Table of Contents

TABLE OF CONTENTS

1. **Introduction……5**
   1.1 General Objective……5
   1.2 Specific Objectives ……...5
2. **Part One: Introduction to Law in General……..6**
   1.1 Definition of Law……...6
   1.2 Functions of Law……6
   1.3 Features of Law……...6
   1.4 Hierarchy of Laws……6
   1.5 Major Laws Governing Bank Lending……7
   1.6 Main NBE Directives Governing Lending Practice ……7
   Discussion Question……12
3. **Part Two: Contract Law Principles in Bank Lending……13**
   2.1 Prerequisites for Loan and Security Contract Formation……13
      2.1.1 Major attributes of legal personality……13
      2.1.2 Beginning of legal Personality……14
      2.1.3 End of Legal Personality……..14

2.2 Contract Law Principles in Bank Lending……15

2.2.1Definition of contract 15

2.2.2.Element of the definition……..…..15

2.2.3 Formation of contracts……..……15

A. Capacity……15

B. Consent and Defects in Consent ……..17

C. Object of Contract ……18

D. Form of Contract …..……19

E. Legal Effects of Contracts……19

F. Extinction of Obligations……20

Discussion Question ……..20

4. **Part Three: Contract of Agency……..21**

3.1 Definition of Agency……21

3.2 Importance of Agency……21

3.3 Sources of Authority……..21

3.4 Types of Agency……....21

3.5 Effects of Agency……..22

3.6 Termination of Agency……23

Discussion Question……22

5. **Part Four: Security Devices……...23**

4.1 Definition and Types of Security……...23

4.2 Suretyship……..23

4.3 Contract of Pledge……..24

4.4 Contract of Mortgage……..25

4.5 Valuation of Collateral…….27

4.6 Registration and Renewal of Collateral …….28

Discussion Question……28

6. **Part Five: Foreclosure Law……..29**

5.1 Legal Framework of Foreclosure……29

5.2 Auction Procedures ……..29

Discussion Question…….30

7. **Part Six: Confidentiality……31**

6.1 Confidentiality of Customer Information……31

6.2 Legal Basis……..31

6.3 Justification for Confidentiality…….32

6.4 Exceptions to Confidentiality…….32

6.5 Liability for Breach ……33

Discussion Question……..33

Zamzam Bank

Training Module on Legal Aspects of Bank Lending

Prepared by:-

Legal & Corporate Governance Department

April, 2026

Introduction

A. GENERAL OBJECTIVE

The general objective of the Module is to make the trainees understand legal issues related to bank lending process so as to mitigate legal risk.

B. SPECIFIC OBJECTIVES

- explain law and its basic features ;
- explain basics of Sound credit management ;
- identify and apply the particular Laws /rules that govern the bank lending Process;
- examine legal Personality and capacity of persons dealing with Credit issues;
- analyze the law of contract in relation to bank lending ;
- internalize and apply law of agency in relation to Credit;
- identify and apply rules of Security Devices;
- handle proper registration of Collaterals and their renewal ;
- be aware of the legal principle of confidentiality of Customer information and Foreclosure.

Part One

Introduction to Law in General

1.1 Definition of Law

The set of rules or body of rules enacted by government in order to govern or conduct human nature and binding upon human society.

1.2 FUNCTION OF THE LAW

In a nation, the law can serve to:-

- Establishes rules of conduct
- keep the peace and order
- Protecting rights and freedoms
- protect minorities against majorities
- Resolve Disputes
- Promote social justice and provide for orderly social change.

1.3 Features of Law

- It is a body of rules
- It is Man-made
- It is normative in character
- It has an element of coercion
- It has territorial limitation
- It is dynamic in nature.

