it.
B. In countries where foreign law is considered as a law, the court has to ascertain the law \textit{ex officio} and without the help of the party relying on it.
C. Most common law countries consider foreign law as a fact.
D. Most continental law countries consider foreign law as a law.
E. All of the above.

14. Which of the following is correct about theories of judicial jurisdiction?

A. Power theory was influenced by the common law theory of 'physical presence.'
B. Power theory does not take into account whether the forum is convenient for the defendant.
C. Fairness theory takes into account justice and convenience to a defendant as major factors.
D. Fairness theory takes into account the relationship between the litigants and the forum.
E. All of the above.

15. Which of the following statements is correct about the choice of the applicable law in conflict of laws?

A. Public policy considerations may not be taken into account when determining the applicable law.
B. Determination of the applicable law comes after a decision on judicial jurisdiction has been passed.
C. Determination of the applicable law does not depend on the nature of the dispute involved.
D. The applicable law can be determined without doing any characterization.
E. All of the above.
16. Which one of the following represents principles of Modern Criminal procedure:

A. The principle of equality of arms
B. The principle of presumption of innocence
C. The principle of double jeopardy
D. Equality before the law
E. All of above.

17. One of the following may not affect the fairness of a criminal trial at all:

A. Trial in absentia
B. Trial in camera
C. Quality of lawyers
D. Televised trial
E. None of the above.

18. Choose the most appropriate statement about pre-trial lawyering:

A. It refers to various tasks performed before litigation.
B. It involves litigation planning, fact investigation, but not legal investigation.
C. It involves designing litigation strategy.
D. It can involve negotiation between the parties.
E. All of the above are true except “B”

19. Retrieving legal facts in the pre-trial task of a lawyer does not include:

A. Identifying the relevant legal provision applicable to the issue/s involved;
B. Examining the degree of applicability of the provision in comparison with other provisions;
C. Identifying Federal Supreme Court Cassation Division decisions in which legal interpretation is given to the provision under consideration in the context of similar issues;
D. The application of the legal provisions to solve the issue under consideration.
E. Facts relevant to the case.

20. Communication skills of a lawyer relates to:

A. writing up pleadings;
B. negotiation;
C. client interviews;
D. writing a notice to the other party
E. All of the above.
21 One of the following is not true about adjudication without trial:

A. The court may render judgment if there is admission to all the facts stated in a pleading.
B. The court resorts to trial in all cases even if there is admission of all facts stated in the pleading.
C. The court may render as it thinks fit if there is admission to all the facts stated in a pleading.
D. The court may give an order on the facts that have been partly admitted.
E. None of the above.

22. One of the following is not true about witness examination:

A. The plaintiff in civil cases or the public prosecutor in criminal cases should invariably produce witnesses to prove claims or charges.
B. It applies to civil and criminal cases.
C. It is one of the means of submitting the results of fact investigation.
D. It allows the litigator to challenge the validity and reliability of the witnesses and other evidence produced by the other party.
E. None of the above.

23. Appellate litigation may end up in:

A. the variation of the lower court’s decision;
B. the confirmation of the lower court’s decision.
C. the reversal of the decisions which is appealed from;
D. remand to the lower court;
E. any one of the above.

24. One of the following is not true about effective oral argument by an appellate attorney in persuading judges on behalf of his/her client:

A. Presenting the case to the appellate court in person;
B. Responding to questions from the bench;
C. Giving utmost attention to the substance of the oral argument;
D. Making rehearsal before oral argument and paying more attention to eloquent rhetoric rather than the substance of the case;
E. Being calm and confident.
25. In general, due process in criminal procedures requires the following:

A. Notice of the proceedings;
B. A hearing;
C. Opportunity to present a defense;
D. An impartial tribunal and an atmosphere of fairness;
E. All of the above.
**SECTION 2- MATCHING** (10 points)

Match each item under **Column A** (i.e., numbers 1 to 10) with its best corresponding item (among letters “A” to “P”) under **Column B**.

