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RESEARCH ARTICLE

COMPARATIVE ANALYSIS OF THE CONTENTS AND STRUCTURES OF THE ETHIOPIAN CIVIL CODE VIS-À-VIS THE MAJOR EUROPEAN CODES

***Samuel Maireg Biresaw**

Lecturer in Laws, Department of Law, Debre Tabor University, Ethiopia

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ABSTRACT

A civil code is a systematic collection of laws designed to deal with the core areas of private law such as property, family, contracts, torts, unlawful enrichment and business related lawsuits and practices. A jurisdiction that has a civil code generally also has a code of civil procedure. In some jurisdictions with a civil code, a number of the core areas of private law that would otherwise typically be codified in a civil code may instead be codified in a commercial code. A typical civil code deals with the fields of law known to the common lawyer as law of contracts, torts, property law, family law and the law of inheritance. Commercial law, corporate law and civil procedure are usually codified separately. The writer is fully convinced that the comparative study of the law, as among the legal systems, is an effective means of learning about other legal cultures and, in due course, improving one's own legal system. This is the case however without concealing the fact that such studies require juristic caliber and attentive care in order not to run in to hasty generalizations in the world of legal pluralism. It is in this context that the writer has decided to comparatively analyze the various attributes of the Ethiopian civil code vis-à-vis the two major European codes- the French civil code (also called code Napoleon) and German civil code of 1907.

INTRODUCTION

When one refers to some of the world's Legal Systems with a collective name such as 'Romanist', 'Romano Germanic', or 'civil law' systems s/he is practically describing an issue that, despite their numerous similarities to other legal systems and despite the existence of possible national contextual differences among themselves, these systems share a distinctive heritage.¹ Generally however, the tradition of the civil law is characterized by a particular interaction in its earlier formative period among Roman Law, Germanic and Local Customs, Canon Law, the International Law of Merchants and later by a distinctive response to the break with Feudalism and the rise of nation states, as well as by the specially important role it has accorded to the science of law.² At first, the variety and complexity of the interacting elements affecting the operations of the legal process in each system suggest that sweeping generalizations cannot be accurate. For instance, a generalized conclusion that, the Ethiopian Civil Code is more likely to provide efficient laws in every aspect of life, than the civil codes of France or Germany, has little meaning.

***Corresponding author: Samuel Maireg Biresaw,**
Lecturer in Laws, Department of Law, Debre Tabor University, Ethiopia.

¹ May Ann Gledoon (2005), *Comparative Legal Traditions in a Nutshell*, PP. 1-2

² Ibid

This is due to the fact that the problem is so complex and the elements to be weighed are so various that such judgments are meaningful only if the area of the law in question (civil law or the code) is defined with some precision. Hence, the insights to be obtained by examining such variables in the equation are relevant for the proper analysis of the problem, but they do not give a basis for definite, generalized conclusions. Secondly, in all of the systems subjected to this study, compensating and offsetting pressures are at work in the areas considered here in under, i.e., to say, each of these systems in a sense have a bundle of counteracting and offsetting tendencies. Thirdly, what may be called the 'psychological position' of the judge or legislature is very crucial. Perhaps, the most persistent and deep seated differences between the French and German system on the one hand and the Ethiopian system on the other are to be found in the qualification of their law making institutions. On the other hand, the writer believes that, the understanding between the different nations of this world will be enhanced not only by the reciprocal knowledge of customs, ways and morals, but by the study and analysis of each other's laws. The study of foreign laws (in comparison with domestic ones) is, of course, especially important to those whose endeavors are directed toward the science of comparative law. Apart, however, from mutual general understanding and the theoretical inquiry, the knowledge of foreign law is of considerable practical significance.

Among other justifications, the continued expansion of international traffic, commerce and globalization, demand that increasing attention be given to foreign laws and legal systems. In this regard, it is logical to take note of the fact that such efforts to comparatively study laws has resulted in the influx of the jurisprudence of private international law. Finally, all of these codes possess, institutionally considered, a considerable degree of flexibility if backed by conscientious and intelligent legislative effort, which has a considerable opportunity to construe and shape the law. Having taken in to consideration their pioneer-ness, dominance, comprehensiveness and sophistication, the writer has chosen to comparatively analyze the contents and structures of the civil codes of France and Germany vis-à-vis their Ethiopian equivalent. The comparison will be made from the perspective of the following three basic criteria- comprehensiveness in approach, the logic, and science and convenience of the arrangement of subject matters and the use of concise phraseology which avoids prolixity on the one hand and ambiguity on the other.

Comparative analysis of the Contents of the Civil Code of Ethiopia with the other Codes

On the Law of Persons: The part of the French civil code which governs the 'law of persons' merely entitled 'of persons' generally concentrates on the enjoyment and loss of civil rights with no particular detail to 'persons' like the case of the ECC in relation to domicile. The FCC rather rules in detail on 'records of civil status' to which six chapters are destined. In relation to 'domicile', a separate title of its own is allotted and hence domicile is dealt in depth. Notably however, nothing is mentioned in the FCC in relation to 'residence'. 'Title IV' of the FCC deals with 'absent persons', i.e., the presumption, declaration and effects of 'absence', and as different from the rest of the codes in this study, it has allotted a chapter on the 'supervision of minor children of a father who has disappeared'. Unlike the attributes of the Ethiopian civil code with regard to the rules on 'names', the writer have seen no title on 'Names' on the French equivalent at least generally. With respect to the 'capacity of persons', the French code is not in different with the ECC, excepting the mention of the titles and the concept of 'foreigners' in the ECC as one case of special disability.³ The German civil code (BURGERLICHES GESETZBUCH), however, as characterized by sophistication and comprehensiveness has almost in a similar fashion to the ECC provided provisions on 'law of persons'. Hence, it has numerous articles on: 'classification of persons', 'associations', 'foundation' and 'juristic persons under public laws' and 'capacity of persons' (guardianship). In line with this, it should also be noted that, the French Code also lacks provisions on 'Associations' and 'foundations'. On the other hand, unlike the attributes of the Ethiopian and French civil codes, the writer noticed no provisions dealing with 'civil-status', 'domicile', and 'residence' on the German counterpart.⁴ Relatively speaking and by far, being the largest code of the modern time with its 3467 Articles, the ECC is found to be more comprehensive in that it had raised all the possible issues in relation to the 'law of persons'. Especially, nevertheless the 'naming rule' and 'concept of naming' under Ethiopian laws is totally imported from Europe, it is given less emphasis in the European Codes.