1.4 Hierarchy of Laws

- Constitution
- Proclamation
- Regulation

- Directives
- Guidelines

1.5 Major Laws Governing Bank Lending

- Banking Business Proclamation No. 1360/2025 and other NBE Directives
- Civil Code ;
- The Commercial Code;
- The Revised Family Code;
- Movable Property Security Right Proc. 1147/2019;
- Stamp Duty Proclamation No. 110/98
- Foreclosure Laws: Proclamation No. 97/98, 98/98 and 216/00-
- Sharia principles/AAOIFI standards
- Other laws/ Proclamations

1.6 Main NBE Directives Governing Lending Practice of Banks

1.6.1 BANK CORPORATE GOVERNANCE DIRECTIVE NO.SBB/91/2024;

- No bank, director, or employee may carry out any transaction under conflict of interest that is contrary to the bank's own policies, the regulatory requirements of the National Bank, Commercial Code and other applicable laws/ article 8.5 /
- Establish independent Board Credit Committee to assist the board of directors in reviewing and overseeing the overall lending of the bank. Article 17 of the Directive lists the responsibilities of the Credit Committee;
- submit any related party loan/foreign currency transactions, banks fixed assets, and technology transactions of material nature, as defined by the board, within fifteen (15) working days from the date of the transaction specifying the name, type of transaction and amount involved;
- Penalty clause /article 23/ for non- compliance.

1.6.2 ASSET CLASSIFICATION AND PROVISIONING DIRECTIVE NO. SBB/90/2024

- Responsibility for Loan Review and Specific Requirements

- The board of directors of each bank shall establish policies for grading, classifying, and monitoring all credit exposures, including off-balance sheet and restructured exposures, as well as, identifying and managing problem assets.
- The loan review function shall be appointed by the board of directors of each bank, among a group of individuals who are knowledgeable in credit analysis methodologies and who are not involved in the lending activities of the bank. The function shall on a regular basis, but not less than once each calendar quarter, report its findings directly to the board of directors in writing

- Placement of Loans or Advances on Non-Accrual Status
- Classification of Exposures
- Forbearance-Restructure Process of Exposures
- Provisioning Requirements for On-Balance/off balance Sheet Exposures
- Eligibility of the Collateral
- Portfolio Composition and Review of Financial Statements of Borrowers and other issues.

1.6.3 LARGE EXPOSURES TO COUNTERPARTY OR GROUP OF CONNECTED COUNTERPARTIES DIRECTIVE NO. SBB/87/2024

- The total exposure (loans, advances, etc.) held by a bank to a single counterparty or a group of connected counterparties is capped at 25% of the bank's total capital.
- Defines Counterparty and Connected Counterparties.
- Banks must report all single counterparty exposures that exceed 10% of their total capital to the NBE within 20 days after the end of each month.
- Intraday interbank exposures are excluded from these limits.
- Banks not currently in compliance must submit an action plan within 90 days and have a maximum of three years to bring their exposures within the new limits.

- The directive applies *mutatis mutandis* to banks engaged in interest-free banking by treating all asset exposures in such activities as exposures under this directive.

1.6.4 EXPOSURE TO RELATED PARTY DIRECTIVE NO. SBB/88/2024

- Define Related Party;
- The aggregate sum of all exposures directly or indirectly held by a bank to any one related party at any one time shall not exceed fifteen percent (15%) of the total capital of the bank;
- The aggregate sum of all exposures directly or indirectly held by a bank to all related parties at any one time shall not exceed thirty five percent (35%) of the total capital of the bank.
- Transactions or write-offs of related-party exposures exceeding Birr 15 million require prior board approval.
- Banks must submit monthly reports to the NBE detailing all related-party exposures, including their classification, maturity, and collateral.

1.6.5 ASSET CLASSIFICATION AND PROVISIONING (SBB/90/2024)

- Loans must be classified into Pass, Special Mention, Substandard, Doubtful, or Loss, based on risk, with a new "Unlikely to Pay" category for loans requiring non-performing status regardless of past-due days.
- All NPLs must stop accruing interest income, regardless of collateral.
- If a single loan constitutes 20% or more of a customer's total exposure, all of that customer's loans must be treated as non-performing.
- Loans with restructuring, exceeding 5% of a bank's capital, must be reported to the NBE.

1.6.6 OPERATIONALIZATION OF MOVABLE COLLATERAL REGISTRY DIRECTIVE NO. MCR/01/2020

- Established a Movable Collateral Registry Office
- Provides duties/responsibilities for banks in related to registration of securities process

- Obliges banks to allocate 5% annual disbursement against movable property as a collateral in related to agricultural and micro, small and medium enterprise loans.

