Introduction to Civil Procedure: Conceptual &Historical Background

- **The Nature of Civil Procedure: Definitional Aspects-**
- The term '**civil procedure**' composed of **two words**:-
  - **1**.'**Civil**' ⇨ '**Private' individuals**' and
  - **2**. '**Procedure**'.⇨ **manner of carrying out a certain activity'**.
- When **combined**, mean,
- The **aspect of court proceedings -OR** '**method of conducting legal actions** relating to the **issues of private**

Substantive Vs Procedural Laws:-

Significance

- **Function of procedural rules**, to **govern** as to:-
  - **How claims of persons are prepared;**
  - **Where and when presented; and,**
  - **How determined and finally enforced** by a **court** of law.
- In a **nutshell**, procedural rules, in essence, **give effect ("life") to the ends sought to be achieved by substantive laws.**

Civil Vs Criminal Procedures:- Scope of Application

- **All** legal disputes before a court of law are thus **either** one of **remedial** **or** **penal** in nature;
- **Civil procedure** is **a set of rules employed in the disposition of civil cases** while
- **Criminal procedure** is meant to **govern the steps to be followed in penal**

The **three** parameters **differentiating civil** cases from **criminal** ones

- **1**. **Nature of the parties** instituting the legal action.
- **A civil** case is naturally initiated by a **private** person claiming **redress** for some **wrong** alleged to have been committed against him by another**.**
- **2.** The **Purpose** of initiating a law suit and the **nature** of the **relief sought**.

➢ **Relief** demanded in a civil case is mostly the **payment of money** or assessed in **monetary values**.

- **3**. **Availability of alternative dispute settling mechanism**
- **Civil cases are subject to negotiations**

Fundamental Procedural Rules

- **Assignment for Self-Assessment**
- **Explain Fundamental values** of procedural rules and **procedural**

- **Rules of civil** procedure **aim to ensure** disputes are **handled** by:-
  - an **impartial legal tribunal**
  - in a **fair and orderly manner** and a
  - as **expeditiously and economically** as possible.
- **Rules of civil** are, **meant to**:-
  - **Secure** the **just, speedy and inexpensive disposition of cases**.
  - **Treating the parties to a law suit equally**
  - **Make the decision within a**

The Cardinal Procedural Principles

- **1. Fair Hearing** of a Suit /**Impartiality** of the Courts
- **2. Public Hearing** of a Suit
- **3. Independence** of the **Judiciary** and **Accountability** of the **Judges**
- **4**. Establishment of **Courts by Law**

Modes of Proceedings (litigations)

- Laws of procedural rules **adopt either** :-
- 1. The '**Adversarial**' or
- 2. The '**Inquisitorial**' modes of modes of litigations.

1. The Adversarial Procedure

- Typical feature of **English judicial process**
- **Characteristics** this court proceeding is that
- **Parties themselves** shoulder the **burden** of **initiating**, **shaping** and **fixing** the **scope** of the litigation.
- **Truth is emerge** as a **bi-product of intensely partisan advocates.**
- ‘**Litigant-driven**’ **fact-finding** process taking a “**win-at-all-costs**” attitude.
- **Judges** play a relatively **passive** **role** as their function is **limited** to **regulating the proper conduct (smooth flow) of process**.
- Judge is merely there as an **impartial umpire** to see to it that the **rules of the game are evenly and properly observed by the players.**

2.The Inquisitorial Procedure

- This mode is tied to the **traditional** function of a **strong and absolute government**, namely the **maintenance of public order and the suppression of crimes.**
- It is chiefly employed in **Continent** Europe
- **Judges** can **inquire deep into the merits** and so **play active roles**
- Judges are basically thereto **ensure public control** over the management of the **individual cases** by **enforcing the law**.

What about **Ethiopian** court proceedings???

- '**Adversarial'** ???or '**Inquisitorial'???**
- **Why ???**

Rules of Civil Procedure in Ethiopia: Historical Development

- Historically **absence** of a **systematically organized judicial** process & **uniformly** applied procedural laws u**p until the end of the 19th**
- Ethiopia's **notoriously litigious practice** through such **customary adversarial contentions** as the "*Tattayaq*-**muget**" with the following **appeals**

➢ **Chiqa-Shum**□**Deputy-Governor**□**Governor** □***Womber Rases***□***"Afe-Negus"***□**Zufan- Chilot'**

Development of Modern procedural laws

- **Proc No 2/1942** establish the **country's judicial structure** and **laid down** the very foundation for the **development of procedural laws in Ethiopia**
- **'Leg. Not. No .33/1943'** in 1943, **the first ever** written **procedural law**
- '**Leg. Not. No 155/1951**' a **rule relating to appeals** to the Imperial Supreme Court

➢ **The 1965 Civil Procedure Code**,

Material source of the Civil Procedural Code

- R. A. **Seddler**, the author claims it was **entirely remarkably of Ethiopian origin**.
- **Scholars** contend overwhelming majority of its provisions are, in a similar fashion to **the 1908 Indian Civil Procedure Code**.
- They conclude that the latter could safely be **considered as the basic material source** of our Code of Procedure

Salient Features of the Civil Procedure Code

- The Code have embodied **comprehensive rules** that apply to **civil litigations of any sort**
- It is **concise** with **only 483**
- **It encompasses rules on**:-
  - **Jurisdiction** of courts;
  - **Framing** of **issues**;
  - **Parties** to and **scope** of **litigation**;
  - **Service** of **summons**;
  - **Pre –trial** and **trial** proceedings;
  - **Revision** of decisions and
  - Modes of **executions**

Distinguishing features of the code

- **Four schedules** of forms governing **pleading** process, **miscellaneous** matters and **execution**
- Should schedules should strictly be observed?
- Contention?
- **Inconsistent** prescriptions between **Amharic** & English text of **Art. 80(2)**
- Amharic text make the use of the forms **indispensably mandatory,** but not the English
- How about the **practice**?
- However Art 244(4) of the **Amharic** Code stipulates that **non- observance** of formal requirements **cannot be a ground for a preliminary objection**.
- The Code was issued as a "**Decree**" by the Emperor,

Proclamations that have Civil Procedural natures

- **Proc No 25/96** and its amendment proclamation **No.138/98**, which preceded **Proc No.454/2005** are of **civil nature**

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