



WOLAITA SODO UNIVERSITY

SCHOOL OF LAW

LAW OF CIVIL PROCEDURE

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Chapter One

Introduction to Civil Procedure_

❖ *Conceptual and Historical Background*

➤ Nature and Purpose:

- The term '**civil**' denote matters related to '**private**' *individuals*' as opposed to '**public**' *affairs* (criminal).
- '**procedure**' refers to '*the manner of carrying out a certain activity*' as opposed to *substantive*.
- ❖ '**civil procedure**' refers '*method of conducting legal actions relating to the issues of private persons*'.

❖ Substantive Rules

- **define rights, duties, privileges and liabilities of persons and set out regulatory norms for their mutual relations.**
- **are basic rules governing the day-to-day activities of individuals with**

❖ Adjective Rules

- **Procedural rules -** instrument to enforce substantive rules, means to an end expected by substantive rules.
- **Evidence laws-** governs the **method of proof** of allegations or assertions of parties to a case.

Substantive Laws

- **Material Source** - Eg. Civil, Commercial, Criminal laws....
- **Objectives** - to avoid disputes by carefully delimiting their respective legal spheres; by predefining rights and duties.
- **Spheres of applications** - deal with civil matters largely falling outside the environs of the courtrooms - “**Law at rest**”.
- Non-retroactive

Procedural Laws

- **Material Source** - Eg. Civil procedures, Criminal procedures, Proc. No.25/96...
- to deal with the manners of framing law suits; determining their place of institutions; and, governing the way they are to be considered and finally enforced by the courts.
- deal the process of litigation; regulate the conduct of relations between the litigants and the court with respect to the proceedings - “**Law of action(motion)**”.
- Effective on cases pending on its effective date.

➤ **Procedural Laws:**

- **Procedural irregularities** affect the ultimate fate of litigation dramatically not less than the substantive problems.
- Rights and duties envisaged by substantive laws would mean nothing unless they are fully enforced,
- Prescription without application is nothing but pretense.
- **give effect (life) to the ends sought to be achieved by substantive laws.**
- ***Existence and proper application of effective and efficient rules of procedure***
 - ✓ avoid potential evils consequent to such unfortunate events &
 - ✓ enable the legitimate owner to properly enjoy and/or exercise the right within the bounds of the law.
- **Normative(legal) & institutional structure - vital**

CIVIL PROCEDURE

- **Nature of the parties** - Private person;
- **Purpose/Relief Sought** - payment of money, forced(specific) performance - (restitution, delivery of goods, injunction);
- **Availability of ADR** - civil cases subject to negotiations.

CRIMINAL PROCEDURE

- **State and individuals;**
- **To maintain peace & order** - imprisonment, fine, capital punishment.
- **criminal cases not subject to negotiations.**

Purpose of Civil Procedure

- ❖ **just, speedy and inexpensive** disposition of cases –
 - to ensure that disputes are handled by an **impartial** legal tribunal in a **fair and orderly** manner and as **expeditiously and economically** as possible.
 - treating the parties to a law suit equally & make the decision within a reasonably **fair and quick time**.
 - ***‘Justice delayed...justice denied’*** - If the application of the rules of civil procedure leads to **costly litigations and excessive delays** –
 - ***‘Justice rushed is justice crushed’*** = **sketchy judgments** rendered at the expense of justice in a manner that obstructs or destroys justice itself would amount to a **miscarriage of justice** potentially jeopardizing the administration of justice.

Factors determining speedy and inexpensive determination of a law suit :-

- Number & nature(complexity) of a case;
- Number of courts(benches);
- Number of judges(justice officials);
- Degree of compliance with the governing rules and
- Case flow management techniques.

Criticisms against Civil Procedure Code

- Indeterminable number and complexities of the procedural steps followed in the litigation process;
 - Lack of procedural transparency;
 - Uncertainty of the governing rules and the irreconcilably divergent inconsistencies in the application of the law.
- ❖ If litigation process intolerably sluggish, inefficient, unpredictable and costly - ***“It is better to be sued and stand as a defendant in our courts than claiming one’s right through them as a plaintiff”.***

- Self-imposed, deep -rooted and rampant customary practices which are repugnant to and observably inconsistent with the dictates of the existing law - “**both a torture to write and a torture to read**”
- There is no tradition of managing law suits separately with their specific natures – Cases which need **summary or accelerated** procedures;
- ❖ **Solution** = no need to deviate from and interpret the clear rules – compliance with the governing laws.

Fundament
al,

procedural

rules

• **Fundamental Procedural Rules**

- **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**

Fundamental Procedural Rules...cont.

1. Fair Hearing of a Suit/Impartiality of the Courts

1.1. Neutrality of the Presiding Judge:

A. personal bias

B. pecuniary(subject matter) bias

1.2. Right to be Heard: Nobody should be condemned unheard.

A. Notice and

B. Adequate and reasonable opportunity

1.3. Equality of Treatment:

C. Equipage equality,

D. Rule equality &

E. Outcome equality.

Neutrality(Impartiality) of the Presiding Judge:

- Judge must be able to bear an **impartial and objective** mind to the question in the controversy; i.e. he/ she should **impart justice without fear or favor**.
- “**Bias or prejudice**” = a leaning, inclination, bent or predisposition towards one side or another or a particular result. **OR** predisposition towards one party or against the other without proper regard to the true merits of the case.

IMPARTIALITY:- 2 features

A. Subjective impartiality = impartiality of the **judge** himself and

B.Objective impartiality = **the tribunal/ court** or bench should provide the public with the guarantee that it operates impartially.

1.1. Neutrality of the Presiding Judge:

A. *personal bias*:- arises from **friendship, relationship** (either personal or professional) or **hostility or animosity** against either of the parties; or, **negativity from personal prejudices; or even political rivalry.**

B. *pecuniary(subject matter) bias* - arises from **monetary interests** in the subject matter of the dispute.

➤ **No one should be a judge in his own case! = “*nemo judex in cause sua*”.**

➤ **impose duty upon the presiding judges to withdraw themselves from the proceedings** where it causes (or, appears to cause) the violation of the rule - Art. 27 of Proc No. 25/96.

1.2. Right to be Heard: Nobody should be condemned unheard.

➤ The governing maxim: '*audi alter am partem*'; = '**Hear the other side**'. Two of the facets of the maxim are:

A. Notice and

B. Adequate and reasonable(effective) opportunity to explain(hearing).

1.3. Equality of Treatment: equal treatment without any discrimination.

➤ There are 3 fundamental pillars used as ultimate test of procedural fairness (equality):

A. Equipage equality:- equality between the litigants in preparing their respective pleadings in **getting legal aids** (services) in **searching for evidence** etc, irrespective of their differences in income levels.

- Eg. If a party is allowed to amend or alter his pleading same opportunity should be granted, when the circumstance so requires, to the other party – Art. 91 of the Civ.p.c).

B. Rule equality:- Under similar circumstances, each party should be subjected to and protected by, similar rules. Same issues should be resolved through similar legal rules.

C. Outcome equality:- Similar issues, under same grounds /circumstances, should have similar outcomes.

2. Public Hearing of a Suit:

- *Justice must not only be done but must also be seen being done.*
- *open trial - access to public & media except closed chamber(in camera).*
- open court proceedings ensures **transparency** of judicial activities and secures the **acceptability and reliability** (credibility) of the judiciary.

3. Independence of the Judiciary and Accountability of the Judges

3.1. Judicial Independence

- ❑ Institutional (administrative) independence and
- ❑ Personal (functional) independence

I. Institutional independence: (administrative)

- Related to the concept of separation of powers & a balanced coordination and cooperation among 3 branches of the government.
- To make judiciary from an **unwarranted encroachment or influence** of any sort, particularly, from the executive branch or official of the government. It can be ensured through:

A. Legal Basis

B. Independence to Administer Internal Affairs

II. Personal (functional) independence

- For independence to be complete & meaningful it must be supplemented by a functional (individual) independence.
- In the process of discharging their judicial tasks, judges should solely be bound and guided by the law & **free**:
 - **internally**, from their own colleagues and/or from the influence of superior courts; or,
 - **externally**, from any kind of outside intrusion, fear or influence.

3.2. Accountability of the Judges

- if left **unregulated and unguided power corrupts** and is liable to be abused.
- Independence **does not mean and should not lead to irresponsibility and arbitrariness.**
- It should not be **manipulated as an incentive for laziness, corrupt motives, or for a tremendous degree of discretion** so as to end up in the **‘rule of the judges’**.

4. Establishment of Courts by Law

- Only courts so established can assume judicial function
- **Special or temporary bodies that take away judicial powers from regular courts; and by and large, do not follow procedures prescribed by law ought not to be set up. ;**
- **Structures** of the courts; their **hierarchical relations** and their **comparable jurisdictions** have to be explicitly constituted by law.
- **Exception** - administrative tribunals assume quasi-judicial power due to specific reason.

- 1. Rules of Procedure Vis-à-vis Modes of Proceedings**
- 2. Rules of Civil Procedure in Ethiopia**
- 3. Salient Features of the 1965 Civil Procedure Code**

Rules of Procedure Vis-à-vis Modes of Proceedings

❖ **The Adversarial Procedure:**

- **began in** early Anglo-Saxon court proceedings;
- **Common in - Common Law Legal system-** (England, USA, Australia and New Zealand);

➤ **Characteristics:**

- **Parties play active role** (i.e. they shoulder the burden of initiating, shaping and fixing the scope of the litigation); but
- **Judges relatively play passive role** (i.e. limited to regulating the proper conduct(smooth flow) of process).