1.6.7 LIQUIDITY REQUIREMENT DIRECTIVE NO. SBB/57/2014,

- Requires banks to maintain liquid assets of not less than 15% of its net current liabilities.
- Any bank that fails to meet the 15% liquidity requirement is prohibited from granting new loans or extending additional credit without prior written approval from the NBE.
- Banks must establish a mandatory ALCO to monitor liquidity positions and manage maturity mismatches effectively.
- Banks must submit a weekly liquidity report to the NBE.
-

1.6.8 RESERVE REQUIREMENTS (9TH REPLACEMENT) DIRECTIVE NO. SBB/97/2025:

- Which became effective on January 1, 2026, mandates a minimum daily reserve balance of 5%
- It introduces a sliding scale for monthly average reserve ratios throughout 2026, reaching 10% by June 2026.

1.6.9 LICENSING, CREDIT INFORMATION AND EXAMINATION FEES ON BANKS DIRECTIVE No. SBB/85/2022

- Established Credit Information Center; and obliges each bank to provide credit information to the center.

1.6.10 Financial Consumers Protection Directive No. FCP-01-20

- Fair treatment
- Transparency and disclosure
- Data protection
- Compliant handling procedure

- Unfair credit related practice
- Notification of changes/ article 5.2.12/
- Other duties of a bank

1.6.11 Directive No. SBB/96/2025, Foreign Exchange Exposure Limits of Banks

- The Net Open Position (NOP), representing the overall foreign exchange risk at the close of each business day, must not exceed +/-18% of the bank's Tier 1 capital. This calculation must include all on- and off-balance sheet foreign currency assets and liabilities exposed to exchange rate risk.
- To maintain market stability, banks must adhere to strict monitoring and reporting rules. Daily reports of foreign currency positions must be submitted to the NBE by 12:00 p.m. noon on the following business day. If the exposure exceeds the 18% limit, it must be rectified by the close of the next business day. Failure to correct an excess position within this timeframe incurs a financial penalty of 10% annual interest on the un-rectified amount.

1.6.12 Foreign Exchange (Amendment) Directive No. FXD/03/2025

- All bank fees for FX purchases are capped at 4%.
- All banks have been required to transparently disclose their FX-related fees on the NBE website.
- The directive also raised the import advance payment ceiling from $5,000 to $50,000.

1.6.13 Risk-Based Capital Adequacy Requirements for Banks Directive No. SBB/95/2025

- Banks must explicitly calculate and hold capital against Market Risk and Operational Risk in addition to Credit Risk.
- Introduced a mandatory buffer of **2.5%** of RWA (risk-weighted assets).

Discussion Question

1. Select three NBE directives and explain how they help reduce credit risk in banks.
2. Do you think the internal credit procedure of a bank considered as a law?

Part Two

Contract Law Principles in Bank Lending

2.1 Prerequisites For Loan And Security Contract Formation

Before concluding the loan and security contract; the bank should:

- Examine Legal Personality and capacity of the borrower;
- Observe the basic legal requirements of a contract formation ;
- Comply with other legal/regulatory conditions including its own internal working procedures

2.1.1 Major attributes of legal personality

Definition:-

"Persons" in law can be defined as human person or legal person subject to rights and duties.

"Legal personality" refers to all the attributes that have legal protection.

- Every physical person is capable of performing all the acts of civil life unless he is declared incapable by the law (Art. 192 of the civil code).
- A legal person can sue or be sued in its own name.
- A legal person can own and administer its property.
- A legal person can enter into contracts or any other legal relationship.
- Every person enjoys the rights of personality and liberties guaranteed by the FDRE Constitution.

Persons are divided into two

1. Physical /Natural/ Art. 1-393 Civil Code (C.C.)
2. Juridical/Legal or Artificial

   Example:- Government, Public Enterprise, Associations, Business organizations, Corporate societies, NGOs etc.

2.1.2 Beginning of legal Personality

Physical /Natural/	Juridical/Legal/
In principle by birth Art. 1 C.C	By law
	Government and its agenesis
	Public enterprises…
	Up on registration and publication
	Associations
	Business organizations like PLC and SC

Physical /Natural

Art.1 of the C.C. states that the human person is the subject of rights from birth to death. There is an exception in the case of merely conceived child–Art.4 of C.C-Issue of being born alive + viability.

