LEGAL ASPECTS OF DOING BUSINESS IN ADDIS ABABA: A PROFILE OF MERCATO BUSINESSMEN AND THEIR RECEPTION OF NEW LAWS*

By John Ross and Zemariam Berhe**

Introduction

When the provisions governing commercial transactions in Ethiopia's new codes were drafted in the 1950's little attention was paid to the current practices of merchants because of their lack of uniformity at that time. M. Jean Escarra, the original author of the Commercial Code, began his task by inquiring into existing commercial law and customs within the commercial communities of Ethiopia. The results of this inquiry were so thin, however, and the existing laws were in such confusion, that he forwent any attempt to harmonize the new Code with the existing law and practice and concentrated on the development of a code which he thought best adapted to the developing nature of the

---

*Haile-Sellassie I University--Northwestern University Research Project.

**J. D., 1971, Northwestern University and L.L.B., 1972, Haile-Sellassie I University, respectively; members of the Northwestern University-Haile Sellassie I University Research Project, 1971.

[1] M. Escarra has stated: "I began by collecting all the possible documentation on Ethiopia, beginning with general readings and working up to finding out about laws, regulations and draft proposals specifically related to commercial matters. I also sought to find out about general trade practices, at least those in use in the business community of Addis Ababa. The results of this preliminary work, I am afraid, were disappointing.

"The business practice or usages de la place which came to my attention were generally not very significant. In fact, Ethiopian trade--especially foreign trade--is based legally...on fairly poor-defined Anglo-American practices to which have been grafted the business customs of each trading group.

Ethiopian economy but which would not be outdated after a few years and which would give legal security for the encouragement of foreign trade and investment.[2]

The survey reported in this article was undertaken primarily to uncover information concerning the extent to which the relatively sophisticated business law concepts imported into Ethiopia by the Commercial Code and various other codes, proclamations, and regulations have been absorbed by the average Ethiopian merchant and authorities charged with enforcement. The focus was narrowed to (1) the use of commercial instruments, (2) compliance with business registration requirements, (3) compliance with account keeping requirements, and (4) utilization of and compliance with bankruptcy laws. The survey was conducted by analyzing a selection of case files from various courts which it was thought would contain representative samples of all kinds of commercial cases now being litigated and by interviewing a selection of merchants and traders in the Mercato, Addis Ababa's principle market area.

A secondary purpose of the study was to provide a profile of the Mercato businessmen, their collective organizations, the legal disputes they have and the means by which they resolve them. Much of this sort of information is, of course, essential background to concentration on our primary focus--code reception by the businessmen. But some of it also bears directly on the primary focus. For example, the extent to which businessmen use the courts rather than customary, less formal means of settling disputes can reflect on the acceptance of the new laws that the courts are to administer.

"The written texts are an irregular collection." The Draftsman then goes on to summarize the existing written laws which had been called to his attention. J. Escarra, Exposè des Motifs (1954, unpublished, Library, Faculty of Law, Haile Sellassie I University), trans. by P. Winship, Background of the Commercial Code of 1960 (1970, unpublished), p.2.

[2]J. Escarra, Rapport préliminaire sur l'élaboration du code de commerce ethiopien (1954, unpublished, Archives, Library, Faculty of Law, Haile Sellassie I University), pp. 1-3.

Results of Survey

1. How Conducted

Selection of Merchants for Interviews.

The Mercato (Addis Ketema) was chosen for the interviews with merchants because it is the largest integrated market area in Ethiopia and because, while other commercial areas in the City may have more advanced types of businesses, the Mercato appears to have the highest concentration of Ethiopian merchants. The reasons for its character are due to its historical origins. When Emperor Menelik II founded the City of Addis Ababa he moved the traditional market which had been at Entoto above the present City to the hillside just south of St.George cathedral. This "old market" remained the principal shopping area for the City until the Italian Occupation in 1939. Following their standard colonial policy the Italians moved the indigenous market to its present location and the "Piazza" was constructed for the use of Italians and other foreigners on the site of the old market. The Muslim minority and especially Arab traders from Yemin were strongly favoured for business in the new indigenous market as a part of the Italian policy of divide et vinci. Today, while the Yemeni Arabs are still the largest group of foreign merchants in the Mercato, almost all retail business and a large part of the importing wholesale business is in the hands of Ethiopian citizens.[3] Parts of the Mercato are rapidly being trans-

---

[3] The Municipality license register indicated that in the Mercato 44 percent of the importing businesses, seventeen per cent of the business licensed merely as retail "shops", twelve per cent of the textile shops, seven per cent of the blanket shops, four percent of the hotels, and eleven per cent of the groceries are owned by Yemenis, and 33 per cent of the importing businesses and 26 per cent of the textile shops are owned by Indians. Except for a few Italians, Englishmen and Greeks practically all of the other businesses are owned by Ethiopian citizens.

In 1968, 90 per cent of the retail businesses in all of Addis Ababa were reported to be Ethiopian owned. Imperial Ethiopian Government, Ministry of Commerce, Industry and Tourism and Central Statistical Office, Report on a Survey of Distributive Trade in Ababa, January-March 1968 (1969), p. 3; see also generally, D. Korten, Statistical Study of the Independent Businessmen Registered with the Ministry of Commerce in Addis Ababa, Ethiopia (1965, unpublished, Library, Inst. of Ethiopian Studies, Haile Sellassie I University).

formed into a modern commercial center with banks, hotels , and large market halls, but all the traditional elements of local, regional and national Ethiopian markets are still present nearby.[4] Tradition and change are meeting rapidly within its boundaries, therefore, and the resulting practices should represent the effect of the foreign elements in the new codes on indigenous customs.

Two sources of information were available about the businesses in the Mercato. One of these was a census conducted by Professor Maurice de Young in June, 1966, with the help of students of the College of Business Administration of Haile Sellassie I University.[5] This census counted the total number of businesses in each segment of the Mercato, the total number of people involved in them, and estimated the value and amount of trade done by each.

The other source was the business license register in the Addis Ababa Municipality which listed name, location, nationality, and type of business of every person and organization licensed to do business in the City. Where conflicts between the 1966 census and the register appeared the latter source was used in selecting the samples since the survey was primarily directed at permanent businesses rather than open market stalls and peddlers and it was found from a preliminary survey that though the licenses might not be entirely current, practically all of the permanent businesses in the Mercato were licensed.[6] Also, the census was thought unreliable because of its age and its failure to define specifically the boundaries of the area surveyed and some of the categories of businesses enumerated.

---

[4] M. de Young, "An African Emporium, The Addis Markato," J. Eth. Studies, vol. 5, no. 2 (1967), pp.103-110.

[5] Id., pp. 111-119.

[6] The books available showed the licenses issued within the previous three years, E.C. 1960-63. Therefore, they may be inaccurate where licenses had not been renewed within the previous three years or were not yet obtained or where a licensed business had closed.

There were found to be approximately 4,000 licensed businesses in the Mecato in 80 categories. With the time and resources available it was calculated that about 150 interviews could be conducted. Therefore for most types of business, interviews were sought in one out of 30 establishments while larger percentages were sought of importers, exporters and some retail businesses which, though small in number, appeared so significant that they should be represented in the Survey. A detail map of the Mercato was obtained from the Municipality Planning Office and was used to insure that the interviews were distributed throughout the entire area.[7] Altogether, 166 interviews were conducted but eight of these were disregarded because of their incompleteness. All of the interviews were with the owners or part owners of business establishments except in the case of a few branch outlets for industrial share companies where the managers were interviewed.

The questions were directed primarily at determining what major legal problems the interviewee had encountered in relation to his business and to what extent the code laws and court system played a role in solving them. Detailed questions were asked about preferences for and experiences with conciliation, arbitration, and courts; use of contracts, negotiable instruments,

---

[7]The Mercato for the purpose of the Survey was the area included within the following lines: starting from the eastern gate of the Mosque halfway through Tessema Aba Kamaw Street to the south where the Cinema Ras is located. From there west to the new open market behind the Addis Ketema Commercial Bank Building. Then, north in a straight line to the Old St. Paul's Hospital. And then East through Addis Ketema Street to meet the starting point at the Mosque.

Many types of businesses are still grouped together in the same locality the way the Italians originally organized the market, but there are also other areas where many different businesses are together. When more than one interview was conducted with a particular kind of business, therefore, care was taken to insure that some were with isolated establishments and others in the concentrated areas.

banking facilities; registration and accounting practices, and membership in associations relating to business. The interviews, which were conducted by students of the Schools of Law, Social Work and Education of Haile Sellassie I University, were often extremely difficult to obtain. Almost every one suspected at first that the interviewers were from the Inland Revenue Service and about to impose additional taxes upon them. Even when confidence was gained the length of time required to adminster the questionnaires made many people unwilling to answer them completely. Others were extremely co-operative, however, and sacrificed much of their valuable working time to give informative answers.