This being the reality however, the writer found, the over emphasis given to names under the title 'Names in general' in the ECC to be a little paradoxical.⁵

On the Family law: The very first concept of family law dealt in the FCC is 'marriage' entitled solely as 'Marriage' with no other indication. Hence, the 'conditions of Marriage', the 'formalities of marriage', 'opposition, and proceedings to nullify marriage', 'obligation arising from marriage', the 'rights and duties of spouses', the 'dissolution of marriage' and the concept of 're-marriage' are all dealt by the FCC in detail. However, unlike the Ethiopian and the German Civil Codes, the French code seems to be silent on the concept of 'betrothal', the 'types of marriage', the 'types of relationships (filiation)', the 'duty to furnish maintenance to the elderly', 'proof of marriage', and the issue of 'irregular unions'. However, it should be mentioned that, similarly with the ECC, the FCC clearly rules on almost all the aspects of 'divorce', 'paternity and filiations', and 'adoption'.⁶ On the other hand, the GCC in addition to what has been mentioned on the FCC has broadly comprised articles on the concept of 'void and voidable marriage', 'matrimonial regimes' (either statutory or contractual regimes), 'legitimizing of children by subsequent marriage and parental powers'. In similar fashion with the ECC, it covers 'Betrothal', 'types of marriage', 'irregular unions', and the 'obligation to supply maintenance' among others issues.⁷ Here also, in similar fashion to the case of 'law of persons', with regard to 'marriage' the writer found the ECC more comprehensive than the rest of the codes.⁸

On Law of Inheritance or Successions: Unlike the other 2 codes, the FCC does not allocate a separate title of its own to law of successions. Rather, 'succession' is dealt as an integral part of the 'law of property' where it is recognized as one of the different ways in which property right can be acquired. Other than the difference in placement, the FCC adopts similar views on successions starting from 'opening' to 'partition' and 'collation' of succession.⁹ In contradiction to the FCC, the GCC has dedicated an exclusive 'Book' of its own to the law of inheritance, i.e., Book V of the GCC. Accordingly, it covers all the concepts regarding succession from 'order of the succession' to 'purchase of inheritance', which is an alien concept to the civil code of Ethiopia.¹⁰ When the issue is converged to the approach adhered in the ECC, it rules on the laws of succession comprehensively under 4 separate chapters, which consecutively deal with 'devolution', 'liquidation', 'partition' and 'conventions relating to an inheritance'.¹¹

On the Law of Property: The French law has destined its Book II and a single Title in Book III for 'property and the various kinds of property rights' and it do not, however, enumerate detailed issues on the issues of 'ownership' and

⁵ Refer to Articles 1- 393 of the ECC The practical naming standard that is has been practically applicable and used in Ethiopia is a three-degree naming standard, i.e., 'First Name', followed by 'Father's name' and finally 'Grand Father's Name'. The naming rule stated on the ECC however does not recognize this and to the contrary it rules on European naming concepts such as the concept of 'Family Name'. Plus, the duty imposed on the 'wife' to keep the family name of the 'husband' is not practically applicable in Ethiopia. Hence, the writer demands amendment of the naming rules under the ECC and its due contextualization to the rules on the ground.

⁶ Consult Articles 144-387) of the FCC

⁷ Read articles 1297-1772 of the GCC

⁸ Consult Articles 550-825 of the ECC

⁹ Read Articles 718-892 of the FCC.

¹⁰ Consult Articles 1922-2385 of the GCC.

¹¹ Refer to Articles 826-1125 of the ECC.

³ Refer to Articles 7-144 and 388-515 of the French Civil Code.

⁴ Refer to Articles 1-89 and Articles and 1773-1921 of the ECC

'possession', which are given their own separate chapters under the GCC and FCC. In a similar fashion with the ECC and GCC, the French code has devoted enough provisions on the right of 'preemption' and 'recovery'. However, unlike the FCC, in the GCC and the ECC the concepts of 'preemption' and 'recovery' are not specified in separate Chapters. The other concepts in property law which are not properly covered by the FCC are 'ownership of land', 'properties under public domain and expropriation', which is the case in ECC and mentioned in the GCC implicitly in its section VIII.¹² While comparing the express contents of all the codes with respect to property law, the writer found the Ethiopian civil code unique in that it deals with issues like: 'Public domain and expropriation', 'Agricultural communities', 'Official organization of land owners', 'Town planning areas, and 'Registers of immovable property'. The ECC also ruled on 'artistic or literary works', which are currently repealed and treated by its own separate proclamation.¹³