2.1.3 End of Legal Personality

FOR Physical /Natural/	For Juridical/Legal/
Death	By law
Absence	Achieving goals of establishment
	Cancelation from registration
	Bankruptcy
	Agreement
	Laps of time

2.2 Contract Law Principles in Bank Lending

2.2.1 Definition of contract?

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature. [Article 1675 of the Civil Code].

2.2.2 ELEMENT OF THE DEFINITION

- Contract is an agreement
- Two or more persons
- As between themselves
- Create, vary or extinguish an obligation
- Proprietary nature/valued in economic or money terms

2.2.3 FORMATION OF CONTRACTS

Four elements of legal requirement for the formation of valid contract

- Capacity
- Consent
- Object
- Form, if any.

  [Article 1678 of the Civil Code]

A. Capacity

It is the power given to a person by law to create, vary or extinguish a juridical act that has legal effect and enforceable by law. Capacity is the principle while incapacity is an exception.

Every physical person is assumed to be capable of performing all the acts of the civil life unless he/she is declared incapable by the law (Article 192 of the Civil Code). Capacity is presumed. Any person who alleges the disability of a

physical person shall prove that such person is under disability (Article 196 of the Civil Code).

There are two types of Capacity. General and Special

1. General Capacity

This refers to the **basic legal ability of a person to make contracts**.

A person has general capacity if they:

- Are of **legal age** (not a minor)
- Are of **sound mind**
- Are **not disqualified by law** (e.g., not declared bankrupt in certain cases)

In short, most adults automatically have general capacity unless there's a legal reason they don't.

2. Special Capacity

This refers to situations where **extra legal qualifications or authority are required** to enter into certain contracts.

Examples:

- A **company director** must have authority to bind the company
- A **public official** must act within their legal powers
- Certain professions (like lawyers or agents) must act within their **granted authority**
- A person acting on behalf of another (like an agent or guardian) must have **proper authorization**

So even if someone has general capacity, they may still lack **special capacity** for specific agreements.

Incapacity of persons: - there are two types of incapacity

General incapacity	Special Incapacity
Incapacity due to age, mental condition, criminal conviction.	Incapacity due to not being a citizen of a country or citizenship

B. Consent and Defects in Consent

It includes the intention of the parties to be bound by the agreement. Consent is a corner stone for a contract.

1. Communication of Consent (Art. 1681)

Consent is expressed either in the form of offer or acceptance. Offer and acceptance are ways of communicating one's own intention to be bound by an obligation. Therefore; offer or acceptance is declared to another person by ordinary ways of communication. These ways of communication could be oral, written, signal and conduct.

2. Consent of Spouses

The Revised Family Code of Federal Law art.68 provide that Consent of both Spouses as mandatory, On the common property of;

- Sale, exchange, pledge or mortgage or alienate in any other way,
- A common immovable/movable/ property or securities registered in the name of both spouses, the value of which exceeds 500 Birr or to stand surety for a debt of such amount to another person etc….
- Exception — Issue of Traders under Commercial Code

3. Defect in Consent

It should be free from any defect - such as: mistake, fraud & duress. Defect causes invalidation (art.1696)

Mistake:-is a false belief about something.

- Which is decisive and fundamental ;
- relates to nature of the contract;
- relates to identity /qualification of a person.(art.1697-1703)

Fraud:- It refers to deceitful practices or false statements of the contracting party. Example —Presenting a false balance sheet to induce loan from a lender. Where there is a fraud the contract is susceptible for invalidation.(art.1704&1705)

Duress: - is a compelling of a party to consent to a contract by threats of injury to person or honor of the person. Invalidation could occur where, the contracting party, one of his ascendants, descendants or spouse are threatened with a serious and imminent danger to the life (person), honor or property; also where it is exercised by a party that does not benefit from the contract.(art.1706&1707)

C. Object of Contract

It is the subject matter of the contract on which the parties agree on. The objects of a contract are obligation to perform something. It is the obligation of the parties to do (positive act) or not to do (negative act) an act. It should be expressed in terms of money.(art.1675)

The acts/object/ the parties agree on should be:-

1. Lawful or moral: - for example, exchanging foreign currency outside Banks is unlawful.
2. Sufficiently defined: - the rights and obligations of the parties must be clearly specified.