Selection of Court Files

The woreda gezat courts are the lowest in the hierarchy. They have jurisdiction over all cases where the amount involved does not exceed $500 (Ethiopian), in the cases of things not immovable and E$1,000, in the case of immovables,[8] except where special subject matter jurisdiction is given to the High Court.[9] From the nine woreda courts in Addis Ababa the seventh, Tekle Haimanot, was chosen because it has local jurisdiction over most of the Mercato area. Because of the uncertainity of the filing methods in previous years and the desire to select the most recent cases possible, the files selected for analysis were those closed between the Ethiopian calendar dates of 1 Maskaram and 30 Miaza 1963 (the second week of September 1970, Gregorian calendar, and the second week in April 1971). A total of 584 files were closed in the Civil Division during this period, many of which were filed in the previous year. All of these files were examined and the basic issues involved were recorded, but only 86 were selected for more detailed analysis because they appeared to involve disputes of a commercial nature.[10]

---

[8] Civ. Pro. C., Art. 13.

[9] Id., Art. 15.

[10] Of the 584 cases examined, 28 per cent involved disputes over house rent, twenty percent equb money, twelve per cent taxation, fourteen percent loans, and nine per cent credit sales of goods. The rest were patrimony, torts, and commissions.

The awradja courts are the next in the hierarchy above the woreda courts. There is only one awradja court for the city of Addis Ababa. Its subject matter jurisdiction extends over disputes involving things not immovable worth E$500 to E$5,000, immovables worth E$1,000 to E$10,000, and any other disputes to which a monetary value cannot be assigned unless they are specifically given to another court.[11] The awradja courts also have appellate jurisdiction over cases decided by the woreda courts. Because the filing system in the Addis Ababa Awradja Court is different and the E.C. 1963 cases were not available, a different method of case selection had to be followed from that used in the Woreda Court. Although this variation made comparisons of the two courts less precise, it turned out to be advantageous because of the usual length of time required for decisions in the Awradja Court. As in the Woreda Court, cases are numbered according to when the complaint is filed, but while in the Woreda Court they are later placed in binders according to when the files are closed, in the Awradja Court they are placed in binders according to their original numbers. The selection of files had to be made, therefore, according to when the cases were originally filed and not according to when they were terminated. All the files which were examined were for cases filed in E.C. 1962, but many of them were actually closed in 1963. Also, while the records indicate that over 2,200 cases were filed in E.C. 1962, less than 1,000 files had been placed in the binders at the time of the survey, the rest having not been terminated or being in the clerks' hands for final processing. Because of the larger number of files and the limitation of resources, only one out of every five files in the binders were examined; only 35 appeared to contain commercial disputes and these were the ones analyzed for the purpose of the Survey.

The High Court is the highest court in Ethiopia with original jurisdiction. It hears all cases involving things not immovable worth E$5,000 and over, and all cases involving immovables worth E$10,000 and over, in addition to having exclusive jurisdiction, inter alia, over formation, dissolution and liquidation of bodies corporated, negotiable instruments, bankruptcy, insurance policies, trademarks, patents, copyrights, and enforcement of foreign arbitral awards and judgments.[12] Within the Addis Ababa

---

[11]Civ. Pro. C., Art. 14.

[12]Id., Art. 15.

High Court there are nine civil divisions to which the Registrar assigns cases according to the nature of the disputes.

Although some disputes which might be called commercial are heard by the other divisions, again due to limits of time and resources only those of the Commercial Division were examined. The filing system is basically the same as that of the Awradja Court with the cases from all divisions numbered consecutively and filed together in the archives. Nineteen hundred and thirty cases were filed in the High Court in E.C. 1962 of which 145 were heard by the Commercial Division. Of these, 111 were located and examined, but only 78 of them were actually commercial cases and these were the ones analyzed for the Survey.

2. Description of Mercato Businesses and Their Major Legal Problems.

For the purpose of comparisons the businesses interviewed were grouped into nine categories. The largest of them included retail clothing and textile stores.[13] Those were grouped together because of the similarity in the types and sources of goods sold and in the legal status of the businesses. Out of 43 establishments interviewed in this category 27 obtained their goods from wholesale merchants and seven bought directly from factories in Ethiopia. Two bought from both of these sources and the others either imported personally through brokers or commission agents, or bought from local craftsmen. All but ten of these were individually owned and among those ten were found five partnerships, three private limited companies, and two branch outlets for share companies.

In the second largest category were grouped 27 handicraftsmen and people offering personal services. This group included goldsmiths, saddlemakers, carpenters, barbers, tailors, and laundries. Most of these are not subject to the Commercial Code because they do not engage in activities listed in Article 5 which would qualify them as "traders",[14] and either buy no goods for resale

---

[13] These include textiles, blankets, carpets, shoes, ready-made clothing, shemmas, and threads and buttons.

[14] See Arts. 5 and 10 of the Commercial Code for a listing of enterprises deemed to be "traders" and "business organizations." Hairdressers may be traders under Art. 5(15) unless they are handicraftsmen under Art. 9. Since all the barbers interviewed were in small establishments they were grouped with handicraftsmen.

or only buy those which are transformed by manual skill in their shops, thus qualifying as "handicraftsmen" under Article 9. With the exception of three partnerships and one private limited company, these businesses were all individually owned.

The third category in size included bars, hotels, restaurants, tej-bets, and tea shops. These were grouped together because of the similarity in nature of their activity, the frequency with which they are found together in the same establishments and the probability of their similar legal status as "traders."[15] Twenty interviews were conducted with these businesses, all but four of which were individually owned, three being partnerships, and one a hotel and restaurant owned by a share company.

Five other categories of ten to sixteen businesses each included retail hardware, household utensils, appliances, and machinery dealers (ten); dealers in food products such as grocieries, butchers, bakeries, and grain, salt and spice dealers (sixteen); retail dealers in miscellaneous goods (fourteen); importers and wholesale dealers in textiles and ready-made clothing (fourteen); and importers and wholesale dealers in hardware, appliances and tires (twelve). In addition, a ninth category was formed of three businesses which did not fit in any other. It includes a firewood dealer, a perfume shop, and a pharmacy.

a. Length of Time in Business

The people interviewed were asked how long they had been in business in the Mercato and the following table indicates the range of responses obtained.

Per Cent	Number	Length of Time in Business in Mercato
6	10	less than one year
9	14	1-2 years
11	18	3-4 years
18	28	5-7 years

---

[15] Tej bet and tea shop operators might be considered handicraftsmen because they only buy the honey and tea which they need to transform into the product they sell.

Table (continued)

19	30	8-10 years
16	26	11-15 years
7	11	16-20 years
4	7	21-30 years
2	3	more than thirty years
7	11	no answer

No significant variation appeared in these responses among the nine groups mentioned above. The responses seem to indicate that most of the owners of businesses in the Mercato have begun working there within the last ten years.[16] In most cases, however, the interviewees indicated that they had had business experience before coming to the Mercato in some other part of Addis Ababa or in another city in Ethiopia.

b. Ethnic Grouping

The interviewers were asked to ascertain, if possible, to what nationality and ethnic or tribal group the person belonged.[17]

The following table indicates the number of each tribal group and nationality interviewed and shows in what kind of business they were engaged:

---

[16] Our survey did not include an investigation into the procedures used to transfer ownership and management of businesses. Since these responses indicate that most businesses in the Mercato have been acquired or begun since the Commercial Code went into effect and detailed provisions are made in the Code (Arts. 150-170) for the sale of a business, it might be an interesting study to see to what extent these provisions are being followed.

[17] It was thought that a direct question in this area might be too sensitive and damage the relationship with the interviewee, so that in a large number of cases it was only reported that he was an Ethiopian.

	Total	Clothes, Textiles	Services, Crafts	Hotels Bars, etc.	Hard-ware etc.	Food, Prod.	Misc. Goods	Whole-sale clothe text.	Imp.,W.S. Hardware, etc.	Un-class.
Ethiopian	36	13	7	4	3	3	2	1	2	1
Amhara	13	2	3	4		1		1	2	
Tigre	17	2	5	4	1	2	1	1	1	
Gurages	35	8	8	4	3	1	10			1
Adere	12	5	1		2	1	1		2	
Galla	14	4	2	3		3	1			1
Yemni Arab	18	5			1	3		6	2	1
Italian	2	1							1	
Ethiopian Arab	5	1				1		3		
Indian	6	3						1	2	
TOTAL	158	44	26	19	10	15	15	13	12	4

The largest group of Ethiopians in the Mercato appear to be Gurages, followed by Tigre, Galle, Amhara, and Adere. The largest foreign group is Yemeni followed by Indians and Italians. The Arab and Indian foreigners seem to be mainly in the wholesale and importing businesses and in textiles and clothing. No significant variation appears among the various groups of Ethiopians except that no Gurages were found in importing and wholesales businesses and a high proportion of them owned miscellaneous goods shops or "suks".

c. Most Frequent Business Related Disputes.

In response to general questions about the kinds of disputes which most frequently arise in connection with their business with customers, suppliers, other businessmen and the Government only 71 out of 158 said that they had had serious disputes with suppliers, other businessmen or the Government. It should be pointed out that the questions were not designed to elicit an exhaustive list of every problem that had arisen, but tended to bring out the most serious problems and those which most often require the intervention of third parties or courts to resolve. From the responses that were obtained, however, an idea may be gathered as to what major disputes arise in connection with Mercato business.