On the law of Obligations: By far, compared to the various subject matters dealt in civil laws, it is contract law which covers the majority of the chapters or Books in all of the 4 codes. Hence, the French civil code has dedicated its provisions from articles 1101-1113 for general provisions of contract law and its miscellaneous provisions cover almost from articles 893,911,931-32,937-38, 955, and 960-61. 'Intervivos donation' is dealt on Articles 1582-93, 1610-13, and articles 1657, 1674-84 rule on 'contract of sales' and the concept of 'lease' covers articles from 1719-22, and 1821-26 of the FCC. The GCC in an identical detailed fashion has provided in its 'Book I' for 'general contractual principles'.¹⁴ Plus, from its Book II, Art 241-397 and provisions relating to special types of obligation from Art 516-32 and 581-96 are dedicated to law of contracts. Taking in to consideration the unlimited practical application (and it is the mother law of inference in civil law) of contract law among other laws of the civil type, the ECC has no deviation in its approach to govern contracts in terms of concern (depth of coverage), number of devoted articles and enumeration of the various types of contracts or obligations. In this regard, the ECC should be appreciated in that it has tried to comprehensively deal with all the possible aspects of law of contracts. It expressly stipulated general provisions on contract law from articles 1675-2026 and tons of provisions on special types of contracts, such as law of sales, agency, lease, contracts allied to sale, donations, loan, custody, sale of immovable property and so on.¹⁵ In addition the ECC has also in detail dealt with other sources of obligation such as 'extra contractual liability' and 'unlawful enrichment'.¹⁶

Comparative analysis of the Structure of the Civil Code of Ethiopia with the other Codes

On the branches of Civil Law: Civil law is so pervasive and bulky that almost all countries under this study divided the law in to branches and classify the legal rules according to this division.¹⁷

In a situation where the relationship among individuals, societies, organizations, and associations are highly complex, it is only possible to know the law where legal categories and distinctions give an order to the mass of rules from various sources that bind its subjects.¹⁸ Classification of the law serves a lot of purposes. First, it helps legal scholars and students to easily analyze study the law and undertake research.¹⁹ Secondly, whenever judges and lawyers face legal problems such classifications help them to determine to which branch of the law a particular problem belongs to. The last importance of classification guarantees the existence of the various branches of civil law in independence of each other. Each branch of civil law has fundamental policy and goals related to the function of the rules in question. Hence, such classification of civil law enables the judges and other legal professionals to conceive, interpret and apply rules in a special way.²⁰ In line with the above argument, the ECC, FCC, and the GCC classify their respective civil laws more or less in a similar way. The following Table is destined to briefly outline the classifications adopted in each of the civil codes under comparison.

Table 1. Branches of Civil Law adopted in the ECC, FCC, and GCC

ECC	FCC	GCC
Law of persons	Law 'of persons'	Law of persons
Family law	Family law	Family law
Successions	Succession as one way of Acquisition of property rights	Law of inheritance
Goods	Law of property and the various kinds of property rights	Law of things
Obligations	Law of the different ways in which property rights can be Acquired	Law of obligation

The above table is destined only to show the general branches of the civil law incorporated in each of the codes. Each of these branches is further divided in to different sub branches. For example, the law of obligation can be further divided in to sub categories such as, different types of special contracts, donations, contracts of services, torts and unlawful enrichments and others.

On the Arrangement (Book) of the Civil Codes: The writer has found that the arrangement of the codes has seldom differences in that in many of the approaches adopted they have similarities.

Book I: 'Book I' of the civil codes of the ECC²¹, FCC and GCC have one thing in common that in all of them the first Book contains general rules, which are applicable to all legal relations governed by the civil law.²² In this regard, for instance, the 'law of persons' is applicable to all the other Books of the civil law for being a 'person' is both a necessary (mandatory) and sufficient condition in order to enjoy rights and duties before the eyes of the law.²³

Publishing, U.S.A., P. 34

¹⁸ Ibid

¹⁹ David, Rene (1968), French Law, its Structure, Sources and Methods: translated by Michael Kindred, Addis Ababa, Haile Selassie University, Faculty of Law, P. 34.

²⁰ Ibid

²¹ Refer to articles Book I of the ECC Articles 1 - 549

²² Refer to Book I of the FCC Articles 1- 515

²³ Article 1 of the ECC dictates the fundamental nature of legal personality by stating that, the human person is the subject of rights and duties from its birth to its death.

¹² Art 854-1296 of the GCC. Also refer to Articles 516-1100 of the French civil code.

¹³ Refer to Articles 1126- 1675 of the Ethiopian Civil Code.

¹⁴ Art 116-157 of the GCC

¹⁵ You are invited to read articles 1675 – 2066, and 2066-3130 of the ECC.

¹⁶ Refer to articles of the ECC on Extra Contractual liability and unlawful enrichments.

¹⁷ Vonmehren A. Taylor, (1975), the Civil Law System Cases and Materials for the Comparative Study of Law , (Englewood Cliffs, N.J. and Prentice-hall