3. Possible: - where the object is absolutely impossible, the contract has no legal effect.

D. Form of Contract

Contracting parties can conclude their agreement the way they like — in WRITING or ORALLY. Exceptions (only written form is to be used);

- contract of guarantee;
- contract of insurance;
- contract of mortgage ;
- contract of Sale of immovable property.

Written Form should be:-

- Signed by all the parties bound by the contract.
- Attested by two witnesses
- Capacity and duties of witnesses-be of age (art.1729(1))-sex or nationality not considered art. 1729(2)-certify the contact & terms thereof(art. 1730(1) not guarantee performance of contract(art. 1730(2)

E. Legal Effect of Valid contract

A contract lawfully formed (by fulfilling the above stated legal requirement) shall be binding on the parties as law.(art.1731)

Where a party does not carry out his obligations under the contract, the other party may require

- the enforcement of the contract, or
- the cancellation of the contract, or
- compensation for damages caused.(art.1771(1&2)

F. Extinction of Obligations / contracts

- It is invalidated /cancelled for defects in consent, incapacity, & object etc; (art.1808-18)
- Termination by agreement;(art.1819-24)
- Remission/release of debt; (art.1825)
- Novation/substitution; (art.1826-30)
- Set-off; (art.1831-41)
- Merger; (art.1842-44)_position of creditor & debtor is merged in the person.
- Period of limitation-ten years (art. 1845-51)

Discussion Question

1. Why capacity is considered a fundamental requirement in loan agreements?
2. How can defects in consent (mistake, fraud, duress) affect the enforceability of a loan contract?
3. In what situations is written form mandatory for banking contracts, and why?

Part Three

3. CONTRACT OF AGNECY

3.1 Definition of Agency

Agencyis a contract whereby a person (the agent)-impliedly or expressly- agrees with another person (the principal) to represent him and to perform on his behalf one or several legally binding acts.(art.2199)

3.2 Importance Agency

- The need to overcome time and space limitation,
- The need to overcome limitations of knowledge and skill,
- The need to represent legal persons,
- The Need to overcome incapacities

3.3 Source of the power of Agency/Authority/

Three Source of power of agency

1. Law
    - Guardian for incapable person
    - Spouses- husband and wife
    - Bodies Corporate-Managers

2. Contract
    - By the express or implied agreement of parties
3. Court

3.4 Types of Agency

A. **General Agency** -expressed in general terms shall only confer upon the agent authority to perform acts of management. Acts done for preservation or maintenance of property, leases for terms not exceeding three years, the collection of debts & the sale of crops, or perishable goods/commodities.(considered as Act of Management (art.2204)

B. **Special Agency** -special authority is required by the agent to perform acts other than acts of management.(art.2205) For e.g. to alienate or

mortgage real estate, invest capitals, sign bills of exchange, effect a settlement, consent to arbitration, make donations or bring or defend an action. It confers upon the agent authority to conduct only affairs specified therein (in instrument) and their natural consequences.

3.5 Effects of Agency

A contract made by an agent in the name of another person (the principal) within the scope of his power shall be deemed to have been made directly by the principal. The principal may avail himself of any defect in the consent of the agent at the time of the making of the contract. Any fraud committed by the agent may be set up against the principal by the third party who entered into the contract with the agent.art.2189 (3)

3.6 Termination of Agency (art.2230&2232)

A contract of agency shall terminate where:-

a. The agent/principal dies;art.2232&2230
b. The principal /agent is declared absent;
c. The principal /agent becomes incapable;
d. The principal/agent is adjudicated bankrupt; and
e. where the principal revoked the agent's power.art.2226
f. The agent may renounce it by giving notice to principal (art.2229)

Discusion Question

1. Why is agency important in modern banking operations?
2. What risks can arise when an agent exceeds their authority?
3. How does termination of agency affect ongoing banking transactions?

