Change for Aptness: Fighting Flaws in the Federal Supreme Court Cassation Division

Bisrat Teklu[*] and Markos Debebe[*]

Abstract

The Federal Supreme Court Cassation Division is established with a view to guarding the legislature's purpose and intent. However, at times, the Division deviates from what the law says and the law-maker intends even to the extent of twisting a clear provision of the law. This can be due to several reasons. This article articulates that in order to fight such flaws in the Cassation Division, it is important to constitute the Division into specialized divisions, employ legal assistants for each specialized Division, appoint an advisory board for specialized divisions, awakening the Judicial Administration Council and conducting detailed studies on the overall performance of the Division.

1. Introduction

History evidenced that cassation courts were established for the first time in the 17thC France with a view to prevent courts from interfering in the acts of the legislature under the guise of interpretation. The first court of cassation was formally named *Cour de Cassation.*[1]As the origin itself dictate, the word "Cassation" is derived from a French word *'cassier'*, which means to quash.[2] It refers to a power given to the highest court of a

[*] LL.B, the author is teaching in Jimma University School of Law. He can be reached at teklubisrat@gmail.com.

[*] LL.B, the author is teaching in Jimma University School of Law. He can be reached at dfmark.tedy@gmail.com.

[1]Abebe Mulatu (2011), 'Issues of Constitutional Interpretation under the 1995 Constitution: The Case of Kedija Beshir*et al vs.* Ansha Ahmed *et al'*, in *Wonber Perodical*, Addis Ababa, p. 51.

[2]Bryan A. Garnaer(ed.) (1999), Black's Law Dictionary(7thed) (West Group, USA), p. 363.

state to quash the judgment of lower courts.[3] Traditionally, the function of cassation courts was to examine a case assumed to incorporate a fundamental error of law and quash it if it finds the same and remand it to a court of rendition.[4] The court was not given the jurisdiction to see a case and pass a judgment on its merit. In short, the phrase *'to quash'* was attached to it because its power was simply quashing a judgment and remanding it to a court of rendition. However, through time, the jurisdiction of cassation courts expanded to disposing the quashed judgment and setting an interpretative precedent. Moreover, it is important to note that a cassation court is different from an ordinary court of appeal. A cassation court is not a third level jurisdiction. Strictly speaking, it did not rule on the merits of the case.[5] Rather, cassation courts examine the judgments themselves: the accurate application of the law in the judgments.[6]

---

[3]ቢልልኝ ማንደፍሮ እና ተሰፋ አለም(*1981* ዓ.ም)፣ "የሰበር ስርአት በኢትዮጵያ አጠቃላይ ገጽታ"፣ *ሕጋዊነት የኢሕድሪ ዓቃቤ ሕግ የሙያ መጽሔት*(ቅጽ 1፣ ቁ. 1)ገጽ 38::

[4]ታምሩ ወንድምአገኘሁ (1983 ዓ.ም)፣ "ፍትህ ወርትእ"፣ *ሕጋዊነት በኢትዮጵያ የሽግግር መንግስት የዓቃቤ ሕግ መጽሔት* (ቅጽ 3፣ ቁ. 5)ገጽ 81:: (የግርጌ ማስታወሻ ቁ. 37ትን ይመልከቱ)

[5]*Cour De Cassation*, The Role of the Court of Cassation, available at, <http://www.courdecassation.fr/about_the_court_9256.html>, visited on June 10, 2013, p. 1.

[6]*Ibid. See also* ቢልልኝ ማንደፍሮ እና ተሰፋ አለም፣ከላይ በማስታወሻ ቁ. 3 ላይ እንደተቀመጠው፣ ገጽ 46::History proved that even if judges are presumed competent, it is inevitable for them to commit mistakes while giving judgments. These mistakes could be either incidentals or fundamental. They may relate to either fact or law. If the mistakes are fundamental it is axiomatic that it will affect justice. Especially, when the fundamental mistake relates to the law, in addition to the injustice created on a party to a trial and the government, the judgment will prejudice the law, and the power of the legislature. Due to this reason, in order to bring justice and ensure the authority of the binding effect of the law an additional procedure is constituted. That is review of judgments through the cassation.

In Ethiopian, the word *'cassation'* was used for the first time in the Treaty of Friendship and Commerce signed between Ethiopia and France in 1907 that established consular courts in Ethiopia, and the procedural law enacted to enforce the agreement under the treaty.[7] However, a cassation court that has the jurisdiction to develop an interpretative precedent was established during *Dergue*.[8] The then Supreme Court Establishment Proclamation had given the court a power of cassation establishing a uniform interpretation of law.[9]

Currently, the power of cassation has a constitutional status. The Federal Constitution recognized the existence of such system at both tiers of governments.[10] Cassation currently comes into picture where there is a basic error of law from the final decision of regular and appellate jurisdiction of courts. Moreover, Article 80(3) of the FDRE Constitution stipulates the cassation power of both Federal and State Supreme Courts. The Constitution gives State supreme courts the power of cassation over any final court decision on State matters;[11] furthermore, it gives the

---

[7] ታምሩ ወንድምአገኘሁ፣ ከላይ በማስታወሻ ቁ. 4 ላይ እንደተቀመጠው፣ ገጽ 78። Even before the introduction of cassation in 1907/8 there was a similar institution in Ethiopian history. There were *Zufan Chilots* that resemble cassation in Ethiopia. However, *Zufan Chilots* were different from cassation in many ways. Beyond basic errors of law, any petition was petitioned in the *Chilot* at the discretion of the emperors. Moreover, death sentences were executed after the emperor affirmed it through its judgment in the *Zufan Chilot*. *See* Aberra Jembere (2012), Legal History of Ethiopia 1434-1974: Some Aspects of Substantive and Procedural Laws (Shama Books) p. 218

[8] አሰፋ ሻመና(2004 ዓ.ም)፣ የፍትሕ አሰጣጥና የፍትሕ ስርአት በኢትዮጵያ (ብራና ማተሚያ ቤት፣ አዲስ አበባ) ገጽ 19።

[9] *See* PDRE Supreme Court Establishment Proclamation No. 9/1980, Cited on Abebe Mulatu, *supra* note 1, pp. 51-52.

[10] Article 80 (3) of the FDRE Constitution recognizes Federal Supreme Court and state supreme courts cassation power. In this regard, the ambit of the former's power is controversial. Especially, on matters whether it has power to revise the decisions of state supreme courts.

[11] FDRE Constitution, Article 80(3)(b).