Disputes with Customers. The problem most cited was obtaining payment for goods bought or services performed on credit.[18] Proportionately this was cited most frequently by wholesale and retail clothing and textile dealers, retail hardware and utensils dealers, and miscellaneous goods shops. The second most common disputes were those over the quality or condition of goods sold and services performed.[19] These problems were cited most by handicraftsmen and people performing personal services but were mentioned by some merchants in the other groups also. The owners of bars, hotels, and restaurants said their most common disputes with customers occur when the customers get drunk and refuse to pay for what they have consumed [20] and sometimes destroy furniture and glasses. Merchants also complained that customers often wish to return goods they have purchased which

---

[18] 34 out of 71.

[19] 18 out of 71.

[20] One tea-room owner said that when this occurs he threatens to take the customer's clothes.

are not defective but which they decide they do not want.

Disputes with Suppliers. Disputes reported with suppliers include complaints that suppliers send goods not ordered, fail to deliver goods on time and send goods which are broken or defective on arrival. In addition, eleven per cent of those having disputes with suppliers said that there is discrimination in price and supply of goods to different retail merchants,[21] and another eleven per cent confessed that they are sometimes unable to pay their accounts with suppliers on time. Eighteen per cent said that suppliers will not supply the kind or quality of goods desired and 30 per cent, the largest group, said that there is often a difference between the kind or quality of goods ordered and that delivered. All the people interviewed were also asked specifically if this occurs and what action, if any, they take when it does. Of the 47 positive responses to these questions eight said that they simply keep the goods and try to sell them and six said that they only keep them if they can sell them but otherwise return them to the supplier. Twenty-one said that they send the goods back and either get a refund or get other goods in exchange, but only three of these said that they sue in court if they are unsuccessful. One merchant said he simply notifies the supplier and one said he keeps the goods and pays less for them.[22]

Ten merchants said that they ask the Chamber of Commerce to negotiate. Eight of these were importers and wholesale merchants, however, and the transactions they referred to were almost all international. They seemed to be well pleased with the way the Cham-

---

[21]These practices are forbidden under the Unfair Trade Practices Proclamation, 1965, Proc. No. 228, Neg. Gaz. year 24, no.19 (original, Unfair Trade Practices Decree, 1963, Decree No. 50, Neg. Gaz. year 22, no.22) but there seemed to be no awareness of its existence among the merchants interviewed.

[22]Under Art. 1748 of the Civil Code this is the solution which the law in most cases would provide, but parties are of course free to settle this problem any way they please as long as they both agree.

ber of Commerce handles such problems.[23]

Miscellaneous Disputes. Other than disputes with customers and suppliers, the most frequent problems reported in the Survey were tax disputes with the Revenue Service.[24] Thirteen people said that they have disputes with their landlords over the amount of rent they pay on their shops. Eight interviewees mentioned disputes arising out of competition with other merchants. In a number of cases these involve a failure to abide by a price fixing agreement among merchants selling the same goods. For example, one metalware dealer reported that he and his competitors made an agreement on prices to be charged with a E$2,000 penalty to be imposed on violators. Inspectors were appointed to insure that everyone was following the agreement, but the other dealers continued to charge lower prices secretly and the agreement fell through, leading them all back to "cutthroat competition." He did not seem to be aware that this agreement was probably unlawful under the Unfair Business Practices Proclamation[25] but apparently did not contemplate trying to enforce it in some tribunal either. Other reported disputes included those over repayments of commercial loans, license and regulation conflicts with the municipality, partnerships, and discrimination by the banks in making loans.

---

[23]Recourse to the Chamber of Commerce might have been desirable for one importer of household goods and building materials who said that he had once ordered some iron work from India, for which he paid $2,000, but the quality of what was delivered was inferior to the sample from which he ordered and the customers for whom he had ordered refused to accept it. He said that the cost of any litigation would have been more than the dispute involved and, even if it would not be, he did not know how either to sue in court or use arbitration with foreign corporations and suppliers and though it would be difficult to enforce any decision made under Ethiopian law and customs. He thought that for any litigation to be worthwhile in Ethiopia, it would have to involve at least E$3,000.

[24]The nature and causes of some of these problems are discussed in a following section on accounting requirements and practices.

[25]See note 21, above.

3. Use of Customary Dispute Settlement and Use of Courts.

Before the modernization of Ethiopia's laws and courts most disputes were settled by some form of arbitration or conciliation by elders, known as shemagelles.[26] It is general knowledge that such customary practices have continued into the modern era. A major focus of the Mercato interviews and the court survey was on a comparison of the use of customary means of dispute settlement with the use of the modern judicial system.

For the purpose of analysis of the questionnaires a distinction was made between arbitration and conciliation on the basis of the responses to questions about whether the arbitrators or conciliators could make decisions which the parties would have to obey or were only to attempt to bring the parties to a voluntary settlement at the end. If the answer indicated that the third party had the power to make a binding decision, the proceedings were considered arbitration, and if the third party did not, they were considered conciliation.

a. Cases Conciliated and Arbitrated.

From the 158 interviews, 59 accounts were obtained of either the use by the interviewees of arbitration or conciliation to settle their own disputes, or their service as arbitrators or conciliators in resolving the disputes of others. This number does not accurately reflect the proportion of businessmen using these procedures, however, since many indicated in answers to other questions that they had actually had more experiences within the last two years but did not have time to tell about all of them. On the other hand, nine people told about two experiences with arbitration or conciliation and one told about three .

Of the 59 proceedings recounted, 35 were conciliation and 24 were arbitration.[27] The following chart indiates the types of disputes for which arbitration and conciliation were used.

---

[26] R. David, "Sources of the Ethiopian Civil Code," J.Eth.L., vol. 4 (1967), p. 342.

[27] Of these, thirteen were from interviews with people who had used arbitration, eleven were from arbitrators, eighteen from people who had used conciliation and seventeen from conciliators.

Type of Dispute	Type of Proceeding		
	Conciliation	Arbitration	Total
Dispute between partners	5	9	14
Payment for goods bought or services rendered on credit	11	2	13
Payment of checks	3	1	4
Payment of notes	2		2
Repayment of loans	5	4	9
Existence of a debt	2	1	3
Goods lost by a laundry		2	2
Equb money	1		1
Guarantee of a debt	1		1
Payment for goods and damages to shop	1		1
Price of goods		1	1
Bankruptcy	1		1
Amount of goods taken in a sale		1	1
Rent dispute between traders sharing a shop		1	1
Unfair competition	1		1
Shop owner accused of theft by a customer	1		1
Size of suit made by a tailor		1	1
Rent dispute with landlord		1	1
No answer	1		1

Discussions of a number of these proceedings are included under particular topics to which they relate below, but some general observations should be made here on the kinds of disputes being settled by arbitration and conciliation and the reasons why these means are being used.[28] They appear to be most frequently used for partnership disputes and for collection of debts based on credit sales, negotiable instruments, and loans. The frequency of the use of these methods for collection of debts is not surprising since they are also the most frequently cited source of dispute among all the people interviewed as well as the most frequent source of commercial litigation in the courts. It is important to note, however, that conciliation is much more frequently used for these disputes than arbitration. This would appear to be because in debt disputes there is seldom any question that the debtor owes the sum alleged. He is usually simply overdue in payment and what the creditor needs is someone to persuade him to pay. A decision such as an arbitrator would be called upon to make, is not needed. In the typical case the creditor alone goes to some elders or mutual friends and asks them to go to the debtor and find out why he has not paid. If they think that he does not have a good reason, they attempt to persuade him to pay immediately, but if they think that his reasons are good they suggest that the creditor allow him more time to pay or in extreme cases reduce the debt. Whether the parties use conciliation or arbitration, it seems that these elders and friends can resolve such disputes more effectively than courts possibly could even though courts have power to make similar flex-

---

[28] Only three cases of arbitration or conciliation were reported which might be considered unsuccessful or in which one of the parties was not satisfied with the decision. In one of these the other party sued in court before the proceeedings were over, in another the conciliators sent by the creditor reported that the debtor was bankrupt and would not agree to pay so they recommended that he sue in court, but he did not. In a third, the person interviewed had been asked by conciliators to pay a check he had written without provision, but he said he ignored their decision. Actually there is probably a higher incidence of failure in these proceedings than this survey indicates because many of the people who told about court experiences said they attempted arbitration and conciliation first but were unsuccessful. Also many may be reluctant to tell about such failures in details.

ible dispositions[29] because the former know the parties well and are familiar with their financial circumstances.

The frequency of the use of arbitration and conciliation for partnership disputes, on the other hand, is more difficult to understand since only sixteen per cent of the businesses interviewed were partnerships, partnership disputes were not frequently cited as important problems, and a relatively small amount of litigation was found in the courts concerning them. The most likely explanation is that because the code provisions are too complex for the existing forms of partnership in the Mercato[30] and people may think that the courts would not properly deal with these disputes. Also the same kind of personal acquaintance with the parties may be thought to be needed to resolve disputes between partners as is needed to determine how soon a debtor should pay his debt.

Arbitration appears to be used for partnership disputes more frequently than conciliation. This seems to be because the partners usually have a definite objective in mind, such as dissolution of the firm, and want a decision made as to how it should be done, or they want a factual determination made as to the value of goods that one partner has bought or whether accounts have been kept properly by the managing partner. Thus there is less persuasion involved in these proceedings than in those for which conciliation is best used.

c. Cases Litigated -- Accounts by People Interviewed.