Part Four

SECURITY DEVICES

4.1 Definition and Types of Security

Security Devices are assurances or protections given by a debtor or a third party to a creditor, to make sure the performance of obligation. They are resources provided by a debtor to creditor to be used in case of failure in the principal obligation;

Security devices include :

- surety ship,(art.1920 ff)
- pledge,(art.2825 ff)
- mortgage,(art.3041 ff)

4.2 Surety Ship

It is personal guarantee undertaken in favor of the creditor to discharge the obligation, should the debtor fails to do so. To be valid the guarantee:-

- should be express;(art.1922(2)
- the maximum limit of the obligation is specified; (art.1922(3)
- it is not above the amount owed by the debtor; (art.1924)

The guarantor shall be released where the creditors allow time for payment to the debtor without the authorization of the guarantor. (art.1928(2)

Types of Guarantee

Joint Guarantee - it exist where a guarantee describes himself as joint-guarantor, co-debtor, or used equivalent terms. He does not have benefit of discussion.(art.1933)

Simple Guarantee - the guarantor may not pay the creditor unless the principal debtor fails to discharge his obligation. He does have a benefit of discussion.art.1934(1&2)

Secondary Guarantee - occurs where a person stands surety not only of the

principal debtor but also for his guarantor; he/she is a guarantor for both the principal debtor and the guarantor.(art.1950)

4.3 Contract of Pledge

It is a contract whereby a debtor undertakes to deliver a thing called the pledge to his creditor as security for the performance of an obligation. art. 2825 Movable Property Security Right Proc. 1147/2019 defines movable properties and how security rights are established, etc.

The contract should:-

- specify maximum amount guaranteed; art.2828(1)
- be made in writing; art.2828(2)
- be made in relation to movable chattels capable of being sold in public auction;art.2829
- the documents of title (vouchers, B/L or way-bills) are delivered or endorsed in his favor. art.2830

A. Rights and Duties of Pledger and Pledgee

The pledger has the right to

- retain the pledge (subject to the restrictions in the contract); art.2834(1)
- dispose freely his right; art.2834(2)
- alienate the pledge or re-pledge it subsequently art.2834(2)
- demand the pledge by paying the debt secured by it. art.2837

The pledgee has the duty to:

- bring action for possession of the pledge; art.2842
- return the pledge where the contract is extinguished (fully) by payment or any other reason; art.2845
- claim the compensation paid in respect of the pledge from the insurer or any other person; art.2848

- collect the fruits of the pledge and the value of the fruit shall be applied to expense, interest,& principal of debt respectively.(art.2841)
- be paid before other creditors , has priority of claim.art.2857

4.4 Contract of Mortgage

Definition

"A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms". Black's Law Dictionary

A. Creation of Mortgage

According to civil code of Ethiop Art 3041

A mortgage is created by:

1. law
2. judgment
3. contract

A valid contract of mortgage exists where:

- made in writing;(art.1723 &art.3045(1))
- the maximum amount guaranteed is specified;
- relates to immovable property or special movables
- created by the owner (or his agent);art.3049(2)-(right to dispose of it)
- the immovable mortgage is specified;art.3048
- Registered(art.3052) - the registration works for 10 years from the date of registration.art.3058(1)

B. Grounds for Cancellation of Mortgage Contracts (art.3110(a-d))

The grounds for cancellation of contracts mortgage are:-

1. The claim secured by the mortgage is extinguished;
2. The mortgagee has renounced his right ;

3. The immovable mortgaged is sold by auction and its proceeds are distributed among the creditors.
4. Offer of redemption is distributed among the creditors.

C. Effects of a Valid Mortgage Contract

- Preferential Right/ Priority Right (art.3076)
- Right to follow immovable (art.3085)
- Right to Collect rents, compensation, etc. (art.3068 & 3069

D. The rights of mortgager and mortgagee

Rights of the Mortgagor (Debtor)

- The mortgagor maintains significant control over the property until foreclosure:
- Right of Ownership and Transfer: The mortgagor retains the right to transfer ownership of the property to third parties; any contract clause prohibiting this is generally considered null and void under Article 3084 of the Civil Code.
- Right to Create Secondary Rights: The owner can charge the property with further mortgages, usufructs, or servitudes without the mortgagee's permission.
- Right of Redemption: The mortgagor can reclaim the property by paying the debt in full before it is sold. This right is fundamental ("once a mortgage, always a mortgage") and cannot be permanently signed away in the initial deed.
- Right to Possession and Fruits: The mortgagor usually remains in possession and is entitled to collect rents and profits from the property.

