

**EXAMINING THE JURISPRUDENCE OF ETHIOPIAN COURTS ON  
PERIOD OF LIMITATION UNDER ETHIOPIAN CONTRACT OF SALES  
LAW IN LIGHT OF INTERNATIONAL INSTRUMENTS.**

**LLM THESIS**

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under Ethiopian Contract of Sales Law in light of International Instruments.**

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## **Declaration**

I, Ameha Andualem Reda, hereby declare that this thesis is my original work and has not been presented for a degree in any other university. To the best of my knowledge and belief, I also declare that any source used here has been duly acknowledged and cited.

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## **Biographical Sketch**

The author of the thesis was born in 1994 in East Arsi Zone of Oromia, Arsi Robe Woreda in Robe town 02 Kebele. He attended primary school at Robe No.1 Primary School. He also attended Secondary and Primary school at Robe Didea Secondary and Primary School. After passing University Entrance exam, the author joined Dire Dawa University as law student in 2014/15 academic year and graduated in LLB degree in law in 2018/19.

## **Abbreviations and Acronyms**

CISG	Convention on International Sale of Goods
FDRE	Federal democratic republic of Ethiopia
OHADA	Organization for the harmonization business law in Africa
OHADAC	Organization for harmonization of business law in Caribbean
PECL	Principles of European Contract Law
UNCTRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
UPICC	UNIDROIT Principles of International Commercial Contracts



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## ***Abstract***

*The issue of period of limitation in contract of sale has also been regulated by international instruments like the limitation convention and UPICC. Thus, the objective of this study targeted in examining the Ethiopian courts jurisprudence while applying the rules of period of limitation in contracts of sale and assessing the similarity and difference that exists between those instruments comparatively with the Ethiopian period of limitation rules on contracts of sale to draw available lessons. To this end, a qualitative methodology which involves doctrinal legal research approach has been employed. Accordingly, it revealed that despite the designation of period of limitation rules on contract of sale to the purpose they fit, based on a qualitative analysis of the existing jurisprudence, the jurisprudence is facing problems due to the challenges in existing laws on period of limitation and the approach of courts. The compared instruments contain lessons capable of solving the challenges of Ethiopian legal system. Based on this, the study recommends consideration of organizing the scattered period of limitation rules of contracts of sale based on systematic classification and the federal supreme courts have to employ mechanisms enabling lower courts to apply decisions that have determined the scope of general contracts period of limitation rules to contracts of sale beyond publishing the decisions due to existences of a number of cassation decisions on different aspects of period of limitation reveal the controversial nature of the issue in contract of sale. From the instruments, lessons that are pertinent to eliminate those challenges and lessons that modernize the legal systems with the global aspects of international sales law have to be drawn.*

***Key words:*** *Contract of sale; Period of limitation; cassation; Limitation convention; UPICC*

# CHAPTER ONE

## 1.1 Background of the study

The formations of contracts of sale like any other kinds of contracts presuppose the expression of agreement of the parties on the subject matters of contracts and its price.<sup>1</sup> This consensually created contract doesn't last forever rather it will be extinguished through different grounds provided under international and domestic legislations. The rule of period of limitation is a principle by a holder of right who does not claim it within the period prescribed may lose his right and it is a principle by which a non-holder of right may acquire a right provided that he has come up with the requirement of the law. States around the world agree on the need of domestic and international rules that regulates the issue of period of limitation in contracts of sale. Though there is ambiguity and complexity over the terminology of period of limitation, it can broadly be defined as period of time within which an individual must commence legal proceedings against another to assert his claims.<sup>2</sup>

Most states have recognized period of limitation in their legal system for the sake of public policy.<sup>3</sup> Due to passage of significant time certain obligation shall not be enforceable because documents may be lost, witnesses may be dead, and the recollection of events long past may have become dim. Therefore for the sake of the general peace and to prevent dishonest actions, claim can't be instituted after the lapse of prescribed or after the commencement of prescribed period in case of acquisitive prescription period.<sup>4</sup> Currently, it has become a learned trend and necessary issue that many of the documents of the sale contracts at different levels are incorporating the clause of period of limitation into themselves. Accordingly, period of limitation in contracts of sale is regulated by domestic, international<sup>5</sup> and regional legal frameworks.<sup>6</sup>

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<sup>1</sup>Abraham Yohannes, 'Formation of contracts of sales'<sup>1</sup>, available at:<http://Chilot.me/knowledge-base/formation-Contract-sales/amp/> accessed 19 March 2022

<sup>2</sup>Luca G. Castellani, 'An assessment of the convention on the limitation period in the international sale of goods through case law', 58 Villanova law review 646 (2013)

<sup>3</sup>Haithama A. Haloush, 'prescription in Arab civil code and the UNIDROIT principles of international commercial contracts of 2004: a comparative analysis', 15 James cook university law review 103 (2008); 'What are limitation period under UK law and when will they come into play?' available at:<https://www.inbrief.co.uk/claim-preparations/civil-claim-limitation-periods/#/> > accessed 19 March 2022

<sup>4</sup>*Id.*

<sup>5</sup>International frameworks are, Convention on the limitation period in the international sale of goods (adopted 14 June 1974 at New York, US America and entered into force 1 august 1988) UNCITRAL limitation convention; herein after limitation convention.

The recent massive increment of international commerce has spurred efforts to unify international commercial law which regulates the exchange of goods and service<sup>7</sup>. Thus, with endeavor of increasing international trade through by the creation of a uniform law of international sales, the United Nation convention on international sale of goods promulgated.<sup>8</sup> Despite the promulgation of the CISG, claims of period of limitation arising from contracts of sale of goods are not regulated by the CISG though article 39(2) CISG sets forth an absolute time limit of two years for the buyer to give notice to the seller of any non-conformity of the goods, this does not constitute a limitation period because time limits for bringing legal actions (limitation or prescription) are generally considered to be a matter not governed by the convention.<sup>9</sup>

Questions relating to limitation of action were left untouched intentionally at time of drafting the CISG and the task given to UNCITRAL first born.<sup>10</sup> The UNIDROIT principles of international commercial contracts or UPICC is another international document that regulate the issue of period of limitation, the UPICC are a non-binding codification of contract law rules and principles designed for international trade on a global scale and their objective is to make available a set of rules that is better suited to cross-border transactions than national contract laws.<sup>11</sup> Though Ethiopia is not signatory state to the CISG and the limitation convention, there are a lot of ample opportunities for the Ethiopian trader to access the world market which paves a way for their involvement in the world market and may invite the application of those international instruments.<sup>12</sup> For instance;

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<sup>6</sup>Instance of regional instruments regulating contract of sale, Treaty on the harmonization in Africa of business law (17 October 1993, 1995) OHADA convention, the principles of European contract law 2002.

<sup>7</sup> Caroline Delisle Klepper, 'the convention for the international sale of goods: a practical guide for the state of Maryland and Its trade community', 15/2 Maryland journal of international law 235 (1991)

<sup>8</sup>United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988)

<sup>9</sup>Ulrich G. Schroeter, 'A time-limit running wild? Article 39(2) CISG and domestic limitation periods', 2 NJCL 153 (2017); Fatima Akaddaf, 'application of the United Nations convention on contracts for the international sale of goods (CISG) to Arab Islamic countries: is the CISG compatible with Islamic law principles?' ,13/1 Pace international law review 294 (2001), available at: <http://digitalcommons.pace.edu/pilr/voll3/iss1/1>>accessed 19 March 2022

<sup>10</sup>Schroeter, *Supra* note 9, at 157; Hans Smit, 'The Convention on the Limitation Period in the International Sale of Goods: Uncitral's First-Born', 23 Oxford University Press 337 (1975)

<sup>11</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, *UNCITRAL, HCCH and UNIDROIT Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales* (United Nations publication 2021) 72

<sup>12</sup>Mamenie Endale Messelu, 'A critical analysis of Ethiopian civil code governing sale of goods in the light of international convention and principles', 7 Beijing law review 133 (2016)

*The Ethiopian trader can access: the African market via COMESA; Europe, Africa, Caribbean, and Pacific countries market via Economic Partnership Agreement (EPA) of Cotonou Agreement; preferential market access to EU under Everything But Arms (EBA); US market via AGOA (African Growth and Opportunity Act); Australia, Canada, Japan, Norway, Sweden, USA and most countries of Europe market via GSP (Generalized System of Preference); China allows almost all Ethiopian export products (agricultural products and raw materials) duty free access; and Ethiopia's geographical proximity to the Middle East and Gulf countries offers great potential market access for the Ethiopian trader.*<sup>13</sup>

The Ethiopian legal system recognizes contract of sale as a special contract and regulates it under Book V title XV of the civil code.<sup>14</sup> The book has regulated various kinds of sale contracts. The special part is not the lone legal framework that regulates contract of sale but it is also accompanied by the general rules of contract in the civil code under article 1675-2026.<sup>15</sup> Claims arising from contracts of sale regarding period of limitation will be governed by those scattered period of limitation rules prescribed under the special part of the civil code and accompanied by the general contract period of limitation rules.<sup>16</sup>

Organized rule of period of limitation would make the task of finding the appropriate periods of limitation rules and the enforcement rules easy.<sup>17</sup> Similarly it is clear that the existence of organized rule that regulates claims of period of limitation in contracts of sale plays a considerable role in finding the appropriate period of limitation rule and makes the enforcement of the rules easy. The role of clear rules which prescribe when and how the rules of period of limitation specified under the general contracts can be applied for claims of contracts of sale instead of the special periods is paramount in limiting the overlap that might be created with the special period of limitation stated under the special part of the code. Despite the recognition of extinctive prescription under Ethiopian contract law as a period of time after the expiry of which

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<sup>13</sup> *Id.*

<sup>14</sup> *Civil code of the empire of Ethiopia*, Proclamation number 165/1960, NEG.GAZETA, 19<sup>th</sup> Year No.3, Addis Ababa, 5<sup>th</sup> May, 1960

<sup>15</sup> *Id.*, article 1676

<sup>16</sup> *Id.*, article 1676 (2)

<sup>17</sup> Ruth A. Kok, 'Statutory limitations in international criminal law' (PhD thesis, Amsterdam center for international law 2007) 27; Andualem Eshetu, 'revisiting the application of the ten year general period of limitation: judicial discretion to disregard Art 1845 of the Civil Code', vol.6 /1 Bahir Dar University Journal of Law 21 (2015)

a contractual right is limited. There is lack of consensus on the question as to whether the period of limitation found in the civil code is a limitation of action (as in the case of France) or a limitation of right (as in the case of Italy).<sup>18</sup> There exists clear variance between the two concepts.

*Limitation of action precludes the possibility of enforcing a right by bringing a court action; however, the right holder can assert it as a counter-claim or may invoke self-help remedies, if there are any. On the contrary, limitation of right extinguishes an obligation (right) and hence the right can't be enforced in any manner.*<sup>19</sup>

Moreover the 10 year period of limitation commences or begins to run from the day the obligation falls due or can be enforced by the creditor.<sup>20</sup> This provision is challenging for interpretation since it has recognized two different dates as commencement period alternatively.<sup>21</sup> Though the drafter on his commentary explained that those two dates are to be used together not separately as conjunction used is 'and' instead of 'or' which is adopted by the text of the code.<sup>22</sup> A period of limitation which has commenced to run can be interrupted and new period of limitation begins to commence as an effect of interruption upon the occurrence of those grounds specified under article 1851<sup>23</sup> even if the possible maximum number of interruption is not known<sup>24</sup> and the effects of interruption of the running period of limitation by other grounds than those specified under article 1852 (2) is questioned in various occasions.

## **1.2 Statement of the Problem**

Under the Ethiopian civil code, sales laws are considered as a special type of contracts to which book 5 of the special contracts under title 15 applies principally and the general contracts rules of the civil code stated under articles 1675-2026 applies additionally.<sup>25</sup> Accordingly disputes arising from contracts of sale concerning period of limitation will be regulated by period of limitation

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<sup>18</sup>Ayalew Mulugeta, 'Ethiopia.' *In international Encyclopedia of laws: contracts* (kluwer law international BV) 150 (2010)

<sup>19</sup> Id: Rene David, *Commentary on contracts in Ethiopia* (Michael kindred tr, English edition, faculty of law Haile Sellassie I university 1973) 90, available at: [www.abysinialaw.com](http://www.abysinialaw.com) accessed March 18, 2022

<sup>20</sup> *Id.*

<sup>21</sup> Mulugeta, *Supra note 18* at 152

<sup>22</sup> David, *Supra note 19*

<sup>23</sup> Civil Code, *Supra note 14*, article 1851 and 1852

<sup>24</sup> Eshetu, *Supra note 17*, at 19

<sup>25</sup> Zena Abera, 'Ethiopian sales law in the light of international laws and principles of contract', 3 open access library journal 1(2016), available at: <http://dx.doi.org/10.4236/oalib.1102719>>3 accessed 19 March 2022; Civil code, *Supra note 14*, article 1676 (2)



rules prescribed under the special part of the civil code and accompanied by the period of limitation rules of the general contract.<sup>26</sup> Despite the special part of the civil code is the primary legal framework that governs claims of contracts of sale, rules regulating period of limitation in contracts of sale can't be found in organized manner under special part of the civil code rather they are found dispersedly in the special part<sup>27</sup> unlike other kinds of special contracts which have separate section in organized manner that deals with claims of period of limitation.<sup>28</sup> This created inconsistencies and confusions in the journey of the claimants to establish their rights on the goods and other means of sale they are claiming their rights on.

The provisions of the general contracts on period of limitation dictated under articles 1845-1868 are among the widely applied rules to special contracts including contracts of sale as long as they don't contradict with special provisions on them.<sup>29</sup> However due to the absence of clear rules specifying when and how the rules of period of limitation prescribed under the general contracts can be applied for claims of contracts of sale instead of the special periods, instances of overlapping with the special period of limitation is being reflected on the jurisprudence and the presence of number of cassation decisions on different aspects of period of limitation reveal the controversial nature of the issue.<sup>30</sup> The general contracts provisions of the civil code that deals about period of limitation under article 1845-1856 of the civil code, doesn't specify and acknowledge exceptional scenarios where some of such provisions may not be applied, by taking into account the special nature of the claim or the objectives of the special laws governing such claims making their blind application through by article 1676 and 1677 to be absurd with respect to certain cases.<sup>31</sup>

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<sup>26</sup> Civil Code, *Spura note* 14, article 1676 (2)

<sup>27</sup> Instances of special period of limitation the civil code of the federal democratic republic of Ethiopia proclamation number 165/1960 article 2298 1 year period for claims on warranty against defects, article 2331 loss of right to claim forced performance due to failure to inform delay in short period after ascertaining it, article 2348 forthwith cancellation in case of nonpayment of the price where the right is expressly given by the contract, article 2354 cancelation of contract as of right by absence of response within short time due to delay of performance of an essential stipulation of the contract and article 2892 (3) loss of right to claim forced performance after lapse of 1 year after ascertaining the delay

<sup>28</sup> For example *Labor proclamation of the federal democratic republic of Ethiopia*, Proclamation number 1156/2019, FED.NEG.GAZETA, 25<sup>th</sup> Year No.89, Addis Ababa, 5<sup>th</sup> September, 2019 part 10. The recently repealed Commercial code of the empire of Ethiopia, Proclamation No.166/1960, NEG.GAZETA, 19<sup>th</sup> Year No.3, Addis Ababa, 5<sup>th</sup> May, 1960, article 674 under book 3 title 3 section 3.

<sup>29</sup> George krzeczunowich, *Formation and effects of contracts in Ethiopian law* (faculty of law, AAU) 10 (1983): Civil code, *Supra note*, article 1676 (2)

<sup>30</sup> Eshetu, *Supra note* 17, at 2

<sup>31</sup> *Id.*, at 19

On top of this, the civil codes provision of period of limitation that regulates general and special contracts including contracts of sale accused for its failure to incorporate the intention of the drafter of the civil code.<sup>32</sup>In the Ethiopian civil code is the limitation of right, found in the Italian civil code, and as opposed to the limitation of action as it is embodied in the French civil code.<sup>33</sup>Similarly the date of commencement of period of limitation specified by the civil code is another challenge in applying the rules of period of limitation in contracts of sale which was not the intention of the drafter, using the conjunction ‘and’ instead of ‘or’ which has been used in the text of the law.<sup>34</sup> According to article 1846, period of limitation commences from the day the obligation become due or the rights under the contract could be exercised hence a party to contract of sale has two optional starting point of date on which the period starts to run, the date the obligation that has emanated from contracts of sale is due or the rights under the contract of sale could be exercised<sup>35</sup> and this provision is alleged to have inbuilt weakness which hinder the uniform application of rules of period of limitation in Ethiopian jurisprudence for contracts of sale.

Furthermore the provisions of the civil code has failed to incorporate the possible maximum number of allowed interruption of the running period of limitation<sup>36</sup> and the maximum period of limitation is unknown since each interruption results on the commencement of new 10 year period of limitation which defeat the reasons of having the rules of period of limitation. Additionally the effects of interruption of the running period of limitation by other grounds than those specified under article 1852 (2) is vague since the effect of interrupting the commenced period by other methods than those stated ground is not prescribed.<sup>37</sup>

There are different opportunities that Ethiopian traders can access world markets and opens the door for application of the limitation convention and UPICC on Ethiopian traders.<sup>38</sup> International instruments like CISG, UPICC, PECL and UCC will applies to Ethiopian traders concluding international contracts of sale on 3 grounds hence first through by freedom of contract<sup>39</sup>, second

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<sup>32</sup>Mulugeta, *Supra note*18

<sup>33</sup> David, *Supra note*,19

<sup>34</sup>*Id.*

<sup>35</sup> Civil Code, *Supra note* 14,article 1846

<sup>36</sup>*Id.*, article 1852: For instance the labor proclamation, *Supra note* 28,article 165 (3) allows the interruption of the commenced period of limitation up to the maximum of 3 times in aggregated

<sup>37</sup>Mulugeta, *Supra note*18,at 153

<sup>38</sup>Endale, *Supra note* 12,at 134

<sup>39</sup> Abera, *Supra note* 25

by rules of private international law<sup>40</sup> and thirdly by virtue of *lex mercatoria*.<sup>41</sup> The limitation convention sets general limitation period of 4 years<sup>42</sup> that can be extended or recommenced up to maximum limitation period of 10 years which is a fixed period.<sup>43</sup> While in the UPICC the period of 3 years is adopted as a general period of limitation<sup>44</sup> and 10 years as a maximum period of limitation.<sup>45</sup> The specified period commences on the date on which the claim accrues as per the limitation convention<sup>46</sup> it begins to run on the day after the day the creditor knows or ought to know the facts as a result of which the creditor's right can be exercised as per the UPICC.<sup>47</sup> The instruments also regulates certain questions pertaining to the effect of commencing proceedings and also addresses rules on the cessation and extension of the limitation period, which ceases when the claimant commences judicial or arbitral proceedings or when it asserts claims in an existing process.