❖ **The Inquisitorial Procedure:**

- is originally tied to the traditional function of a strong and absolute government, namely the **maintenance of public order and the suppression of crimes.**
- **Common in - Continental Legal system-** (France, and Germany);
- **Characteristics:**
 - **Parties play relatively less active role** (i.e. parties do have active role to play in initiating, shaping and fixing the scope of the litigation. However, relatively speaking the system envisages, , **a more active role for the judges**) but
 - **Judges play more active role** (i.e. judges can inquire deep into the merits of the case so as to be able to decide on what the real issues); Eg. Courts can order the parties to produce further evidence and critically examine the witnesses of either side.

CHAPTER TWO

JUDICIAL SYSTEMS IN ETHIOPIA AND JURISDICTION OF COURTS

- is the power of a court to hear and render a **binding** decision - **jurisdiction of courts**;
- deals with the identification of appropriate(level of) courts that should consider **justiciable cases**;
- the effects of absence of jurisdiction;
- matters falling outside jurisdiction of regular courts;
- issues related to transfer of suits and removal of judges from benches;
- current dual court structure(Regional and Federal judicial structures) and mechanisms of resolving jurisdictional conflicts between or among courts.

The Ethiopian Judicial System

The Unitary Court Structure - In Ethiopia:

- Until the end of 19thc, there was **no adequately articulated and/or formally institutionalized** system of administration of justice;
- Substantially been marked by greatly **diversified customary practices & traditional administrative structures**;
- Informal local institutions 
- Governors(administrative authorities) 
- Womber-Rasses (representatives of each provinces) & presiding in Addis Ababa; 
- Afe Nigus and 
- Imperial court.

- ❖ **1931 Constitution** marked the beginning of a new era in the establishment of the modern judicial system; & accordingly,
- ❖ Administration of Justice **Proclamation no. 21/1942** was enacted and **6 levels of court** established;
 - ✓ Supreme Imperial Court;
 - ✓ High Court; 
 - ✓ Provincial(Teklay-Gizat) Court. 
 - ✓ Awraja -Gizat Court; 
 - ✓ Woreda-Gizat Court; and 
 - ✓ Mikiti-Gizat Court. 
- ❖ **Later** - Mikiti-woreda and the Teklay-Gizat Courts were devoid of their jurisdiction by subsequent laws.

❖ The 1965 Civil Procedure Code -
established 4 levels of courts:

➤ **Supreme Imperial Court**



➤ **High Court**



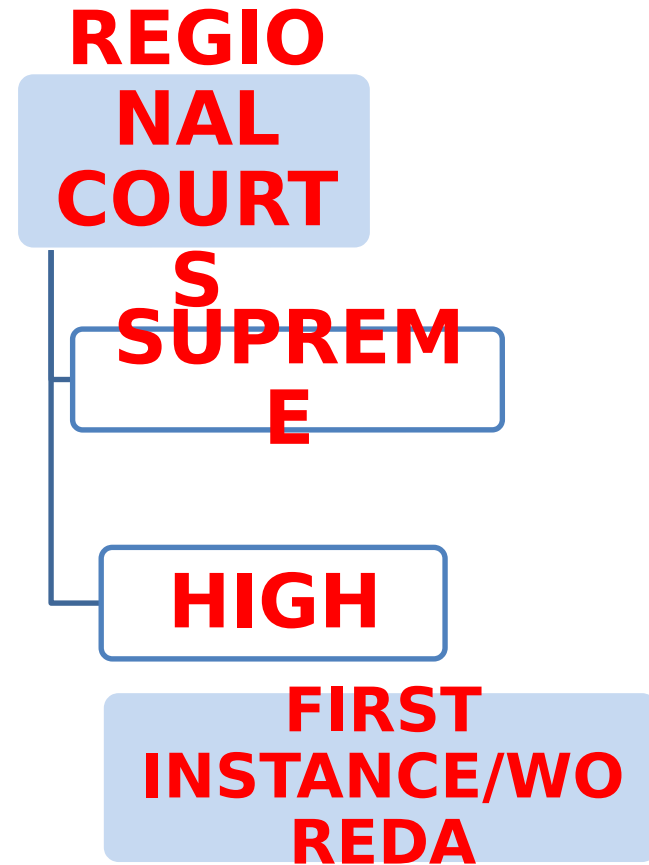
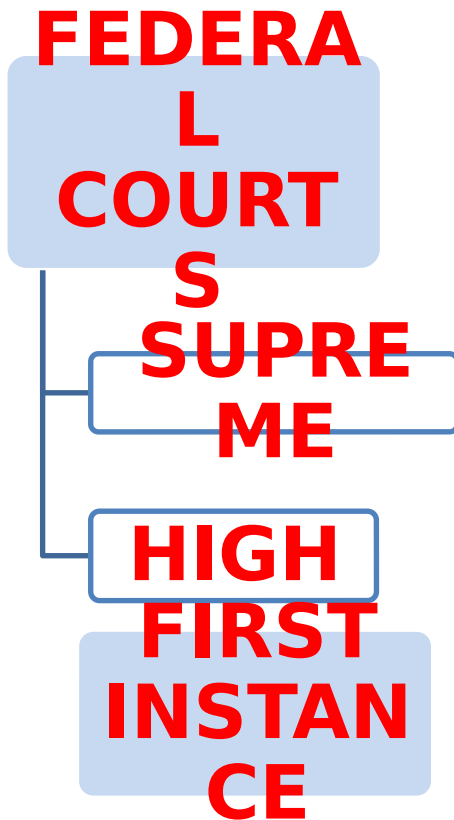
➤ **Awradja Guezat Court and**



➤ **Woreda Guezat Court**

The Present Dual Court Structure

- ❖ The 1991 Transitional Charter & 1995 FDRE Constitution introduced federal state structure
 - Federal & Regional(state) government;



- Constitution recognizes **religious** and **customary courts** and envisages their establishment by law;
- Strictly forbids the establishment of **special or ad hoc courts**;
- **Adjudicative bodies** that are constituted to review administrative decisions (Eg. 'Labour Relation Board', 'Tax Appeal Commission', 'Civil Service Tribunal' and the 'Privatization Agency' and its 'Board').

HOME WORK

- 1. Briefly discuss about jurisdiction of courts in Ethiopia.**
- 2. Discuss the constitutionality of Woreda & Kebele Social Courts.**

Jurisdiction of Courts

- ❖ Power of competent courts to **handle/hear a case, to pass a valid and an enforceable decision/binding judgement.**
- ❖ **Disputes** – may be settled by **Courts** or **out of courts** (E.g. ADR mechanisms).
- ❖ **Three** essential elements of jurisdiction of courts:
 - ***Judicial jurisdiction,***
 - ***Material jurisdiction and***
 - ***Local jurisdiction***

1. Judicial jurisdiction

- ❖ Legal competence of the courts of a particular **nation** or **state** to exercise a judicial power.
- ❖ to adjudicate a law suit and render a judgment binding an individual or his/her property.
- ❖ **Example:** Ethiopia or Kenya as a state is legitimately competent to subject a particular **foreigner or his property** to its judicial powers.
- ❖ arises when there is a '**foreign element**'.
- ❖ foreign element exists if:
 - either of the **parties** is a **foreigner** to that state or the transaction or property, OR
 - It is **occurs or is situated outside** of the territorial boundaries of that state.

❖ **Judicial jurisdiction:**

- If it has **sufficient contact** with either the **defendant** or **property** that is involved in the suit.
- Has to do with the **enforcement of the judgement** (foreigner may not possess property here).
- ❖ Court judgement of a given country may be enforced in another country on the basis of:
 - **Bilateral or reciprocity** **Concession of**
 - **Multilateral treaties**
- ❖ Court of a state to which a judgement is sent for execution consider whether the court that gave the judgement has judicial jurisdiction or not, not merit of a case.

- ❖ Eg. **if foreigner** without any property in Ethiopia is found to be subject to the jurisdiction of Ethiopian courts, the judgement passed against him will be enforced in his **home state**.
- ❖ **There is no law** that specifically govern the issues of judicial jurisdiction in **Ethiopia**.
(Arts. 456 - 561 civ. p. c.)
- ❖ Practically, judicial jurisdiction is a **procedural matter** but in most countries treated as one of **private international law**.
- ❖ **Ethiopian courts must:-**
 - identify the presence of any **international conventions** to that effect, or
 - ensure existence of **reciprocity**.

- Unless an **objection** was raised on grounds of judicial jurisdiction, the courts assume that the jurisdiction exist.
- Otherwise, the grounds would be determined on the basis of the **general legal principles developed by foreign laws** and applicable to the case.
- Grounds for exercising judicial jurisdiction are jurisdiction:
 - ***‘in Personam’*** (over a person) and
 - ***‘in Rem’*** (over a thing).

1. Jurisdiction in '*Personam*'

- ❖ Seeking a relief against the person of the defendant (i.e. natural or legal person).
- ❖ Ethiopian courts assume judicial jurisdiction in Personam if the:
 - defendant is an Ethiopian national or domiciliary **OR**,
 - defendant has consented (*expressly/impliedly*) jurisdiction by Ethiopian court; **OR**,
 - act which is the subject matter of the suit occurred or is situated in Ethiopia.

i. National or Domiciliary

Regarding Nationality:

- Refer Article 6 of the FDRE Constitution & Ethiopian Nationality Proclamation No. 378/2003.

Regarding Domiciliary:

- Refer Articles 183 - 191 of the Civil Code concerning physical/natural person; &
- Refer Articles 545 - 549 of the Civil Code concerning legal/artificial person.

ii. Consent of Parties

❖ **Consent** may be:

- **Express** (if it is orally (verbally) made or written)
Or
- **Implied** (by implication from behaviour of party)-
Eg. If not raised as an objection – presumed waived pursuant to article 244 (2)& (3) of civ.p.c.

iii. The Doing of an Act

- If the subject matter of the suit **occurred** in Ethiopia, an Ethiopian court will have judicial jurisdiction eventhough the defendant is a foreigner or not an Ethiopian domiciliary.
- **Eg.** Contracts concluded & performed between foreigners here in Ethiopia.