Rights of the Mortgagee (Creditor)

- The mortgagee's rights are centered on securing the repayment of the debt:

- Right of Preference (Priority): In the event of the debtor's insolvency or sale of the property, the mortgagee has the right to be paid first from the proceeds before other ordinary creditors.
- Right of Pursuit: The mortgagee can follow the property even if it is transferred to a third party, ensuring their security interest remains attached regardless of ownership changes.
- Power of Sale (Foreclosure): If the debtor defaults, the mortgagee has the power to have the property seized and sold. Under Proclamation No. 97/1998, banks have the right to sell mortgaged property through auction without a court order, provided they follow legal notice procedures.
- Right to Determine Sale Order: If multiple properties are mortgaged for the same debt, the mortgagee bank has the discretion to choose which property to sell first.
- Injunction Rights: To protect their interest, banks can practically secure injunctions to prevent the unauthorized sale or waste of the mortgaged property by taking custody of title deeds.

4.5 Valuation of Collateral

Under Proclamation No. 1357/2024, which governs Real Estate Development and Real Property Marketing and Valuation, banks and financial institutions face specific new obligations aimed at standardizing collateral assessments and regulating their involvement in the real estate market.

Obligations in Real Property Valuation

The proclamation establishes a standardized national system for valuation that banks must use for collateral evaluations and loan approvals.

Mandatory Use of Certified Valuers: Banks are now obligated to ensure that valuations used for loan collateral are conducted by certified valuers from authorized bodies to guarantee professionalism and reliability.

Market-Based Assessment: Collateral estimates must be clear and based on current local market information. While the Sales Comparison Approach is preferred, banks may also use Income Capitalization or the Cost Approach depending on the property type.

Public Disclosure & Transparency: Banks are part of a system that requires the public notification of property valuations to ensure market transparency and informed decision-making by all parties.

Data Verification: If a discrepancy exists between the registered value and the actual value of a property used for a loan, banks must work with relevant bodies to verify and correct the valuation.

4.6 Registration of Collaterals and Renewal

Registration of immovable properties (house, building, premises) as a collateral at a concerned registrar is mandatory. A mortgage has no legal effect unless it is registered in the Register of Immovable Property at the location where the property is situated. The need to effect registration before Registers of Immovable-art.3052 of the civil code.

Civil code Amendment Proclamation No. 639/2009 made art.1723 of the civil code inapplicable the duty to make the contract before court of law or the notary.

Every time the due date is completed or new agreement is concluded the registration of the collateral has to be renewed.

Discussion Question

1. Compare suretyship, pledge, and mortgage in terms of risk protection for banks.
2. Why is proper registration of collateral critical in secured lending?
3. What legal consequences arise if collateral valuation is inaccurate or not properly conducted?

Part Five

Foreclosure Law

5.1 Legal Framework of Foreclosure

Foreclosure is governed by Proclamation No. 97/98, 98/98 and 216/00-, which are applicable only to Banks.

Main reason for the grant of the right to banks is the long time needed to obtain judgments from courts and to subsequently have it executed. Its operation begins only where the borrower/ mortgagor fails to pay the debt wholly or partly on the date fixed for payment as per loan contract. The Bank is expected to observe the mandatory provisions of Articles 394 - 449 of the Civil Procedure Code and the foreclosure manual of the Bank.

The law authorizes the creditor bank to sell properties pledged or mortgaged by auction upon giving 30 days notice. The sale of these properties is deemed to have been made on behalf of the debtor.(legal agent—art.5 of Proc.97/98)

The creditor bank is liable to the damage it causes during the sale of the properties. The registrar is empowered to take necessary action for carrying out sale by auction (art.8 of proc. 97/98& art.18 of proc. 98/98)

5.1 Auction Procedures

Public Auction: The sale must be conducted through a public auction, governed by relevant sections of the Civil Procedure Code (Articles 394—449) to ensure transparency.

Bidder Requirements: Bidders are typically required to register with a deposit (often 25% of the starting/floor price) on the day of the bidding.

Location: Auctions are generally held at the site of the property.

First vs. Second Auction: If no buyer appears at the first auction, a second one is held. Under amendment Proclamation No. 216/2000, if no buyer appears at

the second auction, the bank has the right to acquire the property itself at the floor price set for the first auction.