As can be understood, both instruments has recognized dual period of limitation. Dual period of limitation refers to the adoption two different kinds of period of limitation, namely general period of limitation and maximum period of limitation.<sup>48</sup> Under the Ethiopian legal system we can't find such kinds of classification, due to this a period of limitation may extend to more than 10 years when it is interrupted after its commencement. When it is thoroughly looked at Ethiopian civil code on the limitation period concerning law of sale lacks consistency, coherency and clarity in light of these international instruments. Not only that the code also shows a kind of backwardness and inability to run up to date for these instruments are far more established and well set than the code which is dispersedly and confusedly incorporated the period of limitation as to claim the rights or be debarred from claiming. Therefore, it is found to be mandatory to comparatively study with these international instruments in order to sort out and tackle the existing problems as to the limitation period. Hence, this research is interested in examining the Ethiopian courts jurisprudence on period of limitation in contracts of sale from evidence

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<sup>40</sup> Endale, *Supra note 25*, at 133

<sup>41</sup> *Id.*, at 135: Limitation Convention, *Supra note 5*, article 3(1) (b) and (c): UPICC, *Supra note 5* preamble

<sup>42</sup> Limitation Convention, *Supra note 5*, article 8

<sup>43</sup> *Id* article 23

<sup>44</sup> UPICC, *Supra note*, article 10.2 (1)

<sup>45</sup> *Id* article 10.2 (2)

<sup>46</sup> Limitation Convention, *Supra note 5*, article 8

<sup>47</sup> UPICC, *Supra note 5*, article 10.2

<sup>48</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 'UNCITRAL, HCCH and UNIDROIT *Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales*' (2021) 66

collected from the federal supreme court cassation decisions as instrumental case study and it also investigate the state of the legal frameworks on period of limitation for contracts of sale under the Ethiopian civil code in comparison with the UNCITRAL limitation convention and UPICC to grasp available lessons by analyzing the difference and similarity that existed between those instruments. In lieu of the aforementioned issues, the following objectives of the study and research questions have been framed:

### **1.3 Objectives of the Study**

The study has the following general objective and specific objectives.

#### **1.3.1 General Objective**

The overall objective of this study is to investigate the legal state of rules of period of limitation in contracts of sale comparatively with the UNCITRAL limitation convention and UPICC and typically examining Ethiopian courts practical states in applying the rules of period of limitation in contracts of sale by taking the decision's rendered by the federal supreme court cassation bench as the substantial instrumental case study. Hence the general concern of the study gives due emphasis on examining the jurisprudence and textual comparison between those laws to extracts lesson available.

#### **1.3.2 Specific Objective**

Under the main research objective, the following specific objectives are addressed:

- ❖ To investigate any lessons to be taken from the limitation convention and UPICC for Ethiopian legal systems.
- ❖ To Examine the Culture of Courts in Employing Interpretation of Cassation Bench Interpretations.
- ❖ To Examine the Rules of Commencement of Period of Limitation in Ethiopian Contract of Sales.
- ❖ To examine Ethiopian courts jurisprudence in applying rules of period of limitation in contracts of sale.
- ❖ To Examine the Judicial Understanding on Enforcement Rules of Period of Limitation in Contract of Sale.

- ❖ To examine practical challenges that hinder effective application of rules of period in contracts of sale in Ethiopia.

#### **1.4 Research Questions**

Under the umbrella of the research problems and being in proper correspondence with the touched research problems, the following research questions are addressed:

- ✓ What lessons can be drawn from the limitation convention and UPICC for Ethiopian legal system?
- ✓ What is the jurisprudential state of period of limitation in contracts of sale under Ethiopian courts?
- ✓ What is the Ethiopian Culture of Courts in Employing Interpretation of Cassation Bench Interpretations?
- ✓ What is the rule of Commencement of Period of Limitation in Ethiopian Contract of Sale?
- ✓ What is the Judicial Understanding on Enforcement Rules of Period of Limitation in Contract of Sale?
- ✓ What are the practical challenges that hinder effective application of rules of period in contracts of sale in Ethiopia?

#### **1.5. Scope of the Study**

The thematic scope of this study is limited to investigate the similarity and difference that exist between the UNCITRAL conventions on the limitation period in the international sale of goods of 1974 and the UPICC with the Ethiopian period of limitation laws in contracts of sale to extract lessons, if any, to Ethiopian legal systems and examining Ethiopian courts jurisprudence in applying the rules of period of limitation in contracts of sale by taking the decision's rendered by the federal Supreme Court cassation bench. Thus assessing compatibility of Ethiopian laws on period limitation in contract of sale with those instruments is not part of this study. This because is the nature of the study is comparative legal study which assess the similarity and difference

between two or more laws to obtain understanding of the content of the laws and lessons to be drawn.<sup>49</sup>

## **1.6. Methodology and Methods of the Study**

Owing to the nature of research questions and the overall driving objectives of the study, the study is used doctrinal legal research approach. Doctrinal legal research is a research employed into legal doctrines through analysis of statutory provisions and cases by the application of power of reasoning<sup>50</sup>, Hence the study has employed doctrinal legal research approach because the study will examine laws of period of limitation in contracts of sale, decision and interpretation granted by Ethiopian court under Ethiopian laws on contract of sale in comparison with some significant and substantial international and regional conventions of sale laws. The analysis is done to establish the variation in the situation, phenomenon or problem.<sup>51</sup> As the overall goal of the study aimed at describing and investigating the jurisprudence of Ethiopian courts on period of limitation for claims of contracts of sale and comparative study of the UNCITRAL convention on the limitation period and UPICC with Ethiopian period of limitation rules on contracts of sale by focusing on textual data. More specifically the comparison is going to be made with the UNCITRAL limitation Convention and UPICC to extract their lacunas.

## **1.7. Sources of Data**

In order to attain the objectives of the research, the study will be conducted by using both primary and secondary data sources. Primary data sources includes Ethiopian period of limitation laws on contract of sale, decisions and interpretation given by the cassation bench over period of limitation in contractual claims for sale, UNCITRAL limitation convention and UPICC is used. In addition to primary data sources secondary data sources like, books, journals and other online sources from internet and some other websites will be included in the research.

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<sup>49</sup>Edward J. Eberle, 'The methodology of comparative law', 16/1 Roger Williams university law review 50 (2011); available at: <http://docs.rwu.edu/rwu/voll6/iss/1/2/>> accessed 28 March 2022; Muhammad Imran Ali, 'comparative legal research-building a legal attitude for a transnational world', 26/40 journal of legal studies 66 (2020)

<sup>50</sup>S. N. Jain, 'Doctrinal and non-doctrinal legal research', 17/4 Indian Law Institute 516 (1975)

<sup>51</sup>Ranjit Kumar, *Research methodology a step-by-step guide for beginners* (3rd edition, Sage Publications Ltd 2011); Richard Tewksbury, 'Qualitative versus Quantitative Methods: Understanding Why Qualitative Methods are Superior for Criminology and Criminal Justice', 1/1 Journal of Theoretical and Philosophical Criminology 38 (2000)

### **1.8. Significance of the Study**

Since the study area of this research is hardly and rarely studied, it is believed that the study has its own immense significance to contribute on the understanding of rules of period of limitation in contracts of sale in Ethiopia in comparison with those mentioned instruments. The study will also be contributing its part in creating awareness concerning period of limitation rules in those international instruments compared to Ethiopian period of limitation rules on contracts of sale for Ethiopian traders who have access to international markets. As the study examine the jurisprudential state of rules of period of limitation for contracts of sale by Ethiopian courts, it will identify loopholes and strength and ways forward to cure to be identified gaps. The study will also contribute its part to the development of jurisprudence of period of limitation in contract of sale of in Ethiopia.

### **1.9 Limitations of the Study**

At domestic level in Ethiopia there are very few materials written on the issue of period of limitation in contract of sale so it will have exerted influence by creating shortages of sources.

### **1.10 Organization of the Study**

This study is organized in four chapters. The first chapter of the study encompasses background for the study, problems stated for the study which includes question the study aims to answer, the general and specific objective of the study, methodology and methods of the study with source of data, significance of the study, limitation and organization of the study. The second chapter has sated conceptual frameworks on period of limitation and contracts of sale and international legal framework on period of limitation on contract of sale. Chapter three deals about Ethiopian legal frameworks regulating contracts of sale and period of limitation in contracts of and it also addresses the issue of the jurisprudence of Ethiopian courts in applying rules of period limitation for contracts of sale and comparative study of Ethiopian period of limitation rules with those instruments to grasp lesson available.

### **1.11 Literature Review**

There is no more developed literature with regard to this title. But, some Literature that develop Regarding this study are the Following; Andualem Eshetu, in the Article titled “Revisiting the application of the ten year general period of limitation: Judicial discretion to disregard Art.1845 of the civil code” addressed the issues whether the period of ten year is appropriate for all civil claims or not and assess where as general period of limitation could be disregarded by the

deseccration of the court under the guidance of certain considerations. Accordingly it assess the issue whether the court should always apply the ten year General Period of Limitation by the mere fact that the law provides neither a special period of limitation nor exclusionary rule, or ought there be a little room where the court may apply some other period of limitation to other similar claims by analogy; or exempt certain claims from the subject of limitation before the move to apply Article 1845 of the Civil Code, which is explicitly stipulated for contractual claims. Andualem Eshetu argued that even though the argument advocating for the general application is widely shared view and the reliance on judicial discretion to override a limitation period would render the law too uncertain, the door should not be totally closed for judicial deseccration whereby the period maybe disregarded on the basis of different considerations. Though his study concerned with period of limitation, its concern is limited to article 1845 of the civil code and extends its scope to contractual and non-contractual matters unlike the study are of this thesis which limit the scope on contract of sale and extends its concern to period of limitation rules including article 1845 of the civil code.<sup>52</sup>

Mamenie Endale, In the Article titled “A Critical Analysis of Ethiopian Civil Code Governing Sale of Goods in the Light of International Convention and Principles” analyzes the 1960 Ethiopian civil code governing sales of goods in the context of international convention and principles. He argues that the Ethiopian civil code governing sale of goods is no compatible with the main provisions of the international convention and principles. In order to examine and prove this hypothesis, particular attention was directed towards examining the main provisions of the international convention and principles i.e. CISG, UPICC, PECL and UCC and related this to analyze the Ethiopian civil code governing sale of goods. Mamenie Endale, in the study it assess the Compatibility of Ethiopian sales law with international instrument on the area of scope of applicability, interpretation, formation of the contract, obligation of the parties, risk of loss, breach of contract and remedies<sup>53</sup> without assessing/analyzing Period of Limitation, he is not assess issue of period of limitation, and otherwise my study is not assessing compatibility of Ethiopian laws on period limitation in contract of sale with those instruments. This because, the nature of the study is assess the similarity and difference between two or more laws to obtain understanding of the content of the laws and lessons to be drawn. Zena Abera, emphasize on

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<sup>52</sup> Eshetu, *Supra note 17*, at 2

<sup>53</sup> Abera, *Supra note 12*, at 3



Ethiopian sales law comparatively with that of CISG, PECL and UNIDROIT principles, it has revealed various opportunity of application of those instruments for Ethiopian traders and has found out provisions that are outdated in Ethiopia's civil code even if sales law was adopted considering the then time international standards and principles of contract.<sup>54</sup> Zena, in the study it is not cover issue of period of Limitation.

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<sup>54</sup> Abera, *Supra note 25*,at 1

## **CHAPTER TWO: GENERAL OVERVIEW ON PERIOD OF LIMITATION IN CONTRACT OF SALE.**

### **2.1 Introduction.**

This chapter of the paper discusses some basic concepts related to period of limitation on contracts of sale and subsequent issues relays on. Accordingly, the definition of period of limitation and contracts of sale, international legal frameworks governing period of limitation in contract of sale, justifications for existences of period of limitation in sale contracts, approaches to period of limitation in civil law and common law legal systems, the implication of the approaches of the legal systems on contracts of sale and duration and commencement of period limitation are briefly covered under the following part of the paper

### **2.2 Defining Contracts of Sale and Period of Limitation.**

#### **2.2.1 Defining Contract of Sale.**

The concept of contract of sale does not have similar meaning around the world. However there are various kinds of definitions granted for the term contract of sale. Scholastically it is defined as ‘sale contract is the legal act by which the parties, the seller and the buyer, commit each other to transfer the property of a good in return for payment of a price.’<sup>55</sup> When the sale contract broadly defined it covers the following concepts;

*A sale consists in the transfer of the general property interest in goods from the seller to the buyer for a consideration called the price. A contract for sale (or sales agreement) includes both a present sale of goods and a contract to sell goods at a future time. A present sale means a sale which is accomplished by the making of the contract. The concept of sale necessarily implies contractual arrangements and excludes gratuitous transfers.*<sup>56</sup>

Despite the absence of universally accepted definition for term contract of sale, it is defined as contract whereby one person who obliges himself to transfer to another person the ownership of certain things.<sup>57</sup> Generally the above definitions posit that contracts of sale imposes reciprocal

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<sup>55</sup> Daniel Berlingher, ‘The effects of the international contacts for sale of goods’, 19/33 Journal of legal studies 96 (1975)

<sup>56</sup> Richard D. Cudahy, ‘The sale contract-formation’, 49/1 Marquette law review 107 (1965)

<sup>57</sup>Yohannis, *Supra note 1*

obligation between the buyer and seller. The buyer is obliged to pay the agreed price while the seller performs his obligation of transferring the property or the object of the contract.

### **2.2.2 Defining Period of Limitations.**

There are different factors that affect legal claims arising from contracts of sale. One of the primary factor affecting legal claims arising from contracts of sale is period of limitation. The development of periods of limitation dates back to the ancient Roman law.<sup>58</sup> There are different terminology employed to refer period of limitation and words like ‘prescription’ or ‘period of prescription’ and ‘limitation or period of limitation’ are often used interchangeably; they are actually two different but related concepts.<sup>59</sup> Black’s Law Dictionary defines limitation of actions as ‘The effect of the lapse of time in creating and destroying rights.’<sup>60</sup> Pursuant to Black’s Law Dictionary the general term prescription contain two concepts which are extinctive (negative) prescription and acquisitive (positive) prescription.

*Extinctive (negative) prescription refers to the extinction of a title or right by failure to claim or exercise it over a long period whereas acquisitive (positive) prescription refers to the acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period.*<sup>61</sup>

When we generally scrutinize this definition, the term extinctive (negative) prescription which is also known as liberative prescription is a bar to a law suit resulting from its untimely filing. The term is essentially the civil law equivalent of ‘limitation’ which is defined as ‘a statutory period after which a lawsuit or prosecution cannot be brought in court.’<sup>62</sup>

While the term acquisitive (positive) prescription is defined as a mode of acquiring ownership or other legal rights through possession for a specified period of time.<sup>63</sup> Such mechanism of acquiring ownership was known to the Romans as usucaption which has descended to modern

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<sup>58</sup> Martin Clausnitzer, ‘*The Statute of Limitations for Murder in the Federal Republic of Germany*’, 29/2 Cambridge University Press 473 (1980)

<sup>59</sup>Eshetu, *Supra note 17*,at 5

<sup>60</sup> Henry Campbell, *Black’s Law Dictionary* (Bryan A. Garner, Tiger Jackson and Jeff Newman eds, 9th edition, West a Thomson business Reuters 2009) 1302

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*: Eshetu, *Supra note 17*,at 5

<sup>63</sup> *Id.*

jurisprudence under the name of ‘prescription.’<sup>64</sup> Accordingly ‘acquisitive (positive)’ prescription or ‘usucaption’ as called by Romans sets a rule by which an individual who appropriates a property, which has no claimant, in his possession for a certain period of time can be the owner of the property when the period prescribed under the law has expired along with other legal requirements.<sup>65</sup> Scholastically period of limitation defined in various ways having same concepts. It is defined as ‘period of time within which an individual must institute a legal proceeding against another party.’<sup>66</sup>

Period of limitation prescribe a time limit for a claim being asserted after the lapse of a certain period of time hence once after the lapse of the prescribed time (period) can’t bring legal action for legal claim he assert. Another definition forwarded for the term period of limitation states that, limitation period are periods recognized by all legal systems which influence the passage of time on rights of the parties that may bar their possible claims.<sup>67</sup>

The drafter of the Ethiopian civil code Rene David defines period of limitation as a means which extinguishes obligation when a creditors fails to exercise his right for many years and it is something that is recognized by all legal systems.<sup>68</sup> Domestic literatures have tried to give a meaning for period of limitation in the following way; ‘period of limitation is a legally specified period beyond which an action may be defeated or a property right doesn’t continue.’<sup>69</sup> From the perspective of international contracts of sale period of limitation is defined as ‘a period of time within which a party under a contract for the international sale must commence legal proceedings against the other party to assert a claim arising from the contract or relating to its breach, termination or invalidity.’<sup>70</sup> Internationally the law that govern period of limitation for contracts of sale goods is the limitation convention.<sup>71</sup> However it doesn’t define the word period of limitation but sets the limitation period at 4 years that could be extended up to 10 years on

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<sup>64</sup> Henry Campbell, *Supra note 60*, at 1684; Eshetu, *Supra note 17*, at 6

<sup>65</sup> Tilahun Teshome, *Basic Principles of Ethiopian Contract Law* (2nd edition, the Book Center) 181 (2002); Eshetu, *Supra note 17*, at 5

<sup>66</sup> Castellani, *Supra note 2*, at 646

<sup>67</sup> Ingeborg Schwenzer and Simon Manner, ‘*The claim is time-barred: the proper limitation regime for international sales contracts in international commercial arbitration*’, 23/2 *Arbitration International* 294 (2007)

<sup>68</sup> David, *Supra note 19*, at 89

<sup>69</sup> Efreem Asmare, *Period of limitation under Ethiopian law* (Nebadanplc) 11 (2015)

<sup>70</sup> Yearbook of the United Nations Commission on International Trade Law, *Convention on the Limitation Period in the International Sale of Goods note by the Secretariat* (1988) 19 part two 113, available at: <https://undocs.org>> accessed 28 March 2022

<sup>71</sup> Limitation convention, *Supra note 5*, article 1(1) and 3

different ground stated under the convention.<sup>72</sup> Generally the above documents have defined period of limitation in their own mechanisms and to the purposes they think fit but it can be understood that all of them commonly accepts the belief that period of limitation is a period legally specified within which certain legal claim have to be instituted before court and if not claimed within specified period it will result on the extinguishment of the claim.