Federal Supreme Court the power of cassation over any final court decision.[12] The practice also shows cassation over cassation exists in Ethiopia.[13] However, it can be argued that cassation over cassation over matters exclusively given to states emanates from the lax understanding of the Constitution.[14]

This cassation power of the Federal Supreme Court is further prescribed under subsequent legislation.[15] Federal Courts Proclamation reiterates what the Constitution stipulated under Article 80(3), and added details to the power of the Federal Supreme Court Cassation Division. In addition to this, Article 2(4) of Federal Courts Re-amendment Proclamation provides that, *"Interpretation of a law by the Federal Supreme Court Cassation Division in its judgments made with not less than five judges shall be binding on federal and regional [courts] at all levels."* Moreover, the Proclamation gives the Cassation Division the authority to render a different interpretation of law in its decisions another time.[16] Therefore, the latter provisions read the Court has the power of cassation

---

[12]FDRE Constitution, Article 80(3)(a).

[13]**መሓሪ ረዳኢ (ታህሳስ 2003 ዓ.ም)፤ "የፌደራል የሰበር ሰበር የስልጣን ምንጭ ገልጠን ብናየው! (በሰበር መ.ቁ. 26996 እና 31601 መካሻነት የቀረበ ትችት)"፤ *የኢትዮጵያ ሕግ መጽሔት* (መግቢ 24 ቁ. 2)፤ ገጽ 201።**

[14]*Ibid.* In contemporary Ethiopian legal system, there is cassation over cassation. Even worse, the FSC Cassation Division revises matters that exclusively fall under the jurisdiction of states. However, this should not be the case. Unless the case directly or incidentally, has a contact with federal laws, international instruments or the Constitution itself, the FSC Cassation Division shall not revise the decision of State Supreme Court Cassation Court decisions. Otherwise, it would be against the principles of the Ethiopian co-operative federalism.

[15]*See* Federal Courts Proclamation 25/1996, and Federal Courts Re-amendment Proclamation 454/2005.

[16]Federal Courts Proclamation Re-amendment Proclamation 454/2005, Article 2(4).

[on] final decisions[17] containing basic errors of law, whereby interpretations of laws in its decisions made by five judges shall be binding on both State and Federal Courts. However, the Cassation Division shall exercise this authority in a way the legislative branch of government intended the law to be understood. This is because, unlike courts of the common law legal system, the Cassation Division has no authority to pile an original precedent.[18] Each interpretation shall go hand in hand with the spirit of separation of power.[19] It shall not refute the doctrine of separation of power which is equally recognized under the FDRE Constitution.

In Ethiopia, the role of the judiciary is interpreting laws.[20] Law-making power is exclusively given to the legislative branch of government.[21]For this reason, as one facet of law-making, the judicial branch cannot amend and/or repeal laws.[22] Moreover, if the law is clear, the Cassation Division

---

[17]There is absence of unanimity about the meaning of final decision. *See* Muradu Abdo (2007), *'Review on decisions of state courts over state matters by the Federal Supreme Court'*, Mizan Law Review (Vol. 1 No. 1), p. 64-66.

[18]Worku Yaze (2010), 'Operation and Effect of Presumptions in Civil Proceedings: An Inquiry into the interpretation of Art 2024 of the Ethiopian Civil Code', *Mizan Law Review* (Vol. 4, No. 2), p. 260.

[19]As it is already discussed one of the aims of establishing cassation court is to demarcate the boundaries of the judiciary, for it is ensured that judges couldn't make a law under the guise of interpretation. *See* Abebe Mulatu *supra* note 1.

[20]FDRE Constitution, Article 79(1).

[21]Unless the judicial branch of government delegated to make a law through parent legislation, it cannot enact law.

[22]Pursuant to Article 6(1) of the FDRE House of Peoples' Representatives Working Procedure and Members Code of Conduct (Amendment) Proclamation No. 470/ 2005, law making includes enacting new laws, amending, and repealing old ones and ratifying international treaties and agreements. Therefore, as one part of law making the judicial branch of government cannot amend any provision of law under the pretext of interpretation.

shall apply it as it is.[23] As the words of the law are presumed to express the intention of the legislator, there is no need for interpretation, unless the interpretation of the law may lead to an absurd conclusion.[24] In short, unless there is strong evidence that shows the intention of the legislator was different, it is not proper to give a different meaning to a clear provision of the law.[25] Consequently, when the decision of the Cassation Division is repugnant to the legislative intent, be it made mistakenly or deliberately, it always costs justice.

This article is written to pave a way for fighting the flaws in the decisions of the Cassation Division of the Federal Supreme Court. The article propounds that the Federal Supreme Court Cassation Division is committing flaws that goes to the extent of deviating from the true meaning of the law and such flaws must be corrected. In this regard, in order to lubricate expeditious reform in the Federal Supreme Court Cassation Division some changes are proposed. To achieve its objective, the article contains three sections. Section I, criticizes selected decisions in the Cassation Division. Section II explicates reasons for such mistakes and proposes a permanent solution for the problems. Lastly, there is a conclusion.

---

[23]Bisrat Teklu (2011), 'The Meaning of "Dependents" for the Purpose of Compensation under the Labor Proclamation: Case Comment', *Mizan Law Review* (Vol. 5, No. 2), p.340.

[24]*Ibid.*

[25]*Ibid.* Note that, this restriction is not limited to laws enacted after the coming in to force of the FDRE Constitution. Article 2(3) of Federal Courts Proclamation provided, all laws promulgated before the coming into force of the FDRE Constitution constitute part of the Federal law as long as they are consistent with the Constitution, and the power to enact those laws is in the ambit of the Federal government. Due to this, the FSC Cassation Division is duty bound to interpret pre FDRE laws in accordance to the legislature's intention as long as they are consistent with the constitution.

2. Flaws in The Cassation Division's Decisions

Previously, it is indicated that the power given to the Cassation Division is the jurisdiction to give a binding interpretation. This power is primarily given to the Cassation Division to create a predictable legal system, and make the interpretation and enforcement of laws in line with their legislative purpose.[26] In doing so, the Cassation Division is duty bound to observe what the legislature intended to say. This is because the institution of cassation is established not to make a law; rather, the institution is established to interpret the law.

However, in Ethiopia, there are some decisions criticized for showing the fact that the Cassation Division is evading from the reason why it came into picture. One scholar even went to the extent of writing the FSC Cassation Division amended/changed a law through its interpretation.[27] This scholar is forced to say so for the Cassation Division departed from the law to the extent possible to say it developed a new rule. Moreover, attorneys and scholars complain about lack of uniformity and predictability in the FSC Cassation Division.[28]

It is a known fact that the Cassation Division may not be perfect in interpretations of laws it made. The Court itself admits this.[29] It also

---

[26]Worku Yaze, *supra* note 18.