Discussion Question

1. Why are banks given special foreclosure rights without court intervention?
2. What legal and ethical considerations must banks observe during foreclosure?
3. What are the risks to a bank if foreclosure procedures are not properly followed?

Part Six

CONFIDENTIALITY

6.1 Confidentiality of Customer Information

A person may become a customer of a bank by opening a deposit or current account or by negotiating and signing an advance or loan account. Bank secrets the amount of money deposited in the bank, the degree of indebtedness, the securities given and etc.-not to disclose the transaction of any person (customer).

The duty of banking confidentiality is a combination of statutory obligations and regulatory directives issued by the National Bank of Ethiopia (NBE). As of 2026, this framework has been significantly modernized by the Banking Business Proclamation No. 1360/2025 and the Personal Data Protection Proclamation No. 1321/2024.

6.2 Legal Basis

1. Banking Business Proclamation No. 1360/2025:- This is the primary legislation governing the sector. It explicitly mandates the confidentiality of customer information as a key component of market conduct and consumer protection.
2. Personal Data Protection Proclamation No. 1321/2024:- This law provides a broader legal framework for safeguarding personal data. Banks must ensure that customer information, including personally identifiable details, is stored and processed within Ethiopia.
3. NBE Financial Consumer Protection Directive (No FCP-01-2020):- This directive requires financial service providers to keep data confidential and secure, disclosing it only for "legitimate purposes" agreed upon by the consumer or otherwise permitted by law.

6.3 Justifications for Confidentiality

The justification is not to lose the confidence of the Bank's customers which might affect the existence of the bank. It is mandatory to fulfill the confidentiality sought by the Bank's customers.

6.4 Exceptions for Confidentiality

The duty of secrecy is not absolute and is overridden by several mandatory reporting requirements:

1. Banking Business Proclamation No. 1360/2025 art. 29 states exceptions including court order.
2. Anti-Money Laundering (AML) and Financing of Terrorism Proclamation (CFT) 780/2013 Art 24 & 25: Banks must report suspicious transactions to the Financial Intelligence Service. Secrecy laws cannot be used to inhibit these reporting requirements.
3. Fraud Reporting: Under Directive No. SBB/59/2014, banks are obligated to report actual or attempted fraud to the NBE and other pertinent authorities regardless of general confidentiality duties.
4. Compulsion by NBE: The NBE has "free, full, and unfettered" access to a bank's internal systems, documents, and records for supervisory purposes.
5. Delinquent Lists: Banks are required to report users of dishonored checks to the NBE, which then shares this "delinquent list" with all other banks.
6. Income Tax Law Proclamation no.286/94,Art.38
7. The Federal Ethics & Anti-Corruption Commission Establishment Proclamation no.432/2005 Art.12(2)(G)
8. Private Organization Employees' Pension Proclamation no.715 Art 11(7)
9. Clear authorization of the customer
10. Banker's Interest-when customer is debtor of the bank

6.5 Liability for Breach

Failure to comply with confidentiality or data security requirements can lead to severe administrative and criminal sanctions

A. Criminal Liability

A banker who discloses information against the law will be liable to simple imprisonment (ranging from 10 days to 3 yrs) or fine (ranging from 10 to 10000 Birr) [Art. 397-399 Criminal Code]. Under previous proclamations (still influencing 2026 standards), major violations of banking law could result in rigorous imprisonment of 10 to 15 years and significant fines.

Authorized Disclosure - where the disclosure is made because of the express consent of the person or by the express order of the court or by the express order of the provisions of the law the person who made the disclosure will not be liable to punishment [Art. 400 Criminal Code]

B. Civil liability

Collective agreements or disciplinary guidelines for e.g. of Zamzam Bank states that whosoever knowingly divulges/ discloses information relating to the Bank's customers, to third parties without authorization will be terminated/ dismissed from employment without notice.

It may also incur civil liability for both employer (bank) and employee. (art. 2126 & 2130 of c.c)

Discussion Question

1. Why is confidentiality essential in maintaining trust between banks and customers?
2. Discuss the balance between confidentiality and mandatory disclosure (e.g., AML requirements).
3. What legal consequences can arise from unauthorized disclosure of customer information?