### **2.3 Justifications for Period of Limitation in Contract of Sale.**

Though the justifications asserted may vary depending upon the nature of cases or the policy objectives associated with the claims at hand, different rationales has been forwarded justifying the need of period of limitation in contracts of sale.<sup>73</sup> First it's justified from the diligence perspective.<sup>74</sup> Once after the conclusion of contracts of sale, dispute may arise or there could be a claim to be instituted and the diligence justification posits that

*The plaintiff who have concluded contract of sale agreement with defendants ought not to be permitted to sit upon their laurels. Permitting the plaintiff to delay is regarded as tantamount to granting license to pursue a course of action manifestly unfair to the defendants. A plaintiff could exploit the delay in order to gather evidence so that the defendant who remains naively unaware is both caught by surprises and placed in position of considerably disadvantage in his ability to prepare his defense.<sup>75</sup>*

As per the above justification, the need of period of limitation specifying certain period to which a legal claim have to be instituted arising from contract of sale relies on the protection of defendant from dormant plaintiff. The defendants should not be worried forever due to the inaction or delay of the plaintiff in exercising his right; therefore, the former has to be relieved from his liability at one point via the defense of limitation.<sup>76</sup>

The second justification dictating the need of period of limitation in contract of sale stated from the evidentiary reasons.<sup>77</sup>

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<sup>72</sup> *Id.* article 8 and 23

<sup>73</sup> Eshetu, *Supra note* 17, at 10

<sup>74</sup> Janet Mosher, 'Challenging limitation periods: civil claims by adult survivors of incest', 44/2 the University of Toronto Law Journal 184 (1994)

<sup>75</sup> *Id.*

<sup>76</sup> Eshetu, *Supra note* 17, at 11; Teshome, *Supra note* 62, at 181

<sup>77</sup> Mosher, *Supra note* 74, at 190

*With the passage of time both records and witnesses become unavailable, memories fade, and fair decision-making is potentially compromised. Stale claims raise the possibility that the court will be required to decide upon an incomplete and/or inaccurate factual record, compromising the integrity of its decision making.*<sup>78</sup>

For the sake of preserving and avoiding risks related to evidence showing contracts of sale or claims to contracts of sale, there have to be proscribed period extinguishing obligation if claim is not instituted timely. As the desire and the evidentiary capacity, of the creditor to establish his case is presumed to be weakened with the lapse of time, the presence of a time limit may serve as alarm clock that warns the dormant creditor to exercise his right in due time before the evidentiary capacity thereto deteriorates.<sup>79</sup>

The presence of period of limitation for contracts of sale is also justified by pursuing of claim arising from contract of sale in timely fashion.<sup>80</sup>The absence of period specifying time for institution of claim resulting from contract of sale erodes the predictability of the decision. By providing a time frame within which a claim may be pursued, a statute of limitations provides a sense of predictability and finality to disputes.<sup>81</sup>

As the above rationales reflect, period of limitation on contracts of sale are justified with a view to protecting different interest of creditors right as it protect him from loose of evidence, protect the integrity of judicial decision making in general by avoiding decision rendered upon an incomplete and/or inaccurate factual record and it also benefits the debtors by relieving him from certain obligation after the expiry of prescribed period.

#### **2.4 Approaches to Period of Limitations under Different Legal Systems.**

While there are many legal issues which are dealt with in the same way by the civil law and common law legal systems, there remain also significant differences between these two legal systems related to legal structure, classification, fundamental concepts and terminology.<sup>82</sup> Hence the following part of the paper aimed at showing the legal structure and classification of period

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<sup>78</sup>*Id.*

<sup>79</sup>Eshetu, *Supra note 17*, at 10

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*

<sup>82</sup>Caslav Pejovic, 'Civil law and Common law: two different paths leading to the same goal', 32/3 Victoria University of wellington law review 817 (2001)

of limitation from the perspective of contracts of sale under the two legal systems (common law and civil law).

#### **2.4.1 The Approaches to Period of Limitation under the Common Law Legal Systems.**

The followers of common law legal systems employ the term limitation period (or a statute of limitation) to refer period of time within which an individual institute legal proceedings.<sup>83</sup> In most common law jurisdictions, limitation periods in civil cases are imposed by a separate statute or an enactment often named as ‘Limitation Acts’ or ‘statutes of limitation.’<sup>84</sup> Those limitation statutes have detailed provisions that provide conditions under which a legally fixed period of limitations can be enforced, suspended, interrupted and waived. The common law legal systems classify limitation of actions as a question of procedural law.<sup>85</sup>

Besides having those general execution provisions, the statutes often annexed schedules of periods of limitation that contains the description of the suits (based on category of cause of action and the types of reliefs sought), the applicable period of limitation thereto and its commencements.<sup>86</sup>

Due to the presence of separate statutes that governs period of limitation; the litigation procedure would not be as such difficult, it will be easy for judges to find the appropriate period for their case at hands and makes the enforcements rule easy for concerned stakeholders.

*However, it is important to note, that even though a separate statute of limitations may set up limitation periods for many different types of claims, it does not mean that it can provide a comprehensive limitation rule. As a result of this, the gap in a given limitation statutes are often filled by special pieces of legislations which may set the limitation period for certain types of special claims. For instance, the Limitation Act of 1980 is a prominent civil statute of limitation in England.*<sup>87</sup>

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<sup>83</sup> Kazuaki Sono, ‘unification of limitation period in the international sale of goods’ ,35/5 Louisiana law review 1128 (1975)

<sup>84</sup> Vince Morabito, ‘Statutory Limitation Periods and the Traditional Representative Action Procedure’ , 5/1 Oxford University Commonwealth Law Journal 113 (2005) ; Eshetu, *Supra note 17*,at 20

<sup>85</sup>Schwenzer and Manner, *Supra note 67*,at 296

<sup>86</sup>Eshetu, *Supra note 17*,at 20

<sup>87</sup>*Id.* at 21

#### **2.4.2 The Approaches to Period of Limitation under the Civil Law Legal Systems.**

As per the tradition of civil law legal systems, limitation provisions are typically part of the Civil Code and are often known collectively as period of prescription.<sup>88</sup> Laws governing period of limitation doesn't have separate statute that only deals with prescription however they are found in different parts of the civil code. Despite the belief that the adoption of uniform a rule of limitation could minimize the adverse effects of the uncertainty of the law of limitation on commercial transactions and thereby contribute for the development of trade, the civil law legal systems doesn't have separate statute dealing with period of limitation.<sup>89</sup>

Period of limitation are part of substantive laws under the civil law legal systems<sup>90</sup> therefore the lapse of prescribed period extinguishes an obligation (right) and hence the right can't be enforced in any manner. Claims arising from international sale contracts concerning period of limitation would be substantive matter which extinguishes an obligation resulting on non-enforceability of rights. As we can understand from the rules of both legal systems they have different rules that govern the issues of period of limitation in international sale contracts which have played its own role for varied application of period of limitation.

#### **2.4.3 The Implication of the Approaches of the Legal Systems on Period of Limitation in International Contracts of Sale.**

The variance of understanding of period of limitation between the two legal systems is reflected above beginning from employed terminology to refer the matter. This difference in terminology is more than a matter of nomenclatures. It reflects significant differences in substance in approaching the subject matter.<sup>91</sup>

Problems are inherent in international commerce accordingly if certain disputes arise resulting from international sale contract concerning period of limitation in common law, there will be organized rules that govern the issue. As mentioned above the common law countries consider period of limitation as procedural matters,<sup>92</sup> hence any dispute arising from international sale contracts concerning period of limitation would be procedural issues that results on a procedural bar against bringing legal proceedings after the lapse of the period specified. The proponents of

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<sup>88</sup>*Id.*, at 20

<sup>89</sup>*Id.*; Limitation Convention, *Supra note 5* preamble

<sup>90</sup>Schwenzer and Manner, *Supra note 67*, at 296

<sup>91</sup>Sono, *Supra note 83*, at 1128

<sup>92</sup>Schwenzer and Manner, *Supra note 67*, at 296



common law systems court will hold the claim to be barred after the expiry of the specified date because the passage of the prescribed period constitutes a procedural bar for bringing legal proceedings in common law courts. The fact that the law applicable to the contract provides a 30 year prescription period is irrelevant once the rule concerning the procedure precluded the pursuit of the legal proceeding.<sup>93</sup>

The institution of proceeding in civil law state for claim of period of limitation that has sourced from international contracts of sale may yield different effect from the above legal system in the same matter. Period of limitation are part of substantive laws under the civil law legal systems<sup>94</sup>therefore the lapse of prescribed period extinguishes an obligation (right) and hence the right cannot be enforced in any manner. Claims arising from international sale contracts concerning period of limitation would be substantive matter which extinguishes an obligation resulting on non-enforceability of rights. As we can understand from the rules of both legal systems they have different rules that govern the issues of period of limitation in international sale contract which have played its own role for varied application of period of limitation.

## **2.5. Durations and the Commencements of Period of Limitations.**

The duration and commencement of period of limitation varies depending on the jurisprudence of the country and the cause of actions of the claims. Duration of period of limitation answer the question how long the prescribed period lasts<sup>95</sup> while the commencement of period of limitation refers the time when the specified period begins to run.<sup>96</sup> In accordance to the definitions, duration of period of limitation is a concept related with the length of the period and the commencement of period of limitation is something linked with the starting date for running of period of limitation.

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<sup>93</sup>Sono, *Supra note 83*, at 147

<sup>94</sup>Schwenzer and Manner, *Supra note 67*, at 296

<sup>95</sup>Richard Farnhill, 'know your limits: making the most of limitation periods'(Allen and Overy, 2014), available at:<https://www.allenoverly.com/en-gb/global/news-and-insights/publications/know-your-limit--making-the-most-of-limitation-periods>> accessed 18 March 2022

<sup>96</sup> Susan Bright and Charlotte Bull, 'limitation periods: how much time is there to bring clam?' (Housing after grenfe, 2019) available at:<https://www.law.ox.ac.uk/housing-grenfell/blog/2019/05/limitation-periods>> accessed 18 March 2022

## 2.6 International Legal Frameworks Governing Period of Limitation in Contract of Sale.

### 2.6.1 The Limitation Convention and Its Development.

Most countries legal systems around the world prescribe a claim being asserted after the lapse of a certain period of time. The rationale for such limitation aimed at avoiding the institution of legal proceedings at such a late date that the evidence relating to the claim is likely to be unreliable or lost, and to protect against the uncertainty that would result if a party were to remain exposed to unasserted claims for an extensive period of time or even forever.<sup>97</sup>

Despite the existence of rules regulating the issue, there exists various difference among legal systems with respect to the conceptual basis for doing so, producing in significant variations in the duration of the limitation period and the rules regulating the claims after that period.<sup>98</sup> The variance among the legal systems has the capacity to greatly complicate the adjudication of claims arising from international sales transactions.<sup>99</sup>With the belief to tackle those challenges, the limitation convention was prepared and adopted in 1974; accordingly the following part addresses historical development of the limitation convention and its scope of application.

The limitation convention regarded as the ‘firstborn’ of the UN commission on international trade law (UNCITRAL) because it is the first convention developed by UN commission on international trade law (UNCITRAL).<sup>100</sup> In the year 1968 the commission in its first session decided to request studies to be made on time limits and limitation (prescription) from interested member states.<sup>101</sup>

*The convinced commission by the conducted studies and the subsequent debates, appointed a working group in 1969. The commission charged the working group to study the topic with a view to the preparation of a preliminary draft of an international convention. The working Group reported in 1971 and the commission adopted a draft text at its 1972 session. On the commission's recommendation, the UN general assembly convoked a diplomatic conference in New York in May 1974. This conference adopted a*

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<sup>97</sup>Castellani, *Supra note 2*, at 646

<sup>98</sup>*Id.*

<sup>99</sup>*Id.*

<sup>100</sup>Smit, *Supra note 10*, at 337

<sup>101</sup> Peter Winship, ‘*the convention on the limitation period in the international sale of goods: the United States adopts UNCITRAL's Firstborn*’, 28/4 *the international lawyer* 1071 (1994)

*draft convention on June 12, 1974. In 1980, as noted above, the diplomatic conference that adopted the UN sales convention amended the 1974 text by a protocol.*<sup>102</sup>

On 14 June 1974, 65 nations approved at the United Nations the text of a convention on the limitation period in the international sale of goods.<sup>103</sup> Most part of the UNCITRAL's fourth session held in 1971 while all of its fifth session held virtually in 1972 that was concerned in preparation of this Convention. The final draft that came out of these sessions was submitted to the UN general assembly, which referred it to the UN conference on prescription (limitation) in the international sale of goods. Also referred to this conference was a commentary on the draft prepared by the secretariat in consultation with the reporter of UNCITRAL.<sup>104</sup> Beginning from May 20 until June 14, 1974 conference to which all members of the UN had been invited was held. On the same day on which the text was approved, 8 nations signed and thus signified their intention to ratify the convention.<sup>105</sup> Both the 1974 text and the 1980 Protocol entered into force on August 1, 1988. As directed by article XIV (2) of the 1980 Protocol, the Secretary-General of the United Nations has subsequently prepared a consolidated text. Currently 23 states are parties to the amended convention whereas 30 states are parties to the convention which is not amended.<sup>106</sup>

The limitation convention complements the United Nations convention on contracts for the international sale of goods. Both texts were prepared within the UN commission on international trade law and approved by diplomatic conferences. Although the original text of the Limitation convention was adopted in 1974, the 1980 diplomatic conference that approved the sales convention also approved a protocol to the earlier limitation convention to ensure congruence between the two conventions spheres of application.<sup>107</sup>

The limitation conventions historical development and its preamble depicts strong desire for establishing uniform rules governing the period of time within which a party to a contract for the international sale of goods must commence legal proceedings against another party to assert a claim arising from that contract, or relating to its breach, termination, or validity. By doing so,

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<sup>102</sup> *Id.*

<sup>103</sup> Hans Smit, *Supra note 10*, at 337

<sup>104</sup> *Id.*

<sup>105</sup> Available at: <https://treaties.un.org/page/VViewsDetails.aspx?src=TREATY&chapter=10&clang=en> accessed may 14 2022

<sup>106</sup> *Id.*

<sup>107</sup> Winship, *Supra note 101*, at 1073

the limitation convention brings clarity and predictability to an aspect of great importance for the adjudication of a claim which would facilitate the development of world trade.<sup>108</sup>

With regard to the structure and sphere of application of the limitation convention that regulates period of limitation in international sale of goods, it is classified into four parts. The first parts of the limitation convention contain the actual prescription provision to which legal proceedings emanating from contracts of sale of goods shall be instituted. The second, the third and the fourth part of the convention regulates the implementation, declaration and reservation respectively.<sup>109</sup>

The limitation convention doesn't cover every aspect of prescriptions resulting from contracts of sale of goods; there is subject matter which is under its reach and subject matter beyond its coverage.<sup>110</sup> Its scope and coverage are limited in a variety of ways however article 1(1) stipulates the principal rule. Accordingly article 1 (1) states that the convention covers all claims of a buyer and a seller against each other arising from a contract for the international sale of goods or relating to the breach, termination or invalidity of that contracts. All in all the definition under article 1(1) of the convention means that all contractual claims as well as, say, a claim for unjustified enrichment on account of the nullity of a contract come within the scope of the uniform rule on the limitation period. However, extra-contractual obligations are beyond its scope. This rule purports to settle a number of problems.

First, "by employing the phrase 'against each other', the convention makes it clear that only claims based on privity of contract are covered and that claims against third parties, whether or not based on a theory of a warranty traveling with the chattel, are excluded." The exclusion towards third party was clear and deliberate because there was a strong measure of agreement that product liability claims and their likes should not come within the reach of the Convention.<sup>111</sup> The convention doesn't only exclude product liability it even excludes any claims related to personal injury based on privity of contract.<sup>112</sup>

Secondly the conventions crystal clear stipulation of coverage's of claims of breach, termination or invalidity eliminates any uncertainty that may arises from whether a contract of international sale of goods by specifically addresses them.<sup>113</sup> Thirdly article 1(1) of the limitation conventions

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<sup>108</sup>Castellani, *Supra note 2*, at 646; Limitation Convention, *Supra note 5* preamble

<sup>109</sup>Smit, *Supra note 10*, at 338; Limitation Convention, *Supra note 5*

<sup>110</sup>*Id.*, at 339

<sup>111</sup> *Id.*

<sup>112</sup> Limitation Convention, *Supra note 5*, article 5(A); Hans Smit, *Supra note 10*, at 337

<sup>113</sup>Smit, *Supra note 10*, at 339

rule refrain from using words prescription or limitation and employ functional language to describe the consequence of the expiration period.<sup>114</sup>

*In view of the international character of this Convention and in order to promote uniformity in its interpretation and application, the use of traditional terms, such as 'prescription of rights', 'limitation of claims' or 'limitation of legal proceedings', having differing connotations in the various legal systems, was avoided in the convention. Consequently, paragraph (1) employs the neutral expression 'when claims . . . . Can no longer be exercised by reason of the expiration of a period of time' to denote the subject-matter covered by the convention.*<sup>115</sup>

The above commentary prepared by the UNCITRAL have clearly specified the avoidance of choosing between whether it deals with the institution of prescription as it is known in certain legal systems or of limitation as it is known in others. Since all the consequences of expiration of the period are defined in the convention, this choice was both unnecessary and, in order to avoid too close identification with any particular legal system, undesirable.<sup>116</sup> The common law legal system uses the term limitation period or statute of limitation to refer period of time within which an individual institute legal proceedings<sup>117</sup> whereas the civil law legal system prefer to use the term prescription<sup>118</sup> to refer the above concept in opposite to this legal systems the limitation convention employ functional language to describe the consequence of the expiration period.<sup>119</sup> This is the major instance that shows the neutrality of the convention from neither legal system.