2. Jurisdiction in Rem

- Is jurisdiction 'against the thing/property'.
- Directed against property and the relief sought pertains to the property itself, not person.
- The '*situs of property*' (*place where the property is located*) - has jurisdiction over the case whereby the relief is sought with respect to the property itself.

2. Material/Subject-Matter/ Jurisdiction

- ❖ After judicial jurisdiction is determined the next question is material jurisdiction.
- ❖ Determining level of **competent courts** from among the judicial structure in the **hierarchy of courts** in the country.
- ❖ **There are 3 issues here:**
 - Whether the case is outside the judicial power of ordinary courts or not.
 - Making distinction between federal & regional matters.
 - Determining level of competent courts.

❖ **The two broad criteria to determine material jurisdiction of courts in Ethiopia** are:

1. Subject Matter Jurisdiction:- depends on the:

- **Type of the case** - identifying matters/cases/ falling within & outside the regular court – cases entertained by administrative tribunals(quasi-judicial organ), Sharia Courts(jurisdiction is consensual), Cases settled by arbitration or compromise, & purely political or administrative.
- Drawing a distinction between **Federal & State** subject matter. Article 80(1) & (2) of FDRE constitution, Article 5 Proc. No. 25/1996.

❖ There are **3 yardsticks** used by the proclamation:

i. Nature & status of law on which the case is based – Federal law Vs State law distinction.

A. If the case is based on: **Federal Constitution, Federal laws** (laws enacted by HPR & Federal executives), or **International Agreements**(treaties) - it falls under the jurisdiction of Federal Courts.

B. if the parties to a suit are those specified or administered by the Federal laws: Article 5(1-4) of proc. No. 25/96

- either or both of the parties is/are federal organ or official(employee); OR
- if it is between parties permanently residing in different Regional States; OR
- if one of the parties is a foreign national.

ii. Place where the case arose – if the case arose in Addis Ababa & Dire Dawa.

iii. Nature/type of the suit itself – Article 5(5-10) of proc. No. 25/96 - suits involving matters of:

- Nationality;
- Business organizations registered/established by Federal Government;
- Negotiable instruments (e.g., cheques, letter of credits...);
- Patent or copy rights, or, one based on insurance policy &
- Application for Habeas Corpus.

Which cases are state cases?

- State cases are cases that arise on the cases of State Law and that are not categorized under Federal cases.
- But issues raised on the basis of State Law may be categorized under the jurisdiction of Federal Courts.
- State courts entertain federal cases through delegation:
 - ✓ State High Court = Federal First Instance Court;
 - ✓ State Supreme Court = Federal High Court.

2. Pecuniary Jurisdiction - gathered from the plaintiff's suit.

❑ Jurisdictional limits of courts among various levels of courts based on the:

- **amount of money involved in the proceeding or**
- **nature/complexity of the case.**

➤ **Jurisdictional Limits of Federal Courts =** Federal Courts Establishment Proclamation Number 25/1996 & its amendments & Civil Procedure Code of 1965.

➤ **Jurisdictional Limits of State Courts =** Civil Procedure Code of 1965 & the specific state courts establishment laws (Eg. SNNPR = SNNPR courts establishment Proc. No. 43/2002 & its amendment Proc. No.130/2009)

- **First instance jurisdiction:** - is the original jurisdiction of courts. Art. 8, 11 & 14 of proc. No. 25/96.
- **Appellate jurisdiction:-** is a review mechanism of judgment rendered by the courts of original jurisdiction or appellate court as the case may be. Art. 9, 13 of proc. No. 25/96.
- **Cassation jurisdiction(power of cassation):-** is a review mechanism over final decisions. Art. 10 of proc. No. 25/96.

Federal Courts

Federal First Instance Court

- civil cases which involve an amount not exceeding Birr 500,000 except those cases exclusively given to the Federal High Court.
- Articles 14 of Proc. No. 25/96.

Federal High Court

- civil cases which involve an amount exceeding Birr 500,000 and those cases exclusively given to the Federal High Court without considering amount of money claimed.
- (Articles 11 of Proc. No. 25/96).

Federal Supreme Court

❖ **First instance jurisdiction:- Art. 8**

- offences for which officials of the Federal Government are held liable in connection with their official responsibility;
- offences for which foreign ambassadors, consuls as well as representatives of international organizations and foreign states are held liable;
- Application for change of venue from one Federal High Court to another or to itself.

❖ **Appellate jurisdiction:- Art. 9**

- decisions of the Federal High Court rendered in its first instance jurisdiction;
- decisions of the Federal High Court rendered in its appellate jurisdiction in variation of the decision of the Federal First Instance Court.

❖ **Power of cassation:- Art. 10**

- Final decisions of the Federal High Court rendered in its appellate jurisdiction;
- Final decisions of the regular division of the Federal Supreme Court;
- final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

States Courts - Art. 13, 14, 15 civ.p.c

❖ **Woreda Courts** = First Instance

Jurisdiction for:-

- movable properties up to 5,000 Birr
- immovable properties up to 10,000 Birr.

❖ **State High Courts** = First Instance

Jurisdiction for:-

- movable properties more than 5,000 Birr
- immovable properties more than 10,000 Birr.

❖ **State Supreme Courts** do not have first instance or original jurisdiction.

Determination of Amount in Controversy

- Is gathered from the statement of claim of the plaintiff – **Article 16 & 226-228 of Civ. P. C.**
- Plaintiff seeking for a recovery of **specific thing or money** should indicate the **actual or estimated** amount.
- ❖ **Exclusive Jurisdiction: - Art. 11 of proc. No. 25/96**
- Irrespective of the **monetary value or nature** of case jurisdiction is vested in a court based on **sensitivity or complexity** of cases.
- **E.g. Federal High Court shall have exclusive First Instance Jurisdiction over issues related with:**
 - Cases whose subject matter regarding private international law, or
 - Nationality, or
 - Application regarding the enforcements of foreign judgment, or
 - Applications for change of venue, from one first instance court to another or to itself, in accordance with the law.

3. Local Jurisdiction

- After **judicial and material jurisdiction** is determined the next question is local jurisdiction.
- Eg. Among the various Federal First Instance Court Which specific place of court has jurisdiction.
- Based on the convenience of parties & witnesses.
- Aimed to avoid **forum shopping** (entertaining the same case in more than one court).

3.1. Basic Place of Local Jurisdiction: Art 19(1) of the Civil Procedure Code.

- “...the court of the place where the **defendant actually resides** or **carries on business** or **personally works for gain.**”
- Suits Regarding Contracts –
 - **Contracts generally** - Art. 24 Civ. P. C.
 - **Contracts of carriage** - *carriage by sea* - Art. 208 of the Maritime Code and *carriage by air* - Art 647 of the Commercial Code.
 - **Contracts of Insurance** - in the court of the place where the head office of the insurance company is situated or registered or where the object insured is situated - Art. 24(3) Civ. P. Code).
 - **Contracts of pledge, deposit, or bailment** - instituted in the court of the place where the property is located.
 - **Suits Involving Immovable Property** - Art. 25
 - place where the immovable property exists – “*Situs* of property”.

- **Suits for Wrong Done to Persons or Movable Property** - Article 27 of the Civil Procedure Code.
- **Suits Regarding Successions** - Art. 23 of Civ. Pr. Co. - place where succession opened.
- **Suits upon Several Causes of Action** - instituted in any court that has jurisdiction over one of the causes of action, subject to rule on joinder of causes of action - Art. 29 of the Civ. P. C.

Change of Venue(Transfer of Suit) and Removal of Judges

1. Change of Venue (Transfer of Suit)

- Selected court having local jurisdictions may not be convenient/suitable/ for either or all of the parties (mainly for defendants) for certain **reasonable grounds**.
- Transfer may be made to court having **material jurisdiction** or **to the higher court**.

Grounds for change of venue: Art. 31 of cv.p.c

- **Unfairness and impartiality** of forum court;
- **Unusual difficulty/complexity** of issues in a case;
- **Inconvenience(party/witnesses)** of forum court ('forum no-convenient' – inconvenient court for defendant to present his evidences & defend).
- *If amendment of pleading(Art. 91) made the case **out of jurisdiction of the court.***
- ❖ Must be **interpreted narrowly** as it is an exception.

2. Removal/Withdrawal/ of Judges

(Art. 27 of the Proc. No. 25/96).

A judge must be removed/withdrawn/ if he/she:

- has some relations to a party or an advocate or
- was a tutor or legal representative of a party or

Conflicts of Jurisdiction

- ❖ Possibility for two or more courts to assume jurisdiction over the same cause of action – to avoid inconsistent judgments & harassment to the parties.
- ❖ Can be resolved by:
 - 1. Priority:- Art. 7 of the Civ.p.c**
 - arises when a plaintiff institutes two or more suits on the same cause of action in different courts.
 - 2. Pendency:- Art. 8 & 244(2)(c) of the Civ. p.c.**
 - no court shall try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties in another court in Ethiopia having jurisdiction.
 - 3. Consolidation:- Art. 11 of the Civ.p.c**
 - ✓ where the claims of both parties are separate while the matter in issue in one suit is closely related to a suit pending in another court.

CHAPTER THREE

PARTIES TO AND DIMENSION OF SUITS

- Parties to a Civil Suit –
 - ❖ ***At first instance jurisdiction:***
 - **Plaintiff:-** a party who makes an allegation and initiates proceedings.
 - **Defendant:-** a party against whom a claim is filed.
 - ❖ ***At the appellate court:- Appellant & Respondent***
 - ❖ ***At the Cassation court:- Applicant & Respondent***
 - ❖ **Intervener & third party defendant:-** parties that are brought into a pending suit.
- Common Requirement for all parties of a suit:
 - **Capacity** – ability to perform juridical acts - Art. 33(1), 34(2) & 244(2)(d) of the civ.p.c.
- Capacity is presumed & incapacity is an exception – Art. 192 & 193 of the civil code.