Book-I of the Ethiopian civil code deals with the concept of 'persons'.²⁴ It has three basic 'Titles' respectively dealing with 'physical persons',²⁵ 'Capacity of Persons',²⁶ and 'bodies corporate and property with specific destination'.²⁷ Title I of Book I, which is entitled 'physical persons', on its part, is constituted of five other 'chapters' that respectively deal with the concepts of: 'personality and the rights inherent in personality', 'names', 'proof of civil status', 'absence' and chapter five deals with the issue of 'Residence and Domicile'.²⁸ Title II of Book I, entitled 'capacity of persons' also possess five chapters of its own respectively dealing with: 'general principles', 'minors', 'insane persons and infirm persons', 'persons interdicted by law' and the last chapter is busy with the issue of 'foreigners'.²⁹ The last 'title' in Book I, which is entitled 'bodies corporate' has four chapters as a constitute elements respectively dealing with: 'administrative bodies and the church', 'associations', 'properties with specific destination'³⁰, and finally, 'foreign bodies corporate'.³¹ The FCC immediately before its 'Book I' contains a Preliminary Title. This Preliminary Title contains only six articles. The articles are on general provisions with respect to publication, effective date and application in general.³² Book I of the FCC extends from Article 7 to 515. It has lots of chapters in it. For instance, chapter one of Title I, talks about 'the enjoyment of civil rights'.³³ Chapter two ruled on 'the respect of the human body', which is entirely enshrined in article 16 and its 9 sub-articles. Unique to the rest of the codes, Chapter three in Book-I declares about 'the examination of the genetic particulars of a person and the identification of a person owing to his generic prints'.³⁴ The other bizarre system of structure noticeable from the FCC is what is called 'Title Bis' it is a kind of sub-title. For instance, the first title-Bis declares about 'French nationality'.³⁵ When we see the ECC it does not bother about declaring about nationality. Nationality is rather a constitutional issue. Chapter seven of the FCC is devoted to 'special provisions regarding oversea territories'.³⁶ It is obvious that this issue is not the concern of the ECC for Ethiopia has remained to be a land locked country with no oversea territory. The lion share of Book I of the FCC is devoted to the 'records of 'civil-status'.³⁷ It is plainly known that this office has only materialized in Ethiopia very recently. In the following concepts however a similar approach is followed in the ECC. Domicile is dealt in articles 102 to 111 of the FCC. Book I of the FCC also deals with the issue of "of absentees"³⁸, "of marriage"³⁹ (which is part and parcel of family laws in the rest of the codes), "of divorce"⁴⁰, "of filiation"⁴¹, "of adoption"⁴²

and the issues "of parent and child parental authority"⁴³, "of minority, guardianship and emancipation"⁴⁴ and "of majority and of adults who are protected by law".⁴⁵ Book I of the German civil code is extended from section 1 to 240. Title I, of Division I, of Book I, of the GCC declares about 'Natural Persons, Consumers and Entrepreneurs'.⁴⁶ The concept of 'entrepreneurs' and 'consumers' does not exist in the Ethiopian civil code. The term 'consumers' is used to identify the rest of the subjects of civil law from 'traders. Not even in the Ethiopian commercial code the terms are mentioned. Similar to the ECC, Title two of Book I in the GCC deals with 'legal persons', 'legal persons under the civil law', 'their registration', 'associations' and 'foundations'.⁴⁷ Unlike the ECC and the FCC however, it also declares about 'things and animals' in this Book. It even discuss about 'agency and authority'.⁴⁸ The other odd point covered here is the 'exercise of rights, self-defense and self-help'.⁴⁹ These concepts are by nature the business of criminal law in Ethiopia and the ECC, obviously, does not say a thing about them. While the GCC adds other special rules of the law of person like 'agency', 'self-defense' and 'self-help', the FCC and ECC specifically deal with registration, absence and domicile. In addition, the FCC, in its Book I, deals with persons not only as individuals but also as members of a family, which has, by doing so, practically included family law provisions.⁵⁰

Book II: Book II of the ECC is entirely devoted to governing the issues of 'family and successions' altogether. Of all the chapters in Book II, 12 of them are destined to deal with 'family law'. The ECC has dealt with all the possible issues of family law in great detail. It has explicitly and having dedicated an exclusive chapter of its own for each issue, has dealt with: 'relationship by consanguinity and affinity', 'Betrothal', 'conclusion of marriage', 'conditions of marriage', 'effects of marriage', 'dissolution of marriage', 'proof of marriage', 'irregular union', 'filiations', 'adoption', and 'obligation to supply maintenance'.⁵¹ Title V of Book II is exclusively destined to deal with 'law of successions' in details. Accordingly, all the issues of law successions from the 'opening of succession' all the way to 'conventions related to the inheritance' have been dealt with great detail.⁵² Book-II of the FCC deals with the issue of 'property and the various modifications of ownership'.⁵³ As a result the concepts of 'ownership'⁵⁴, 'usufruct', 'use and habitation'⁵⁵, 'servitudes'

⁴³ Id., articles 371-387

⁴⁴ Id., articles 388-487.

⁴⁵ Id., articles 488-515

⁴⁶ The GCC sections 1-20

⁴⁷ Id., sections 21-54

⁴⁸ Id., sections 164 to 185. Agency is part of 'special contracts' under the Ethiopian civil code on article 2179 -2264.

⁴⁹ Id., sections 226

⁵⁰ Book I of the German Civil Code contains articles (sections) 1 to 240. The general part (*Allgemeiner Teil*), articles 1 through 240, comprising regulations that have effect on all the other four parts, such as personhood and civil status, contractual capacity, declarations of will, rescission, formation of contracts, limitation of actions, and agency.

⁵¹ Refer to Articles 550-825 of the ECC on pages 93-137. 12 chapters are dedicated to Family Law. Here it should also be noted that, the family law portion of the Ethiopian civil code has been amended and replaced by the 'Revised Federal Family Code of 2000' and each regional state in Ethiopia has also enacted its own family code in line with the contextual situation of the family in the regions.

⁵² Id., articles 826-1125 of the ECC on pages 137-187.

⁵³ Refer to articles 517-639 of the FCC

⁵⁴ Id., article 544

⁵⁵ Id., articles 578-636

²⁴ Refer to Articles 1-549 of the civil code of the Empire of Ethiopia, Proclamation No. 165 of 1960, PP. 1-93.