The limitation convention applies to contracts for international sale of goods when contract for the sale of goods is concluded between parties whose places of business are in different states and if both of those states are contracting states, or when the rules of private international law lead to the application of the law of a contracting state. The limitation convention also applies by

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<sup>114</sup>*Id.*

<sup>115</sup>Year book of the United Nations commission on international trade law, *commentary on the convention on the limitation period in the international sale of goods* (1979) 10 part three 245, available at: [https://uncitral.un.org/en/texts/salegoods/conventions/limitation period of international sale of goods](https://uncitral.un.org/en/texts/salegoods/conventions/limitation%20period%20of%20international%20sale%20of%20goods)> accessed 28 March 2022

<sup>116</sup>Smit, *Supra note* 10, at 339

<sup>117</sup> *Id.*

<sup>118</sup> Eshetu, *Supra note* 17

<sup>119</sup> Limitation Convention, *Supra note* 5, article 1; Smit, *Supra note* 10, at 339

virtue of parties' choice.<sup>120</sup> Article 3(1) provides specifically that the limitation convention applies only if, at the time of conclusion of the contract, the parties to the contract have their places of business in contracting state while article 2(a) defines international sales broadly as contracts of sale between a buyer and seller who, at the time of conclusion of the contract, have their places of business in different states. Therefore the limitation convention only applies when those pre conditions are fulfilled or when the parties to contracts for international sale of goods explicit select the limitations convention to be applied in their contracts.

As stated above once after fulfilling the above conditions the contract for the sale of international goods would be under the reach of the convention however there are international sale of goods transactions which are beyond the scope and coverage of the limitation convention even though meeting the requirements. The general rule of the convention is followed by a large number of limitations and exceptions prescribed under article 1(2), 2, 3, 4, 5 and 6. The limitation convention doesn't cover all period expiration which may result on loss of claim. For it specifically excludes from the its sphere of application provisions, either of national law or in a contract, that set a time period within which, on penalty of forfeiture of the claim, notice of a claim must be given or some other act not amounting to institution of legal proceedings must be performed.<sup>121</sup>

*Article 1 (1) limits the scope of the convention that this convention only governs the limitation period within which parties to a contract of international sale of goods must commence legal proceedings (as defined in article 1(3) (e)) for the exercise of any claim arising from the contract or relating to its breach, termination or invalidity. Thus, the Convention has no effect on any rules under the applicable law concerning 'time-limits', that make giving notice to the other party a pre requisite for the acquisition or exercise of a particular type of claim.*<sup>122</sup>

The provision makes clear that time limits are beyond the scope of the limitation convention hence the limitation convention does not apply to time limits. There exist clear distinction between time limits and limitation periods on the basis of a procedural criterion. A limitation

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<sup>120</sup> Limitation Convention, *Supra note 5*, article 3 and 2(A)

<sup>121</sup> Smit, *Supra note 10*; Limitation Convention, *Supra note 5*, article 1(2)

<sup>122</sup> Year book, *Supra note 115*, at 245

period exists where a claim has to be instituted within a given period. All other periods specified by law within which a given right or power must be exercised should be regarded as time limits and its typical examples include the requirements that within a specified period of time the other party be given notice of the alleged defects in the goods delivered or of the refusal to accept such goods on grounds of non-conformity or defects.<sup>123</sup>

Depending on the type of contract of sale of goods and types of good, the limitation convention excludes certain transactions from its reach. The first excluded type of sale contracts is consumer sales.<sup>124</sup> Consumer sales are outside the scope of the limitation convention if the goods are bought for personal, family or household use. The usage of the word ‘personal’ in conjunction with the words ‘family or household’ indicates that the intended use must be non-commercial.<sup>125</sup> The rationale behind such exclusion of consumer sale from the ambits of the limitation convention lays on the fact;

*In many countries such transactions are subject to various types of national laws that are designed to protect consumers. In order to avoid any risk of impairing the effectiveness of such national laws, it was considered advisable that questions of prescription or limitation relating to consumer sales should be excluded from this convention and most consumer sales are domestic transactions and it was felt that the Convention should not apply to the relatively few cases where consumer sales were international transactions (e.g. because the buyer was a tourist with his habitual residence in another country).*<sup>126</sup>

The limitation convention also excludes contracts of sale of goods by auction and sales on execution or otherwise by authority of law<sup>127</sup> because of their subjection to special rules under various national laws hence it was considered desirable that they should in all respects remain subject to these special rules.<sup>128</sup> The other excluded contacts of sales includes exclusion of sales of stocks, shares, investment securities, negotiable instruments, money, ships, vessels, aircraft

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<sup>123</sup> Katharina Boele Woelki, ‘the limitation of right and action in the international sale of goods’ 4/3 uniform law review 621(1999) ; Year book , *Supra note* 115, at 149

<sup>124</sup> Limitation Convention, *Supra note* 5, article 4(A)

<sup>125</sup> Year book, *Supra note* 115

<sup>126</sup> *Id.*, at 152

<sup>127</sup> Limitation Convention, *Supra note* 5, article 4 (B) and (C)

<sup>128</sup> Year book, *Supra note* 115

and sale of electricity.<sup>129</sup> The exclusion of such kinds of contract of sale from the scope of the limitation convention was justified by their subjection to different mandatory and special rules under domestic laws.<sup>130</sup>

The limitation convention is a separate convention which exclusively deals about period of limitation in international contracts of sale. Structurally the limitation convention is organized in four parts part I, contains the actual prescription provisions, Parts II, III and IV deal with implementation, declarations and reservations, and final clauses, respectively.<sup>131</sup>

The terminology employed to refer the period of time within which the parties to contracts of sale must institute legal proceedings before a court of law to exercise claims under the contract varies depending on the type of legal system adopted. Accordingly, the proponents of common law countries adopt the name limitation period (or a statute of limitation) whereas the followers of civil law countries employ the name prescription, to depict period extinguishing obligations when a person fails to exercise the rights within prescribed period.<sup>132</sup> The limitation convention has deliberately refrained itself from using terms like prescription or limitation and uses functional language to describe the consequence of the expiration period.<sup>133</sup>

Most legal systems around the world limit or proscribe a claim being asserted after the lapse of a certain period of time and have established rules governing the period of time within which a party to a contract of sale must commence legal proceedings against another party to assert a claim arising from that contract, or relating to its breach, termination, or validity.<sup>134</sup> The limitation convention have adopted a dual period of limitation hence there is a general period of limitation of 4 years<sup>135</sup>, which can be extended or recommenced, and a maximum period of limitation of 10 years, which is a fixed period.<sup>136</sup> Due to the recognition of dual period of limitation by the limitation convention, claims of a person that have emerged from contracts of sale of international goods concerning breach, termination or invalidity will be barred by 4 years

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<sup>129</sup> Limitation Convention, *Supra note 5*, article 4 (D), (E) and (F)

<sup>130</sup> Year book, *Supra note 115*, at 152-153

<sup>131</sup> Smit, *Supra note 10*, at 338

<sup>132</sup> Sono, *Supra note 83*, at 1148

<sup>133</sup> Smit, *Supra note 10*, at 339

<sup>134</sup> Castellani, *Supra note 2* at 645

<sup>135</sup> Limitation Convention, *Supra note 5*, article 8

<sup>136</sup> *Id.*, article 23



period of limitation and when the 4 general period of limitation is extended or recommenced, the action will be barred by the maximum period of limitation of 10 years.

As discussed above, the enforcement rules of period of limitation are those rules prescribing how the specified period commences, raised, enforced, interrupted or waived.<sup>137</sup> In this regard enforcement rules of period of limitation of contracts of sale specify the mechanism of commencements, raising, enforcing interrupting or waiving the mentioned period of limitation that applies to contracts of sale. The period of limitation prescribed by the limitation convention both the general and the maximum period of limitation begins to run on the date the claim accrues.<sup>138</sup> Moreover the concept of accrual is further defined in articles 10-12, dealing with particular situations. Accordingly the general rule posited for the commencement of period of limitation in cases of breach of contract is the date claim accrues whereas at time when the claim arises from a defect or other lack of conformity the claim accrues when the goods are actually handed over to, or their tender is refused by the buyer while in cases of fraud committed before or at the conclusion of contract or during its performance, the period of limitation begins to run when the fraud was or reasonably should have been discovered.<sup>139</sup> The limitation conventions adoption of objective time of commencement for both periods in the limitation convention is an approach which is highly appreciated.<sup>140</sup>

The limitation convention also contains rules prescribing the interruption of running period of limitation for claims of contracts of sale. The cessation and extension of period of limitation by the limitation convention is governed by provisions beginning from article 13-26. Period of limitation which is running can be interrupted when the claimant commences judicial or arbitral proceedings against the debtor, or when a claim is asserted by the claimant in existing court proceedings and procedures for commencement of judicial proceedings depend on national laws.<sup>141</sup> However the effect recognized by the limitation convention for the interruption of a period of limitation which has commenced is peculiar to it. To protect a party from loss of claim if the period of limitation is interrupted by instituting proceedings, some legal systems consider the commencement of an action as suspending the running of the period of limitation until the

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<sup>137</sup>Eshetu, *Supra note 17*

<sup>138</sup> Limitation Convention, *Supra note 5*, article 23

<sup>139</sup> *Id.*, article 10-12

<sup>140</sup> UNCITRAL guide, *Supra note 11*, at 66

<sup>141</sup> Limitation Convention, *Supra note 5*, article 13 and 14

proceedings are concluded, at which time the running of the period resumes while other legal systems specify that the commencement of legal proceedings triggers the start of a new limitation period afresh by interruption of the period.<sup>142</sup>The limitation convention does not fully adopt any of these approaches, hence period of limitation are not suspended nor do they recommence as anew rather they simply cease to run; in other words, they do not run anymore.<sup>143</sup>

Sometimes the creditor might be prevented from instituting legal proceedings to assert his claim within prescribed period as a result of a circumstance beyond the control of the creditor and which could be neither avoided nor overcome. In these kinds of situations, the limitation convention affords protection for creditor who was prevented from taking the necessary acts to stop the running of the limitation period in extreme cases such as commercial dispute resolution in countries that have been affected by military conflicts.<sup>144</sup> The limitation period allows the extension of the period of limitation so as to expire one year after the date when the circumstance ceased to exist.<sup>145</sup>

Despite the recognition of the period, the question that can be raised is whether the prescribed period of limitation is a limitation of action or a limitation of right. Provision which governs the issue have to provide clear specification as to the classification of the period due to the effect of the variance such classification has. The effect of the expiration of period of limitation prescribed under article 8 and 23 of the limitation convention, it formulates that the principal effect of lapse of the limitation period that no claim may be recognized or enforced in legal proceedings commenced after the period expired.<sup>146</sup> As we can see from the above provision limitation convention is only concerned with the recognition or enforcement of claims in any legal proceedings and is not concerned with whether the right is extinguished or not.<sup>147</sup> Hence the expiry of the period prescribed under the limitation convention bars action not the right and affirmative defenses can be raised.<sup>148</sup> Pursuant to this, when claims of the parties arising from a contract of international sale of goods or relating to its breach, termination, or invalidity can no longer be asserted by reason of the expiration of a period of time, the person loses the right of

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<sup>142</sup>Sono, *Supra note 83*, at 157

<sup>143</sup> UNCITRAL guide, *Supra note 11*, at 68

<sup>144</sup> *Id.*, at 69

<sup>145</sup> Limitation Convention, *Supra note 5*, article 21

<sup>146</sup> *Id.*, article 24 (1)

<sup>147</sup> UNCITRAL guide, *Supra note 11*, at 67

<sup>148</sup> Limitation Convention, *Supra note 5*, article 25 (2)

bringing proceeding before courts and he can raises any self-help remedies since the lapse of the period only affects the action.

The defenses of period of limitation have long been understood to be part of the defendant's arsenal in the litigation battle.<sup>149</sup> The defense of period of limitation for claim resulted from contracts of sale of goods; courts are prohibited from raising the issue of period of limitation unless it is raised by the defendant as per the limitation convention.<sup>150</sup> Pursuant to this, the expiration of the limitation period will not be taken into consideration in legal proceedings unless it is invoked by a party to the proceedings in the limitation convention.

### **2.6.2 The UNIDROIT Principles of International Commercial Contracts.**

The UPICC is among an important step towards uniform rules on period of limitation which provide rules prescribing period of limitation in international contracts of sale. The International Institute for the Unification of Private Law was founded in Rome in 1926 as an organ of the League of Nations.<sup>151</sup> The UPICC are a non-binding codification of contract law rules and principles designed for international trade on a global scale, which aimed at to make available a set of rules that is better suited to cross-border transactions than national contract laws. They are a non-binding set of rules that will only apply to a given contract if the parties or an adjudicator so chooses and if such a choice is recognized or acknowledged by the relevant legal framework.<sup>152</sup> The UPICC Principles cover various topics that has emanated from international contract of sale and the text of each principle is followed by a commentary including illustrations.<sup>153</sup> Period of limitation arising from international contract of sale is among the topics regulated by the UPICC principles. The UPICC regulates Period of limitation separately under chapter 10.<sup>154</sup>

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<sup>149</sup> Mosher, *Supra note 74*, at 169

<sup>150</sup> Limitation Convention, *Supra note 5*, article 24

<sup>151</sup> Haloush, *Supra note 3*, at 100

<sup>152</sup> UNCITRAL guide, *Supra note 11*, at 74

<sup>153</sup> Haloush, *Supra note 3*, at 100

<sup>154</sup> UPICC, *Supra note 5*, chapter 10

Limitation period is the term employed to refer period of limitation.<sup>155</sup> The term employed by the UPICC corresponds with the common law terminology which is used to refer period of time within which an individual must institute legal proceedings.<sup>156</sup>

The approach of dual period of limitation is also recognized by the UPICC. Therefore the UPICC has adopted 3 years as a general period of limitation<sup>157</sup> and 10 years as a maximum period of limitation for claims emanating from contracts of sale.<sup>158</sup> The date of commencement of period of limitation in UPICC varies for general period of limitation and for maximum period of limitation. In this regards of classification, the general limitation period which is 3 years begins to commence on the day after the day the obligee's knows or ought to know the facts as a result of which the obligee's right can be exercised<sup>159</sup> whereas the maximum period of limitation that is 10 years begins to commence on the day after the day the right can be exercised.<sup>160</sup> The UPICC have tended to choose a subjective time of commencement for general period of limitation by employing terms like 'the day the obligee knows or ought to know certain facts' and an objective time of commencement for the maximum period of limitation by using terms like 'the date the right can be exercised' depending on the length of the periods.<sup>161</sup> The criterion of knowledge should be raised and established by the creditor at time of general limitation period however the criteria of knowledge is immaterial for maximum period of limitation.

Interruption of the commenced period of limitation by various grounds has also been acknowledged by the UPICC, accordingly the UPICC adopt the approach by providing that the running of the limitation period is suspended when the obligee asserts rights in judicial proceedings or arbitration proceedings, such as by commencing the proceedings, or in insolvency proceedings or dissolution proceedings and the suspension lasts until final decision has been issued or until the proceedings have been otherwise terminated.<sup>162</sup>

Creditors might be prevented from asserting their claims by the occurrences of events that are beyond their control and in such instances the UPICC suspends the commenced period. In lieu of

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<sup>155</sup> *Id.*, article 10.1(1)

<sup>156</sup> Sono, *Supra note* 83, at 1128

<sup>157</sup> UPICC, *Supra note* 5, article 10.2 (1)

<sup>158</sup> *Id.*, article 10.2 (2)

<sup>159</sup> *Id.*, article 10.2 (1)

<sup>160</sup> *Id.*, article 10.2 (2)

<sup>161</sup> UNCITRAL guide, *Supra note* 11, at 66

<sup>162</sup> UPICC, *Supra note* 5, article 10.5 and 10.6

this, the UPICC have recognized three grounds that suspends the running period at time of occurrence events which are beyond the control of the creditors, accordingly force majeure, death, and incapacity are grounds that suspends the commenced period.<sup>163</sup>

The effect of the failure to claim rights within specified time under UPICC principles are regulated by article 10.9 (1). In accordance to this provision, the failure of the person to claim his right within period prescribed under article 10.2 results on barring of the action not the right.<sup>164</sup>The UPICC has expressly provided that the expiration of the period of limitation does not extinguish the right and rather it kills the action. Furthermore, the UPICC has prohibited courts from raising the issue of period of limitation unless it is pleaded by the defendant. Accordingly, it provides that the expiration of the limitation period will not be taken into consideration in legal proceedings unless it is invoked by a party to the proceedings.<sup>165</sup>

To sum up, the terms contract of sale and period of limitation are characterized by lack of similar meaning around the world despite the existence of elements they commonly shares. The recognition of period of limitation in contract of sale is justified by reason of public policy. The classification of the legal systems into civil and common law has played big role for the existence of varied understanding of period of limitation and the approaches of legal systems has implication on period of limitation on claims originating from contract of sale. The duration of period of limitation is not similar in domestic and international legal frameworks governing contracts of sale internationally. The limitation convention and UPICC have regulated the issue of period of limitation in international contract of sale. Though they differ by the term they have employed both instruments contains rules recognizing dual period of limitation, duration of period of limitation, commencement of the periods, grounds suspending and interrupting period of limitation under their ambits.