1. Plaintiff: Requirements:-

➤ ***Capacity***

➤ ***Vested interest*** - a person must be the real party interest with regard to the particular claim or allegation - having enforceable right - Art. 33(2).

❑ **Required because:-**

- it is up to the interested person to claim/abandon it.
- to avoid defendant facing 2/more suits over a single cause of action.

❑ **Effects of Lack of Vested Interest: -**

➤ ***Preliminary objection*** - Art. 244(2)(d);

➤ ***Substitution or addition*** (if bona fide(genuine) mistake - Art. 40). What if intentional?

2. Defendant:- Requirements:

- **Capacity** – Art. 33(1) & 244(2)(d).
- **Allegation** made against a person–Art. 33(3) civ.p.c
- ❖ Plaintiff shall state specific relief that he claims in the statement of claim – Art. 224 civ.p.c.
- ❖ The suit must show relations between **parties** and **wrongs done** to plaintiff and **claims** made by him.

Representation in Civil Suits

- ❖ **Legal Representation:-** representing the **incapable persons** by organs of protection - Article 34 of the civ.p.c.
- ❖ **Representative Class Suits/Class Action/:**
Art. 38
 - ✓ representation is allowed is because a suit involves several persons and that it is inconvenient for all concerned to be parties individually.
- ❖ **Requirements:**
 - ***Parties should have the same interest in a suit;***
 - ***Parties must agree to be represented; and***
 - ***The number of parties is more than two.***

What does mean “**Same interest**”?

- It is Common interest/grievance/, and
- The relief they demand is beneficial to them all.
- it does not mean that the claim of parties has a single cause or that it arises from the same transaction only.
- Plaintiffs must demand the same relief against the defendant for the same wrong committed against all of them; as defendants invoking the same defense against the plaintiffs on the same cause of action.

➤ Eg. where a local administrative body decides to give a residential area for investor and persons living there are to be transferred to another place. If persons claim that a decision is unlawful and challenges the decision itself, they are considered to have the same interest.

❖ Once proper representation is

Agents and Pleaders - Article 57 of the civ.p.c.

- ❖ Is a legal representative, agent or pleader of a person may make any appearance, application or act in or to any court.
- ❖ **Requirement:**
 - representatives are able to answer all the material questions relating to a suit.
- ❖ **Article 57** - is a person authorized by operation of law to act on behalf of a party to a suit – by organs of protection.
- ❖ **Article 58** - Family members of a person can be agents if they appear in a suit without receiving remuneration or reward from a person to be represented.

- ❖ **Article 59** - government is represented by agents in a civil suit;
- ❖ **Article 60(1)** - government as a defendant for its public servant represented by pleader;
- ❖ **Article 61** - agents of Armed Forces;
- ❖ **Article 62** - agents for prisoners;
- ❖ **Article 63** - representation by pleader/advocate.
- **Requirements:- advocate license & letter of authorization from a**

Joinder of Parties and Causes of Action

1. Joinder of Parties:

- is multiplication of parties in a single suit & widens the scope of litigation;
- the issue is how 2/more plaintiffs bring action against a single/more defendants.

Arguments For & Against Joinder:

❖ Arguments of proponents:

- Pool resources together & enables to share costs;
- Reduces court burden;
- Avoids possibility of conflicting decisions.

❖ **Arguments of opponents:**

- expands the scope of litigation & causes delay of proceedings.
 - it results in embarrassment of the defendant and makes him not to be able to properly defend himself.
- ❖ So, Art. 221 tries to strike a balance between these 2 conflicting interests toward joinder.
- ❖ If joinder results in a delay of proceedings or embarrassment of defendant, the court may order separate suits.
- ❖ In all other cases, joinder is allowed so long as it does not bring about delay of proceedings or embarrassment to a defendant.

Forms of Joinder of parties

- **Joinder of Plaintiffs:-** 2/more plaintiffs bring action against one/more defendant(s);
- **Joinder of Defendants:-** one/more plaintiff(s) file a suit against 2/more defendants and
- **Joinder of Plaintiffs and Defendants:-** 2/more plaintiffs bring action against 2/more defendants.

Types of Joinder of parties

❖ **Permissive joinder of parties:-**

Articles 35, and 36(1,2,3,4,5,6)

- ✓ Parties entitled to join can choose between joint actions or separate suits.
- ✓ They are not obliged to bring a joint action or defense – it is **optional**.
- ✓ Applies to plaintiffs & deals with how 2/more plaintiffs bring a single suit.

❖ **Requirements:-Joinder of Plaintiffs:Art. 35.**

- The right to relief must arise from the **same/series of/ transaction(s)** whether jointly, severally or in the alternative – source of the claim must be from same source.
- **‘same transaction’** it does not mean **same interest** unlike the requirement under Art. 38.
- Parties may claim **different remedies.**

❖ ***Joinder of Defendants: Art. 36.***

➤ a situation where two or more persons are jointly sued by one/more plaintiffs.

❖ **Requirement:-**

➤ There must be a **common question of law or fact**, if separate suits were filed against the defendants.

Effect of Misjoinder and Non-Joinder of Parties

Permissive Joinder:-

- Mis-joinder or non-joinder does not result in the defeat/dismissal of a suit.
- If a party is not joined or is improperly joined, the appropriate measure is to drop a party improperly joined and demand **substitution**, and proceed with.
- If there is non-joinder, the court shall proceed with the case irrespective of such non-joinder.
- If there is improper joinder of defendants, the plaintiff should be given the option to drop the defendants improperly joined or to proceed with separate suits.

Mandatory Joinder:-

- Joinder of indispensable parties.
- Parties are obliged to bring a joint action/defense.
- Except for Art. 36(3) and (4), which applies to joinder of defendants, the Civ.p.c does not have an explicit rule on mandatory joinder of plaintiff because mandatory joinder is a question of substantive law than procedural rules.

❖ **Categories of Mandatory joinder applies to:**

i. Persons required by substantive law to exercise their rights jointly.

➤ **Example:** joint owners, joint creditors or debtors, husband & wife over common property, etc.

ii. Those persons who can be affected by a decision given in their absence.

➤ **Example:** Persons who are entitled to oppose the judgment under Art. 358.

- In case of **non-joinder of defendant**, the case is not dismissed, the court shall order the joinder of such party, by issuing summon on him - Arts. 39 & 40(2).
- There is no clear provision dealing with a non-joinder of a party plaintiff and its effect.

- Art. 40(2) can be considered to have an application to the non-joinder of an indispensable party plaintiff because it says that a court may order joinder of a party as plaintiff or defendant if it believes that such party is necessary for the proper determination of a case.
- If there is non-joinder plaintiff, the court should first secure his consent before adding him as a party plaintiff.

❑ What will happen if a plaintiff who is an indispensable party does not consent to be a party to a particular suit?

There are 2 options:

- the court shall make such party a defendant, rather than dismissing a case;
- dismiss a case if a party plaintiff refuses to be added as a party plaintiff.

Joinder of Causes of Action - Art. 217, 221

- ✓ is the right of action or legal right forwarded by facts relied upon by the plaintiff.
- ✓ is related to the nature of the injury alleged to have been suffered.
- ✓ the focus is on the harm against a person than the acts that caused the harm.
- ✓ the facts or occurrences that give rise to a claim for relief without particular reference to the substantive law to be applied, or the nature of relief sought.
- ✓ **Example**: breach of contract, body injury, etc.

- **Joinder of causes of action allowed** as long as it does not bring about **delay of proceeding or embarrassment to a defendant**.
- Even **unrelated claims** can be joined.
- **Example:** a plaintiff could join cases over contract with tort and bring a single action against a defendant.

❖ ***Exceptions:***

- claims for recovery of immovable property may not be joined with other kinds of claims except those involving such property – **Art. 218**.
- A claim by or against an executor, administrator, or heir in his representative capacity cannot be joined with a claim by or against him in his personal capacity – **Art. 219**.

Interventions:

- is a mechanism by which a party is brought into a pending case to present a claim or defense.
- **Joinder** is an issue that comes at the beginning of a suit, while **intervention** is a question that comes into picture after a suit undergoes some steps.

There are two types of intervention:

1. Intervention by an application of a third party himself - Article 41.

➤ **Requirements:**

- Interest on a case – indispensable party;
- Application before decision

- If intervention is allowed, the proceedings are suspended until the original parties have been served with a copy of the statement of a party who is allowed to intervene.
- What if intervention denied?

2. Intervention by Public Prosecutor- Art. 42.

- Cases related to civil status, incapacity, marriage and bankruptcy.

Third-Party Practice/Impleader - Art. 43, 76

- is the procedural device enabling the defendant in a lawsuit to bring into a suit an additional party who may be liable for all or part of the original plaintiff's claim against the defendant.
- **Purpose:** is to settle claims involving the same cause of action/transaction in a single suit.
- Is optional and that the defendant may claim against the third party in a separate suit.

➤ **Requirements:**

- Defendant shall ***demand third party intervention*** in his **statement of defense,**
- ***Extent*** ***of contribution/indemnity*** to be made or covered by such third party must be

Change of Parties - Art. 48

- Up on **death** of the original parties, there will be replacement.
- There is no change of parties if the court **concludes the hearing** of a case and adjourns the case to make a decision even if one of the parties dies – **Art. 53.**

CHAPTER FOUR

PLEADINGS AND PRE-TRIAL PROCEEDINGS

Pleadings: Definition:-

- all formally written statements filed to a court of law by parties to a suit with respect to their respective claims and/or defenses.
- Art. 80(1) - *formally written statements that constitute them, such as statement of claim, statement of defense, memorandum of claim, appeal, etc; and provides that these documents must be the ones that initiate proceedings in a court of law and make replies thereto.*
- any document that does not set in motion proceedings in a court of law or that does not make a reply thereto does not amount to pleadings.