[27]ፈቃዱ ጴጥሮስ (2004 ዓ.ም)፤ *የኢትዮጵያ የሕገ-መ ሕግ* (ፋር ኢስት ትሬዲንግ፣ አዲስ አበባ)፤ ገጽ *196*።

[28]ዮሴፍ አዕምሮ (እ.ኤ.አ *2012* ዓ.ም), "የፍትሐብሔር ክርክሮች፡ ፈተናዎች እና ተስፋው", 'The Resolution of Commercial/Business Disputes in Ethiopia: Towards Alternative to Adjudication?' *Ethiopian Business Law Series*(School of Law, AAU,Vol. V), p. 18. *See also* the discussion made by the scholar on the article on pp. 15-18.

[29]*See* the prologues of most Cassation Division decision volumes, for instance, see volumes 7 & 8.

makes its judge's lack of expertise and the recentness of the system an excuse for such flaw.[30] However, as the interpretations made by the Division may pile an interpretative precedent, an utmost care should be taken to avoid errors of interpretation as the interpretation made by the Division has a far-reaching implication.[31]Moreover, though the Cassation Division may make flaws on its interpretations; no one would expect it to miss the clear meaning of the law. At times, when the Division departs from the clear meaning of the law, it would be hard to conclude that it is made due to lack of competence. In such instances, it is rather easy to conclude that the Division has developed a new rule through the conscience of its judges: not in a way the legislature articulated it. The problem will be magnified when such deviations are repeated. In short, at times, the Cassation Division disregards the clear meaning of the law; it is snatching the legislature's role. Such interpretations are the reflections of the interests of individual judges who sit in the Cassation Division. Nevertheless, such unsound interpretations of the Cassation Division are being taken as the right versions of the law under the coverage of the Cassation Division's judicial supremacy. Due to this, it is drawing a new track that was not wished by the legislature. Moreover, the problem is aggravated due to lack of an effective response from the side of the other branches of government. At times, the Cassation Division repeatedly gave a decision that totally ignored the legislative intent, none of the other branches of government effectively responded. And, at times, they

---

[30]*Ibid.*

[31]ፕሮፌሰር ጥላሁን ተሾመ (እ.ኤ.አ 2012 ዓ.ም)፤"የፌደራል ጠቅላይ ፍ/ቤት ሰበር ችሎት በእነ አስራት ብርኃኑ ላይ በሰጠው ፍርድ ላይ የቀረበ ክሪቲክ"፣ *ወንበር ቡሰቲን* (አዲስ አበባ) ገጽ 15።

responded, their response was to secure only the interest of the few.[32] Moreover, another prominent step taken by the House of the Federation (hereinafter HoF) in order to re-structure the flaw of the Cassation Division was the case between *Kedija Beshir et. Al. and Ansha Ahmed et. al.*[33] However, the decision of the HoF is criticized to be unconstitutional.[34] In addition to this, the recent move by the Ministry of Justice that attempted to force Kirkos Sub-city Justice Bureau and the Federal First Instance Court of the Sub-City, and was rejected by the Justice Bureau of the sub-city was against the independence of the judiciary and out of the power of the Ministry.[35]

---

[32]For instance, when the FSC Cassation Division decided on the formality requirement required for the sale of immovable property, the legislative branch took a measure to save those it wanted stabilized. Ignoring private citizens, it only took a measure to save financial institutions, i.e., banks. *See* Civil Code Amendment Proclamation No. 639/2009, Articles 2 and 3.

[33] The House of Federation of Federal Democratic Republic of Ethiopia (May 2008), 'The Decision of the House of Federation on W/ro. Kedija Beshir's petition', Journal *of Constitutional Decisions* (Vol. 1, No. 1) pp. 35-41. In the Case, the House took a bold step to review an evasive unconstitutional decision of the Cassation Division, though its move ignited critiques.

[34] *See* Abebe Mulatu (2011), *supra* note 1, pp. 46-69. The decision of the HoF was criticized to be unconstitutional. Even though, the House brought justice through revision of judgments, the Constitution did not support its power. Among other arguments the author raised, He primarily asserts Proclamation No. 250/02 never allow the House to review court decisions. In addition, he mentioned giving the House the power to review court decisions will endanger the judicial branches independence, and curtail courts under the ambit of a political organ: the legislative branch. Other than this landmark case, yet there is no other critical revision made on the final decision of the Cassation Division.

[35] Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010, Article 16; On January 19, 2014 the Ethiopian Reporter Amharic version reported that the Ministry of Justice tried to force Kirkos sub-city Justice Bureau to re-open a case which was heard in the Sub-City's First Instance Court and the Federal Supreme Court Cassation Division before Seven Years. However, the Bureau rejected the claim of the Ministry. *See* ሪፖርተር ጋዜጣ (እሁድ ጥር 11/2006 ዓ.ም) ፍትሕ ሚኒስቴር በሰበር ተዘግቶ የነበረ ክስ እንደገና እንዲጀመር አዘዘ፣ ዘመን (ቅጽ 19 ቁጥር 1432፣ ክፍል 1) ገጽ 5 እና 50::

This section is devoted to showing certain mistakes made by the Cassation Division while rendering decisions. In this regard, three cases, where the Cassation Division made an unexpected U-turn from the law, are discussed.

2.1. CASSATION MITHRIDATIZATION?[36]

2.1.1. The Sale of Business: The *Law in proper* and the "*Law*" of the Cassation Division

Article 1161 of the Ethiopian Civil Code recognized transfer of ownership of a property in good faith. According to this provision, a person that buys a corporeal chattel in good faith for consideration, and made it in his/her possession can acquire the ownership of the latter. The *a contrario* reading of this provision recalled two important things. First, unless otherwise a special law under express terms cross-referred to this provision, this provision is not applicable to the transfer of special movables. Second, the word "corporeal chattels" excludes "incorporeal chattels". In other words, Article 1161(1) of the Civil Code does not govern special movables, and incorporeal movables.[37]

On the other hand, Article 124 of the Commercial Code provides that a business is an incorporeal movable. An admirable content of the concept of business in this regard is that, it incorporates both tangible and intangible elements.[38] However, though incorporating tangibles, it