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<sup>163</sup> *Id.*, article 10.8

<sup>164</sup> *Id.*, article 10.9 (1)

<sup>165</sup> *Id.*, article 10.9 (2)

## **CHAPTER THREE: EXAMINING THE JURISPRUDENCE OF ETHIOPIAN COURTS ON PERIOD OF LIMITATION UNDER CONTRACT OF SALE LAW.**

### **3.1 Introductions.**

Under this chapter, domestic legal frameworks governing contracts of sale and period of limitation in contract of sale are discussed comparatively with international instruments governing period of limitation on contract of sales accompanied by lessons to be drawn are conducted. Furthermore the examination of the jurisprudence of Ethiopian courts while applying the rules of period of limitation in contract of sale through by using logical reasoning via investigating decisions rendered by the federal cassation division on contract of sale concerning period of limitation are dealt.

### **3.2 The Legal Frameworks Governing Contracts of Sale and Period of Limitation in Ethiopia.**

Laws regulating contracts of sale are among determinant factors which foster domestic and international trade. By taking into account the role of regulation of contracts of sale transactions in fostering domestic trade, the Ethiopian legal system have enacted laws that govern contracts of sale. Accordingly the following section of the paper discusses domestic laws governing contracts of sale and period of limitation.

#### **3.2.1 The Legal Frameworks Governing Contracts of Sale in Ethiopia.**

The civil code of the empire of Ethiopia contains main provisions that govern contracts of sale. The civil code contains 3367 articles, which is divided into five books and twenty two titles. Among those books, the part of the civil code that regulates contract of sale is Book V in the title XV.<sup>166</sup> Besides there is clear indication that the general contract provisions are applicable to contracts including contract of sale in a way they do not contradict with special provisions.

*The general provisions of this title (Book IV, title XII on contracts in general) shall apply to contracts regardless of the nature thereof and the parties thereto and nothing in this*

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<sup>166</sup>Abera, *Supra note*, 25 at 1

*title shall affect such special provisions applicable to certain contracts as are laid down in Book V of this code and in the commercial code.*<sup>167</sup>

Moreover the provisions on general contracts are also applicable to non-contractual obligations to the extent that such rules are relevant.

*The relevant provisions of this Title (Book IV, Title XII on contracts in general) apply to obligations notwithstanding that they do not arise out of a contract and nothing in this title affect the special provisions applicable to certain obligations by reason of their origin or nature.*<sup>168</sup>

Therefore the provisions stated under Book V under title XV are not the only laws that govern contracts of sale in Ethiopia as the application of general contracts law provision is extended for sale contracts in a way they do not contradict with special provisions.

The civil code of Ethiopia that regulates contracts of sale defines contracts of sale as ‘a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him.’<sup>169</sup>

### **3.2.2 The Legal Frameworks Governing Period of Limitation in Contracts of Sale in Ethiopia.**

The Ethiopian civil code that regulates civil matters domestically contains various provisions on period of limitation. Since a contract of sale is one type of special contracts to which the special parts of the civil code apply, the issues of period of limitations that have aroused from contracts of sale of are matters regulated by book V of the civil code. Despite the rules under book V of the civil code are laws that govern matters arising from contracts of sale, the special part of the civil code doesn’t contain organized rules that regulate period of limitation on contracts of sale. There are scattered periods under the special part of the civil code which regulates contracts of sale, for instance article 2298 specify 1 year period for claims on warranty against defects, article 2331 loss of right to claim forced performance due to failure to inform delay in short period after

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<sup>167</sup> Civil Code, *Supra note* 14, article 1676

<sup>168</sup> Id., article 1677

<sup>169</sup> Id., article 2266

ascertaining it, article 2348 forthwith cancellation in case of nonpayment of the price where the right is expressly given by the contract, article 2354 cancellation of contract as of right by absence of response within short time due to delay of performance of an essential stipulation of the contract and article 2892 (3) loss of right to claim forced performance after lapse of 1 year after ascertaining the delay. Except those rules the law of sale as governing a special type of contract does not stipulate special periods for other possible claims that could be brought by the contracting parties like claims for the invalidation of the contract, payment of the price and other claims based on the nonperformance.<sup>170</sup>

The special contract part that governs transactions of contracts of sale have not fixed period of limitation for contracts of sale doesn't mean that the person asserting the claim would remain in vain. Rather the general contracts period of limitation rules of the civil code that is found under the general contracts part will directly govern limitations of actions in special contracts like contracts of sale. Accordingly the general contracts period of limitations rules will apply to those contractual claims that have emanated from contracts of sale that is special contracts and for which the law did not fix special periods of limitation.<sup>171</sup>

The Ethiopian legal system doesn't have separate statutes that governs period of limitation in civil claims rather provisions prescribing periods of limitation are found throughout in different laws in a scattered manner, along with other provision. When dispute arises between buyer and seller which results in litigation before the court of law, the court applies law of sales and general contract provisions to adjudicate the dispute. Article 1676 of the civil code clearly indicates that the general contract provisions are applicable to contracts including contract of sale in a way they do not contradict with special provisions since contracts of sale in Ethiopia is governed by special part of the civil code on Book 5 which is part of special contracts. The application of the general contracts period of limitation rules to contract of sale is not limited to the duration of 10 year rather issues related with commencement of these periods left to the general contracts parts because of its silence.

Period of limitation in contracts of sale under the Ethiopian legal systems is not only governed by the civil code rather it is also regulated by decisions of the cassation divisions rendered by no

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<sup>170</sup>Eshetu, *Supra note 17*, at 36

<sup>171</sup>*Id.*, at 26



less than five judges which are binding on all federal and states courts at all levels.<sup>172</sup> Once after proving the existences of ambiguity on the case any level of court entertaining claim concerning period of limitation in contracts of sale, judges are duty bound to apply interpretation granted by the federal cassation division on the same matter.

Proclamations imposing binding obligation of interpretation on any level of Ethiopian courts into the present legal framework of Ethiopia, aims at achieving uniform application of law, equal treatment of parties to a case, predictability and certainty of law in the country.<sup>173</sup> In order to achieve uniform application of laws, predictability and certainty of laws on contract of sale in general, courts of any level in Ethiopia which is entertaining claims arising from contracts of sale on the issue of period of limitation have the obligation of considering and applying prior decisions rendered by the federal cassation division over the same legal matter not on factual issues.

The Ethiopian civil code in Book IV, title XII, section 6 has preferred to use the term ‘period of limitation’ or ‘Yirga’ in Amahrci to describe a period of time after the expiry of which a contractual right is limited.<sup>174</sup> From the preferably employed terminology by the above mentioned part of the Ethiopian civil code, it can clearly be understood that similar name with common law legal system and the UPICC principles is employed to refer the period of time within which the parties to contracts of sale must institute legal proceedings before a court of law to exercise claims under the contract unlike the limitation convention which has refrained from using such terms.

Most legal systems around the world limit or proscribe a claim being asserted after the lapse of a certain period of time and have established rules governing the period of time within which a party to a contract of sale must commence legal proceedings against another party to assert a claim arising from that contract, or relating to its breach, termination, or validity.<sup>175</sup> According to article 1845 of the Ethiopian civil code;

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<sup>172</sup> *Federal courts establishment proclamation*, No.1234/2021, FED.NEG.GAZETA, 27<sup>th</sup> Year No.26, Addis Ababa, 26<sup>th</sup> April 2021. Art.10(2)

<sup>173</sup> Hussein Ahmed, ‘Uniform application of law in Ethiopia: effects of cassation decisions of the federal supreme court’, 7 African journal of legal studies 203 (2014)

<sup>174</sup> Can be understood from Civil Code, *Supra note* 14, at article 1845 and its following

<sup>175</sup> Castellani, *Supra note* 2, at 645

*Unless otherwise provided by law, actions for the performance of a contract, actions based on the non-performance of a contract and actions for the invalidation of a contract shall be barred if not brought within ten years.*<sup>176</sup>

After the expiry of 10 years period of limitation, claims of persons based on performances of contracts of sale, based on non-performances of contracts of sale and action requesting invalidation or cancelation of contracts of sale will be barred by period of limitation unless other kinds of period of limitation is provided by law. In absence of other kinds of period prescribed by the law, the duration recognized for claims of performance, nonperformance, invalidation and cancelation of contracts of sale is 10 years. However the 10 years period is not the maximum period of limitation it may extend beyond 10 years when new period begun to commence upon each interruption of the running period. Unlike the Ethiopian legal system which contain single period of limitation, the limitation convention and the UPICC have adopted a dual period of limitation. Accordingly there is a general period of limitation of 4 years<sup>177</sup> and 3 years<sup>178</sup> under the limitation convention and the UPICC respectively, which can be extended or recommenced, and a maximum period of limitation of 10 years, which is a fixed period.<sup>179</sup> The Ethiopian period of limitation rules of contracts of sale has failed to incorporate such kinds of classification. As specified earlier the need of having period of limitation under legal systems is justified from the perspective public policy, accordingly because of the lapse of significant time documents may be lost, witnesses may be dead, and the recollection of events long past may have become dim.<sup>180</sup> The prescription of maximum period of limitation serves as an instrument for achieving the above sated purpose, under the Ethiopian legal system maximum period of limitation is unknown because each interruption of the running period results on the commencement of new period of limitation which defeats the reasons of having period of limitation under the legal frameworks.

With regard to the commencement of period of limitations, according to article 1846 of the civil code, period of limitation starts to run from the day when the obligation is due or the rights under the contract could be exercised.<sup>181</sup> However the recognition of two optional dates which is the

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<sup>176</sup> Civil Code, *Supra note* 14, at article 1845

<sup>177</sup> Limitation Convention, *Supra note* 5, at article 8

<sup>178</sup> UPICC, *Supra note* 5, at article 10.2 (1)

<sup>179</sup> Limitation Convention, *Supra note* 5, at article 23; UPICC, *Supra note* 5, at article 10.2 (2)

<sup>180</sup> Haloush, *Supra note* 3, at 103; Limitation period under UK law, *Supra note* 4

<sup>181</sup> Civil Code, *Supra note* 14, at article 1846

date the obligation is due or the rights under the contracts could be exercised may create problem of interpretation.<sup>182</sup> In similar fashion to the Ethiopian legal system, as per the limitation convention both the general and the maximum period of limitation begin to run on the date the claim accrues.<sup>183</sup> Though the civil code of Ethiopia posits two optional date of commencement, the commencement of period of limitation which have started to run from the day when the obligation is due<sup>184</sup> is similar date with the one provided by the limitation convention commencing from the date which the claim accrues.<sup>185</sup> Except the terminological variance, in both law the period begins to run from the day of maturity of the claim. Unlike the UPICC, the date of commencement posited by article 1845 and general period of limitation stated under article 10.2 (1) of UPICC is different despite in both instance the period of limitation begins to run from the date the right can be exercised because UPICC requires the existence of knowledge by the obligee's that the right can be exercised. There is similarity between the date of commencement of maximum period of limitation of UPICC and the date of commencement of 1846 since in both instances period of limitation begins to commencement the day the right can be exercised irrespective of the knowledge.

The interruption of the period of limitation and its effect is regulated by article 1851 and 1852 of the civil code. In this regard the period of limitation shall be interrupted and new period begins to run where the debtor admits the claim, in particular by paying interest or installments or by producing a pledge or guarantees or when the creditor brings an action for the debtor to discharge his obligations.<sup>186</sup> Pursuant to the above provisions when a proceeding is instituted for the performance contracts of sale, for non-performances contracts of sale and institution of an action for invalidation of contracts of sale, period of limitation that have commenced and running can be interrupted and which may results on recommencement of new period of limitation. Despite its recognized that a period of limitation claims emerging from contracts of sale interrupted as per article 1851, the provisions prescribing the effects of interruption is ambiguous.

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<sup>182</sup>Mulugeta, *Supra note* 18

<sup>183</sup>Limitation Convention, *Supra note* 5, at article 23

<sup>184</sup> Civil Code, *Supra note* 14, at article 1846

<sup>185</sup> Limitation Convention, *Supra note* 5, at article 9

<sup>186</sup> Civil Code, *Supra note* 14, at article 1851 and 152

*Article 1852 (2) is ambiguous in the sense that it specifies the effect of interruption in terms of the particular method like where the debt is acknowledged in writing or established by a judgment that has interrupted the period of limitation, and it is not clear what would be the effect of the interruption where the method is other than those stated in the article.*<sup>187</sup>

The provision allows the recommencement of the 10 years period of limitation when the debt is acknowledged in writing or established by a judgment as an effect of period of limitation which is running however it has created a doubt that whether the new period of limitation which recommence after the interruption is the 10 year period or not where the method interrupting the running period is other than those stated under the provision. Despite the specification of the act of the creditor is the one that interrupts the commenced period of limitation originated from contracts of sale, by the interpretation rendered by federal cassation in file number 43636,<sup>188</sup> it was confirmed that for claims arising from contract of sale, institution of an action for cancelation of contract by the seller and institution of claim for performance of contract by the buyer interrupts the running of period of limitation. To protect a party from loss of claim if the period of limitation is interrupted by instituting proceedings, some legal systems consider the commencement of an action as suspending the running of the period of limitation until the proceedings are concluded, at which time the running of the period resumes while other legal systems specify that the commencement of legal proceedings triggers the start of a new limitation period as afresh by interruption of the period<sup>189</sup> Unlike the limitation convention which does not fully adopt any of these approaches<sup>190</sup> and the UPICC which recognizes suspensory effect for interruption of period of limitation,<sup>191</sup> the Ethiopian civil code has recognized the recommencements of fresh period of limitation upon interruption of the period.<sup>192</sup>

The occurrence of uncertain circumstance that prevents a person from claiming his right is unknown and at time of their occurrences they may limit the person from claiming rights. Unlike

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<sup>187</sup>Mulugeta, *Supra* note 18, at 153

<sup>188</sup>*Almaz Tesema vs. Beyene W/mikael and Tsige Teshome, 'Decisions of the Federal supreme court cassation Division', File No.43636, Vol,10, (22 March 2002 E.C), at 151*

<sup>189</sup>Sono, *Supra* note 83, at 157

<sup>190</sup> UNCITRAL guide, *Supra* note 11, at 68

<sup>191</sup> UPICC, *Supra* note 5, at article 10.5 and 10.6

<sup>192</sup> Civil Code, *Supra* note 14, article 1852

the limitation convention<sup>193</sup> and UPICC which allows the extension of the period of limitation so as to expire one year after the date when the circumstance ceased to exist,<sup>194</sup> the Ethiopian legal system which governs claims of period of limitation that is originated from contracts of sale have failed to regulate the circumstances of above kinds.

Various laws regulating contracts of sale provides a period of time on which contractually created rights can be limited after the expiry that period. Despite the recognition of the period, the question that can be raised is whether the prescribed period of limitation is a limitation of action or a limitation of right. Provision which governs the issue have to provide clear specification as to the classification of the period due to the effect of the variance such classification has. In this regard

*Limitation of action precludes the possibility of enforcing a right by bringing a court action; however, the right holder can assert it as a counterclaim or may invoke self-help remedies, if there are any.*<sup>195</sup>

The effect of classifying the period of limitation as a limitation of action results on exclusion of enforcing the right that have originated from contracts of sale by instituting proceeding before court of law once after the expiry of the period however the persons entitled to claim the right can invoke self-help remedies. In opposition to the above the classification, recognition of period of limitation as a limitation to right refers; Limitation of right extinguishes an obligation (right) and the right cannot be enforced in any manner. At the end of the prescribed period the possibility of raising a right as a defense to another action is precluded as well as the possibility of asserting the right in an affirmative action.<sup>196</sup> The recognition of the period of limitation as a limitation of rights brings the right that have sourced from contracts of sale to death totally, therefore there is no possibility to assert the right in an affirmative action.<sup>197</sup>

Like the limitation convention<sup>198</sup> and UPICC<sup>199</sup> which recognizes the expiry of the prescribed period under the limitation convention as a bar of action not right. The formula that is adopted by

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<sup>193</sup> Limitation Convention, *Supra note 5*, at article 21

<sup>194</sup> UPICC, *Supra note 5*, at article 10.8

<sup>195</sup> Mulugeta, *Supra note 18*; See also David, *Supra note 19*, at 89

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Limitation Convention, *Supra note 5*, at article 24 (1)

the Ethiopian civil code under article 1845 is not clear however it can be argued that it has recognized period of limitation for contractual matter which includes contracts of sale as a limitation of action. This can be understood from the entitlement of the section of the civil code on the matter as ‘limitation of action’, Second, the provision 1845 dictates that period of limitation, bars only actions, third article 1850 acknowledge the room of exercising a right on any available pledge, though the right of action is barred and lastly article 1809 provides that a party who was incapable or gave a defective consent may refuse to perform, even if his or her right of action to invalidate the contract is barred.<sup>200</sup> Thus, when a person fails to institute a proceeding within 10 years that have aroused from contract of sale seeking an action for performance of contract of sale, action based on non-performance of contracts of sale and action claiming for invalidation or cancelation of contracts of sale, the failure bars the right of bringing action not right. After the expiry of the 10 years period, the person who’s right is barred by period of limitation can raise the right as defense to another action, because the civil recognizes period of limitation in section 6 as limitation of action to rights originated from contracts of sale.

The Ethiopian legal system classify the defenses of period limitation as among a ground to be pleaded as a preliminary objection<sup>201</sup> that have to be raised by the person asserting it as defenses. The defense of period of limitation for claim instituted which resulted from contracts of sale; courts are prohibited from raising the issue of period of limitation unless it is raised by the defendant. Similarly the limitation convention<sup>202</sup> and the UPICC<sup>203</sup> provide that the expiration of the limitation period will not be taken into consideration in legal proceedings unless it is invoked by a party to the proceedings.