Pleadings: Purposes:-

- provide the defendant with notice of the suit and enable him to prepare his defenses;
- enables a court to frame the appropriate and relevant issues that need decision;
- helps to fix the issues to be decided and limit scope of litigation and determine the evidences to be used;
- guide the parties and the court in the conduct of cases; and
- Helps to expedite litigation.

Pleadings: Requirements:-

- Relate to their preparation, format, and content.
- Divided into **technical** and **legal**.

1. Technical requirements: Arts. 80(2), 92, 222, 223, 234, 327-330.

- Handwritten in ink, printed, or typewritten** on the prescribed paper;
- Prepared according to the **form** prescribed by Civ.p.c.
- Concise** & contain a **statement of material facts** on which a party relies for his claim or defense; **Verification** = mean alleged facts are true and correct **and**
- **Signature** - Art. 93.
- **Annexes** - Arts. 223, 234,

❖ **Concise statement of material facts:-**

- is in clear, precise and plain language because:
- ✓ Preparing claims & defenses is different from ordinary writing of things;
- ✓ Parties are not allowed to add claims or defenses at a later stage;
- ✓ legal provisions and arguments shall not be incorporated in pleadings.
- ✓ parties should not include issues of evidences in pleadings as it is raised in a separate stage.

- ❖ It is examined by the **registrar** of a court.
- **Rejected** – if technical requirements are not fulfilled Arts. 229, 232;
 - rejection does not prohibit fresh suit, if correction to the error made.
 - applicable also for Memorandum of appeal.
 - **reasons** for rejection must be provided.
- ✓ unsatisfied by the reasons can apply to judge to review the decision of the registrar.
- ✓ Application for review must be filed within 5 days after the registrar made a decision.

➤ **Accepted** – if not rejected – Art. 230.

The registrar shall:

- ✓ give number to a suit and register it on the register of civil suit;
- ✓ examines and compares the original and copy of document attached to the statement of claim and gives the original to the plaintiff;
- ✓ order the party to pay the court fee;
- ✓ submit the statement of claim and annexes to the judge in order to check legal requirements.

2. Legal Requirements: Art. 231

- Checked by the judge on the types of pleadings;
- Accepted – if fulfilled;
- Rejected – if not fulfilled – court fee refunded & fresh suit is not prohibited.

Pleadings: Types:-

1. Statement of Claim/Compliant:

Definition:-

- is a pleading submitted to a court by plaintiff:
- ❖ **Statement of Claim: Requirements:-**
- the above technical requirements; &
- Contents provided under Art. 222.

Statement of Claim: divided into:-

1. Caption: Contains:-

- Name of the court
- Title of the suit, and
- Names of parties; their description & address.
- Capacity of plaintiff - If there is representation.

2. Cause of action:- facts constituting a cause of action and when and where it arose.

- it is legal requirement – Art. 231.
- It is not necessary to consider evidences in order to determine a cause of action.

3. Jurisdiction:

- **Accepted** – if the court has jurisdiction.
- **Rejected** – if it has no jurisdiction (material) – but judicial & local jurisdictions are waiveable.

4. Relief: Art. 224

- demand for the relief to which the pleader believes he is entitled to.

2. Statement of Defense: Definition:- Article 80(2) 223 and 234.

- is the pleading that contains material facts on which the defendant relies for his defense.

Statement of Defense: Parts:-

- **Part I:** name of the court to which he submits his defense & number of the suit;
- **Part II:** is the statement showing the points of defense.
- Defendant is expected to **raise affirmative** grounds of defense (inadmissibility of the claim on is incapable or **court lacks jurisdiction** or that the action is **barred by period of limitation**, etc.).

- Defendant can raise objections to a suit.
- Defendant can raise a counterclaim or set off.
- Defendant must respond to each allegation – admit or denial.
- **Denial must be direct:** Art. 235
- ✓ Evasive denial is a denial in general terms;
- ✓ Evasive denial does not amount to a

Statement of Defense: Requirements:-

- Accepted – if fulfilled;
 - Rejected – if not fulfilled – Art. 229 & 238.
-
- If rejected, the court shall proceed with trial of case.
 - Rejection does not mean that the case is to be decided for the plaintiff & defendant defend orally – Art. 241.

Effects of Failure to Plead: Plaintiff

- means that the plaintiff omits some facts he could have alleged;
- A party pleading is supposed to plead all the claims arising from a single cause of action.
- Issues are framed from allegations made in the statement of claim.
- If a claim is not included in the pleading, it is not put in issue by a court.
- ***Remedy:- not put in issue, amendment of pleading;***

Effects of Failure to Plead: Defendant

- means that the defendant is not replying to some points of defense against the claim of the plaintiff.
- Denial should be specific – on every allegation;
- if the defendant fails to object to a new issue raised by the plaintiff at a trial, it means that he consents to the trial of that issue.
- ***Remedy:- not put in issue, amendment of pleading;***

Alternative Pleadings - Arts. 224, 237

- **Meaning:-** is optional grounds of claims/defenses;
 - ✓ does not mean that the plaintiff is entitled to double recovery for the same harm - **optional**.
- **Aim:-** at maximizing the grounds of claim/defense;
- there is no limitation as to the ground of defense;
- **Example 1:-** Plaintiff could plead that there is breach of contract and that he demands damage or that there is unlawful/unjust enrichment if no contract is found to exist.
- **Example 2:** defendant could put forward a defense saying that there is no valid contract or that its performance is prohibited by force majeure.

Subsequent/further Pleadings :- Art. 239

- **Meaning:-** pleading again on the same issue on which the pleading already been made;
- raised with the defense;
- **Counter-reply** should not be allowed when there is no counter-claim/set off;
- When defendant raises counter-claim in his statement of defense, he becomes plaintiff;
- Defendant shall pay court fee - Art. 215(2).

Amendment of Pleadings: Meaning:- Arts. 91 & 252

- introduces a modification to the content of the pleading already submitted to a court before decision;
- is allowed to **rectify defects** in pleadings;
- when it is necessary for the purpose of determining the real issues in dispute.
- Presupposes that a technically & legally sufficient pleading has already been filed and that it is found to be defective in terms of what has been claimed or stated;

Amendment: Grounds and the Process:-

- ordered by the motion of a court (*where the error in pleading is likely to affect the substantive rights of a party*) or by the application of a party;

➤ Amendment: Effects and Related Issues:-

- is between 2 conflicting interests:
 - Causes delay of proceedings: **Vs**
 - Protects a party from losing his substantive rights or being affected as a result of pleading error.
- ❖ **Balance between these two interests:**
 - Arts. 91 & 252 aims to balance by setting parameters;
 - imposition of damage on a party who requested the amendment of pleadings.

Liberal approach toward amendment:-

- in trying to strike a balance between these two interests the tendency in most legal systems is toward allowing amendment.
- the request for amendment should be taken into account in liberal manner that permits amendment.
- It is an abuse of discretion for the court to deny leave to amend unless there is a demonstrable indication of prejudice to an opposing party.
- ❖ introduction of new evidence could not serve as a ground for the amendment of pleading.

Summon: Definition:-

- is a formal mechanism by which a defendant is notified of a suit made against him and called upon to appear on a fixed time & date before a court to answer an allegation made by the plaintiff against him;
 - Signed by **registrar** or **court** - Art. 94(3);
 - Served to each defendant, in case of joinder of defendants.
- **Issuance of summons: Purpose:- It helps to:**
 - inform/communicate the defendant that a suit is made against him;
 - provide defendant with an opportunity to be heard and present his version of a suit.

Summon: Contents:-

- Name of plaintiff and what he is claiming against the defendant;
- Name of defendant and his address,
- Time, Date, and Court before which the defendant is supposed to appear.
- It shall also inform the defendant what he should bring with himself on the date he appears before a court – Statement of defense.
- it shall disclose to the defendant that a case will be considered even if he fails to appear on the fixed date, or even if he fails to bring his statement of defense.

Serving officer: Meaning:- Art. 95.

- is any person who collects from a court and serve on defendant;
- authorized by a court – usually the plaintiff;

Summon: Effects of failure to serve:- Art. 70(d)

- if it is due to plaintiff's negligence & defendant not appeared;
- the court may adjourn the hearing or
- Struck out of a suit;
- ❑ in cases of **appeal**, that the appeal be dismissed as against respondent not

Modes of Service

- Determines legal sufficiency of serving summon;
- Service is legally sufficient if the mode of service used is reasonable under a given circumstance.
- If the mode employed is not deemed to be sufficient, the court cannot proceed with the case and make a valid decision since it affects the opportunity to be heard that is available to the defendant.

1. Personal Service:- Art. 95(3).

- if the summon is served to the defendant personally;
- is the **best mode** of service;

2. Assimilated Service:- Art. 96.

- When served on the defendant's agent who is authorized to accept service &
- When served on the defendant's pleader/advocate.

3. Constructive mode of service:- Arts. 99 - 101.

- When served on the defendant's agent who is not authorized to accept service;
- When served on an agent in charge of immovable property, if the suit relates to immovable property &
- When served on the adult member of defendant's family.

2. Substituted Mode of Service:- Arts. 103 & 105.

- if the serving officer cannot serve, he shall return it to a court & then court order substituted service;
- is the least effective mode of service;
- is the final mode of service used when all other modes of service are not applicable;
- **Includes:-**
 - by affixing a copy of summons in public areas, publication in newspaper, etc.