In contrast with the amount of experience with arbitration and conciliation reported, only 25 accounts of experiences in courts in the last five years were obtained from the interviews.[31] Six of these cases were suits to collect for goods bought on credit,

---

[29]Civ. C., Art. 1770.

[30]A large number of the partnerships in the Mercato are arrangements often between relatives, by which one partner manages the business for six months while the other is in the countryside farming, and then they exchange places.

[31]Two people told about two cases each, and the others only related one experience, but five said that they had had more than one lawsuit in the last five years and three had had more than ten.

and two were against the person interviewed to make him pay. Four cases were against drawer of fraudulent checks, but two of these were by the same merchant. Six other cases involved the transfer of all the grain merchants from the Mercato to the new grain market when the old grain market was destroyed to build new market halls. The remainder of the cases consisted of a partnership dispute, a tax case, a complaint by a customer who wished to return a suit of clothes he had just bought, a criminal prosecution for the purchase of stolen goods, a suit against a landlord for the destruction of the tenant's shop, and a dispute with the Municipality over the issue of a license.

Cases in court files. The 86 cases selected for analysis from the Woreda Court included 49 disputes over credit sales, eleven commercial loan cases,[32] nine services contracts, seven suits to collect rent on goods, and two cases to collect commissions.[33] Of the 35 commercial cases from the Awradja Court which were analyzed, twenty involved credit sales, five involved loans by the Commercial Bank, four involved private loans, two were to collect commissions, two were about service contracts, one was to recover money paid on a fraudulent check, and one involved earnest money. Over half of the High Court commercial cases analyzed involved negotiable instruments. Most of these were on

---

[32]Many of the contracts which became sources of litigation in the lower courts have a common characteristic which should be noted. At the time the contract is entered the parties fix the amount of damages and the penalty payable in cases of a breach of the contract by a party. This practice is most common in loan contracts, where the borrower agrees to pay a certain amount to the lender as damages and a certain amount to the Government as a penalty for not returning the money borrowed on the due date. It appears that the courts do not generally enforce these penalty provisions. In one case, however in the Woreda Court, there was E$50 payable to the Government and E$30 to the lender according to the contract. The Court gave orders to the court cashier to collect the E$50 payable to the Government by the defaulting party.

[33]The remaining involved equb and idir disputes. See n. 49-61 infra.

promissory notes but many involved checks and a few bills of exchange. These disputes usually arise when people buy goods on hire-purchase or installment contracts or take loans from the Commercial Bank and fail to pay the promissory notes or give bad checks. The rest of the analyzed High Court litigation involved dissolution of partnerships and a share company, a number of automobile insurance cases, one trade mark case, and one case of bankruptcy.

d. Number of Hearings and Amount of Time Required to End Disputes by Conciliation, Arbitration, and in Courts.

One of the most crucial tests of the efficiency of a tribunal for the resolution of commercial disputes is the speed with which it acts. Historically merchants have often been willing to sacrifice lofty ideals of justice, even though they might benefit from them, for an expeditious means of terminating their disputes. While lengthy litigation may have been one of the favorite Ethiopian pastimes in a more leisurely era, our survey had indicated that busy merchants of a modern city do not want to sacrifice valuable working hours to spend days and months arguing over their rights in courts. The choice of tribunal may therefore often depend more on the speed with which it usually acts than the substantive results it provides.

Almost a third of the conciliation proceedings required only one hearing and a fifth required only two. Five required three hearings, three required four, three between five and seven, and three others required eight. Ten hearings were held to settle one partnership dispute and twelve for the payment of a check. A third of the arbitration proceedings were also concluded with only one hearing and the others required between two and seven. None required as long as four of the conciliations, however, which may indicate that disputes can be resolved more quickly when the arbitrators have power to bind the parties. Where more than one hearing was required they were usually held once or twice a week at night or on Sundays instead of during business hours. Almost all of the disputes were settled in less than a month, therefore, and little valuable business time was lost. The data collected in this Survey, however, indicate considerably larger litigation periods in all of the courts surveyed.

The lengths of time reported by the interviewees for court cases in which they were involved in are indicated by the following chart. These times do not include any appeals that may have been made.

Time	Court			
	No Answer	Woreda	Awradja	H.C. Tax Court
Still not finished	1			1
One hour		1		
"A very short time"		1		
Two weeks		1		
One month		2		
Three months			1	
Four months				1
Six months				1
Nine months			1	
One year			1	1
Two years			2	2
Three years			2	
Four years			1	
No answer	1		1	

The accounts of the litigants seem to show that the longest delays occur in the Awradja Court and that the Woreda Court decided cases relatively quickly. [34] This tendency is also shown by the

---

[34] Cases may end more quickly in the Woreda Court because less money is involved and the parties are more willing to compromise. Many cases there are dismissed because neither party appears on an appointed day. However, in all courts most delays are quite unnecessary. See T. Geraghty, "People, Practices, Attitudes, and Problems in the Lower Courts of Ethiopia", J. Eth.L., vol. 6 (1969), pp.471, 477, 487, 497, 506.

following chart indicating the length of time and number of hearings required for termination of the cases examined in the court survey.

Woreda Court

No. of Hearings	%	Time Taken	%
1 to 2	17	less than 2 weeks	2
3 to 4	44	2 weeks to 1 month	29
5 to 7	23	1 to 2 months	18
8 to 10	6	2 to 3 months	18
11 to 13	4	3 to 4 months	12
14 to 16	3	4 to 6 months	4
17 to 20	3	6 to 8 months	10
21 and over	-	8 to 12 months	3
		10 to 12 months	3
		12 and over	-

Awradja Court

No. of Hearings	%	Time Taken	%
1 to 2	14	less than two weeks	6
3 to 4	31	two weeks to 1 month	10
		1 to 2 months	6
5 to 6	14	2 to 3 months	12
7 to 8	15	3 to 4 months	10
		5 to 6 months	26
9 to 10	6	6 to 8 months	14
11 to 12	5	8 to 10 months	7
13 to 14	6	10 to 12 months	9
15 to 18	6	more than 12 months	-
more than 18			

In the High Court the files indicated that the time taken in suits involving money debts or negotiable instruments averages three months. The number of hearings is about five. For other cases, more hearings are held and the time taken is much longer. In a case where the sale of shares in a company was the issue, the time taken was one year and number of hearings twelve.

One important factor in the time a litigation takes is the effect of the summary procedure provisions of the Civil Procedure Code.[35] Where a plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, he can attach to the pleadings an affidavit made by a person who can swear positively

---

[35]Civ. Pro. C., Arts. 284-292.

to the facts verifying the cause of action, the amount claimed and stating that in his belief there is no defense to the suit. In this way a decree can be obtained in a relatively short period of time. These provisions are applicable in many suits brought to the lower courts but they are rarely used. In the survey only one case found in the Awradja Court was brought under this procedure and one was found in the Woreda Court. On the other hand, almost all suits involving negotiable instruments, payment of insurance premiums, bank loans, and installments in the High Court are filed under this summary procedure. Merchants in particular make use of it in their law suits when trying to collect money from their defaulting customers. These simple cases even when brought under normal procedures do not take much time in the High Court but the time taken is longer than in the cases filed under summary procedure. Those filed under summary procedure usually take three to six weeks, but those that are not take seven to twelve weeks.

e. Preferences and Attitudes of Merchants Interviewed About Arbitration, Conciliation and Courts as Means of Resolving Commercial Disputes.

All of the people interviewed were asked a series of questions about the kinds of disputes and disputing parties for which they preferred to use arbitration, conciliation, and courts. Over a third of the interviewees did not respond to these questions at all either because they said that they never had any disputes or had not had enough experience with any method to form an opinion. Of the 100 who did respond to some of these questions, 60 said that they preferred arbitration or conciliation[36] for all disputes regardless of the subject matter. Of these, 28 said that they preferred never to take disputes to court, but nineteen said that they will go to court if a dispute cannot be settled by arbitration or conciliation, especially if it involves a large amount of money. Others in this group said that they thought courts were sometimes better for action against criminals and for disputes with foreigners, people who want revenge, and people who are unlikely to accept arbitrators' decisions. Among the 60 who said that they preferred

---

[36] A few made a distinction between arbitration and conciliation and said they preferred conciliation but would not use arbitration because they did not trust arbitrators.

arbitration or conciliation for all disputes, 21 said that it was worthwhile attempting them for any amount of money and five said that they were worthwhile for any dispute over E$10. One considered it worthwhile if the dispute involved over twenty dollars, two if over E$30, two if over E$50 and three if over E$100.

Forty interviewees were qualified in their preference for arbitration or conciliation over courts. Of these 40, thirteen preferred arbitration or conciliation only when simple issues or small amounts of money (usually stated as between E$1 and E$20) is involved. Among the others who qualified their preference for arbitration and conciliation, thirteen said they preferred them only for disputes with friends, relatives and good customers, nine preferred them only for commercial disputes or when people did not pay debts, two preferred them for all disputes except those with the Government,[37] one only for land disputes[38] and one for disputes which do not involve written agreements.