²⁵ Id., articles 1-191 on Pages 1-33.

²⁶ Id., articles 192-393 on pages 34-67

²⁷ Id., articles 394-549 on pages 67-93 of the same code.

²⁸ Id., pages 1-33.

²⁹ Id., pages 34-67.

³⁰ The concept includes, 'endowments' on article 483, 'committees' on article 507, and 'trusts' on article 516.

³¹ Id., pages 67-93. Foreign bodies corporate are dealt from articles 545-549 of the ECC.

³² *supra note* 17, P. 35

³³ Read article 7-15 of the FCC

³⁴ Id., articles 16 sub-articles (10)-(13)

³⁵ Id., articles 17 to 33.

³⁶ Id., article 33

³⁷ Id., articles 34 to 101.

³⁸ Id., articles 112-133.

³⁹ Id., articles 144-227.

⁴⁰ Id., articles 228-309. A great deal of emphasis is given to divorce.

⁴¹ Id., articles 311-342.

⁴² Id., articles 343-370

and 'land services' are enumerated in great detail.⁵⁶ While Book II of the ECC comprises 'family and successions',⁵⁷

Table 2. The Arrangements of the Civil Codes in terms of Books

	ECC	FCC	GCC
Book I	- law of person - Registration - Residence and domicile -family	- person - Registration - Residence and domicile - Family law	- person - cataract - Agency
Book II	-family	- Of property and the various kinds of property rights.	Law of obligation
Book III	- Goods	- of the different ways in which property rights can be acquired - including succession law - Contract law	-law of things
Book IV	Obligations	Law of Securities	- Family law
Book V	Special contracts	Provisions applicable in Mayotte	law of Inheritance

the same book in the FCC deals with the 'property and the various Modification of Ownership'.⁵⁸ The GCC on its part has incorporated the 'laws of Obligation' in its Book II.⁵⁹ This book covers sections 241 to 852 of the GCC. The books begin its job on its 'Title I', 'Division I' by discussing about 'duty of performance' on its section 241. The GCC deals with the 'laws of obligations' in a splendid manner and in a detailed fashion, by ruling on almost every concept and issue of the matters involved. For instance, section 305 discuss about 'drafting contractual obligations by means of standard business terms', a concept generally available in the Ethiopian contract law. Similarly to the ECC on contracts it deals with the 'creation', 'subject matter' and 'termination' of contracts.⁶⁰ It also enumerates some types of contracts such as 'distance contracts' and 'reciprocal contracts', which are also recognized in the ECC in similar other terminologies.⁶¹ In direct similarity to the ECC, the GCC details out the grounds for the 'Extinction of contractual obligations' on its section 362 and the following.⁶² The terminologies used by the GCC are more direct and explanatory than the other codes. For instance, the concept of 'remission of debt' is simply stated as 'forgiveness of debt'. Book II of the GCC is very large and it outlines the following subject matters⁶³: 'types of obligations', 'special types of purchase', 'exchange', 'loan contract', 'financing assistance between an entrepreneur and a consumer (a concept entirely alien to the other codes)', 'donation', 'lease', 'rent', 'gratuitous loan' (an awesome concept), 'contracts for the loan of a thing (a unique concept)', 'contracts to produce a work and similar contracts', 'brokerage contracts' (a commercial code concept in Ethiopia), 'contracts for the management of the affairs of another' (the concept is known as unauthorized agency in the ECC). In addition, the same Book of the GCC also incorporates the concept of 'bank transfer', 'interbank payment', 'current account', 'partnerships', and 'imperfect

obligations' such as gaming, betting and lottery, which are all the proper issues of commercial law in Ethiopia. Similarly to the ECC, it also deals with 'suretyship', unjust enrichment (one major source of obligation as different from tort and contract) and 'tort'.⁶⁴

Book III: Book-III of the ECC deals with the 'laws of property'. It is entitled 'goods in general and possession'. Lots of 'chapters' and 'titles' are devoted to the subject matters of: 'good in general', 'possession', 'individual ownership of property', 'joint ownership of property', 'usufruct and other rights in rem', 'collective exploitation of property', 'register of immovable property', and 'literary and artistic ownership'.⁶⁵ The FCC counterpart however deals with 'of the various ways how Ownership is acquired including succession'.⁶⁶ Accordingly, the FCC has enumerated such mechanisms of acquisition of property rights respectively as: 'of successions',⁶⁷ 'of gifts *inter vivos* and of wills',⁶⁸ 'of contracts and of conventional obligations in general'.⁶⁹ Oddly, and with no tangible fluency and correlation with the law of property, the same Book also has enumerated numerous provisions on 'of Matrimonial regimes',⁷⁰ 'of sales',⁷¹ 'of exchanges',⁷² 'of hiring',⁷³ 'of contracts of real states promotion', 'of firms and companies',⁷⁴ 'of loans', 'of deposit and sequestrations', 'of aleatory contracts (gambling, betting)',⁷⁵ and 'of compromise and arbitration agreements'.⁷⁶ Similarly to the ECC, the GCC has destined its Book III to the 'law of Property'.⁷⁷ Regarding law of property both the ECC and the GCC are similar in terms of content and recognition. The GCC also deals with possession on its section 854. It also enumerate various sections on: 'General provisions on rights in land',⁷⁸ 'ownership', 'acquisition and loss of ownership of land and movables', acquisition by prescription, which is the German equivalent of the Ethiopian notion of 'usucaption' in the ECC, 'finding' (occupation in the ECC), 'co-ownership', 'servitude', 'rights of pre-emption', and 'pledge of movable things', an issue treated under special contracts in Ethiopia.⁷⁹

Book IV: When we proceed to Book IV of the ECC it expressly deals with the 'law of obligations'.⁸⁰ And all the

⁶⁴ Id., articles 762-823 of the GCC.