Acknowledgement of service:- Art. 102.

- The person served must sign an acknowledgement of service;
- The serving officer is under obligation to request the person served to sign an acknowledgment that he received the summons.

Effects of refusal to sign acknowledgment - Arts. 103 & 105(2) :-

- Court orders a fresh summons or
- Substituted service or
- Court may consider that the person is properly served and proceeds with the case.
- When the serving officer unable to serve, return summon to the court and produce an affidavit as to the facts that prevented him from serving the summons;

CHAPTER FIVE

PRE -TRIAL PROCEEDINGS

1. The First Hearing

I. Reading SOD

II. Examination of Parties – if both parties appeared examined by courts – to determine positions of parties.

III. Ruling on preliminary objections

IV. Framing issues for trial

- ❖ Then the court sets a date for trial, at the trial evidences heard & then decided.
- ❖ Sometimes, cases adjudicated at first hearing, without full scale trial.

➤ **Non-appearance of parties**

- **Appearance** - coming before the court;
- Appearance in person is not mandatory, it may be made through agent or pleader;
- ✓ But the court may order personal appearance;
- Several plaintiffs/defendants - may be represented;
- **Representation** - must be written & filed - Art. 66;
- If partnership sued - all partners must appear individually at first hearing but subsequent proceeding continue in firm name - Art 67;
- **Body Corporate & government** - if sued court may require personal appearance of secretary, any director or principal officer - Art. 68.

Effects of Non- Appearance of Parties;

- Parties need not appear in person unless the court demands it.
- If the court orders appearance to be in person, but a party fails to appear in person, it is treated that such party makes no appearance.
- Depend on a party who fails to appear & on whether or not the summons is duly served.

➤ **If both parties failed to appear at hearing date, the court order; - Art 69(2)**

- Struck out
- Dismissal – if it is appeal/cassation

➤ **Non-appearance of Defendant; if duly summoned; (Art 70) -**

- Ex-parte proceeding – if called for hearing;
- loses the right to submit SOD – if

➤ **Non-appearance of Defendant; (Art 70)**

- 2nd summon & Adjournment – if not duly summoned;
- **Adjournment** – if summoned but short time;

➤ **Non-appearance of Plaintiff - Art 73**

- **Dismissal** – if called for hearing & the defendant not admitted the claim(partly/fully);
- **Decision** – if defendant admitted;
- **Ex-parte Proceeding** – if defendant raised counterclaim/set-off; (***Cassation File - 14184***).

➤ **Non-appearance of one/more plaintiff(s)/defendant(s) from several Plaintiffs - Art 75**

- **Proceed & order given against non-appearing plaintiff;**

➤ **Effects of Non-appearance:**

1. Struck out - (Art. 69(2) or 70(d)) : -

- The plaintiff may as of right bring a fresh action on the payment of full court fees;
- The original suit may continue & the plaintiff is relieved from payment of court fee, if he satisfies the court that there was a **sufficient cause for his/her non-appearance.**

2. *Dismissed* - (Art. 73, 69(2) (2) 70(d) or 73) :-

- Plaintiff will be precluded from bringing a fresh suit in respect of the same cause of action.
- But, if the plaintiff can show good cause for his non-appearance within 1 month from the dismissal, the court may, after giving notice of application to the opposite party, order setting aside the dismissal upon such terms and costs as it thinks fit.
- ✓ Then the court fix a day for proceeding the existing suit.

3. Ex-parte - (Art. 70(a)) : -

- Where the defendant, while he is duly served, does not appear on the date which is fixed for hearing, the court may proceed ex-parte;
- Court will proceed to adjudicate the suit in the absence of the non-appearing party;
- If a third party defendant does not appear, the court enters a default decree.

- ❑ Defendant against whom an order made ex-parte or third party defendant against whom a decree is passed may, within 1 month from the day he became aware of such action, apply to have it set aside - **Article 78.**
- ❑ Plaintiff seeking to have an order of dismissal set aside must apply within ***a month from the date of the order.***
- ❑ Defendant seeking to have an ex -parte decree set aside has ***one month from the time he was aware of the decree,*** as defendant may not be aware.

❖ If the defendant does not apply within that time, or if the court finds that the summon was duly served and that there was not sufficient cause for non-appearance, the decree is valid and it will be enforced against the defendant notwithstanding that he never presented his defense.

❖ ***In case of multiple Defendants:***

- ✓ if the decree is such that it cannot be set aside only against the non-appearing defendant entitled to have it set aside, it may be set aside against the other defendants (indispensable parties);
- ✓ If separate judgments can be entered against each defendant, there is no need to set aside the decree against the others.

4. Default Proceeding - (Art. 233) : -

- If the defendant, while he is duly served, failed to appear in court of law on the date which is fixed for hearing, the court shall order default proceeding;
- If the non-appearance is on the day fixed for submitting SOD, he loses the right to submit it;
- If a third party defendant does not appear, the court enters a default decree – Art. 76.

Sufficient Cause;

- A party whose interest is affected due to the order up on non -appearance may apply to the court to set aside the order;
- If the court is satisfied that the non-appearing party was prevented due to sufficient reason, it may order to set aside the order and the case will continue to proceed;
- Art. 71(2)?
- Art. 74(2)?
- Art. 78(2)?

Examination of Parties:

- Court read pleadings & ask parties (whether admit or denies allegations in the pleadings);
- parties given second chance to admit or deny;
- If admitted, then decided – Art. 242.
- If denied, issues framed -

❖ Particularly important to:

- Help the court clarify & develop issues;
- Plaintiff get opportunity to respond on SOD;
- Defendant might have raised affirmative defense like force majeure....

Ruling on Preliminary Objections - Art. 244 & 245

- ✓ If preliminary objections raised, the other party must be heard and then decided; not merit of the case;
- *Court has no jurisdiction*
- *Subject matter of the suit Res Judicata*
- *Suit is pending in another court*
- *Other party is not qualified for acting in the proceedings;*
- *prior permission to sue has not been obtained, when this is required by law;*
- *Suit is barred by limitation; or*
- *Claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement . (Vol-24, 161062).*

- The list under Art. 244(2) not exhaustive;
- any preliminary objection not raised at the earliest possible opportunity is deemed waived unless the ground of objection is due to reasons such as to prevent a valid judgment from being given eg., material jurisdiction – Art. 244(3).
- ❖ Preliminary objection – either accepted or rejected
 - If rejected, issues framed & heard;
 - If accepted, **dismissal** (res-judicata, period of limitation....) or **struck out** (eg. Jurisdiction, pendency,...).
 - Court fee refunded after reduction based on regulation;

Framing of Issues - Art. 246 -248

- Court shall ascertain upon what **material propositions** of *fact or* of *law* the parties are a *variance*, and shall thereupon proceed to *frame and record the issues* on which the right decision of the case appears to depend.
- Framed based on the material proposition of fact or of law **affirmed by one party and denied by the other**;
- **Material propositions** are those propositions of fact or of law, which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense;

❖ Framed from pleadings, documents produced by parties, oral allegations.... Art. 248.

❖ **Advantages of framing issues:**

- limit scope of litigation;
- expeditious proceeding;

2. Adjudication without Trial

- Agreement on issue – Art. 252
- Parties not at issue – when admitted - Art. 254
- Disposition of issues at the first hearing – Art. 255
- ✓ Eg. 1. If issues framed can be determined by argument or evidence once produced by parties.
- ✓ 2. If only issues of law is framed – as no evidence will be produced;
- ✓ 3. If only documentary evidence is produced

3. **Compromise and Withdrawal**

- **Compromise** – agreement reached after the suit has been instituted & before decision – Art. 3307 civ.c, 274 – 276 cpc.
- **Valid agreement must contain: Art. 276**
 - Name and place of the court in which the suit is pending
 - Title of the action and the number of the suit
 - Name, description, place of residence and address for service of the parties; and
 - Matter to which the agreement relates
- **Withdrawal–** Plaintiff
discontinue/abandon a case;

❖ **Withdrawal with leave:** - if with court permission – Art. 278(2) (a) & (b) – court permits if there is good cause; (Vol. – 24, 161301).

➤ **Effects:**

- ✓ There is the right to institute fresh suit on the subject matter
- ✓ Period limitation should not be interrupted;

❖ **Withdrawal without leave:** - If without court permission;

➤ **May be due to 2 reasons:**

- ✓ When reason for withdrawal rejected by court;
- ✓ When no application for withdrawal submitted;

➤ **Effects:**

- ✓ Fresh suit is not allowed – Art. 279

CHAPTER SIX

THE TRIAL AND OTHER PROCEDURES

❖ **Trial** includes:

- Production of evidence – i.e. how witness and documentary evidence are brought before the court;
- Conduct of trial; and
- Giving judgment and decree.

Ordinary Proceedings

- **Production of Evidences** - prove factual allegation/s that is/are affirmed by one party and denied by the other;
- Purpose of production of evidence:
 - Expedite trial process;
 - Exclude prejudicial & unreliable evidence;
 - Protects privacy of parties – privileged witnesses should be heard;
- Witnesses listed (Art. 223(1)(a), 234(1)) may be replaced
- Witnesses may be called by court – Art. 264
- Calling party must cover costs of witness–Art. 112/1

Summon must specify: Art. 118

- time & place witness required to attend;
- production of documents/evidences in his possession. Eg. Contract/Certificate of marriage, will...
- Non-attendance must be due to good cause like illness, unavailability of transportation.
- Non-attendance without good cause leads to criminal liability – Art. 120.

Witness may be either:

- observed the fact/accident or
- expert witness.