[36]Mithridatism is a medical word. It refers to the development of immunity to a poison by taking gradually increasing doses of it.
[37]Muradu Abdo (2012), Ethiopian Property Law (Master Printing Press, Addis Ababa) p. 185.
[38]Commercial Code, Articles 124 cum. 128. Articles 124 of the Commercial Code provides, "A business is an incorporeal movable consisting of all movable property

remains incorporeal under the law.[39] Moreover, a business is a special incorporeal movable.[40]Due to this, any transaction involving business assimilates business more or less to the rules governing an immovable property.[41] The rules applying to the transfer of business are different from those applicable to the transfer of ordinary movable. They even require registration. For this, mere possession of the corporeal elements of a business does not prove ownership.[42]

However, though both Article 1161 of the Civil Code and Article 124 of the Commercial Code are crystal clear, the Cassation Division in the Case between *Ato Yalew Delenesaw vs. W/ro Birkinesh Shewareg et. Al.*[43] made an erroneous interpretation that clearly defeats the purpose of the law. The Court decided that Article 1161 of the Civil Code is applicable to the sale of incorporeal movables/business.[44] The Court in its judgment reasoned:

> *"አመልካች ውሉን በቅን ልቦና ያደረጉት በመሆኑ ሕጉ ለቅን ልቦና ተዋዋዮች ለሰጠው ጥበቃ አኳያ ጉዳዩ የማይታይበት ምክንያት አይኖርም በዚህም መሰረት የቅን ልቦና ባለይዞታነትን አስመልክቶ በፍ/ብ/ሕ/ቁ 1161 ላይ*

---

brought together [ ] for the purpose of carrying out [ ] commercial activities…". The phrase *"all movable property"* signifies the term incorporate both tangible and intangible property. Moreover, Article 128 of the Commercial Code cemented this by saying a business may consist corporeal movables.

[39]Article 124 of the Commercial Code is beyond crystal clear in this regard. It provides a business is an incorporeal movable.

[40]Muradu Abdo, *supra* note 37. See also Article 3047 of the Civil Code and Articles 150-205of the Commercial Code.

[41]Yazachew Belew (2010), 'The Sale of Business as a going concern under the Ethiopian Commercial Code: A Commentary' *Journal of Ethiopian Law* (Vol. 24, No. 2) p.93.

[42]*Ibid.*. See also Muradu Abdo, *supra* note 37.

[43]Federal Supreme Court (2010), *Ato Yalew Delenesawvs. W/ro Birkinesh Shewareg et al* Federal Supreme Court Cassation Division Decisions Volumes, Cassation File No. 34586 (Vol. 8, 2003 E.C) pp. 321-323.

[44]*Ibid,* p. 322-323.

ግዙፍነት ያለው ተንቀሳቃሽ ነገር ባለሃብት ለመሆን በቅን ልቦና ዋጋ ሰጥቶ ውል የተዋዋለ ሰው የተባለውን ተንቀሳቃሽ ነገር በእጁ ሲያደርግ በቅን ልቦናው ምክንያት የዚህ ንብረት ባለሃብት እንደሚሆን ...::"

"The Commercial Code under Article 124 recognized business as an incorporeal movable. On the other hand, the petitioner concluded the contract for the sale of business in good faith. Therefore, there is no reason for not applying Article 1161 of the Civil Code to the sale of business, i.e., the provision applicable to corporeal movables, to incorporeal movables. Therefore, Article 1161 of the Civil Code is applicable to the sale of business." (Translation, the authors)

However, both the Amharic and English versions of the Civil Code restricted the application of the Article 1161 of the Civil Code only to corporeal chattels. Moreover, while making the decision, the Cassation Division did not sufficiently reason out why the legislature's stipulation should not be taken strictly. The fact that business is a special movable also goes beyond what the legislature intended. Due to this, the analogy the court followed while the legislature articulated how the law shall be read was astonishing.

In civil litigations, using the rule of analogy is allowed when the law does not govern the matter. When the law-maker deliberately excludes a certain matter from being governed by a certain provision, one cannot apply the provision to the omitted matter. In this regard, Article 1161 is very much clear. It precisely limited its scope to ordinary corporeal chattels. The legislature's qualification of the provision to ordinary corporeal chattels signifies the lawmaker omitted incorporeal movables, including business deliberately.[45]Moreover, the principle is that no one

[45]The lawmaker excluded special movables from the ambit of Article 1136 for several reasons. Among others, it excluded such properties for reason that the ownership of

can transfer a better right than s/he has. A person cannot transfer a thing that s/he does not own. The Cassation Division itself in *W/rt Tarik Getachew Vs. W/ro Alganesh Tetemke* supported this principle and affirmed it as follows:

> "በሌላም በኩል አንድ ሰው አንድን ንብረት በሽያጭ ለሌላ ሰው ሊያስተላልፍ የሚችለው በንብረቱ ላይ ትክክለኛ ሕጋዊ ባለመብት ሲሆን ወይም በህጉ አግባብ የንብረቱ ህጋዊ ባለመብት የሆነው ሰው የመሸጥና የመለወጥ ስልጣን ሰጥቶት ሲገኝ ነው። የሌላውን ሰው ንብረት ንብረቱ ነው ብሎ መሸጥ ከህጉ ጋር የሚቃረን በመሆኑ ሕገ ወጥ ነው። ሕገወጥ ውል ደግሞ በፍትሃብሔር ሕግ 1716 መሰረት ፈራሽ ነው። ገዢው ከንብረቱ የሚነቀለው ወይም ለሕጋዊ ባለመብቱ አንዲሰቅ የሚደረገውም በዚህ ምክንያት ነው።"[46]
>
> *"A person can transfer a property either when s/he is the owner, or when s/he is authorized by the owner to do so. Transferring the property of another person is unlawful as it is against the law. In addition, Article 1716 of the Civil Code stipulates that unlawful contracts have no effect. This is why a person that acquires the property of another is compelled to return it to its lawful owner."(translation, the authors)*

The latter explanation of the Court indicates its decision is nourished by the principle, "no one can transfer a better right than s/he has". However, while it applied Article 1161 of the Civil Code to the sale of business, the Division was broadening the scope of the exception. This implies the decision of the Division was nurtured by the sole interest of the judges; not the legislatures.

---

such movables needs additional protection of registration and issuance of title certificates. Moreover, in their nature incorporeal properties can only be claimed through a legal action: not by taking possession. This is the reason the legislature excluded incorporeal movables from Article 1161. *See* Muradu Abdo, *supra* note 37, pp. 89 & 184.

[46]Federal Supreme Court (2011), *W/rt Tarik Getachew vs. w/ro Alganesh Tetemke*, FSC Cassation Division File No. 51034, Federal Supreme Court Cassation Division Decisions (vol. 11, 2004 E.C) p. 313.