Fifty-seven of those who said they preferred arbitration or conciliation for some or all disputes gave reasons for doing so. By far the most common explanation[39] was the conservation of money and time. The customary methods are less expensive because the parties do not have to pay court fees and advocates or scribes. Also valuable time is saved because fewer hearings are usually required to settle disputes than in courts. The second most frequently cited reason was that arbitration and conciliation do not destroy friendship between the disputing parties but help them arrive at an understanding of each other's problems and usually enable them to continue doing business together on good terms. In many cases the role of the arbitrators and conciliators as moral counsellors seems to be as important as their role as fact finders and decision makers.

---

[37]Civ. Pro. C., Art. 315(2) prohibits arbitration of administrative contracts, but apparently disputes with some branch of the Government not involving administrative contracts could be submitted to arbitration (see Civ. C., Arts 3244-3305.).

[38]Apparently arbitration is used frequently for land disputes and an inquiry into its effectiveness and efficiency as compared to courts would be an interesting study.

[39]41 out of 57 mentioned this.

Two interviewees, who were both Gurage, mentioned that it is customary to use arbitration or conciliation before going to court and if someone goes to court first, people will approach him and ask him to try arbitration. Often these people are elders and almost everyone accepts their request. Only two people said that they preferred arbitration or conciliation because judges are corrupt and take bribes.

It is particularly significant that only one person said that the laws were too complex to apply to his business so he preferred to have all his disputes settled by customary means.

As already mentioned, many people who preferred to settle all disputes by arbitration or conciliation still felt that courts are necessary because some adversaries are unwilling to submit to the former and even for those who are, courts are sometimes needed to enforce the agreement or award.[40] Twelve people also said they did not trust arbitrators for disputes involving large amounts of money and complex issues, indicating that they actually had more confidence in the courts but that arbitration is less expensive and more convenient. Many also felt that courts were the only institution equipped to deal with criminals, evil-doers, and people who deliberately try to harm them. However, only three people interviewed said that they preferred to use courts for all disputes and never use arbitration or conciliation.

---

[40] Forty-seven people who had completed successful arbitration or conciliation proceedings replied to the question about what would have been done to a party who did not comply with the agreement or decision. Of these, 21 said that they would have gone to court and three of them said the arbitrators or conciliators would have gone also and testified against the offender. Two others said they would have appealed to the arbitrators first, and then gone to court. In five cases the offending party would have had to pay penalities under the agreement or decision to the offended party and to the Government and in some cases to the arbitrators also. One said that he would have only appealed to the conciliators and seven said social and economic pressure would be put on the offending party by the arbitrators and other members of the community. Three said they did not know what could be done, and nine said that nothing could be done to enforce the decision. All these last twelve were conciliations however.

Those who indicated strong preferences for using arbitration and conciliation were from all of the major tribal groups and nationalities interviewed. About two-thirds of the Gurages and Amharas interviewed said that they preferred them for all disputes while half the Indians and Italians and one third of the Tigres Aderes, Gallas, and Arabs did also. From responses to the questions about experience with actual dispute settlement, Gurages and Arabs appear to use arbitration and conciliation most frequently[41] but they were being used by all of the other tribal groups interviewed also and in at least eight cases were used to settle disputes between people of different tribal groups and nationalities. This indicates that the practice of arbitration and conciliation in the Mercato is not merely the custom of one or a few tribal groups, but can be effectively used between people of diverse backgrounds.

f. Conclusions.

From the results of the Mercato interviews and court survey it may be observed that there is a strong preference for settling commercial disputes by customary means rather than by courts. This preference does not appear to be motivated by a rejection of the foreign elements of the codes of the modern judicial system, but by the relative efficiency and security offered by the customary practices as opposed to the delays, expenses, and uncertainity of the courts. Although the efficiency and competence of the courts could probably be much improved by further education of the judges

---

[41]Though there was little evidence from our survey of use of substantive customary rules from case to case, the tendency of these two groups to use arbitration and conciliation may be partly due to the existence of important independent legal traditions among them. Islamic law based on the Koran has little to do with actual commercial transactions and may even conflict with important practices such as charging interest. Among Arab traders, however, especially those from Yemen, the Koran has long been supplemented by customs, and legal fictions known as Hiyal have often been used in contracts to make customary commercial law enforceable in Moslem courts. J. Schact, An Introduction to Islamic Law (1964, Oxford, Clarendon Press), pp.77-85. For a study of the Gurage legal system see W. Shack, "On Gurage Judicial Structure and African Political Theory," J. Eth. Studies, vol. 5, no.2 (1967), p. 89.

and advocates as well as by creation of more specialized commercial courts, the relative advantages of arbitration and conciliation can probably never be totally overcome.[42] The disadvantages of courts do not necessarily reflect on their competence but in many cases may be due to the more difficult task which they have to perform since one party often resorts to them because the other cannot be found or is unwilling to attempt any kind of settlement.[43] The existence and efficiency of courts, on the other hand, is in many cases essential to the effective functioning of the customary institutions. For one thing, courts stand behind conciliation and arbitration decisions--ready to enforce them against a recalcitrant party. The majority of the people who had used arbitration or conciliation successfuly said they would have gone to court to enforce the obligations had the other party not complied.[44] Encouragement of compliance was formerly left almost exclusively to community social pressure but this, it was reported, has declined because the traditional respected shemagelles are harder to find and have been replaced by relatively young men chosen from the same trades which the parties practice. It is also likely that many defending parties are willing to submit to arbitration or conciliation because they know that the complainant will take them to court if they do

---

[42]Practically every major legal system in the world recognizes and enforces arbitral awards to some extent especially in relation to commercial transactions. For a comparison of arbitration in other countries see International Chamber of Commerce, Commercial Arbitration and the Law Throughout the World (1964, Verlag für Recht and Gessellschaft AG., Basel).

[43]The people who had had experience in court were asked if they had attempted arbitration or conciliation before or during the court proceedings. Seven simply said no and two said no because the other party was unwilling. One said no because he had a written agreement which he could produce in court. Thirteen, on the other hand, said yes but the other party had refused or, in three cases, did not comply with the arbitrator's decision.

[44]See note 40, above.

not and the results there may be less favourable for themselves.[45] Even when the parties get into court, the court's role may be primarily supportive of customary dispute settlement. Although usually no record of it appears in the court files, it is likely that in many of the cases where the files are closed because neither party appears on the appointed day for a hearing, the dispute has been settled by arbitration or conciliation outside of court.

Only a few cases were found in the court survey relating to the enforcement of conciliation or arbitration awards and most of those found arose out of joint venture agreements and insurance contracts.[46] A desire to bring the customary proceedings more in line with legal provisions, making them more easily enforcible in

---

[45]In the Woreda Court when both parties appear or when at least the plaintiff follows his case properly until the court gives a decision, an award to cover the expenses and court fees is usually granted to the winner in addition to the substantive amount of the claim. Awards in addition to the substantive amount of the claim are also usual in the Awradja Court.

[46]Arbitration or conciliation agreements were mentioned in only five of the court cases analyzed. Three of these were in the High Court, one in the Seventh Woreda and one in the Awradja. In the Seventh Woreda Court the following agreement was filed as evidence by the plaintiff when the debtor failed to pay her debt.

> I W/ro... because I owe $350 to W/ro... and was sued in the Seventh Woreda Court, now that I believe I owe the above amount, I hereby sign willingly to pay $20 a month and if I do not pay, to pay $100 to the government and $50 to the creditor. Agreed in front of arbitrators. Witnesses are...[four names].
>
> signature
>
> We also whose names are mentioned above have heard and seen when this agreement was concluded.
>
> signatures

courts, may be seen, however, in the use of written preliminary agreements and final awards which the parties sign.[47] In the majority of cases the agreements and awards are still oral but it is unlikely that they were ever written in earlier times.[48]

4. Customary Associations Relating to Business[49-61]

5. Commercial Instruments

For the purposes of commerce, among the most important of the foreign institutions adopted in the Commerical Code are negotiable instruments. In Book IV of the Commercial Code a ne-

---

[47]A "compromise" may be made to create, modify or extinguish legal obligations. But for a compromise to have this effect it must be in the form required by law for the creation, modification or extinction of rights without consideration. Civ. C., Art. 3308. Arbitral submissions, generally, must also be in such form to be given legal effect. Id., Arts. 3326, 3327. The forms for disposing of rights without consideration are found in the articles dealing with the forms required for donation (Id., Arts 2443-46), where it is stated that donations relating to rights on immovables must be in the form governing the making of a public will (Id., Arts. 881-83) which for the disposition of immovables must be in writing. But corporeal chattels and bearer titles may be donated by mere delivery, and other rights and credits may be donated in the form governing their assignment for consideration. For many disputes of a commercial nature, therefore, an oral agreement will apparently suffice to make the compromise or arbitration legally valid.

[48]Asked about changes in rules and procedures, one Gurage elder said that in the old days the debtor killed a bull, prepared drinks and then called the conciliators and the agreement was guaranteed by a guarantor, but was not put in writing. Now, he said, there is only drink served and the agreements are always in writing. He had been in business in the Mercato for ten years.