❑ Examination of witness on commission:

- when witness may not be able to attend before court due to physical incapacity, far from court jurisdiction or other reasons – Art. 122-125
- ❑ Witness testimony by affidavit – Art. 204

Affidavits employed in 2 situations:

- Where party proved the facts to the best of his knowledge, and
- party may prove some fact by affidavit where he believes that the facts are happening or will happen.
- ✓ Eg. Paupership – Art. 468
- ✓ Eg. Temporary injunction – waste of subject matter of a suit
- So, no need of producing evidence, but it is rebuttable.

- Documentary evidence may be either:
 - ✓ admissible – forms part of the record;
 - ✓ Inadmissible – returned to person who produced it
- Documentary evidence is classified as:
 - real proof as opposed to oral testimony;
 - Real evidence includes written documents and demonstrative evidence.
 - Eg. Photographs, recordings, and tangible objects like the murder weapon or a broken glass....
 - Most of the real proof introduced at trial is in the form of documents.

2. Special rules that govern admissibility of documents:

- Rule of authentication: - only that the person offering the document must produce evidence that it was signed or prepared by the person who is claimed to have signed or prepared it.
- Best evidence rule: - require production of original document - Art. 140, 223, 233(1), 234(1), 264(1).
- person ordered to produce document, may cause to produce without attendance - Art. 114, 115, 119, 145, 146

Procedure of admission of documentary evidence: The court endorses:

- *Number on it;*
- *title of the suit;*
- *name of the person producing it;*
- *Date of production.*
- ❖ Copy must be compared with the original & the latter returned;
- ❖ no document may be returned which by force of the decree has become void or useless.
- ❖ Exceptionally, court may order production of evidence on its own motion.

Conduct of The Trial

Order of proceeding:

- ❖ **Burden of proof:** - obligation to provide evidence necessary to establish a disputed fact or a degree of belief in the mind of the court.
- ❖ **It involves 2 concepts:**
 - **Burden of persuasion** - ultimate burden of **convincing** the court of an issue, and it does not shift during the trial; and

- But this burden may shift to the defendant if defendant admits the allegations of the statement of claim and has raised what we have called affirmative defenses.
- ❑ **General rule** - Party who has the burden of proof has the right to begin. The plaintiff has the burden of proving that he has a cause of action, and the defendant has the burden of proof on the question of whether he has a valid defence.
- ✓ Article 258

➤ **Example:-** if the defendant admitted the existence of a contract, his non performance and the damages claimed, but contended that his non performance was excused by force majeure, he would have the right to begin, since he has the burden of proof on the only issue in the case.

➤ ***preponderance of evidence:-*** If, in a suit for breach of contract, the plaintiff fails to make out a case showing that there was a contract, there is no reason to proceed further: the burden is on the plaintiff to show that there was a contract, not on the defendant to show that there was not a contract.

✓ Art. 259, 260 Civ.p.c & Art. 2001 of Civil Code.

❑ The plaintiff has the right to begin and has the burden of proving the essential element of the suit. **Two options:**

❑ The plaintiff has opportunity to produce all his evidence on all the issues without waiting for the defendant to produce evidence on the issues he has the burden of proof - Art. 260(1) OR

❑ Reserve it by way of answer to the evidence produced by the other party.

Production of Evidence by the Parties

- ❖ **Examination of witnesses:** is the primary responsibility of parties,
- ❖ But the court is also given broad power with respect to the examination of witnesses.

Three stages/manners/ to examination of witnesses:

- **The examination-in-chief** – helps the proponent to develop the testimony of the witness in light most favorable to him.
- **The cross-examination** - the opponent tries to discredit that testimony.
- **The re-examination** -the proponent tries to minimize the effect of cross-examination.

- **Art. 261** - the witness first takes the oath and proceeds to answer the questions propounded by the proponent or his advocate.
- **Art. 263** - provide the form of questions:
- **Questions put in examination-in-chief**
 - ✓ Only relate to facts relevant to the issues to be decided;
 - ✓ Only to such facts of which the witness has direct or indirect knowledge; and
 - ✓ Leading question are not allowed unless with the permission of the court or on the preliminary issues.
- **Question put in cross-examination:**
 - ✓ Aim to show to the court what is erroneous, doubtful or untrue in the answers given in examination-in-chief; and
 - ✓ Leading questions are allowed.
- **Questions put in re-examination:**
 - ✓ For the purpose of clarifying matters, which have been raised in cross-examination.

➤ **Purpose of the rule forbidding leading questions:**

- ✓ is to prevent a witness who is quick to adopt the suggestion of the examiner from saying something that he would not say otherwise.
- ✓ testimony must be that of the witness and not the examiner; the examiner cannot put words in the mouth of the witness, so to speak.

➤ **But what constitutes leading question?**

- ✓ it could be determined by the **form** of the question and the **tone** in which it is asked-it is only where the question itself suggests the answer which the examiner wishes to receive that it is considered to be leading.
- ✓ **Example:** Where the examiner concludes with a positive suggestion such as “didn’t you?” or “weren’t you?”.

❑ **Three situations where the court could permit asking leading questions - Art. 263(2):**

- **Introductory matters:** when asking name, age, occupation and address, and to save time, the examiner can simply start “your name is....., isn’t it?”.
- Where the **witness cannot remember** some or all of the matters as to which the testimony is sought.
- **Assisting child witnesses** who have difficulty in testifying.

❑ **Some of the methods of impeaching witness credibility:**

- That the witness is **biased** in favor of the **proponent** or against the **opponent**;
- That he has made **prior statements inconsistent** with his testimony in court;
- That he has a **poor reputation** for telling the **truth**;
- That he has been **convicted** of certain criminal offences reflecting on his **trustworthy**.

Documentary evidence:

- ❑ There are **no express provisions** of the Civil Procedure Code governing the introduction of documents into evidence. But according to **Art.138:**
- The court at **any stage of the suit rejects** any document, which it considers **irrelevant** or otherwise **inadmissible**, recording the grounds of such rejection.
- The court may rule on the **admissibility** of the documents at the **first hearing** or could wait until the **trial**.
- It has duty to exclude an **inadmissible document** even if no objection is made, and where a document has been admitted to incorporate it as part of the record - **Art.142.**

Power of Court during production of Evidence

- In **adversarial system**, which Ethiopia's system of litigation has adopted, the role of the court is minimal with regard to the examination of witnesses when it is compared with the **inquisitorial system** of litigation.
- But Ethiopian Civil Procedure Code give the courts **broad power** with respect to examination of witnesses & production of documents at the trial.

➤ This principle of party presentation is modified by giving the judge a **potential degree of control over the conduct** of the litigation.

Example: Court has power to:

- ✓ order amendment of pleadings on its own motion;
- ✓ frame issues for trial;
- ✓ put a question to a witness at any time during the examination;
- ✓ call a witness even though he has not been called by the parties & order any person to produce any document that he has with him;
- ✓ recall any witness who has been examined and may put to him such questions as it thinks fit - Art. 266

- Court may recall a witness to clarify points or matters.
- Only the court that examines the recalled witness & parties do not have a further opportunity to question him although they may request that he may be called.

- Where a party, without a lawful excuse, **refuses to give evidence/produce a document** in his power, court may **pronounce judgment against him** – Art. 267
- However, the court may decide not to take such a step & may issue the same kind of order as it would against any recalcitrant witness.
- If a person who is a party to a suit refuses to give evidence or to produce any document, the court may order, with or without a bail for the arrest of such person, as it considers the attendance of such person necessary - Art. 268 & 118(2)(b).

Interpretation of Disposition - Art. 262

- Every state is empowered to use its language as a working language of its courts. The Constitution also gives a right to individuals who do not know the language of the court to have an interpreter.
- Interpreter takes an oath & swears to interpret the evidence truthfully to achieve objective of justice;
- Interpreter must repeat the questions & answers exactly as they have been given & cannot summarize.
- An official interpreter should be used but if this is not possible, the court must be satisfied that the interpreter is fluent in both languages.

Recording evidence - Art. 269:

❑ *The evidence of each witness shall:*

- ✓ start with his name, age, occupation and address and an indication that he has been sworn or affirmed;
- ✓ be taken down in writing by the presiding judge or, if he is for some reason unable to record, by a judge or clerk under his personal direction and superintendence;
- ✓ be divided into examination-in-chief, cross-examination, and re-examination with a note as to where the cross-examination and re-examination begin and end;
- ✓ ordinarily be taken down in the form of a narrative, but the presiding judge may in his discretion take down or cause to be taken down any particular question and answer;
- ✓ When completed, the record shall be signed by the court.

- Where there has been an objection to a question, which is overruled/sustained, the court must record the question, the answer, the objection, the name of the person making it and the courts ruling - Art. 270
- This is to enable the appellate court to determine whether the objection was properly overruled/sustained.
- If no objection to a particular question at the trial, it cannot be raised on appeal.
- Where, after evidence has been recorded, there is a change in the composition of the court. **Example:**
 - ✓ when one of the judges is replaced, the suit continues on the basis of the evidence that has been recorded, and it is not necessary to hear that evidence over again - Art. 271(1).

Court Inspection/View/

- It helps to ascertain what probably happened - to have a full-fledged understanding of the subject matter;
- It helps to avoid necessity of taking time at trial & is particularly important where complicated financial questions are involved.
- It is just like the property itself were brought into court & introduced as real evidence.
- Court may further appoint a commissioner to make a local investigation for the purpose of elucidating any matter in dispute - Art.132.

‘open’ and ‘in camera’ trial

- **Open trial** - witnesses must give their evidence in open court, unless the court otherwise directs, for good cause to be recorded - Art. 261(3);
- **In camera** - where the evidence is not to be given in open court, the judge will take evidence in chambers in the presence of parties/their advocates.