2.1.2. The case between Agency for the Administration of Rented Houses *vs.* Mr. Kassa Gezaw:[47]

The case started in the Federal First Instance Court between Agency for the Administration of Rented Houses (hereinafter the Applicant) and Mr. Kassa Gizaw, the then employee (mechanic) of the Applicant (hereinafter the Respondent). The Applicant petitioned that the Respondent, the then employee of the latter, received different automobile spare parts that are worth ETB 1,178.05 (One Thousand One Hundred and Seventy Eight Birr and Five Cents) from the Applicant's store to repair the latter's car. However, the Respondent neither used the spare parts to repair the car nor returned them to the applicant's store. Hence, the Applicant prayed for the court to order the Respondent to return the spare parts in kind or pay the monetary value of it.

The Respondent on his part admitted the fact that he took the spare parts from the Applicant's store but challenged his liability. He argued that, he took the spare parts in order to repair the Applicant's car at the work place. Moreover, he alleged that his duty was simply repairing the Applicant's car during working hours. And, when he left work place, like other employees, the necessary safety searches were undergone on him by the security guards of the Applicant in order to assure that he did not take any property of the latter.[48] Following this, he requested the Court to exonerate him from any liability for the lost spare parts. He further

[47]Federal Supreme Court (2009), *Agency for the Administration of Rented Houses vs. Mr. Kassa Gezaw*, FSC Cassation Division File No. 28865, Federal Supreme Court Cassation Division Decisions (vol. 5, 2001 E.C) pp. 141-144.

[48]From this argument of the Respondent, it is easy to understand that there was no evidence that showed he took the spare parts from work place. In other words, he alleged the safety searches show he did not take anything out from work place.

argued that the cause of the loss is the negligence of the Applicant's security guards.

The Federal First Instance Court reasoned that, no time limit was set by the Applicant on the Respondent to finish his work and return the spare parts to the store. In addition, the Court stressed that since the Respondent is not responsible for spare parts that are lost out of the work hours, whereas the Applicant failed to prove that the spare parts are lost during work hour. Accordingly, the Court released the Respondent from liability.

Following, the Applicant lodged an appeal to the Federal High Court. However, the Court sustained the decision of the lower court. Owing to this, the Applicant petitioned the FSC Cassation Division. The Cassation Division accepted the petition to determine the following issues:

- ✓ Whether the Respondent is liable for the lost spare parts?, and
- ✓ Who has the burden to prove the time when the spare parts were lost?[49]

Finally, the Cassation Division examined the case and decided in favor of the Applicant. The Court reasoned that the spare parts were lost before the Respondent returned them to the Applicant's store and he failed to

[49]From the reading of the case under discussion one may say that the issue which was framed by the FSC Cassation Decision was only the first one. But, if we try to draw the holistic picture of the case and understand the fulcrum of the case, it would not be hard to understand that the other issue was in the mind of the judges to reach on the final binding interpretation. The writers duly understand the question that could be posed at this juncture. Meaning, are we going to say that the interpretation of the bench on these issues is precedent or not? Axiomatically, it could not be a *ratio decidendi*. But, equally it has a paramount role to show flaw of the Cassation Division.

prove they were lost out of working hours. Hence, he is liable pursuant to Article 2027 of the Ethiopian Civil Code for the loss of the spare parts.

The Cassation Divisions problem lies on its legal base and analysis of the trial proceeding of the lower courts. First, Article 2037 of the Civil Code unequivocally provides, if there is contractual relationship between the parties, extra-contractual liability law has no application. To put the issue in nutshell, extra-contractual liability claim cannot emanate from contractual relationship.[50] If there is a breach of contractual term, it should be settled in accordance with the provisions of the law of contract.[51]

However, the Division applied extra-contractual liability law provisions in the presence of contractual relationship. In its analysis of facts, the Cassation Division stated that there exist employee/employer relationship between the Applicant and the Respondent. This relationship on the other hand can only emanate from a contract.[52] Therefore, this analysis of the Division is evidentially circumstantial to show its understanding of the existence of contractual relationship between the latter. The Division in its words analyzed:

> "*Since the Respondent accepted the spare parts based on the employment contract, he is liable for whatever happens against the spare parts until he uses or restores them.*" (Translation, the authors)

[50]It is also possible to see art 2088 of the Civil Code. This provision precludes strict liability claims at times there is contractual relationship.
[51]Civil Code, Articles 2037(2) and 2088(2).
[52]Labor Proclamation No. 377/2003, Article 4.

This shows the Division was aware of the existence of a contractual relationship, *i.e.*, an employment contract; nevertheless, it used extra-contractual liability law provisions, specifically Article 2027 of the Civil Code to settle the dispute. Whilst the law should regulate the relationship of the parties through the provisions of contract and labor law, the Division calculatedly settled the dispute using extra-contractual liability provisions. In other words, when the employer claimed the employee is liable/at fault, the employment contract shall come into picture consonant with the governing Labor Proclamation. However, the court did not do so. This, on the other hand, refuted the rule under Article 2037 of the Civil Code.[53]

Second, in principle, the Civil Code holds a person extra-contractually liable when s/he deviates from the required standard of social behavior.[54] In this regard, liability is incurred extra-contractually when a wrong is committed either intentionally or negligently.[55] Moreover, it is only where the law expressly provides that a person could be held extra-contractually liable in the absence of a mental fault.[56] In this regard, the Civil Code enumerated these sources of liability under Article 2027. However, note that Article 2027 of the Ethiopian Civil Code cannot be used to hold a person extra-contractually liable. This provision simply

---

[53]This flaw of the FSC Cassation Division is not a one-time slip up. The Division also held the same position under *Ethiopian Radiation Protection Authority vs. Ato Tariku Chane*. See Federal Supreme Court (2005 E.C), *Ato Ethiopian Radiation Protection Authority vs. Ato Tariku Chane*, FSC Cassation Division File No. 69179, Federal Supreme Court Cassation Division Decisions (vol. 13, 2005 E.C) p. 52.

[54]Professor Christian von Bar (2004), *The Interaction of Contract Law and Tort and Property Law in Europe: A Comparative Study* (European Law Publishers), p. 26.

[55]*Ibid.*

[56]Civil Code, Article 2027(2).

provides for the sources of extra-contractual liability.[57]Therefore, if one needs to hold a person extra-contractually liable based on fault, s/he should rely on Articles 2028.