To sum up this sub section, an attempt has been made on the issue of the legal frameworks governing contracts of sale and period of limitations in contracts of sale is discussed in wide manner. In this regard the above discussion have specified that beyond the civil code of the Ethiopia that regulates period of limitation in contracts of sale, an interpretation of laws governing period of limitation in contracts of sale rendered by the cassation division of federal

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<sup>199</sup> UPICC, *Supra note 5*, at article 10.9

<sup>200</sup> Mulugeta, *Supra note 18*

<sup>201</sup> *Civil procedure code of empire of Ethiopia*, decree number 52/1965, FED.NEGARIT GAZETA, 25<sup>th</sup> Year No.3, Addis Ababa 8<sup>th</sup> October 1965, article 244 (2) (f).

<sup>202</sup> Limitation Convention, *Supra note*, at article 24

<sup>203</sup> UPICC, *Supra note 5*, at article 10.9 (2)

supreme court, no less than five judges is binding on all courts in the country serve as guideline to which judges can not deviate from it on similar legal matters. Moreover the legal framework regulating period of limitation in contracts of sale under the Ethiopian legal system is compared by the instrumentality of different comparators. Pursuant to these comparisons the following elements are investigated as a lesson to be drawn to the Ethiopian legal system.

### **3.3 Lessons to Be Drawn to Ethiopian Legal System.**

The desire of insuring clarity and predictability to aspect of adjudication of a claim have ignited interest in domestic laws, internationals and regional conventions to establishes uniform rules governing the period of time within which a party to a contract for the contracts of sale must commence legal proceedings against another party to assert a claim arising from that contract, or relating to its breach, termination, or validity.

In this regard first, the sister convention to the CISG, the 1974 United Nations Convention on the Limitation Period in the international Sale of Goods<sup>204</sup> which regulates the claim of period of limitation for contracts of sale upon fulfillment of different ground is the main one and though it is not convention the UNIDROIT Principles of International Commercial Contracts (the UPICC)<sup>205</sup> lays down principles of contracts of sale including period of limitation. In the above instruments the claims of period of limitation are regulated in organized mechanism separately from other types of claims, pursuant to this the limitation convention only regulates the claims of period of limitation in a contract for the international sale of goods in separate statute and the UPICC<sup>206</sup> regulates the claims of period of limitation for contracts of sale in separate section or chapter. Under the Ethiopian laws, rules prescribing contracts of sale are governed by separate book<sup>207</sup> however this separate books doesn't have separate comprehensive section which may applies to claims of period of limitation originated from contracts of sale rather they are found dispersedly in different part of the civil code. Due to the dispersion of the provision of period of limitation regulating contracts of sale in different part of the civil code they may overlap with each other. To minimize challenges that may emanates from the dispersion of the rules of period of limitation, by taking lessons from the above instruments, collecting and organizing the

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<sup>204</sup> Limitation Convention, *Supra note 5*, at article 13 and 14

<sup>205</sup> UPICC, *Supra note 5*

<sup>206</sup> *Id*, Chapter 10, separate chapter governing issues of period of limitation

<sup>207</sup> Civil Code, *Supra note 14*, at Book V , Title XV

provisions of period of limitation in separate section or chapter depending on the claims they regulates have to be considered.

Except the terminological variance employed, all legal systems recognize the influence of passage of time on rights. The existences of rules regulating period of limitation arising from contracts of sale assures for a party to a contract of sale must commence legal proceedings asserting claim arising from that contract regarding performance, non-performance breach, termination, or validity. Under the limitation convention the general period of limitation is 4 years<sup>208</sup> to assert claims and which can be extended or recommenced on the occurrence of grounds extending the period of limitation to a maximum period of limitation of 10 years.<sup>209</sup> Hence a person who is going to institute a proceeding by the instrumentality of the limitation convention concerning breach, termination or validity of contracts of sale have to bring his action within 4 years however if the period which has commenced is interrupted by those grounds specified under the convention, the maximum period is 10 years which can't be extended. Similar position is reflected by the UPICC<sup>210</sup> which prescribe the general period of limitation as 3 years and 10 years of maximum period of limitation.

In Ethiopian rules of period of limitation of contracts, actions for performance, actions for non-performance and actions for the invalidation of a contract have to be brought within 10 years<sup>211</sup> however a new period of limitation begins to run as afresh upon each interruption of the commenced period and such period shall be of 10 years where the debt has been admitted in writing or established by a judgment.<sup>212</sup> Here two points needs to be clarified, first when a period of limitation claim of contracts of sale which is running interrupted, a new period of limitation starts to commence as a fresh upon each interruption. As per this provision, there is no possible prescribed numbers of interruptions allowed or maximum period of limitation specified. A good example that can be raised here regarding allowed possible number of interruption is the trend adopted by the labor proclamation which allows interruption of the commenced period of limitation up to the maximum of 3 times in aggregated.<sup>213</sup> It is clear that such kinds of lacuna

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<sup>208</sup> Limitation Convention, *Supra note 5*, at article 8

<sup>209</sup> *Id*, article 23

<sup>210</sup> UPICC, *Supra note 5*, at article 10.2

<sup>211</sup> Civil Code, *Supra note 14*, at article 1845

<sup>212</sup> *Id* article 1852

<sup>213</sup> Labor proclamation, *Supra note 28*, at article 165 (3)



may affect smooth transaction of parties in commerce and defeats the reason of necessity of period of limitation. Second, the provision specify that where the period of limitation is interrupted by acknowledgment of debt by writing or established by judgment, a new period of limitation that begins to commence is 10 years, the ambiguity of the provision is that it is not clear what would be the effect of interruption of the period of limitation where the period of limitation is interrupted by other ground than those specified under article 1852 (2). A well-deserved lesson to be drawn from the limitation convention and UPICC is, the trend of prescribing maximum period of limitation rule that commences after the interruption because such measure helps in achieving the rationale of rules of period of limitation and exhaustive discussion or leaving space for other grounds in illustrative manner that specify grounds and effect of interruption of period of limitation have.

### **3.4 The Philosophy of Rene David on Period of Limitation.**

The Ethiopian civil code was drafted by Rene David who has written a brief commentary on the civil code's provisions on contracts. The commentary addresses various issue of contracts contained under the civil code, among those issue, the aspect of period of limitation in contracts are the main one.<sup>214</sup> In his commentary he has clearly reflected his philosophy of period of limitation that deviates from what is adopted by the civil code. The limitation of action is the term employed by the drafter to refer a means that extinguishes obligation where a person fails to exercise it for many years.<sup>215</sup>

With regard to questions raised as to whether the period of limitation found in the Ethiopian civil code's article 1845 is a limitation of action or a limitation of right, he has clearly stated that;

*The Ethiopian civil code preferred the formula found in the Italian Civil Code, which provides that all rights are subject to a ten-year limitation. This makes it clear that at the end of ten years the possibility of raising a right as a defense to another action is precluded as well as the possibility of asserting the right in an affirmative action. The right created by the contract disappears by limitation; it can't be asserted in any way.*<sup>216</sup>

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<sup>214</sup> David, *Supra note* 19, at 89

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*, at 90

From the above comment it can be understood that what the drafter intended to incorporate in the Ethiopian Civil Code is the limitation of right.

The period of limitation starts to commence from the day when the obligation is due and the rights under the contract could be exercised.<sup>217</sup> As per the intention of the drafter, the two dates which are the day the obligation is due and the rights under the contract could be exercised are two different dates which determines days for commencement of period of limitation. The problem of article 1846 is that both of the starting points are recognized alternatively however the commentary on the article seems to avoid the problem by using the conjunction ‘and’ instead of ‘or’ which makes the two dates cumulative.<sup>218</sup>

### **3.5 The Judicial Understanding on Rules Regulating Period of Limitation in Contract of Sale.**

The Ethiopian legal system considers contract of sales as special contract and regulate it by the civil code in Book V title XV.<sup>219</sup> In addition to those special provision of contract of sale there is clear specification that the general contract provisions are applicable to contracts including contract of sale in a way they do not contradict with special provision.<sup>220</sup> Therefore, whenever certain dispute arises concerning contract of sale, prior scrutiny have to be carried out to ascertain the existence or absence of relevant provision under the special part and it is only failing this that one can resort to the general contracts provisions.<sup>221</sup>

Obligations originated from the sale contracts will be extinguished on different grounds.<sup>222</sup> Among those various grounds, extinction of obligations arising from contract of sale through by period of limitation is the common one. Accordingly, when a person fails to exercise rights originated from contract of sale for many years, the right will be declared extinguished.<sup>223</sup> Despite the special law that governs contracts of sale has provided special period of limitation that only applies for particular types of claims<sup>224</sup>, it doesn’t stipulate special period of limitation

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Abera, *Supra note 25*

<sup>220</sup> Civil Code, *Supra note 14*, at article 1677

<sup>221</sup> Abera, *Supra note 25*

<sup>222</sup> David, *Supra note 19*

<sup>223</sup> *Id.*

<sup>224</sup> Instances of special period of limitation under Civil code, *Supra note 14*, at article 2298, article 2331, article 2348, article 2354 and article 2892 (3).

for claims that could be brought by the contracting parties like claims for the invalidation of the contract, payment of the price and other claims based on the non- performance.<sup>225</sup> Though provisions regulating the above claims emanating from contract of sales are missing under the special part, the application of general contracts provisions on period of limitation is acknowledged by article 1676 (1) of the civil code since it is contracts. Due to lack of clear provisions that specify when and how the rules of period of limitation stipulated under the general contract to be applied for contracts of sale, variation of interpretation has been witnessed in different scenarios from published federal cassation decisions.

From the time the Federal Supreme Court started to publish the federal supreme courts cassation bench decisions in volume 1, period of limitation in contracts of sales was not raised until volume 4.<sup>226</sup> Since contract of sale is a type of contract, when claims concerning period of limitation in contract of sale arises which is not covered by the special law, regulation of the claim in the general contracts period of limitations rules depending on the issue at hand is recognized.<sup>227</sup> The recognition of applying the general contracts period of limitation rules to contracts of sale doesn't mean that the rules can be applied for every period of limitation claims in contracts of sale. In few cases the lower courts have applied the general contracts period of limitation rules to contracts of sale claims by disregarding the special period of limitation fixed by the special law. Accordingly, when the claim at hand concerning period of limitation is covered by the special provisions that are mentioned by the special law governing contracts of sales, the rules of period of limitation in general contracts doesn't comes into picture. For instance, the special law regulating contract of sale provides a special period of limitation for the buyer to bring an action against the seller on the basis of warranty against defects and non-conformities. By basing on this, the buyer who has received defective or non-conforming goods has to institute an action against the seller on the basis of warranty against defects and nonconformities within one year after giving notice<sup>228</sup> not by the 10 year period of limitation of general contracts. A good insight in this regard was made by the federal cassation bench in file

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<sup>225</sup>Eshetu, *Supra note 17* ,at 36

<sup>226</sup> *Development bank of Ethiopia vs. Haji Abdurrahman Telisa*, 'Decision of the federal Supreme Court cassation Decisions' File No.15662, Vol. 4, (13 March 1999 E.C), at 24. In this case, even if the lapse of 1 year period prescribed under article 2298 was raised as an objection, the cassation bench hasn't considered it as an issue and has skipped it.

<sup>227</sup> Civil Code, *Supra note 14*, at article 1676 (1)

<sup>228</sup> *Id.*,at Article 2298 (1)

number 55229<sup>229</sup>, in which the lower court applied the general contracts period of limitation of 10 years by disregarding the special period of limitation fixed by article 2298 (1).

*The cassation bench asserted that the person is expected to notify the existence of defect without delay as per article 2292 and have to bring claim within 1 year pursuant to article 2298 (1) whose failure to bring the action within 1 year after the notification bars the right. Therefore, due to the failure of the person to bring an action claiming the existences of defects on the goods received within 1 year after notifying the respondent, the court decided that the action is barred by 1 year period of limitation.*<sup>230</sup>

As per the above cassation decision the general contracts period of limitation can't be applied in contract of sale for claim instituted on the ground of defective and nonconforming goods.

In opposite to the above case<sup>231</sup>, in the case of Weldetsadik Birhanu vs. Sintayehu Ayalew, the federal cassation has criticized the lower courts application of special period of limitation stated under article 2892 (3).<sup>232</sup> The lower courts held the decision that the claim for performances of contracts of sale of house is barred by 1 year period of limitation because the action is instituted after the lapse of 1 year and 8 months after the notice is given as per article 2892 (3) of the civil code. The federal cassation bench on the other hand applied the general contracts period of limitation prescribed under article 1845 of the civil code by excluding the application of the special period of limitation specified under article 2892 (3) because,

*In situations whereby the seller have failed to prove that he has informed his intention not to perform as per the contract to the buyer unequivocally or the contract of sale have not specified compulsory date for performance of contract, the application of the 1 year period of limitation prescribed under article 2892 (3) of the civil code is not proper. Therefore when the application of period of limitation specified by the special laws is excluded or at time of absence of special period of limitation, for dispute arising from*

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<sup>229</sup> *Development bank of Ethiopia vs. Meheda Umer*, 'Decisions of the federal supreme court cassation Divisions', File No. 55229, Vol.12, (9 January 2003 E.C), at 50

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Weldetsadik Birhanu vs. Sintayehu Ayalew*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 38935, Vol.8, (3 March 2001 E.C), at 327.

*claims for performance of contract the applicable period of limitation is the 10 year specified under article 1845 of the civil code.*<sup>233</sup>

Pursuant to this decision, the rules of general contracts on period of limitation can be applied for claim of performance of contracts of sale when period of limitation specified by the special laws is excluded or at time of absence of special period of limitation. There are certain instance that has originated from contracts of sale may lead to unlawful enrichment claim which doesn't have specified period of limitation rules. Accordingly, when a contract declared invalid or canceled, parties will be restored to their earlier position to which they were before the conclusion of contract (to their previous position) and if their exist a person who is under duty of restoring the property on which he has altered or incurred an expenses, has the right to claim alteration or expense he incurred through by unlawful enrichment.<sup>234</sup> Despite securing the right of the person, the provisions of the civil code that governs claims of unlawful enrichments doesn't contain provision prescribing period of limitation for claims originated from unlawful enrichments. Though the part of the law governing unlawful enrichment failed to prescribe period of limitation which bares the claim of unlawful enrichment, the cassation bench decided that claims of compensation emanating from unlawful enrichment should be regulated by 2 years period of limitation pursuant to article 2143 (1) of the civil code provision stipulated for extra contractual claims.<sup>235</sup> The application of period of limitation of extra contractual claims to unlawful enrichment by cassation bench justified by;

*The chapter of the civil code that governs unlawful enrichments doesn't specify a period of limitation for compensation claims, however the presence of provisions dealing about unlawful enrichments and extra contractual liability in the same title as well as unlawful enrichment arises from extra contractual liability, period of limitation prescribed under extra contractual liability shall be applied to unlawful enrichment in similar manner.*<sup>236</sup>

In accordance to this decision, a person can claim compensation arising from unlawful enrichment within 2 years from the date he sustained the damage as per article 2143 (1) of the

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<sup>233</sup> *Id.*

<sup>234</sup> Civil Code, *Supra note* 14, at article 1815 and 1818

<sup>235</sup> *Megertu Negasa vs. Tsehay Liga, Decisions of the federal Supreme Court cassation Divisions'*, File No. 34406, Vol.6, (7 April 2000 E.C), at 225.

<sup>236</sup> *Id.*

civil code. The relevancy of this decision is pivotal in contracts of sale, because as a result of invalidation or cancelation of contract of sale restoring parties to the position they were before the conclusion of contract of sale is inherent effect of invalidation or cancelation of contract of sale,<sup>237</sup> hence a person who is obliged to restore to the property which he has altered or incurred an expense has the right of claiming right arising from such alteration or expense he incurred through by unlawful enrichment within 2 years period of limitation of extra contractual provision, because the part of civil code that governs unlawful enrichment doesn't contain provision that specify period of limitation for such claim.<sup>238</sup>

The federal cassation bench has practically entertained dispute originated from contracts of sale that has resulted on unlawful enrichment claim due to invalidation of contract of sale in federal cassation file number 99634.<sup>239</sup> Onwards to the above decision, period of limitation for unlawful enrichment that have aroused from other source in general and unlawful enrichment arising from invalidation or cancelation of contract of sale is regulated by the 2 year extra contractual period of limitation of article 2143(1).

However the rendition of decision by the federal cassations division in volume 22 in cassation file number 78629<sup>240</sup> have added a new sphere to the jurisprudence and has expanded the scope of article 1845 to unlawful enrichment claim emanating from invalidation or cancelation of contracts of sale. There is no doubt that courts were applying the 2 years period of limitation of 2143 (1) for compensation disputes arising from unlawful enrichment claim which is resulted from invalidation or cancelation of contracts of sale.<sup>241</sup> However it's application is excluded in the above decision which has acknowledged the application of 10 year period of limitation specified under article 1845 of the civil code instead of the 2 year period of limitation of 2143 (1) for claims arising from unlawful enrichment.<sup>242</sup>

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<sup>237</sup> Civil Code, *Supra note* 14, at article 1845

<sup>238</sup> Federal cassation Decision, *Supra note* 235

<sup>239</sup> *Tesfalem Arefa vs. Amarech Gudeta and Chala Haile, Decisions of the federal Supreme Court cassation Divisions*, File No. 99634, Vol.18, (1 June 2007 E.C), at 183.

<sup>240</sup> *Solomon Kasa heir of Kasa Abbebe vs. Ayalnesh Sfra, Decisions of the federal Supreme Court cassation Divisions*, File No.78629, Vol.22, (14 January 2000 E.C), at 395.