<table>
<thead>
<tr>
<th>Column A</th>
<th>Column B</th>
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<tbody>
<tr>
<td>1. Arrest without warrant</td>
<td>A. A property adversely claimed by two persons</td>
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<td>2. Cross-claim</td>
<td>B. Application of different laws to several parts of a contract</td>
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<td>3. Depacage</td>
<td>C. Arises together with the primary issue.</td>
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<td>4. Fact investigation</td>
<td>D. Co-defendants</td>
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<td>5. Incidental issue</td>
<td>E. Counter claim</td>
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<td>6. <em>Lex loci delicti</em></td>
<td>F. Cross appeal</td>
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<td>7. Material Evidence</td>
<td>G. Flagrant offences</td>
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<td>8. Precedent</td>
<td>H. Governing law in tort cases</td>
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<td>9. Punitive victims rights</td>
<td>I. Impleader</td>
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<td>model</td>
<td>J. Legal Investigation</td>
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<td>10. Remand</td>
<td>K. <em>Ratio decidendi</em></td>
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<td>L. Reprimand</td>
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<td>M. Sending back to a lower court</td>
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<td>N. Victim Oriented</td>
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<td>O. Weapon used for an offence</td>
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<td>P. Witnesses</td>
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SECTION 3- SHORT ANSWERS (15 points)

Give a short answer to the following questions:

1. Federal Courts have exclusive jurisdiction over federal civil matters in Ethiopia. Do you agree? Why or why not? (5 points) About five lines

2. Bekele, a police officer, lives in a small village situated partly in East Hararge Zone and partly in the Harari Region. W/ro Ayelech is married to Ato Hunde and there was suspicion that she has extramarital affairs with Ato Markos. Bekele finds the suspects (Ato Markos and W/ro Ayelech) in bed and brought them to justice.

a) Under whose jurisdiction does the matter fall? Why? (6 points) About six lines

b) Assuming that the case proceeds to trial, can any of the defendants validly demand trial in a closed court? Why or why not? (4 points) About four lines

SECTION 4- ESSAY TYPE QUESTIONS (20 points)

1. Neither of the names ‘conflict of laws’ nor ‘private international law’ is fully descriptive; these terms are not also wholly accurate and precise. Explain. (10 points) About ten lines

2. The rules of subject-matter or material jurisdiction are “jurisdictional” while the rules of venue are only “procedural”. Explain this statement in light of the relevant provisions of the Civil Procedure Code. (10 points) About ten lines
SECTION 5- HYPOTHETICAL CASE PROBLEM (30 points)

Read the following hypothetical case and answer the two questions that follow.

D is accused of stealing V’s pistol. D denied committing the crime. The public prosecutor thus introduced an alleged confession of the defendant recorded by an investigating police officer, and it also introduced a pistol which is claimed to have been found and seized in D’s house through a search warrant.

D’s lawyer objected the admissibility of both D’s confession and the pistol found in D’s house. The lawyer stated that the confession was obtained while D was being severely beaten by the investigating police officer during interrogation. He also stated that the investigating police officer came to know the whereabouts of the pistol from D’s confession during the interrogation. He further stated that the investigating police officer did not read the search warrant to D and that the search was conducted in the evening at 8:30 PM, contrary to what was ordered in the search warrant. D’s lawyer requested for the exclusion of these two forms of illegally obtained evidence and prayed for the acquittal of the defendant.

The prosecutor, on the other hand, claimed that D’s confession was obtained freely and voluntarily and that the pistol was found in his house through a lawful search during daytime, 4:00 PM in the afternoon. The prosecutor requested the court to reject D’s objections and prayed for the admissibility of the two forms of evidence. After the oral argument of the parties, the court framed two issues: namely:

a) Whether the confession was obtained freely and voluntarily, or whether it was a result of coercion? And,

b) Whether the pistol was seized under lawful search?
Question 1

Which party bears evidential and persuasive burdens in respect of these two issues? Why?

(15 points)

Question 2

If the allegations of D’s lawyer are found to be true and if you are the judge in the case, what will your position be on the admissibility or inadmissibility of these two forms of evidence? Why?

(15 points)