Nevertheless, in this case, the Cassation Division made the Respondent liable relying on Article 2027 of the Civil Code. Though Article 2027 of the Civil Code is envisaged to bestow the sources of extra-contractual liability, the Division used this provision to hold the Respondent liable through negligence. Therefore, the provision called for to govern the latter issue by the Cassation Division was not appropriate. In addition, the writers believe, the interpretation of the Cassation Division has to be detailed enough to avoid confusion rather than aggravating the same. It is where the Division is able to give an explicit interpretation that we can say the laudable policy behind the system can be achieved. In the case at hand, the Division even failed to single out and show through which source of non-contractual liability the Respondent was held liable. Unfortunately, if the intention of the Division was to show the presence of fault, it was supposed to rely on Articles 2030 and 2031 of the Civil Code as the lower courts did in the case. Moreover, this problem has worsened when the Cassation Division repeated the same mistake in a recent volume.[58]

[57] J. Krzeczunowicz (1970), The Ethiopian Law of Extra-contractual Liability Law, (Faculty of Law, Haile Sillasse I University) p. 64

[58]*Ethiopian Radiation Protection Authority vs. Ato Tariku Chane, supra* note 53.

2.1.3. The *"Columbus"*[59] Cassation: the Discovery of a New Ground for the Dissolution of Marriage

The Federal Revised Family Code is eloquent on specifying the grounds of dissolution of marriage. Article 75 of the Code exhausted the grounds through which marriage ends: death or absence of a spouse, invalidity of marriage and divorce. More surprisingly, the Code requires the interference of a court in all grounds of dissolution of marriage, except one.[60] Other than dissolution of marriage due to the death of a spouse, marriage cannot be dissolved without judgment. Other than the latter, the Code does not recognize any other unilateral or bilateral act to end marriage.[61]

The grounds for dissolution of marriage therefore are sincerely clear. When the reading of the provision nurture that, marriage cannot be dissolved in any way other than the above three, it's a*contrario* reading nourishes marriage cannot be dissolved when spouses started to live their own independent and separate life due to quarrels. Moreover, had this been the intention of the legislature, it could have included it among the grounds for dissolution of marriage.[62]The legislative history of the RFC shows that disuse of marriage was proposed as a ground for dissolution of marriage. However, the legislature struck it out from being a

[59]Christopher Columbus is among renowned discoverers through his sale on the sea. His voyages brought him with endless opportunities. However, not on the "sea"; the FSC Cassation Division voyage on the 'sea' of laws, and fortunately, it discovers new rules.
[60]Dejene Girma (2009), 'Tell me Why I Need to Go to Court: A Devastating Move by the Federal Cassation Division', *Jimma University Journal of Law* (Vol. 2 No. 1) pp. 118 and 119.
[61]*Ibid.*
[62]*Ibid,* p. 124.

mechanism to end a family relationship.[63]This shows the legislature omitted this ground intentionally.

However, abruptly, the Cassation Division made disuse of marriage one ground for dissolution. In a Case between *W/ro Shwaye Tessema vs. W/ro Sara Lingane* the Court decided, disuse of marriage for a long period can be a ground for the dissolution of marriage. Moreover the Cassation Division strengthened this position in the Case between F/Sillase vs. WagayeGayem by stressing that;

> «በመሰረቱ ጋብቻ በፍርድ ቤት ውሳኔ ወይም በተግባር ተጋቢዎች ተለያይተው በየፊናቸው የራሳቸውን ሕይወት ከቀጠሉ ሲፈርስ እንደሚችል ከተሻሻለው የቤተሰብ ሕግ አንቀጽ 76 ድንጋጌና ይህ ሰበር ሰሚ ችሎት ... በመዝገብ ቁ. 20398 ካስተላለፈው ውሳኔ መንፈስ ይንገነዘበው ነው::»[64]
>
> *"Marriage can dissolve either when the court decides divorce, or when the parties start a separate life letting behind their marriage. This is underscored both in Article 76 of the RFC and the Cassation bench decision on file No. 20398."*

In fact, the Cassation Division stressed that mere separation will not end marriage;[65] however when the parties start a separate life letting behind their relationship it will end family marriage. Nevertheless, the RFC in nowhere recognizes disuse of marriage as a ground for dissolution of marriage. The position of the Cassation Division in this regard seems searching the *law to what ought to be*. Moreover, even though we duly

---

[63]*Ibid.*

[64]Federal Supreme Court (2004 E.C), *Ato F/Sillase Eshete Vs. w/ro Wagaye Gayem*, FSC Cassation Division File No. 61357, Federal Supreme Court Cassation Division Decisions (vol. 13, 2005 E.C) p. 125.

[65]Federal Supreme Court (2004 E.C), *W/ro Menia G/sillase Vs. w/ro Meseret Alemayehu*, FSC Cassation Division File No. 67924, Federal Supreme Court Cassation Division Decisions (vol. 13, 2005 E.C) p. 147.

appreciate that the position of the Division may be sound, such ground should not appear unless the legislature opted to do so. While the express intention of the legislature can be fetched from the law and its legislative history, the Cassation Division's blink that added a new ground for dissolution of marriage is therefore outside its playground. It has even done this in the presence of several criticisms on its position. This has made the Cassation Division's move repugnant to the principle of separation of power; and for this, one could have no words except saying the Cassation Division discovered a new rule: the "Columbus" Cassation.

3. Permanent Solution for the Problems

Under the previous section, though it is not exhaustive, criticisms are made based on few selected decisions of FSC Cassation Division. Hence, this section is devoted to proposing solutions for the problems of the Cassation Division.

3.1. Constituting the Division through specialized Divisions

Nowadays, the Cassation Division has no specialized divisions. A single division decides all criminal, civil, commercial and labor cases. Moreover, the judges in all cases are the same except for the change of one or two judges. This is witnessed in all volumes. A sample survey made on recent reported Cassation Division decisions volumes moreover shows the same. A survey made on cases reported by the Cassation Division shows the following empirical result.