[49-61]In order to conserve space, the editors have omitted this interesting section of the piece, which deals chiefly with problems of local interest. It has been published in Ethiopia, as part of Occasional Paper No. 1, Journal of Ethiopia Law (1972).

gotiable instrument is defined as "any document incorporating a right to an entitlement in such manner that it be not possible to enforce or transfer the right separately from the instrument." Recognition is given in particular to transferable securities, documents of title to goods and "commercial instruments."[62] Commercial instruments are negotiable instruments setting out an entitlement to the payment of a sum of money and those recognized by the code are bills of exchange, promissory notes, checks, travellers checks, and warehouse goods deposit certificates. All of these are regulated under Title I and II of Book IV except warehouse goods deposit certificates which are governed by the Civil Code.[63]

Use of Commercial Instruments in the Mercato

In order to determine to what extent commercial instruments are being used for business in the Mercato a series of questions was asked about their use in sales and lending transactions. Forty-nine per cent of the people interviewed said that they use no commercial instruments in connection with their businesses at all. Some of these did have checking and savings accounts with banks for their own personal use, however. Another 49 per cent said that they use checks for at least some of their business transactions. Forty per cent of these also used promissory notes, but only seven per cent used bills of exchange. Only two merchants said that they use warehouse goods deposit certificates. One of these was a retail clothing merchant and the other was a hardware and appliance importer. The remaining two per cent of the sample said they use promissory notes, but did not use checks or bills of exchange. Promissory notes were used by both importer-wholesalers and retail merchants, but bills of exchange were used only by those engaging in foreign commerce. Only fourteen said that they discounted promissory notes and bills of exchange with banks--less than half of those using them.

Because the Uniform Law drafted by the Geneva Convention on Negotiable Instruments was adopted for most of the provisions of the Commercial Code relating to them, these provisions are characterized by an emphasis on formality and technical distinctions typical of the Civil Law systems. The principal example of this

---

[62] Comm. C., Art. 715

[63] Id., Arts. 732-95.

is that, unlike Anglo-American law where a check is merely one form of bill of exchange which is drawn on a banker and payable on demand instead of at a future date,[64] under the Ethiopian Commercial Code each kind of instrument must be specifically labeled as such in order to be valid. A clear distinction is made between a bill of exchange and a check. A check must be labeled as such and drawn on a bank and is payable on demand regardless of the date shown as the date of issue. If the drawer wishes to delay payment, he must draw a bill of exchange, label it as such, and show the date of issue and the date for payment.[65] Under the law, therefore, the check was not meant to be used as an instrument of credit, but is only a means of immediate payment.

The responses to the questions about use of negotiable instruments, credit sales, and private lending indicated, however, that a substantial practice exists in the Mercato of using checks as instruments of credit by post-dating them with the date on which the debtor wants them to be paid. The post-dated check appeared to be the most popular means of guarantee in the Mercato for both sales to customers on credit and purchases from suppliers. Of course, if the law were followed by the banks, the payee could present the check at any time after issue and demand payment, but bankers interviewed said that they refuse to pay checks until the

---

[64] British Bills of Exchange Act, 1882, Art. 73; Uniform Commercial Code (U.S.), Secs. 3-104.

[65] Comm. C., Art. 854: The preliminary draft and French edition of the Commercial Code are much more explicit in this provision, which is an exact reproduction of French Law and the Geneva Convention. In addition to saying that the check is payable at sight, they go on to say that any stipulation to the contrary is to be disregarded and that if the check is presented for payment before the day indicated as the date of issue, it is payable on the day of presentation. The French edition, of course, has no official status but it seems likely that the two additional clauses in the Article were omitted by mistake since they were included in italics in the French edition with a note saying that they were omitted in the versions published in the Negarit Gazeta but with no explanation as to why. Their omission does not actually change the meaning of the Article but only makes it less clear.

date stated on them as the date of issue. They also said, however, that they instruct customers whom they find doing this not to post-date checks. Unless it is presented before the date stated as the issue date, there is not evidence on the check as to when it was issued, and if funds are not available in the bank when the check is presented for payment criminal sanctions, including imprisonment, may be applied to the drawer for the issue of a fraudulent check.[66] The actual effect of this practice, therefore, can be to impose a criminal penalty for the failure to pay a debt on time rather than for the issue of a fraudulent check. If imprisonment is the end result, this effect may be contrary to the provision of Article 58 of the Constitution of 1955 which forbids imprisonment for debt unless the debtor is able and merely unwilling to pay a court judgement. The popularity of the post-dated checks appears to be due, however, mainly to this possible effect, since the creditor feels much more secure if he can threaten the debtor with criminal action than if he must involve himself in the lengthy process of a civil suit to collect the debt. On the other hand the willingness to give post-dated checks in spite of the criminal penalties that may result may be due to a general feeling that they will not be enforced if the debtor promises to pay at a later time. All the people interviewed were asked what they do if customers give them checks without sufficient funds in the bank. Of the 56 responses to this question, four said that they notify the police immediately, eight said they sue the drawer or notify the police unless the drawer pays soon, and seven said they notify the police unless they find that the drawer was merely negligent or is someone they know personally whom they think will pay later. The other 37 said they simply hold the check until funds are available or notify the drawer and try to get him to pay but do not sue or notify the police.

Assuming that the present practice with regard to post-dated checks is to some extent undesirable because it is possible to punish criminally an honest, insolvent debtor, but that it still represents a needed institution for commercial transactions, certain actions could be taken to correct the situation. One possi-

---

[66] Pen. C., Art. 657(1), "Whosoever intentionally draws a cheque without cover or knows that there will not be full cover at the time of presentment for payment, is punishable for fraudulent misrepresentation." Regarding imprisonment, see id., Arts. 656, 742.

bility would be to eliminate the rigid distinction between checks and bills of exchange so that a post-dated check would actually be a bill of exchange[67] and the criminal penalties for fraudulent misrepresentation regarding "checks" would not apply when post-dated checks are not paid. This would still leave evidentiary problems in proving when the check was issued unless it were accompanied by a memorandum. It would also require considerable redrafting of the Commerical Code. A less drastic change might be made in the Code by recognizing a check a delai de vue, so that a certain number of days is allowed before the check may be presented.[68] This kind of check has been recognized in the past in in Italy, Portugal, and Rumania where five days were allowed before presentation, and is still recognized today in the Vatican State[69] and Venezuela[70] where ten and six days respectively are allowed. This modification would still not make the check as much an instrument of credit, however, as it is in practice now in the Mercato because much post-dating now is a month or beyond.

As long as the present code provisions are retained, however, the practice of post-dating checks might be to some extent discouraged if the banks and courts were informed that according to the law checks should be paid when presented regardless of the date which appears on them, and regulations were issued under the Commercial Code to this effect. The banks might also attempt to

---

[67] In many British cases it has been held that a post-dated check is not a check in law, because it is not payable on demand. But at the same time it is not invalid because the law (Bills of Exchange Act, 1882) says that a bill is not invalid when it is post-dated, and hence may be negotiated before its date and dealt with as valid. The practice is common in British business, especially among money-lenders who lend money against post-dated checks. See M. J. L. Rajanayagam, "Post-dated Cheque and Holding in Due Course," J. Bus. L., (Jan., 1969), pp. 33-36; see also generally, H. Schwarz, "Post Dated Cheque," South Afr. L.J., vol. 70 (1953), pp. 130-131.

[68] See, M. Vasseur and X. Marin, Le Cheque, (1969, Paris, Sirey), pp. 62-63.

[69] Vatican State, Comm. C., Art. 340.

[70] Venezuela, Comm. C., Art. 490.

educate their customers on the use of bills of exchange, which the post-dated check in effect is, and issue to them bill of exchange forms like personalized checks.

6. Compliance with Legal Obligations by Businesses in the Mercato.

While the use of most the institutions and practices described above is usually optional with the party involved, the law imposes certain mandatory obligations on all persons engaged in commerce or all with "trader" status. Among the most important of these are the duties to register with the Ministry of Commerce, Industry and Tourism and to keep accounts of all business transactions. Also, in the event of failure of a business there may be a duty to file a statement of bankruptcy with the High Court if all commercial obligations cannot be met. Questions were asked in the Survey to determine to what extent these duties are being fulfilled by traders in the Mercato.

a. Business Registration Requirements.

The Commercial Register. Prior to the enactment of the Commercial Code, registration of businesses was required under the Business Enterprises Registration Decree.[71] The Code includes provisions for a Commercial Register[72] but allows the prior law to remain in effect until an order is published in the Negarit Gazeta revoking it.[73] This order has not been published yet, but the Decree has been replaced by the Business Enterprises Registration Proclamation of 1961.[74] Under the Commercial Code only those businessmen classed as "traders" and organizations classed as "commercial" would be required to register, but every company and every person engaged in business for profit is required to register under the Proclamation. While

---

[71] Business Enterprises Registration Decree, 1957, Decree No. 27, Neg. Gaz., year 17, no. 4.

[72] Comm. C., Arts. 86-123.

[73] Id., Art. 1174.