<sup>241</sup> Federal cassation Decision, *Supra note* 235

<sup>242</sup> Federal cassation Decision, *Supra note* 240

The cassation bench criticized the justification reflected in cassation file number 34406<sup>243</sup> which have opened a room for application of 2 years period of limitation of article 2143 (1) for unlawful enrichment claim including unlawful enrichment claim arising from invalidation or cancelation of contracts of sale by stating that;

*Despite the placement of the two obligations under the same title of the civil code and the extra contractual nature of the unlawful enrichment claims, applying the 2 year period of limitation specified for tortuous claim under article 2143 (1) is not sufficient ground therefore claims arising from unlawful enrichment can't be regulated by the 2 year period of limitation. Hence the proper period of limitation provision to be applied for claims arising from unlawful enrichment is the 10 year period of limitation prescribed under article 1845 of the civil code through by article 1677 (1) because at time of absence of provisions prescribing period of limitation that governs the claim at hand, through by following the principle of article 1677 (1) of the civil code applying the period of limitation stated under article 1845 which is 10 year is acknowledged by the federal cassation division decision in volume 6 in cassation file number 31748.<sup>244</sup>*

Even if interpretation of law rendered by the cassation division of the federal supreme court with not less than five judges shall be binding at any level of courts from the date the decision is rendered<sup>245</sup> however it can be reviewed by interpretation of law rendered by cassation division presided by not less than seven judges with the same issue by not less than seven Judges.<sup>246</sup> Depending on this provision, for the case at hand and for claims arising from unlawful enrichment that is originated from invalidation or cancelation of contracts of sale, the applicable period of limitation is the general contracts period of limitation of 10 years of article 1845. The revision of the earlier interpretation of the cassation decision have impact on claims of contract of sale, because prior to the revision of the decision invalidation or cancelation of contract of sale by court reinstate parties to their previous position<sup>247</sup> hence a person who is obliged to restore the property he altered or incurred expenses, can claim it through by unlawful enrichment within two

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<sup>243</sup> Federal cassation Decision, *Supra note 235*

<sup>244</sup> Federal cassation Decision, *Supra note 240*

<sup>245</sup> Federal court proclamation, *Supra note 172*, at article 26 (3)

<sup>246</sup> *Id.*, at article 26 (4)

<sup>247</sup> Federal cassation Decision, *Supra note 239*)

year period of limitation, as per article 2143 of the Civil Code<sup>248</sup> however after the revision of the decision, reinstatement of the parties resulting from invalidation or cancelation of contract of sale, the person having duty of returning the property he altered or expense incurred can claim compensation through by unlawful enrichment within 10 year by the general contracts period of limitation as per article 1845 of the civil code.<sup>249</sup>

The scope of application of the rules of period of limitation prescribed under the general contracts is not limited to contractual matter rather its application extends to other non contractual claims. In this regard, in few instances the extended application of the general contracts provision of period of limitation to other non-contractual claim<sup>250</sup> and for some special contracts<sup>251</sup> revealed by the decisions of the federal Supreme Court cassation division, it have stated that even though the source of the obligation doesn't emanates from contracts, the general contracts period of limitation prescribed for contractual claims shall be applied when the laws regulating the obligation have failed to specify period for instituting the claims pursuant to article 1677 (1) of the civil code. Due to different reasons the part of the law which regulates certain claims may sometimes fails to incorporate provisions governing claims concerning period of limitation. Though laws are not expected to govern every dispute, a room which paves a way for uncertain and non-uniform application of laws has to be eliminated. To minimize such kinds of doubt on the issue of period of limitation, the federal cassation division stated that when the part of the law which regulates the dispute fails to specify special period of limitation, the applicable period of limitation is the general contracts 10 years period of limitation.

The recognition of applying the general contracts period of limitation law rules to claims other than contracts doesn't mean that it can be applied for every claims. The applicable rules of period of limitation varies depending on the nature of claim instituted hence disputes concerning ownership rights that have aroused from succession, sale or donation contracts on immovable concerning whether the claim is barred by period of limitation or not have to be examined and decided by considering different factors. In the case of Yeshareg Kebede and Hanna Admasu vs.

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<sup>248</sup> Federal cassation Decision, *Supra note 235* ; Civil code, *Supra note,19*, at article 1818

<sup>249</sup> Federal cassation Decision, *Supra note 240*

<sup>250</sup> *Yismaw Dres vs. Ybeltal Fkir*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 31748, Vol.6, (18 February 2000 E.C), at 285. *Hajira Abro vs. Hashim Haji Aliye*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 34940, Vol.8, 28 December 2001 E.C, at 314.

<sup>251</sup> *Girma Shiferaw vs. Christian charity development organization*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 32545, Vol.6, (14 May 2000 E.C), at 351.



Yeshiwork Mekonin the cassation bench reflected the position that if the dispute of the parties is concerned with ownership right of immovable property that arises from succession, sale or donation contracts, the issue whether the claim is barred by period of limitation or not should be regulated by the relevant, enforceable part and content of the law for the case at hand namely succession, sale and donation related limitation provisions of the Civil Code.<sup>252</sup>

### **3.6 The Judicial Understanding on Enforcement Rules of Period of Limitation in Contract of Sale.**

The enforcement rules of period of limitation are those provisions specifying how the prescribed period commences, is raised, enforced, interrupted or waived.<sup>253</sup> The enforcement rules in contracts of sale vary depending on the nature of the claim and the provision governing the claim. In contracts of sale, if the claim at hand regarding period of limitation proved to be regulated by the enforcement rules of general contracts, it will be regulated by the civil codes articles 1846-1856<sup>254</sup> whereas if the claim at hand is ascertained to be regulated by the special law, enforcement rules prescribed by such law shall apply.<sup>255</sup> With regard to the commencement of the 10 year general contracts period of limitation, the period of limitation starts to run, from the day when the obligation is due or the rights under the contract could be exercised.<sup>256</sup> The period of limitation which has started to run can be interrupted and new period of limitation begun to be counted when the debtor admits the claim or the creditor brings an action for the debtor to discharge his obligations.<sup>257</sup>

The date of commencement of period of limitation prescribed under article 1846 of the civil code is criticized on the ground that it may create a problem of interpretation.<sup>258</sup> This problem may arise from the provisions specification of two optional dates for the commencement of period of limitation. Accordingly the period of limitation commences on the date beginning from the

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<sup>252</sup>Yeshareg Kebede and Hanna Admasu vs. Yeshiwork Mekonin, 'Decisions of the federal Supreme Court cassation Divisions', File No.71537, Vol.14, (2 December 2005 E.C), at 68.

<sup>253</sup>Eshetu, *Supra* note 17, at 23

<sup>254</sup> *Id.*

<sup>255</sup> Examples of enforcement rules on special period of limitation, Civil Codes, *Supra* note 14, at article 2298 and article 2892.

<sup>256</sup> Civil Code, *Supra* note 14, at article 1846

<sup>257</sup> *Id.*, at article 1851 and 1852

<sup>258</sup>Mulugeta, *Supra* note 18, at 152; David, *Supra* note 19

obligation is due or the rights under the contract could be exercised.<sup>259</sup> This means there exist two different period of commencement for period of limitation and depending on at which point one has started counting, a party's action for invalidation of a contract, for enforcement of a contract, or the action based on the nonperformance of a contract could or could not be barred.<sup>260</sup> Such kinds of question might be witnessed when the due date of the contract and the rights under the contract could be exercised are different.

Jurisprudentially the two line of interpretation raised in contracts of sale regarding the date of commencement of period of limitation in the case of Tsegaye Mitiku vs Abebech Mitku (with two persons),<sup>261</sup> In this case the federal cassation division, mentioned that period of limitation commences from the date the rights under the contract could be exercised though the lower courts argued that period of limitation commences from the date the obligations falls due and considered the date contract of sale concluded as beginning date for the commencement of period of limitation. The argumentative issue in the case was whether the period of limitation in contracts of sale commences to run from the date contracts of sale concluded which is followed by the lower courts or from the date the rights under the contract could be exercised which is adopted by the cassation bench. The federal cassation division has reflected similar position in the case of Kefiyalew Ayele and Asegedech Mekonin vs. Werknesh Belay and Tolcha Balcha,<sup>262</sup> by considering the date the rights under the contract, could be exercised as a date a period of limitation starts to commence by disregarding the date contract of sale concluded.

The period of limitation that have commenced or started to run can be interrupted and new period begun to run when the grounds specified under the laws ascertained to happen. Among different grounds which interrupt the running period of limitation, the act of creditor to bring an action seeking the performances of contracts is among the ground that interrupts the running of period of limitation.<sup>263</sup> Despite the civil code specify that the institution of an action by the creditor is the ground that interrupts the running of period of limitation, the federal cassation

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<sup>259</sup> Civil code, *Supra note 14*, at article 1846

<sup>260</sup>Mulugeta, *Supra note 18*

<sup>261</sup>*Tsegaye Mitiku vs Abebech Mitku et al (with 2 persons)*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 36756, Vol.8, (17 March 2001 E.C), at 331.

<sup>262</sup>*Kefiyalew Ayele and Asegedech Mekonin vs. Werknesh Belay and Tolcha Balcha*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 131151, Vol.22, (25 December 2010 E.C), at 15.

<sup>263</sup> Civil Code, *Supra note 14*, at article 1851 (b)

bench in its file number 43636,<sup>264</sup> affirmed that, though article 1851 of the civil code recognizes the institution of an action by the creditor interrupts the running of period of limitation in contract of sale, an action instituted by the debtor seeking the cancelation of the contracts of sale interrupts the running of period of limitation for the claim instituted by the creditors seeking performance of contracts of sale. Even if the respondent argued that the person that has instituted an action for cancelation of the sale contracts was them not the applicant the period of limitation can't be interrupted because of article 1851 (b), the federal cassation bench that entertained the case on the alleged commission of basic error of law after hearing the claims of the parties rendered the decision that the claim of the applicant is not bared by period of limitation in opposition to lower court's decision. Pursuant to this binding interpretation granted by the federal cassation bench, though the proceeding that interrupts the running of period of limitation is the one that is instituted by the creditor, proceeding instituted for the claim of cancelation of contract of sale by the seller interrupts the running of period of limitation for the claim of performance of contract by the buyer.

Though special laws contain their own provisions regulating period of limitation and enforcement rules for instituting court proceeding<sup>265</sup>, they may fail to specify certain enforcement rules that prescribe those periods may be raised, enforced, suspended, interrupted or waived. In such instances provisions prescribing enforcement rules under the general contracts, article 1851 of the civil codes are the one that regulates interruption of running of period of limitation mentioned under the general contracts which is 10 years and special period of limitation mentioned under special laws that doesn't contain provisions addressing issue of interruption of the prescribed special period of limitation.

Accordingly the provision specifying period of limitation under the general contracts is not the only provision which is applied for special contracts<sup>266</sup> and to other non-contractual obligation<sup>267</sup> rather provisions prescribing enforcement rules have also been applied through by the instrumentally of article 1676 and 1677 of the civil code. However there is variation of

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<sup>264</sup> Federal cassation Decision, *Supra note 188*

<sup>265</sup> For example the labor proclamation, *Supra note 28*, part 10 is separate part in the proclamation that regulates disputes of period of limitation

<sup>266</sup> Federal cassation Decision, *Supra note 251*; Federal cassation Decision, *Supra note 232*

<sup>267</sup> Federal cassation Decision, *Supra note 250*); *Tegegn Mamo vs. Kasahun Desalegn*, 'Decisions of the federal Supreme Court cassation Divisions', File No.25664, Vol.6, (7 May 2000 E.C), at 239; *Dinqe Tedla vs. Abate Chane*, 'Decisions of the federal Supreme Court cassation Divisions', File. No. 17937, Vol.4, (20 March 1999 E.C), at 80.

interpretation of provisions of the enforcement rules of period of limitation basing on the type of the claim. Pursuant to this, interpretation of provision on commencement, interruption or waiver of period of limitation in employment contract or contract of sale or on other non-contractual obligation varies highly. For instance in the disputes of employment contracts, the date of commencement of period of limitation for managerial employees in labor claim to enforce his right according to 1846 begins to run from the date the letter of cancelation of employment contract is received by the employee not the date letter is written,<sup>268</sup> and the period of limitation which was running can be interrupted by a letter written by the employer for request of payment made by the employee when proceeding instituted by the employee to enforce his right by payment as per article 164 (3) of labor proclamation number 377/96 and 1852 (2) of the civil code.<sup>269</sup> On other case where parties argued by giving their own interpretation of article 1846, the cassation bench which has entertained the claims of the parties affirmed that, prior to granting interpretation for the provision, the content, spirit, goal and relation between the parties have to be considered. By taking into account those specification the cassation division decided that the period of limitation commences from the date the applicant started to give the transit service.<sup>270</sup>

From the above aspects of the jurisprudence the existences of challenges can be witnessed that is originated from different sources which may affect the smooth transaction of the business. In different situations the cassations has urged lower courts in deciding whether certain claim is barred by period of limitation or not have to be examined and decided by considering different factors<sup>271</sup> and at time of interpretation of the provision that governs the claim of period of limitation, there have to be examination of the provisions content, spirit, objective and relation between the parties.<sup>272</sup> Due to absence of such consideration in few instances the decisions of lower courts was reversed.

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<sup>268</sup> *Tiruwerk Mengiste vs. Prefabricated buildings parts manufacturing organization*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 94931, Vol.16, (14 February 2006 E.C), at 150.

<sup>269</sup> *Gulilat Welde vs. Commodity wholesale and import organization*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 63635, Vol.11, (27 June 2003 E.C), at 188.

<sup>270</sup> *Ethiopian maritime transit service enterprise vs. disaster prevention and preparedness*, 'Decisions of the federal Supreme Court cassation Divisions', File No. 42700, Vol.10, (12 July 2002 E.C), at 171.

<sup>271</sup> Federal cassation Decision, *Supra note 252*

<sup>272</sup> Federal cassation Decision, *Supra note 270*

## 3.7 Challenges in the Existing Jurisprudence

### 3.7.1 The Problem of Scope

In Ethiopian legal system, the civil code that regulates contracts of sale has failed to stipulate the scope of application of the general contracts provisions of period of limitation in contracts of sale. The lack of clear provisions that specify when and how the rules of period of limitation stipulated under the general contract to be applied for contracts of sale can result in various problems in sales law enforcing process, like uncertainty over the applicable rules, predictability of the decisions and also should there is clear rules specifying situation of applying or disregarding the general contracts provisions of period of limitation on contract of sale there is a potential to avoid the uncertainty on the rules and predictability of the decisions.

In relation to this a good insight is the claim of period of limitation emanating from unlawful enrichments to which the part of the civil code that governs claims of unlawful enrichment has failed to provide rules prescribing period of limitation for institution of action on the claim of unlawful enrichment. Though the part of the law regulating unlawful enrichment has failed to prescribe period of limitation which bares the claim of unlawful enrichment, the cassation bench decided that claims of compensation emanating from unlawful enrichment should be regulated by 2 years period of limitation pursuant to article 2143 (1) of the civil code provision stipulated for extra contractual claims.<sup>273</sup> The application of extra contractual period of limitation provision to unlawful enrichment by the cassation bench justified by the absence articles specifying period of limitation under the chapter of the civil code that governs unlawful enrichments and the presence of provisions dealing about unlawful enrichments and extra contractual liability in the same title moreover unlawful enrichment arises from extra contractual liability.

The regulation of claims of period of limitation in unlawful enrichments by the rules of extra contractual period of limitation lasted until the publication of volume 22<sup>274</sup> which has replaced it by the general contracts period of limitation of 1845. Based on this revision, reinstatement of the parties resulting from invalidation or cancelation of contract of sale, the person having duty of returning the property he altered or expense incurred can claim compensation through by

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<sup>273</sup> Federal cassation Decision, *Supra note* 235

<sup>274</sup> Federal cassation Decision, *Supra note* 240

unlawful enrichment within 10 year period of limitation, as per article 1845 of the civil code<sup>275</sup> not within 2 years of article 2143. Had there been rules that specify when and how the general contracts period of limitation provisions could be employed to claims of contract of sales such kinds of problems which may raises doubt on the jurisprudence wouldn't been created.

Even though the rules of period of limitation to be applied for contracts of sale are determined by the type of the claim and the objective, in some instances the general contracts rules of period of limitation applied for contracts of sale by disregarding the special period.<sup>276</sup> On other case the special period prescribed by sales law was applied by disregarding the general contracts rules of period of limitation.<sup>277</sup> It is not only in the contract of sale the above kind of application witnessed rather the federal cassation bench has also sated aside the rules of general contracts period of limitation that is applied by the lower courts and applied other rules of period limitation for claims other than contracts of sales. For instance in federal cassation file numbers 28686<sup>278</sup>, 43600<sup>279</sup> and 31185<sup>280</sup>, the cassation has disregarded the regulation of the claims on the case by general contracts rules of period of limitation. In opposition to those cases in federal cassation file numbers 17937<sup>281</sup>, 25664<sup>282</sup> and 71537,<sup>283</sup> the cassation has applied the general contracts rules of period of limitation instead of the special period fixed by the special law.

As we can understand from the cases, the absence of clear rules which prescribes when and how the rules of period of limitation specified under the general contracts can be employed without contradiction with special period of limitation provided by sales law may create uncertainty over the rules to be applied and may affects smooth transactions of business.

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<sup>275</sup> *Id.*

<sup>276</sup> Federal cassation Decision, *Supra note 232*

<sup>277</sup> Federal cassation Decision, *Supra note 225*

<sup>278</sup> *Government house rental agency vs. Gizaw Menjeta*, 'Decisions of the federal Supreme Court cassation Divisions', File No.28686, Vol.6, (24 November 2000 E.C), at 251.

<sup>279</sup> *Government house rental agency vs. Dawit Mesfin*, 'Decisions of the federal Supreme Court cassation Divisions', File No.43600, Vol.10, (5 January 2002 E.C), at 225.

<sup>280</sup> *Ethiopian insurance corporations vs. Ethiopian commercial bank*, 'Decisions of the federal Supreme Court cassation Divisions', File No.31185, Vol.6, (12 May 2010 E.C), at 261.