S. N	Name of Judge	Volume 12 in%	Volume 13 in%	Volume 14 in %

o									
		C a	C r	C o	C r	L a	C o	C r	L a
1	Tegene Getaneh	41.02	29.41	17.64	19.35	36.36	----------	----------	8.33
2	Hagos Woldu	89.7	94.1	70.58	64.51	63.63			
3	Almaw Wole	89.74	100	88.23	96.77	95.45	93.33	100	91.66
4	Ali Mohammed	92.3	88.23	88.23	93.54	90.9	86.66	100	91.66
5	Birhanu Amenew	33.3	23.529	----------	----------	----------	----------	----------	----------
6	Teshager G/Sillase	48.7	32.35	41.17	35.48	36.36	86.66	100	100
7	Dagne Melaku	33.3	5.88	----------	----------	----------	----------	----------	----------
8	Tsegaye Assmamaw	5.12	----------	5.88	----------	----------	----------	----------	----------
9	Nega Dufisa	28.2	55.882	94.11	100	90.90	----------	----------	----------
10	Adane Niguse	28.20	61.76	76.47	90.32	86.36	86.66	----------	91.66
11	Abdulqadir Mohammed	5.12	----------	11.76	----------	----------	----------	----------	----------
12	Hirut Melese	2.56	5.88	----------	----------	----------	----------	----------	----------
13	Tafese Yerga	2.56	2.94	5.88	----------	----------	----------	----------	----------

14	Mustefa Ahmed	-----------	-----------	-----------	-----------	-----------	86.66	85.71	58.33
15	Tehlit Yemsel	-----------	-----------	-----------	-----------	-----------	6.66	-----------	16.66
16	Mekonnen G/Hiwot	-----------	-----------	-----------	-----------	-----------	20	42.85	33.33
17	Retta Tolosa	-----------	-----------	-----------	-----------	-----------	26.6	14.28	8.33

Table 1. Judges sitting in reported cases from Volume 12-14.

The table shows that if one judge participates once in the cassation division, it is most probable that he will participate in other cases. For instance, in Volume Twelve among the judges that participated in disposing contractual cases, it is only two which did not participate in the disposition of criminal cases. In addition to this, a judge that participates in greater percentage in deciding civil case also participates in disposing many criminal cases as well. The vice versa is also true. If a judge's participation in the volume is lower in percentage in a certain category, most probably his participation in other types of cases is minimal. The same is observed in volume thirteen and fourteen. Therefore, this indicates that there is no specialization in the Cassation Division among judges. It seems the appointment is random without considering specialization/concentration of a judge in a certain area of law.

To the opposite, an individual cannot specialize in every area of law. This may be taken as against the principle of division of labor and dispensation of quality justice. Therefore, it is important to appoint certain judges that special knowledge in a given area for proper and

expeditious dispensation of cases. Such division would help a judge to master a certain area so that the possibility of making errors would be mitigated. In this regard, the Federal Supreme Court may adopt such precedent as a rule in the present set up simply by instructing who should sit on certain category of cases. On the other hand, in other countries such as France and Italy, it is possible to divide the Cassation Division in to several divisions. Moreover, if such kind of institution is opted for, and a case that has interdisciplinary nature comes before the Cassation Division, the divisions can exchange judges that specialize in certain areas with a view to effectively disposing the case at hand.

In this regard, if a decision to constitute various divisions is reached, it is important to make a need assessment and cluster matters in certain broad categories. In this regard, so far, the Federal Supreme Court reported cases where it passed binding decisions in fourteen volumes. In these volumes 1,265 cases are reported. If we see the share of cases in accordance with the criteria used by the Federal Supreme Court in its reports for classification it looks as follows:

No.	**Category**	**No. of reported cases**	**%**	**Nature of Cases**
1	Employment and Labor Law	210	16.6	100% Civil
2	Civil Procedure	188	14.865	100% Civil
3	Family and succession	165	13.04	100% Civil
4	Contract	163	12.88	100% Civil
5	Criminal	101	7.98	100% Criminal
6	Property	77	6.08	100% Civil
7	Others	66	5.21	95.45% Civil

				4.5% Criminal
8	Jurisdiction	64	5.05	
9	Extra Contractual liability and unjust enrichment	50	3.95	100% Civil
10	Tax and Customs	44	3.47	84.09% civil
				15.9% criminal
11	Execution of judgments	44	3.47	
12	Commercial Law	43	3.39	100% Civil
13	Bank and Insurance	28	2.21	100% Civil
14	Agency	15	1.18	100% Civil
15	Intellectual Property	7	0.55	85.71% civil
				14.28% criminal
Total		1265		

Table 2. Number of reported cases in category

The table shows that the lion's share is taken by labor related cases, followed by cases on civil procedure. Moreover, the classification shows that some group of cases headed in a special heading for readers convenience can be seen by similar specialized divisions. For instance, it is possible to see cases on civil procedure, contracts, extra contractual liability, agency, property and intellectual property in the same category. In addition, most cases categorized as "*Others*" (63 out of 66) and those that relate in the heading "*Jurisdiction*" (62 out of 64) require specialization in civil law, while very rare require specialization on criminal law.

The writers assume that, the numbers reflect the caseload in the Cassation Division. Due to this, they recommend a division that specialized on employment and labor law to be constituted. Moreover, as it is not possible to constitute a division for every category and for justifications associated with their relatedness it is recommended to constitute a division that specialized on *civil law* with judges that specialize on civil law. This is done by clustering group of cases that has a civil law nature. In association with this, in France, one can show a separate division that specialized in *commercial law*. However, the number of cases reported on commercial law, including cases on bank and insurance only constitute 5.6%(71) of the cases reported. This indicates that it is not necessary to establish a special division for commercial matters for the time being. Therefore, having this in mind the writers recommend if a specialized bench on civil law is constituted having the power to see including, but not limited to cases on contract, civil procedure, law of extra-contractual liability law and unjust enrichment, property, intellectual property, family and succession, commercial matters, bank and insurance, and agency. This will constitute more than 60% of the cases reported.

Lastly, by considering the special nature of the law it is important to constitute a division that specializes in criminal law. In fact, the share of cases decided on criminal law, including those with criminal nature of tax and customs (only 7 cases), in the category of "*Others*" (only 3 cases) and on the category nominated "*Intellectual property*" (only 1 case) is not greater that 10% of the cases decided so far. However, the special nature of the law dictates the constitution of a separate division on criminal law.

Furthermore, rather than enforcing recent proposals to adopt the devise of negative screening in the Federal Supreme Court Cassation Division, it is better to divide the Division into specialized divisions and see the possibility of minimizing the burden on the Cassation Division.