⁶⁵ Refer to articles 1126-1674 of the ECC on pages 187-276.

⁶⁶ Refer to Book III of the FCC articles 711- 2283. The fact that the FCC deals with the issue of 'successions' as part of property law is one of the striking differences as between the FCC and the ECC in that 'succession' is recognized as one of the ways of acquisition of ownership right in France. In Ethiopia however, 'succession' is only a mechanism of 'transfer of ownership right' as different from modes of acquisition of ownership of property title mentioned in the property law of Ethiopia.

⁶⁷ Refer to articles 720-892 of the French civil code..

⁶⁸ Id., articles 893-1100 of the FCC

⁶⁹ Id., articles 1101-1369

⁷⁰ Id., articles 1387 to 1581

⁷¹ Id., articles 1582-1701

⁷² Id., articles 1702-1707. 'Exchanges' are the French equivalent of the Ethiopian concept of 'Barter'.

⁷³ Id. Articles 1708-1831

⁷⁴ Id., articles 1832-1873. This is an exclusive mandate of the commercial code in Ethiopia.

⁷⁵ Id., articles 1964-2010. Similarly 'aleatory contracts' are the proper ambits of commercial code in Ethiopia.

⁷⁶ Id., 2069-70. More Detailed coverage is given to the concepts on the ECC.

⁷⁷ Refer to Book III of the GCC Article (sections) 853 -1296. Property law or (*Sachenrecht*) is dealt on articles 854 through 1296, describing possession, ownership, other property rights (e.g. servitudes, security interests), and how those rights can be transferred.

⁷⁸ Refer to the German civil code article 873-925

⁷⁹ Id., refer to articles 903-1204 of the same code

⁸⁰ Refer to Articles 1675 to 2265 of the Ethiopian Civil Code 1960 on pages 277-373.

⁵⁶ Id., articles 637-710

⁵⁷ Refer to Book II of the ECC Articles 550-1125

⁵⁸ Refer to Book II of the FCC Article 516- 710

⁵⁹ Book II of the GCC is contained in sections 241 to 852. The Law of obligations or (*Schuldrecht*), articles 241 through 853, describing contractual obligations and other civil obligations, including torts and unjust enrichment.

⁶⁰ Refer to section 311 of the GCC

⁶¹ Id., section 320 of the GCC. The Ethiopian concept equivalents are: 'contracts of adhesion', 'contracts between absent parties' and 'bilateral contracts' where there is a counter flow of obligation from *contractants*

⁶² Refer to the Ethiopian grounds of extinction of contracts on article 1808 and the ff. of the ECC. The grounds include: proper performance, invalidation, cancellation, termination, set-off (off set), novation, remission of debt, merger (confusion), and Prescription (period of limitations).

⁶³ Generally refer to the article of the GCC from 433 to 761

possible types or sources of an obligation has been dealt in this Book whether ‘contractual’ or ‘extra-contractual (torts)’ or ‘unlawful enrichment’. This Book, among other issues, deals with the issues of formation, effects, performance, non-performance, extinction of contractual obligations, and special terms of obligations or contracts. In addition, the issues of ‘extra-contractual liability’, ‘unlawful enrichments’ and ‘laws of agency’ are also dealt with a considerable detail.⁸¹ Book IV of the FCC is entirely allotted to the ‘law of Securities’. The FCC has allocated its articles 2284 to 2488 to the enumeration and discussion of almost everything on security devices. We have seen earlier that in the Ethiopian code that the various types of securities are also dealt but as an integral (considerable) part of special contracts. The GCC however has allotted its Book IV to ‘family law’.⁸² Similarly to the ECC, the GCC also incorporated comprehensive rules regarding the law of family. Book IV of the GCC defines the concept of ‘civil marriage and engagement’. It also articulates the requirements of ‘capacity to marry’, ‘re-marriage’, ‘the obligation to maintenance’. It also has detailed discussions on ‘special provisions for the child and its parents who are not married to each other’⁸³, ‘parental custody’, ‘guardianship, legal curatorship and custodianship’.⁸⁴ Book IV of the GCC, in a way that shows the great deal of emphasis given to comprehensiveness in due course of its enactment, even bothered to rule on the issue of ‘cooperation of the youth welfare office’.⁸⁵ Such offices are generally unavailable in third world economies.

Book V: In a striking difference with the rest of the codes under scrutiny, Book-V of the Ethiopian civil code deals with ‘special contracts’. The Book enumerates ‘contracts related to the assignment of rights’ on its Title 15. Such contracts are treated on a separate chapters of their own as contracts of: ‘sales’, ‘contracts allied to sale’, ‘donation’, ‘loan of money and other fungibles’, and ‘contracts for periodical payments’.⁸⁶ Plus, ‘title 16’ of the same Book in detail articulates ‘contracts for the performance of services’ such as ‘employment’, ‘work and labor’, ‘intellectual work’, ‘medical or hospital contracts’, ‘innkeepers contract’, and ‘publishing contracts’.⁸⁷ Book V on Title 17 deals with the various ‘contracts for the custody, use, or possession of chattels’, such as ‘letting and hiring’, ‘loan for use or free loan’, ‘bailment’, ‘warehousing’, and ‘pledge’.⁸⁸ For various crucial reasons, the Ethiopian civil code treats the issue of ‘contracts related to immovable property’ exclusively and independently on Book V, Title 18. Such contracts include, the ‘sale’, ‘lease’, ‘mortgage’ and ‘antichresis’ of an immovable property.⁸⁹ This Book has also, unlike the rest of the codes, dealt with special type of contracts called ‘administrative contracts’ on its articles 3131 to 3307 with particular emphasis and detail.⁹⁰ The concept is not available in the rest of the codes. The last portion of Book V of the ECC, i.e.,