[74] Business Enterprises Registration Proclamation, 1961, Proc. No. 184, Neg. Gaz., year 21, no. 3.

failure to register under the Commercial Code will only prevent someone from holding himself out to be a "trader" to third parties in addition to being subject to criminal punishment under the Penal Code,[75] the Proclamation provides that "no company or individual enterpriser shall be entitled to maintain any action in Ethiopia upon any contract made by it in Ethiopia unless before the making of such contract the company or individual enterpriser shall have registered in the Ministry of Commerce and Industry as provided in this Proclamation."[76] In addition no municipality may license a non-registered business and any company or individual who carries on business without registering or engages in a business that is not authorized by his registration is punishable in accordance with the provisions of the Penal Code of 1957."[77] Thus, although the provisions of the Proclamation are more simple because they eliminate the necessity for making the subtle legal distinctions between "traders" and "non-traders" and require every business enterprise to be registered, the practical effects of failure to register may be much more harsh than those of the Commercial Code. Under the Code the only civil legal effects of non-registration of an individual trader seems to be that the trade name and distinguishing marks of his business are not protected,[78] he is not able to voluntarily enter a scheme of arrangement instead of being declared bankrupt,[79] and his account books are not admissible as evidence in his favor.[80] None of these sanctions are likely to ever be felt by the average small businessman. If the provisions of the Proclamation were literally applied by the courts, however, they would prohibit the enforcement of any contract made by any unregistered businessman.

Registration of Business Interviewed in the Mercato. The major purpose of Commercial Registers is publicity of the legal

---

[75] Pen. C., Art. 428

[76] Business Enterprises Registration Proclamation, 1961, cited above at note 74, Art. 5.

[77] Pen. C., Art. 746.

[78] See Comm. C., Arts. 118, 127-141.

[79] Id., Art. 1120

[80] Id., Art. 71.

status and financial condition of persons and organizations registered.[81] Questions were asked, therefore, to find out if the people interviewed had registered and if they ever used the Commercial Register to obtain information about other businesses.

Forty-seven per cent of the people interviewed said that they were not registered with the Ministry of Commerce and Industry, but two of those not registered said that they looked at files of other businesses to get information. Forty per cent were registered but only four of these said they looked at other files to get information. Thirteen per cent did not answer the questions pertaining to registration. Among the retail businesses about 40 per cent of the clothing and textiles shops, 40 per cent of the hardware and utensil dealers, twenty per cent of those dealing in food products, and only one of the thirteen miscellaneous goods shops were registered. About 65 per cent of the bars, restaurants, and hotels were registered and 40 per cent of the handicraftsmen and people providing personal services.[82] Among the importing and wholesale businesses 70 per cent of the textile and clothing merchants and 65 per cent of the hardware and appliance dealers said they were registered.

By type of business organization it was found that only 37 per cent of the individual enterprisers and 22 per cent of the partnerships without written agreements were registered.[83] Of the partnerships with written agreements 63 per cent were registered, however, as well as five of the eight private limited companies, the one limited partnership, and one share company. Two of the six who said that they used the Commercial Register to investigate other businesses were private limited companies and the other four were individual enterprises.

---

[81] Id., Art. 88; A. Jauffret, Manuel de droit commercial (1957, Paris, Librairie General de droit et de jurisprudence), p. 60.

[82] These, as noted above, may not be required to register under the Commercial Code, because they are not "traders" or "commercial organization" but they are so required under the Business Enterprises Registration Proclamation, 1961, cited above at note 74.

[83] For a discussion of the legal status of non-registered partnerships and those without written agreements see P. McCarthy, "De Facto and Customary Partnerships in Ethiopian Law," J.Eth.L., vol. 5 (1968), p. 105.

There are several reasons which may account for the lack of enthusiasm for use of the Commercial Register. Although the Proclamation says that the owner of a business which is not registered cannot bring an action on any contract in any court in the Empire and that no Municipality can grant any license to do business unless the business is registered, in practice these sanctions appear to be completely ignored. Practically all of the permanent businesses in the Mercato are licensed by the Municipality and it in fact owns many of the major buildings. The Commercial Register was mentioned only once in all of the court cases examined in the survey and that was in connection with whether or not a party could legitimately claim to be president of a share company because his name was not entered as such in the Register. If the registration law had been enforced many of the cases examined would probably have been dismissed because the plantiffs were not registered. Many of those who were registered said that they received practically no benefit from having done so, but some said that it is easier to engage in foreign trade and to get loans and guarantees from the banks. A few bankers interviewed said that they check to see if a borrower is registered, but most bankers accept a valid license from the Municipality as sufficient evidence that he has a legitimate business. Among those merchants who were aware that the Commercial Register exists and that they might have some obligation to register but had not, there seemed to be a feeling that registration would insure an increase in their taxes since they would have to state the amount of capital invested in their businesses and to pay fees for registration itself. The fear regarding taxes may not be entirely unfounded. As will be discussed in the following section, taxes, although supposedly based on income or turnover are in many cases actually based on the amount of capital in the business.

In effect, therefore, there are two registration systems, that of the Ministry of Commerce, Industry, and Tourism and the other of the Municipality, and since actual penalties seem to be applied by the latter for non-registration and registering with the former is often feared to cause an increase in taxes, many businessmen in the Mercato consider the procurement of a license from the Municipality the only formality required for legitimately doing business.

b. Obligations to Keep Accounts and Their Use for Assessment of Taxes

Requirements of the Commercial Code. Provisions are made re-

garding the kinds of accounts to be kept by all traders and commercial business organizations in the Commercial Code.[84] Generally any person[85] or business organization carrying on trade must keep such books as are required in accordance with business pratices and regulations, having regard to the nature and importance of the trade carried on.[86] Petty traders may be exempted from keeping accounts under special regulations,[87] but such regulations have not yet been issued and no definition of petty traders is found in the Commercial Code or elsewhere. Presumably then even the smallest trader is subject to the requirements being discussed.

As a minimum the Code requires that every trader and every business organization keep a journal where daily entries must be made of his or its dealings regardless of their nature. The bookkeeper may, however, at least once a month balance the proceeds of such dealings but must preserve all documents necessary for checking these daily transactions.[88] Every trader and business organization must also prepare an inventory and balance sheet, both when they begin to carry on trade and at the end of each financial year when they must also prepare a profit and loss account.[89] Anyone who fails or neglects to keep books and accounts regularly and in good order and to keep his correspondence, invoices, and other business papers for the prescribed time as required by law, regulation, or articles of association is punishable under the Penal Code with fine or imprisonment not exceeding one month.[90]

---

[84] Comm. C., Arts. 63-85.

[85] French version reads, "toute personne physique ayant a la qualite de commercant." See note 14, above regarding the definitions of "traders" and "business organizations."

[86] Comm. C., Art. 63.

[87] Id., Art. 64; see also, the discussion of the Commercial Law Codification Sub-Commission on Oct. 20, 1954, Proces-verbaux de la sous-commission de lois commerciales (1954, unpublished, Archives, Faculty of Law, Haile Sellassie I University), p.58.

[88] Comm. C., Art. 66.

[89] Id., Art. 67.

[90] Pen. C., Art. 817.

Accounting Requirements of the Income Tax Proclamation and Regulations. In addition to the requirements of the Commercial Code, people in business have obligations to keep accounts under the Income Tax Proclamation[91] and Regulations.[92] In them provisions exempting small businesses from keeping accounts have been made. The Minister of Finance may make regulations requiring taxpayers to keep certain books of account in certain forms,[93] but he may prescribe regulations for certain taxpayers who are not required to keep records and books of accounts if their taxable income as estimated by the Tax Authority does not normally exceed E$6,000.[94] The Income Tax Regulations do provide for a category of taxpayers who do not have to keep accounts if the tax authority estimates their income to be below E$6,000.[95] Fifteen classes are provided within the category based on the amount of income which is estimated, and the amount of tax to be paid is prescribed for each category.

If no records and books of account are maintained by a taxpayers, if for any reason the records and books of account are unacceptable to the Income Tax Authority, or if a taxpayer fails to declare his or its income within the prescribed time, the Income Tax Authority may assess the tax by estimation.[96]

Accounting Practices Among the Businesses Interviewed in the Mercato. In order to obtain some idea of how the accounting requirements of the Commercial Code and Income Tax Proclamation are being followed and what effect they may have on business practices, the people interviewed were asked a series of questions about what kind of account books they keep, if any, and to what extent they are used for determination of the amount of tax they pay. The latter question seems particularly important because of the num-

---

[91] Income Tax Proclamation, 1961, Proc. No. 173, Neg. Gaz., year 20, no. 13).

[92] Income Tax Regulations, 1962, Leg. Not. No. 258, Neg. Gaz., year 22, no. 1.

[93] Income Tax Proclamation, 1961, cited above at note 91, Art. 42.

[94] Id., Art. 43.

[95] Income Tax Regulations, 1963, cited above at note 93, Reg. 30.

[96] Income Tax Proclamation, 1961, cited above at note 92, Art. 40.

ber of people who cited the arbitrary manner of tax assessment as the greatest problem faced by traders in the Mercato at present. Out of 158 interviews, all but eight people responded to these questions. Fifty-six of them said that they keep no books at all and that their taxes are assessed entirely by estimation. Five, however, said that they kept no books at all but paid no tax either. They failed to explain clearly why not. Fifty-one others said that they keep some kind of account books but that taxes are still assessed entirely on the basis of estimation. In most cases these books are only note books or "exercise books" in which they record credit sales and purchases and keep some kind of basic inventory but are not complete enough to be used for an accurate evaluation of their profits and losses.