<sup>281</sup> Federal cassation Decision, *Supra note 267*

<sup>282</sup> Federal cassation Decision, *Supra note 267*

<sup>283</sup> Federal cassation Decision, *Supra note 252*

### 3.7.2 The Problem of Dispersion

As discussed somewhere above, rules regulating claims of period of limitation in contracts of sale are not exhaustively covered by the part of the civil code that governs contracts of sale. Despite its status recognition as special contracts and its regulation by the separate part, this part have specified few provisions that regulates claims of period of limitation and the general contracts rules of period of limitation applies to the issues of period of limitation which is not covered by the special part.<sup>284</sup> Accordingly rules regulating claims of period of limitation in contracts of sale are found in scattered manner in the special part of the book and in other part of the book. Though contracts of sale have separate part under the civil code that governs contracts of sale, this part doesn't contain separate section that regulates claims of period of limitation unlike other special contracts like employment contracts which contain separate section that governs the issue of period of limitation in contracts of employment under part ten<sup>285</sup> and the law that governs contracts of insurance also contain separate section under the commercial code of Ethiopia.<sup>286</sup>

As a result of dispersion of provisions of period of limitation that governs disputes arising from contracts of sale in the general contracts part and in the special part, overlapping between those rules of period of limitation is reflected. For example in file number 38935<sup>287</sup>, the lower courts dismissed the claim by applying period of limitation rules of article 2892 (3) for the claim that have arisen from contract of sale of house even though the applicant urged the regulation of he's claim by the general contracts rules of period of limitation specified under article 1845 whereas the federal cassation reversed the decision by regulating the claim at hand by article 1845 period of limitation. In other instance in file number 55229<sup>288</sup>, the supreme court of Oromia regional state applied the period of limitation of article 1845 instead of article 2298 (1) s period of limitation while the cassation employed 1845 period of limitation by disregarding 2298 (1) period by stating that the person is expected to notify the existence of defect without delay as per article 2292 and have to bring claim within 1 year pursuant to article 2298 (1) whose failure to

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<sup>284</sup> Civil Code, *Supra note* 14, at article 1676

<sup>285</sup> Labor proclamation, *Supra note* 28, at article 163-167 part 10. Separate part in the proclamation that regulates period of limitation for claims

<sup>286</sup> Commercial Code, *Supra note* 28, at article 674 under book 3 title 3 section 3. separate section in the commercial code that governs period of limitation for claims of insurance

<sup>287</sup> Federal cassation Decision, *Supra note* 232

<sup>288</sup> Federal cassation Decision, *Supra note* 225

bring the action within 1 year after the notification bars the right. The above cases indicates the overlapping between special period of limitation law of sales and general contracts period of limitation that applies to contract of sale which may create question on uniform application of period of limitation rules in contracts of sale.

### **3.7.3 The Dilemma on Rules of Commencement of Period of Limitation.**

An enforcement rule of period of limitation includes under its scope, rules specifying the date prescribed period of limitation begins to run. The date of commencement of period of limitation prescribed under article 1846 of the civil code is among such rules that specify the date of commencement of period of limitation and which may applies to contracts of sale. Unlike the intention of the drafter of the civil codes<sup>289</sup>, article 1846 of the civil code, the period of limitation commences on the date beginning from the obligation is due or the rights under the contract could be exercised. What makes this provision problematic in the jurisprudence is the due date and the date beginning from which a right under a contract could be enforced is different dates and the provision has recognized both dates.<sup>290</sup> This means there are two different starting points, and depending on at which point one has started counting, a party's action for invalidation of a contract, for enforcement of a contract, or the action based on the non-performance of a contract could or could not be barred.<sup>291</sup>

Despite the specification of two different starting dates for period of limitation, the federal cassation has eliminated such dilemma by stating that period of limitation commences from the date the rights under the contract could be exercised unlike the lower courts which have argued that period of limitation commences from the date the obligations falls due and the lapse of 16 years by counting the date of period of limitation from the date of conclusion of sale contracts.<sup>292</sup> Furthermore the cassation bench has applied the same stand in the case of Kefiyalew Ayele and Asegedech Mekonin vs. Werknesh Belay and Tolcha Balcha<sup>293</sup>, even though the respondent and the lower courts asserted that period of limitation begins to run (commences) from the date contract of sale concluded. The cassation bench objected such interpretation and stated that in this case period of limitation begins to run from the date of issuance of the title to the respondent.

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<sup>289</sup> David, *Supra note* 19, at 90

<sup>290</sup> Mulugeta, *Supra note* 18, at 152

<sup>291</sup> *Id*

<sup>292</sup> Federal cassation Decision, *Supra note* 261

<sup>293</sup> Federal cassation Decision, *Supra note* 262



Even if the case doesn't arise from contracts of sale, in other situation at time of absence of special contract depicting the date of payment by the respondent to the applicant for transit service rendered is after the work of joint account reconciliation takes place, the cassation bench after examining the provisions content, spirit, goal and relation between the parties held that period of limitation commences from the date the applicant started to give the transit service unlike the lower courts which have taken the stand that the period of limitation commences after the work of joint account reconciliation takes place.<sup>294</sup>

The lower courts habits of considering date of conclusion of contracts as a date period of limitation begins to commence in the above cases was justifiable criticized though the existence of two separate dates under article 1846 of the civil code is problematic. Furthermore the lower courts have failed to give due attention for interpretation granted by the cassation bench on the provision on file number 36756<sup>295</sup> though the interpretation recognized as binding in all level of courts.<sup>296</sup> Had there been due consideration given by the lower courts on the prior interpretation granted on the provision on the above case, they might not considered the date of conclusion of contracts of sale as beginning day for running of period of limitation in the case of Kefiyalew Ayele and Asegdech Mekonin vs. Werknesh Belay and Tolcha Balcha.<sup>297</sup> As the lower courts are the main stakeholder in applying uniform rules of period limitation for claims of contracts of sale, they have to employ previous interpretation of the cassation bench on similar claims to achieve the desired uniformity.

### **3.7.4 The Culture of Courts in Employing Interpretation of Cassation Bench Interpretations.**

The Ethiopian courts structure entrusts the federal supreme court of Ethiopia the power of cassation over any final court decision which contains basic error of law.<sup>298</sup> Pursuant to this power, interpretations of law rendered by the cassation division are binding on all level of courts.<sup>299</sup> Due to the binding nature of the interpretation, any level courts have the obligation of adherence to this interpretation in similar matters. The federal supreme courts power of cassation

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<sup>294</sup> Federal cassation Decision, *Supra note 270*

<sup>295</sup> Federal cassation Decision, *Supra note 261*

<sup>296</sup> Federal courts proclamation, *Supra note 172*, at article 26 (3)

<sup>297</sup> Federal cassation Decision, *Supra note 262*

<sup>298</sup> Federal courts proclamation, *Supra note 172*, at article 10

<sup>299</sup> *Id.*, at article 26 (3)

also applies to claims of period of limitation originated from contracts of sale, accordingly any level of courts in Ethiopian are bound to apply the interpretation given on certain provision in similar matter that have aroused from contract of sale concerning period of limitation.

The tendency of courts in applying cassation interpretation of laws in similar matter for the issues of period of limitation that have arisen from contracts of sale is not reflected in sufficient manner. Though the interpretation might be used in various situations the memorable instances noticed while carrying out the study where the interpretation of laws given by the cassation bench employed by court is in cassation file number 78629,<sup>300</sup>the cassation applied interpretation of law rendered by the federal cassation division decision in volume 6 in cassation file number 31748 which authorizes the employment of 10 year period of limitation prescribed under article 1845 of the civil code at time of absence of provisions prescribing period of limitation that governs the claim at hand.<sup>301</sup> Courts that are entertaining cases have to scrutinize the existence of prior decision which is rendered by the cassation bench on similar matter and provision because of the binding nature of the cassation interpretation.

For different factors courts may fail to consider and employ the cassation benches interpretation on similar circumstances, such failure may erode the uniform applicability of the provisions. For example in federal cassation file number 31748<sup>302</sup>, the federal cassation division recognized the applicability of period of limitation of 10 years of article 1845 at time when the part of the law which regulates the dispute fails to specify special period of limitation.<sup>303</sup> In accordance to this decision, the 10 years period of limitation prescribed for contractual claims shall be applied to obligation that doesn't arise from contracts when the laws regulating the obligation have failed to specify period for instituting the claims. However in other case, the federal cassation employed the 2 years period of limitation pursuant to article 2143 (1) of the civil code provision stipulated for extra contractual claims due absence of provision regulating period of limitation under the chapter of the civil code that governs unlawful enrichments.<sup>304</sup> The presence of discrepancy can clearly be understandable in the above two cases, since the application of the 10 years period of limitation of article 1845 to obligation that doesn't emanated from contracts at

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<sup>300</sup> Federal cassation Decision, *Supra note* 240

<sup>301</sup> Federal cassation Decision, *Supra note* 250

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> Federal cassation Decision, *Supra note* 235

time of absence rules regulating the issue of period of limitation for the claim at hand<sup>305</sup> while the employment of the 2 years period of limitation of article 2143 (1) is acknowledged because the part of the law that governs claims of unlawful enrichments has failed to prescribe rules which govern claims of period of limitation.<sup>306</sup> The failure of the court to examine the previous interpretation of laws can be attributed for different factor however such kinds of discrepancy may raises question on uniform application of rules of period of limitation.

Furthermore the lower courts, has failed to regulate the claim by period of limitation of article 1845 through by using the previous interpretation of the cassation bench of file number 31748 which authorizes the regulation claims by article 1845 at time of absence of specified special period of limitation for claims.<sup>307</sup> In this case there is no prescribed period of limitation provision under the special part which regulate dispute arising from the situation whereby the sellers has failed to prove that he has informed his intention not to perform as per the contract to the buyer unequivocally or the contract of sale have not specified compulsory date for performance of contract.<sup>308</sup> Since the application of period of limitation specified under article 2892 (3) of the civil code comes into picture, when contract of sale concluded between the seller and buyer prescribes compulsory date of performance, after proving the institution of the proceeding by the buyer requesting for performance of the contact of sale after the lapse of 1 year from the date prescribed by the contract.<sup>309</sup> Therefore the claim at hand in this case can't be regulated by period of limitation of article 2892 (3), accordingly the lower courts should have regulated the claim by rule of period of limitation of article 1845 by the interpretation given in file number 31748. The cassation bench criticized the lower courts application of period of limitation of article 2892 (3) by stating that, when the application of period of limitation specified by the special laws is excluded or at time of absence of special period of limitation, for dispute arising from claims for performance of contract the applicable period of limitation is the 10 year specified under article 1845 of the civil code.<sup>310</sup>

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<sup>305</sup> Federal cassation Decision, *Supra note* 250

<sup>306</sup> Federal cassation Decision, *Supra note* 235

<sup>307</sup> Federal cassation Decision, *Supra note* 250

<sup>308</sup> Federal cassation Decision, *Supra note* 232

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

With regard to the date of commencement of period of limitation in contract of sale, the cassation disregarded consideration of the date contracts of sale concluded as a date period of limitation commences because the obligation that arises from the contract is not due as the title deed was not issued therefore period of limitation commences from the date the rights under the contract could be exercised not from the date contracts of sale concluded.<sup>311</sup> According to article 26 (3) of the Federal courts establishment proclamation<sup>312</sup>, any level of court has the obligation to follow the binding interpretation of the cassation division given in the above case regarding commencement of period of limitation in contract of sale when dispute arises whether the period of limitation in contracts of sale commences to run from the date contracts of sale concluded or from the date the rights under the contract could be exercised. Contrary to the binding interpretation of the federal cassation division, the lower courts in the case of Kefiyalew Ayele and Asegedech Mekonin vs. Werknesh Belay and Tolcha Balcha,<sup>313</sup> regarded the date of contracts of sale concluded as the date of commencement of period of limitation in contract of sale though the title deed wasn't issued. Similar to the previous decision, the federal cassation stated that period of limitation in contract of sale starts to commences from the date the rights under the contract, could be exercised not from the date contract of sale concluded in scenario whereby title deed wasn't issued.<sup>314</sup> This is clear insight where the lower courts have failed to follow the binding interpretation of the cassation bench in similar matter. Though the cases raised in this sub section are not sufficient enough to conclude the tendency of courts to follow the interpretation of the cassation division on similar matter is totally absent, it might be raised as evidence for the question of culture of courts in applying cassations interpretation in the jurisprudence of the country.

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<sup>311</sup> Federal cassation Decision, *Supra note* 261

<sup>312</sup> Federal courts proclamation, *Supra note* 175, at article 26 (3)

<sup>313</sup> Federal cassation Decision, *Supra note* 262

<sup>314</sup> *Id.*

## **CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS.**

### **4.1 Introduction.**

This chapter is the final part of the study that is dedicated to conclusion and recommendations based on the preceding chapters' discussions. Thus, brief conclusion has been followed by recommendations on different aspects of the study conducted.

### **4.2 Conclusion.**

This research aimed at examining Ethiopian courts jurisprudence on period of limitation under contract of sales law of Ethiopia by taking the case decided and interpretation granted by federal cassation division as a tool and the legal states of period of limitation in Ethiopia comparatively with the limitation convention and UPICC to draw lessons from them. Based on a qualitative analysis of the existing jurisprudence and the legal frameworks comparatively studied, it can be concluded that the examination of the state of the jurisprudence is facing challenges in the existing jurisprudence and there are lessons to be drawn to Ethiopians legal systems from those instruments compared. Specifically, the following core points have been concluded in light of the intended specific research objectives and questions.

There are instruments that regulates period of limitation in contracts of sale internationally, the limitation convention and UPICC are among instruments prescribing rules of period of limitation in contracts of sale. Those instruments regulating period of limitation in contracts of sale in international arena and the Ethiopian period of limitation rules in contracts of sale have shared common aspects and vary in different aspects, there exist various lessons to be drawn to Ethiopian legal systems to eliminate the problems the legal systems and the jurisprudence had faced. Though the terminology employed by the UPICC and Ethiopian civil code is similar in opposite to the limitation convention, the limitation convention and UPICC have recognized dual period of limitation which contain maximum period of limitation which is fixed that serve as a tool to achieve the purpose of period of limitation law unlike the Ethiopian law that doesn't contain neither such kinds of classification nor maximum possible allowed interruption.

Based on the analysis and discussions made on previous chapters, Ethiopia does have legal frameworks and courts as judiciary organs that interpret and apply rules of period of limitation on contracts of sale. However there are challenges that are originated from the legal frameworks which may erode uniform applications of the rules and predictability of the decisions.

From the perspective of the legal frameworks, though there are separate legal frameworks in the civil code that regulates claims of contracts of sale which is important for uniform application of the rules and predictability of the decisions, rules regulating issues of period of limitation in contracts of sale are not found in organized manner rather they are found in scattered way on different parts of the code. Due to dispersion of the rules on different parts, the instance of overlapping of the rules is witnessed. The absence of rules prescribing when and how the rules of period of limitation specified under the general contracts could be applied for claims of contracts of sale is making the challenges worse. The rush by mere justification of absence of rules regulating claims of period of limitation contracts of sale in the special is not sufficient to regulate the claim by the general contracts period of limitation rules because their application might be excluded for different reasons. Additionally the provision 1846 which regulates the date of commencement is also another challenge by specifying two independent dates as a commencement for the period of limitation since it doesn't leave room for solutions when the two dates happens to exist in single transactions. Furthermore a new 10 years period of limitation starts to commence only when a period of limitation which has commenced is interrupted by acknowledgment of debt by writing or established by judgment, the effect of interruption of the commenced period of limitation by other grounds than those prescribed under the provision is not regulated and which is another challenge of the legal frameworks. In different instance the 10 year period of limitation specified under the civil code may run beyond 10 year because each interruption of the commenced period results on the recommencement of new period of limitation moreover unlike other kind of special contracts, in contract of sale the possible allowed interruption of period of limitation is not specified which may defeats the reason of having the rules under the legal system.

Though the circumstances of applying the general contracts period of limitation rules to claims of contracts of sale is unknown, the federal cassation has sated grounds of applying the rules of general contracts period of limitation instead of the special period for claims of contracts of sale and the scenario of applying the special period instead of the general period of limitation. Moreover the cassation division has paved a way of resolving problems that may emanates from date of commencements of period of limitation for claims of contracts of sale which plays a pivotal roles in achieving uniformity in applying the rules. Despite the decision given by interpreting provisions of period of limitation by the federal cassations in issues of contracts of

sale is binding in all level of courts found in Ethiopia, the lower courts have to give due regards and apply the interpretation for similar case which is backbone for uniformity and predictability of decisions.

### **4.3 Recommendations.**

Based on the above conclusion to create uniform application of rules of period of limitation in contracts of sale and to achieve predictability on the decisions, the following core points on the challenges created from the legal frameworks and the jurisprudential bottlenecks have been suggested:

The cassation divisions in different occasions on the cases it have adjudicated have specified the circumstances of applying and disregarding the rules of period of limitation of general contracts to claims of contracts of sale. The federal supreme courts beyond making its decisions accessible to lower courts, it have to employ different mechanisms that enables the lower courts to apply the decisions for similar case which plays major role in uniform application of the rules of period of limitation since the interpretation of the federal cassation bench is binding.

The cassation bench has also extended the scope of application general contracts period of limitation rules to claims of unlawful enrichment originating from the invalidation or cancelation of contracts of sale by reviewing its own previous decision. Hence at time of occurrence of changes of such kind on the jurisprudence, the cassation bench has to prepare enabling mechanisms like trainings to the lower court judges to apply such changes since publishing and distributing the cassation decision is not good enough to apply the changes.

Due consideration have to be granted in organizing dispersed period of limitation rules of contracts of sale provisions based on systematic classification depending on the claim they regulates that enhance predictability of decisions and uniform application by eliminating the overlap that might be created between the special periods prescribed under the special part and the general contracts period of limitation provisions.

From the international instruments governing period of limitation in contracts of sale, lessons that are pertinent to eliminate those challenges and lessons that modernize the legal systems with the global aspects of international sales law have to be drawn. The legal system have to consider by taking lessons from the above instruments, collecting and organizing the provisions of period

of limitation in separate section or chapter depending on the claims they regulates. The instruments have clearly specified maximum period of limitation rule that commences after the interruption of the commenced period, this is another lessons to be drawn to the legal system because there is no prescribed maximum period that commences after interruption and the provision lacks maximum allowed interruption. Furthermore the effect of interruption of the running period of limitation by grounds other than those prescribed under the provisions is not covered by the provision regulating the issue hence the lesson of exhaustive discussion of the effects of interruption of the commenced period of limitation by different grounds have be drawn from those instruments as a lesson.



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