‘Title 19’, is covered by the issue of ‘compromise and arbitral submission’. Considering the year of the promulgation of the ECC, i.e., 1960, the writer found it appreciable that it had incorporated numerous provisions on the modern concepts of alternative mechanisms of dispute resolution (ADR) such as ‘Negotiation’, ‘Mediation’ and ‘Arbitration’.⁹¹ At the end of its Book V, about 20 articles of the ECC are dedicated to ‘provisions dealing with laws repealed by the enactment of the civil code’ and ‘transitory provisions’.⁹² Book-V of the FCC, which is the last segment of the code, is oddly and exclusively destined to ‘Provisions applicable in Mayotte’.⁹³ It is similar with the Ethiopian equivalent in that the last remaining Title of the ECC also deals with applicable provisions, repealed laws and transitory rules of the code. The FCC is however different in that it has allotted an entire Book for ‘Miscellaneous Provisions’. On the other hand, Book V of the GCC is allotted to the ‘law of successions’. Unlike, the French civil code, the approach followed by both the GCC and the ECC regarding law of succession is similar in that both codes have dedicated large number of provisions to successions and comprehensively covered all the possible issues in law of successions having allotted an exclusive Book or Title of its own. In terms of grass root level legal guarantee however, the GCC is better than the ECC even on law of successions. It does not require a scholar to identify this special quality of the German civil code. Similar to the ECC, the GCC treated succession on its section 1922 all the way to section 2385 of the code. Among others detailed rules are available on ‘legal position of the heir’, ‘liability of the heir for the obligation of the estate’, ‘legal relationship of the heirs between themselves’, ‘appointment of a subsequent heir’⁹⁴, ‘legacies’⁹⁵, ‘testamentary Burdon’, ‘executor’ or the liquidator of succession in Ethiopia, ‘wills’, unworthiness, ‘contract of inheritance’, ‘certificate of inheritance’⁹⁶. However, as different from the Ethiopian code, the GCC has explicitly allowed or ruled on the ‘purchase of inheritance’. To the contrary, it is prohibited under the ECC. The concept is known as ‘conventions related to the inheritance’ in the ECC.⁹⁷

On the Structure of the Civil Codes: Having maintained the ancient tradition which went back to the Roman Codes, the modern codes are, at first, divided in to Books and then the various Books are further divided in to Titles. Then, the ‘Titles’ are divided in to ‘Chapters’. The ‘Chapters’ would be further dissected in to various minor classification that have different names in different codes such as ‘paragraphs’ or ‘sections’ or ‘articles’. For instance the smallest units of structure used both in the ECC and FCC are named as ‘Articles’ or sub-articles. However, the same unit of structure is known as ‘sections’ under the German civil code. The writer has used the following diagrams to indicate the possible types of subdivision used (adopted) in each of the codes under comparison in this study.

⁸¹ Law of agency is dealt up on articles 2179-2265 on pages 358-373.

⁸² Refer to Book IV of The GCC articles (sections) from 1297 – 1921. Family law or (*Familienrecht*), articles 1297 through 1921, describing marriage and other legal relationships among family members

⁸³ The concepts are the equivalents of an ‘irregular union’ and ‘illegitimate children’ or those born out of wedlock in the Ethiopian civil code.

⁸⁴ Refer to articles 1615-1850 of the GCC.

⁸⁵ Id., articles 1849-50. E office is one of the institution or schemes established to protect the various interests of the youth.

⁸⁶ Refer to articles 2266-2511 of the ECC on pages 374-417.

⁸⁷ Id., articles 2512-2697 on pages 417-445 of the ECC.

⁸⁸ Id., articles 2698-2874 of the ECC on pages 450-477.

⁸⁹ Id., articles 2875- 3130 of the ECC on pages 477 -521

⁹⁰ Id., on pages 521-554 of the ECC.

⁹¹ Id., articles 3307-3346 on pages 554 – 561.

⁹² Id., articles 3347-3367 on pages 561 – 580.

⁹³ Consult Book V of the FCC provisions from 2488- 2534

⁹⁴ It is the same with the concept of the ‘Holder-in-tail’ in the ECC

⁹⁵ Two types of legatees are recognized in the ECC- ‘Universal legatee’ and ‘Singular Legatee’.

⁹⁶ The ECC used the terminology ‘certificate of Heir’

⁹⁷ Refer to articles 1922, 1942, 1967, 1975, 2018, 2032, 2058, 2100, 2147, 2192, 2197, 2229, 2265, 2274, 2339, 2353, and 2371 of the German Civil Code. It is absolutely prohibited in the Ethiopian law of succession to enter in to any kind of contractual engagement regarding the succession of a person during the life time of such person.