Some appeared to keep adequate account books but for various reasons they are not used for taxes. One merchant had had a course in accounting and kept all the appropriate books, but said that the tax assessors will not look at them but only estimate on the basis of invoices and their guess at the number of sales per year. Another also said he had been keeping accounts for a year but that the revenue service will not accept them. He had once gone to court to have the amount of his tax reduced. Still another said that he keeps all the journals and ledgers required and he had copies of the Commercial Code in both English and Amharic which he showed the interviewer, but he said his books are not used for tax assessment because they are not audited. Eleven said they keep some kind of accounts or at least receipts and invoices which are considered by the tax assessors but that the assessors supplement them with their own estimation.

Only one-sixth of those answering the questions said that they keep journals and ledgers which are used for assessment of their taxes without estimation on the part of the assessors. Three others said they keep journals and ledgers also but that their taxes had not been assessed yet because they had only recently begun business.

Accounts were not kept or those kept were not used for tax assessment by any of the miscellaneous goods dealers interviewed, by 90 per cent of the retail hardware and utensil dealers, 85 per cent of the personal services businesses and handicraftsmen,[97]

---

[97]Most of these are not required to keep accounts under the Commercial Code, because of their "non-trader" status. See note 14, above.

80 per cent of the food produce dealers, 75 per cent of the bars, hotels, and restaurants, and 67 per cent of the retail clothing and textile merchants. Accounts which were the basis of tax assessment or were considered along with estimation were kept, however, by 75 per cent of the importers and wholesale dealers in hardware, machinery and utensils, and by 70 per cent of the importers and wholesale dealers in clothing and textiles.

From the viewpoint of business organizational structure, 75 per cent of the individual enterprises and 80 per cent of the partnerships without written agreements did not keep accounts which were used for tax assessment, while 65 per cent of the private limited companies, and 70 per cent of the partnerships with written agreements did. Therefore, although most of the businesses which do not use any or adequate accounting practices are the smaller retail shops which are run by individual owners or an informal partnership, a significant number of larger importing and wholesale businesses with more advanced forms of business organization seem to be lacking in this respect also.

The problem of inadequate accounting methods is not one which can be solved easily or quickly because a strict enforcement of the Commercial Code provisions would simply drive out of business many people who lack the education and ability to keep accounts and whose businesses are not large enough to justify hiring employees to do it for them. There is some effort being made by the tax authority to encourage traders to keep proper accounts since one person interviewed said that he had not kept accounts in the past, but would in the future because last year he had to pay a twenty per cent penalty for not having them. However, another trader noted that although he had to pay E$150 a year as a penalty for not keeping accounts, he would have to pay an employee more than E$150. a month to keep accounts for him. Therefore, he naturally preferred the former. The lack of proper accounts is a serious threat to the stability of many businesses not only because they assist to establish profitable prices and make wise investment decisions but because of the arbitrariness and inequity with which taxes may be assessed. There is an obvious temptation for tax assessors to demand and accept bribes when the tax assessed is based entirely on their estimation of how much the business appears to be earning and the taxpayer has no documentary evidence with which to challenge the estimation. Practically all of the businessmen who complained about tax problems said that most people in the Mercato who did not want to pay exorbitant taxes bribed the tax assessors and several even admitted that they bribed them themselves. An effort needs to be made, therefore,

to encourage business owners to learn how to keep the accounts required by law, but it seems that an attempt suddenly to enforce the laws would probably have undesirable results.

c. Bankruptcy

Code Provisions. Under the codes, when a non-trader does not have enough assets to meet all of his financial obligations his creditors may seize, upon proper execution of a court judgment, what property he has other than that deemed essential to his and his family's survival.[98] Those who come first may take what they find but the debts owed to those who find nothing are not extinguished and may be reasserted at any time. That is to say, a "non-trader" debtor apparently may not be legally executed from his debts under any codified procedure -- he cannot be declared "bankrupt".[99] The debtor may not be imprisoned for refusal to obey a court judgement for payment of money if he is unable to do so.[100] On the other hand, a trader or commercial business organization may be put into bankruptcy by a suit initiated by his creditors or himself.

Regardless of who intiates a bankruptcy action or when it is begun, a trader or commercial business organization which fails to meet payments must file a notice to this effect with the registrar of the bankruptcy court including the firms's balance sheet, its profit and loss account, and a list of its commercial credits and debts.[101] Complex bankruptcy proceedings then begin in which the debtor either works out an agreement with his creditors for partial payment of his debts and remains in business, or the business is wound up and all of the remaining assets are distributed to them. If the debtor's assets do not exceed E$1,000 or cannot amount to more than one tenth of the liabilities, a

---

[98] Civ. Pro. C., Arts. 404-455.

[99] Id., Art. 392(2); Extension of bankruptcy provisions to non-traders was discussed by the sub-commission but rejected at the insistance of the Draftsman. Proces Verbaux, cited above at note 87, p. 78.

[100] Civ. Proc. C., Art. 389; Rev. Const., Art. 58.

[101] Comm. C., Arts. 972-973.

summary procedure is available in which many of the normal steps are shortened or eliminated.[102] Rather than entering into bankruptcy proceedings, a debtor who is about to cease meeting obligations may voluntarily apply for a scheme of arrangement by which he works out a compromise agreement with his creditors.[103] To do so, however, he must file the same documents required for a notice of bankruptcy and show that he has been properly registered for the past two years or since the opening of business.[104]

Customary bankruptcy practice in the Mercato. As should be evident from the findings reported in the immediately preceding subsections, these bankruptcy and scheme of arrangement provisions would be difficult to apply to most businesses in the Mercato because they often are not registered and rarely keep the accounts necessary for the provisions to apply. Only one bankruptcy case was found in the High Court and it involved the winding-up of a share company.

Bankruptcy is an institution recognized by custom among the businessmen in the Mercato, however, and as already mentioned the results of arbitration and conciliation proceedings often have the equivalent effect of adjudication in bankruptcy. One such proceeding was related by an Arab importer who held a E$1,000 promissory note from another trader who was "bankrupt." The bankrupt had taken E$20,000 of goods from ten different people and had only E$10,000 remaining. Six elders were chosen whom all the parties knew well and all agreed on. The conciliation agreement was not written and the proceedings were only an attempt to bring the parties to a voluntary reconciliation. Four meetings were held, one every week. At first the debtor was unwilling to give up his last possessions, but finally he agreed under pressure from the elders and, after paying his taxes, the elders and the creditors discussed how to share his goods. A decision was reached by the elders that the creditors tear up their promissory notes and accept half the amount owed. The decision was not written but since the notes were torn up in front of the elders, it seems unlikely that a future dispute would arise from it. Everyone accepted the decision. The interviewee said he did not know what would have been done to any party who

---

[102] Id., Art. 1166.

[103] Id., Arts. 1119-53.

[104] Id., Art. 1120.

did not comply.

Another elder interviewed said that when traders become bankrupt it is customary for them to circulate notes among their acquaintances explaining why they are bankrupt and asking for contributions to pay off their debts. The elder had in his pocket one of these notes from someone whose shop had burned recently and he said that most people felt socially obliged to make these contributions. The idir associations, also function in some cases as a form of bankruptcy insurance, so that if a member is honestly bankrupt the association will pay his debts.

It is conceivable that the customary procedures used in cases of bankruptcy do not include all of the protections for both debtors and creditors which the bankruptcy law is designed to provide. It seems likely, however, that the elders who conduct these proceedings inquire into all outstanding debts and by knowing the bankrupt personally are familar with his assets. Also, since the agreements reached usually have the legal effects of a "compromise,"[105] creditors should be unable to reassert their claim later in court.

In general, therefore, the bankruptcy provisions, because of their complexity and lack of correlations with many business practices, are among the least "received" of the foreign institutions of the Commercial Code, but the need of bankruptcy as an institution has produced customary practices which in most cases are legally recognizable.

Conclusion

The results of this survey have shown some major conflicts in the Mercato between law and practices. The conflicts appear to be due to lack of education or knowledge on the part of mer-

---

[105] Under the law parties are not bound by the terms of a compromise arrived at through conciliation unless they have expressly so agreed in writing. Civ. C., Art. 3322(2). If they have so agreed the conciliator's decision has the force of res judicata without appeal and may not be contested by the parties on the ground of a mistake concerning the rights on which they have compromised, id., Art. 3312, but there are certain grounds upon which a compromise agreement may be invalidated. Id., Arts. 3313-15.

chants with respect to accounting practices and registration requirements and reluctance on the part of authorities to enforce strictly many harsh legal provisions. Little, if any, evidence of resistance to these laws on the basis that they are "foreign" to the customary way of doing things was detected.

Furthermore, though there seems to be a marked preference for the use of customary means of settling disputes over the use of courts this does not appear to be based upon the fact that the courts apply "foreign," complex laws. Rather it appears due to the relative convenience of customary arbitration and conciliation at this stage in the development of the court system.

The commercial instrument devices introduced in the Commercial Code in an effort to facilitate business are being used by some businessmen in the Mercato. Again, those who are not using them appear, by and large, simply not be aware of their advantages or not to know how to utilize them.

Thus, it may be safely said that our survey has not uncovered any resistance to the sophisticated new laws upon which we have focused. It seems likely that, with a growing awareness on the part of businessmen, they can be fully implemented and utilized.