3.2. Employing Legal Assistant for each specialized Divisions

A legal assistant is broadly defined as a professional qualified by education, training or experience to do work of a legal nature under the supervision of *a superior (emphasis added).*[66] In this regard, the term paralegal is mostly attached to assistants that give aid for attorneys.[67] However, this would not mean that legal assistants cannot work in courts by adding judges in researching. They can be employed in courts so that they can aid judges in their function to interpret laws. It is a general knowledge that the main functions of legal assistants include conducting legal researches and proof reading legal documents.[68] First and for most, legal assistants can play an important role in the field of research. They can assist judges in searching for the meaning of the law. These paralegals may devote their time in searching for the meaning by examining legislative history, the experience of other countries, the costs of flaw in the economy, etc.. Judges who are occupied in court routines and case congestion will have additional arm for assistance on researching. This, on the other hand, in addition to helping the proper disposition of a case will widen the scope of research in the field of law

[66]L. L. Edwards and J. S. Edwards (2002), Introduction to paralegal Studies and the Law: A Practical Approach, (West Legal Studies, USA), p. 1.
[67]*Ibid.*
[68]*Ibid,* p 7.

in the Ethiopian legal system. Moreover, slight mistake in citation of laws can be corrected through recommendations made by the legal assistants. This will also aid perfectness. Therefore, by employing legal assistants the Cassation Division can mitigate flaws on its decisions.

Furthermore, appointing paralegals in the FSC Cassation Division can play a greater role in nurturing future judges acquainted in basic knowledge in the area they work on. A legal assistant that work in the Cassation Division would most probably not remain there for life. At some point, s/he could be appointed as a judge in lower courts. S/he may fit the post in the recruitment process. In addition, after acknowledging his/her competence, the Division may recommend him for a post as a judge in lower courts. In such instances, the lower courts may find a professional having broad knowledge in the area s/he specializes. This will in fact help the justice machinery on the other hand. Through this, the proper enforceability of past decisions of the Cassation Division can also be ensured as, probably, s/he has a firsthand knowledge.

3.3. Appointing Advisory Board for Each Specialized Division

As it is indicated in previous discussion, justice in its strict sense can be done only if the Cassation Division avoids flaws. To do this, the Division must be able to see the holistic picture of the case at hand. And, most of the time, the cases may need in-depth investigation and the opinion of other fields of specialization. Hence, this fact instigates the need of an advisory board that could advise and assist the Cassation Division on matters that appear before it for interpretation.

Since the main purpose of constituting an advisory board is to assist the judges to have a holistic picture on a certain matter, the members of the board must be from different sectors. The writers believe that, though members may vary depending on different matters, the board should include as representatives of university professors that specialize in law, a representative from Ministry of Justice, Justice and Legal Reform Institute, lawyers associations and economics professionals associations.[69] The board established in this way must be a permanent advisory board for a specific term which would give the necessary recommendation for the Division on the interpretation of the law. In this regard, the board will give its learned recommendation on the question of interpretation sent for it by the Cassation Division.

At this juncture, it is important to note that this board is not established to dispose of a case, neither its way of looking at the law would bind the Cassation Division. Rather, the board will simply be requested to brief its view on the interpretation of a certain provision of the law when the Cassation division believes that the interpretation of the disputed provision would have a significant impact on the legal system and the economy. Note that the case is not given to the board. Consequently, the board will send its view on the matter, together with its reasoning. The Cassation Division then can see the view of the board, and take its position after seeing what was proposed. Therefore, the role of the board would resemble the role of the Council of Constitutional Inquiry.

[69]Based on this composition, we can understand that the board may have both permanent and temporary members. For examples, those representative of the private sectors and associations who may be lawyers or non-lawyers shall be temporary members. Their membership to the board shall be determined based on the case which needs interpretation.

3.4. Awakening the Judicial Administrative Council

Currently the Federal Government has a Federal Judicial Administration Council which is comprised of personnel from different organs and authorities, including judges.[70] The Council, apart from other functions, has the power and duty to nominate candidates for judgeship, issue of judges' code of conduct, rules of disciplinary procedure and periodically evaluating the judicial activities of the federal courts and judges.[71] Though these power and duties have a paramount rule for aptness they are not yet implemented/exercised to the required level. Even more, there are complaints about the Council's lack of commitment to dispose disciplinary complaints brought against judges.[72] Moreover, there is no recent detail evaluation made on federal courts and judges. Hence, the writers keen to urge the need of awaking the Council to achieve the laudable intention behind its establishment.

3.5. Evaluating the performance of the Cassation Division and Proposing Solutions

Given the current working system of the Federal Supreme Court, there is also a need to establish another ad hoc committee[73] which could be in

---

[70] Amended Federal Judicial Administration Council Establishment Proclamation No. 684/2010, Article 4(1).

[71] Amended Federal Judicial Administration Council Establishment Proclamation No. 684/2010, Article 4(1), Article 6.

[72] ሪፖርተር ጋዜጣ፣ ከላይ በማስታወሻ ቁ. 35 ላይ እንደተቀመጠው፣ገጽ 5:: The complaint is that the Council did not dispose a complaint brought before seven years against five Federal Supreme Court Cassation Division judges so far. However, to the writers view the Council was supposed to dispose it expeditiously: in favor or against the judges.

[73] One question that could be posed at this juncture is the necessity of an ad hoc committee in light of the existence of the federal judicial administration council which is in charge to conduct a periodic evaluation of the judicial activities of the federal courts and judges. The writers duly appreciate this fact but we equally believe that since

charge of assessing the management, performance and working system of the court in general and the Cassation Division in particular. Hence, to enhance the efficacy/correctness of the Division, the Court must look back at what the Division has done. To do this, the writers believe that it is necessary to establish an ad hoc committee to evaluate the management and performance of the Federal Supreme Court in general and the Cassation Division in particular.

4. Conclusion

Separation of power is a cardinal rule under the FDRE Constitution. This bedrock principle on the other hand dictates the role of the three organs of government. In providing so, the Constitution does not allow the judicial branch to interfere with the powers of the legislative branch. In other words, the judicial branch is supposed to stick to interpretation of the law. In this regard, the Cassation Division that assumes the highest burden to find the exact intention of the legislature and to create uniformity in the legal system. This shows that the Division must avoid flaws in its decisions. In particular, it is important to avoid mistakes that result in the making new law under the guise of interpretation. In order to do so, it is advisable for the Ethiopian judiciary specifically the Federal Supreme Court to look back once in order to face the challenges of such uncanny routes and flaws. In particularly, the Judicial Administrative Council should awake and respond to such amiss appropriately; nevertheless, without disgracing the independence of the judges. Furthermore, it is better if the Cassation Division is constituted in various

---

there is no such assessment until now the workload is too burdensome and it would be fine if it is made by a separate organ solely established to get this duty done.

divisions, such as, civil, labor and criminal. Such organization will enable the court to have specialized judges in a specific area. Moreover, as in the case of other countries, it is recommended if an advisory board constituted of different professionals is formally established in order to help the Cassation Division. In addition, by taking into account the caseloads on the judges in the Cassation Division, it is sound to hire legal assistants for judges.