The Ethiopian Civil Code is structured in to:

- Books ----→Titles ----→chapters -----→sections -----→paragraph
---→Articles---→sub-articles

The French Civil Code is structured in to:

- PreliminaryTitle----→Books --→Title -→Title-Bis----->Chapters
----→Article---→Sub-Articles

The German Civil Code is structured in to:

- Books-----→Divisions-----→Title----->Sub-Title-----
>Sections-----→Roman No.(sub-sections)

Diagram 1. Structure of the ECC, FCC, and GCC

Peculiar Characteristics of the Codes under Context

The Ethiopian Civil Code: this code is by far the largest civil code in the world constituting 3367 articles within it. As a result, it is more full-fledged and it is apparently the compilation of all the major principles of civil law compiled from the civil codes of many countries in Europe. Hence, I found it to be bulky, comprehensive and uncontextualized. However, it is the unflinching belief of the writer that, considering the time it has been enacted, 1960, it has been a totally foreign code filled by alien concepts, which were not contextually fit to govern the then realities of the country. Or its foreign element had by far outweighed the then Ethiopian domestic reality. This problem by itself resulted in other related problems. One is, it has failed to practically govern the realities on the ground and the other is, it has unnecessarily incorporated concepts, which are with no practical importance to the Ethiopian reality. A typical example is the concept of 'family name', which is repealed by disuse nevertheless stated on the code in black and white. The other peculiar feature of the ECC is unlike the rest of the codes, it deals with 'Administrative Contracts' with a notable detail having destined a separate chapter which is further divided in to general provisions, concessions of public services, contract of public works and contract of supplies.⁹⁸ Moreover, it also deals with the concepts of "compromise and arbitral submissions" in a separate title which is not the case in the rest of the codes.

The German Civil Code: The *Bürgerliches Gesetzbuch* abbreviated as the BGB, is the civil code of Germany. The Code has been in development since 1881; it became effective on January 1, 1900, and was considered a massive and groundbreaking project. The BGB served as a template for the regulations of several other civil law jurisdictions, including Estonia, Latvia, Taiwan (the Republic of China), Japan, Thailand, South Korea, the People's Republic of China, Brazil, Greece and Ukraine. It also had a major influence on the 1907 Swiss civil code, the 1942 Italian civil code, the 1966 Portuguese civil code, and the 1992 reformed Dutch civil code.⁹⁹ The BGB is one of the modest and comprehensive codes of our time. It was drafted mainly by professors after a century of the most intense juristic study of both Roman law and Native German Law. It is aimed at a complete statement of the law in terms of interlocking concepts, principles and rules.¹⁰⁰ The writer found it to be a real advanced text book on civil law. The concepts, principles and roles used in it are clear-cut and expressed in a language which, though technical and heavy in style, is consistent and free from ambiguity. Generally the GCC is comprehensive, inclusive and sophisticated. It should also be known that no other German

law has a larger number of sections than the BGB which contains 2385 sections (articles).

The French Civil Code: The Napoleonic Code (French: *Code Napoléon*; officially '*Code civil des Français*', referred to as (*le Code civil*)) is the French civil code established under Napoléon I in 1804. It was drafted by a commission of four eminent jurists and entered into force on 21 March 1804. The Code, with its stress on clearly written and accessible law, was a major step in replacing the previous patchwork of feudal laws. Historian Robert Holtman regards it as one of the few documents that have influenced the whole world.¹⁰¹ The Napoleonic Code was not the first legal code to be established in a European country with a civil legal system; it was preceded by the *Codex Maximilianeus bavaricus civilis* (Bavaria, 1756), the *Allgemeines Landrecht* (Prussia, 1794), and the *West Galician Code* (Galicia, then part of Austria, 1797). It was, however, the first modern legal code to be adopted with a pan-European scope, and it strongly influenced the law of many of the countries formed during and after the Napoleonic Wars. The Napoleonic Code influenced developing countries outside Europe, especially in the Middle East, attempting to modernize their countries through legal reforms.¹⁰² The FCC was made by practitioners, who were concerned to take a firm line on the various issues that had come to light in the preceding centuries and to effect a sane and practical reconciliation between the various local and regional customs and the Roman Law. There was nothing philosophical followed by the compilers of the FCC in the systematic German sense. They seldom looked to the future. They were much concerned to the settlement of controversies which had already arisen or were likely to arise in the near future. The compilers set roles which are relatively of a narrow scope and of an intensively practical kind. The general arrangement of the code, which has often been severely criticized and sometimes deserved it, does not appear to have interested them. Hence, the contrast with the German code, where the precaution with arrangement is almost morbid, is striking.¹⁰³

Conclusion

The writer of this study genuinely believe that it should be the tradition of legal scholars to duly identify the various legal families of the legal system in which they have studied or practice law in the future. It is in the intention of this effort that the writer has tried to comparatively analyze the Ethiopian civil code vis-à-vis the major European codes of France and Germany. All the codes scrutinized in this study belong to the same legal tradition, famously called the civil law (continental) legal system. Despite the tangible differences in the historical background of these codes, the writer has found out that, there are numerous attributes shared by the codes both in terms of 'substance' and 'structure'. This is however without camouflaging the tangible differences as among these codes in relation to terminology, points of emphasis, arrangement and peculiar inclusions and exclusions of subject matter. Regarding, the Ethiopian civil code, however, as it is a code that has been basically constituted out of the fundamental legal principles of civil law imported from the influential codes in Europe, it shares various attributes of both the French and the German civil codes. In comparison (of the two codes) however, the ECC is much more similar with the GCC both in terms of substance, structure and most importantly comprehensiveness in dealing with various subject matters of civil law.

⁹⁸ Refer to Articles 3131-3307 of the Civil Code of Ethiopia 1960.

⁹⁹ Wikipedia the Encyclopedia

¹⁰⁰ Vonmehren A. Taylor, *supra note* 17, PP. 23-26.

¹⁰¹ Robert B. Holtman (1981-2), in Wikipedia the Encyclopedia, https://en.wikipedia.org/wiki/napoleonic_code

¹⁰² Ibid

¹⁰³ (Vonmehren A. Taylor) *supra note* 17