Evidences which are bases to court decision

- ❑ Court decision must base on the evidence that has been presented in open court or in camera and the evidence presented on commission in accordance with the provisions of the code. So:
- Court may not base its decision on secret evidence that has not been presented in the presence of the parties or their advocates.
- Court must base its decision on competent and relevant evidence.
- ❖ Court must reject irrelevant/inadmissible documents and testimony of oral evidence.

Judgment and Decree

- According to Arts. 273, 259, 180 - Court shall pronounce judgment in open court either at once or, as soon after as may be practicable, on some future day to be fixed by the court.
- Judgment shall be:
 - ✓ reduced to writing;
 - ✓ signed by the judges except dissenting judge
 - ✓ pronounced by a judges or where there are more than one judge, by the presiding judge.

Pronouncement of judgment

- Where a case has been heard by more than one judge, the decision of the majority shall be the judgment of the court: provided that any judge dissenting from the decision of the majority shall state in writing the decision which he thinks should be made together with the reason - Art. 181(2).
- Judgment must contain the points for determination, the decision thereon & reasons for such decision.
- In case where several issues have been framed, the court shall state its decision on each separate issue unless the decision on any one or more issues is sufficient for the decision of the case.

Contents of judgment & Decree

- **Judgment** - must be on matters specifically raised by the parties.
- **Exception:** court has the power to frame additional issues, and if it believes that there is an issue that has not been raised and should have, it may frame that issue, require the parties to give evidence on it, and render judgment in light of its decision on the issue.
- Judgment can not be executed, what is executed is the decree.

- **Decree - is** the operative part of the judgment.
- Decree must contain:
 - ✓ The number of the suit;
 - ✓ The names and description of the parties;
 - ✓ The particulars of the claim;
 - ✓ A clear order to do or to abstain from doing something or to pay a definite sum of money or to deliver a particular thing or surrender or restore immovable property;
 - ✓ The amount of costs incurred, and by whom or out of what property they are to be paid;
 - ✓ Such particulars as are necessary to render the decree susceptible of execution; and
 - ✓ Where the decree can be executed by the personal obedience of the judgment debtor, the time within which it shall be executed.
 - ✓ If the judgment was for the defendant, it would seem that the decree should state matters (1), (2), (3) and (5) and that the judgment in the suit was for the defendant.

- **Art. 185** - envisages that a decree for the delivery of movable property shall also state the amount of money to be paid as an alternative if the property cannot be delivered.
- Where the decree is for the payment of money, the court may, for sufficient reason, postpone the payment of the amount decreed or permit payment to be made in installments, with or without interest – to enable the judgment debtor to make payment without suffering execution.
- **Art. 187** - Where the suit is for the recovery of immovable property together with rent or mesne profits, the decree should be for the possession of the immovable together with the rent or mesne profits, which have accrued prior to the suit and until the delivery of possession to the decree holder.

How should the amount be determined?

- If an accounting or division of property is necessary - there should be a preliminary order or any other direction as it thinks fit before a final decree.
- Where a set-off is allowed, decree shall state the amount due to each party & shall be for the recovery of any sum, which appears to be due to either party.

The right to get a copy of Judgment & Decree?

- **Art. 184(1)** - Certified copies of the judgment or decree or both shall be furnished to the parties on application to the registry of the court which passed it and the date be mentioned thereon.

Special Proceedings

- ❑ Are applicable for cases determined without full-scale trial – **Summary & Accelerated procedures**

Summary procedure Art. 284

- refers to a procedure by which the plaintiff may lodge his claim without the necessity of instituting a full-scale suit.
- is available where plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant & arising:
 - ✓ Upon a contract, express or implied such as on a bill of exchange, promissory note or other simple contract debt, or
 - ✓ On a bond or contract written for payment of a liquidated amount of money, or
 - ✓ On a guarantee where the claim against the principal is in respect of a debt or liquidated amount.

- Where summary procedure is available, the plaintiff has the option to employ it, but he/she is not obliged to do so.
- The plaintiff must be entitled to recover a specific sum of money ascertained at the time of suit.
- **Example:** If the defendant accepted goods under a contract, but refused to pay the price, a summary suit for the price would be proper, since the amount claimed is liquidated.
- Plaintiff must:
 - ✓ employ the term “Summary Procedure” & submit an affidavit,
- swear positively to the facts, verifying his cause of action & amount claimed, & stating that in his belief there is no defense to the suit.

- The statement of claim is not served on the defendant instead the court serves a special summons.
- The summons advises him that he has been sued for a sum of money on a specified obligation & that he must obtain leave to defend the suit.
- He may not appear & defend unless he applies and obtains such leave from the court.

- If the defendant fails to make such an application within the time fixed by the summons, the plaintiff is entitled to a decree for an amount not exceeding the sum claimed in the statement of claim together with interest if any & costs against the defendant or such of the defendants as have failed to apply for leave to defend.
- The purpose of the procedure is to enable the plaintiff to avoid a full-scale suit & this has been accomplished.
- Once the judgment has been entered in favor of the plaintiff, the court should be able to pass the same kind of decree as in any other case.

- **Art. 286** - an application for leave to appear and defend is to be supported by an affidavit, which states whether the defense alleged goes to the whole or part only and, if so, to what part, of the plaintiff's claim.
- Plaintiff must be served with notice of the application & with a copy of the defendant's application.
- Then, the court will hold a hearing, at which time the defendant may be examined on oath & required to produce relevant deeds, books, documents & the like.
- **Art. 287** - If court denies defendant leave to appear & defend the suit, plaintiff shall be entitled to judgment as against such defendant.

- Art. 288 - When there is judgment for part of the claim. The court should grant the leave, but should make it conditional.
- If the defense applies only to part of the claim or part of the claim is admitted, the court enters a judgment for the plaintiff in the amount of the admitted claim of such terms as to suspending execution or the payment of any amount realized by attachment, or taxation of costs as it may think fit.
- The defendant is then given leave to appear and defend as to the balance of the claim.
- In the case of multiple defendants, where not all are entitled to leave to appear and defend, the court is to grant leave only to a defendant who has defence to the claim of the plaintiff.
- As to the others, the plaintiff is entitled to a decree on which he may obtain execution without prejudice to his right to proceed with the suit against the defendant or defendants given leave to appear and defend.

- Where leave is given, the court may make orders with respect to the filing of pleadings, framing of issues and the like, or may order the case to be heard immediately.
- If the issues are clear, it should order an immediate hearing, since the purpose of the summary procedure is to enable the plaintiff to have his claim determined as soon as possible.
- Once the court allows the defendant to defend the case, the summary proceeding will be turned to ordinary proceeding and the case will be handled as any other ordinary cases.
- Art. 292 If the court has entered judgment for the plaintiff, but subsequently discovers that the service of the summons was not effective or that there is good cause for doing so, it may set aside the decree in favor of the plaintiff and give the defendant leave to appear and defend, if it seems reasonable to do so.
- The court may also stay or set aside execution and impose terms as it sees fit.

Accelerated procedure – Art. 300

- Provides for the immediate hearing of certain kinds of cases speedily and without a full-scale suit because the nature of the case requires & renders suitable an immediate disposition.
- Art 301 - a party entitled to have his case heard under accelerated procedure must file a written, dated and signed application within the period fixed by law for the making of such applications, or where no period is fixed, within fifteen days from the occurrence of the facts on which the application is based.
- The application must specify the capacity in which the applicant acts and must indicate the provisions of the law under which it is made; it must also be supported by an affidavit stating the reason of it.
- It has also to include the required documentary evidences as the applicant wishes to submit.

- The proceeding at this point is ex-parte, and the defendant is not served with notice.
- If the applicant is not qualified to act in the proceedings or if it is not in the proper form or not filed within the prescribed time, or if the court considers that the subject matter of the application cannot be properly disposed of under the accelerated procedure, the application will be dismissed.
- However, a dismissal of the application does not operate as res judicata as to the subject matter of the application, but a fresh application may not be made on the same ground to be dealt by and through accelerated procedure.

- Whereas, where the application is allowed, on the basis of Art 303 of the Civil Procedure Code:
- *the court shall make its decision in accordance with the provisions of the following Articles and such decision shall be written in the form of judgment or written order, as the nature of the case may require.*
- *unless otherwise provided in this chapter or the law under which the application is made, the court shall make its decision on the basis of the application.*
- *nothing in sub Art (2) shall prevent the court from requiring the production of such evidence or additional evidence as may be necessary, on such terms, in such manner and within such time as the court shall direct.*

- At this stage, you have to note that in a number of cases, there is no provision by which an interested party has the opportunity to appear and oppose the granting of the application. However, a number of cases in which an application is authorized involve only one party, and where another party would be interested, he could move the court to modify or set aside its order granting the application. In the civil procedure code, it is specifically provided that the court may always make a further order when necessary.
- As to the right to appeal, Art 306 of the Civil Procedure Code provides that unless otherwise provided by the law under which the application is made, no appeal shall lie from any decision under this chapter other than a judgment under Arts 309-311. And, where an appeal lies, from a judgment given under this chapter it shall be made within ten days from the giving of such judgment and such judgment shall not be enforced until the period for appeal has expired or the appeal has been decided.
- The scope of application of accelerated procedure is provided under Art 300 of the Civil Procedure Code. On the basis of this Article, the code refers to specific applications and contains directions to be followed in the disposition of such applications. However, you have to note that, if the court concludes that a case could properly be disposed of in accelerated procedure, applications other than those expressly referred to in the code may be heard under accelerated procedure.

- Having the above facts in mind, now let us proceed to discuss some points with regard to issues of certificate. According to Art 305 of the Civil Procedure Code:
- On making its decision in favor of the applicant, the court shall, where he so requires, provide him with a dated and signed certificate stating in a concise form the contents of such decision.
- The provisions of sub-Art (1) shall apply in particular in matters concerning change of name (Arts 42 and 43 of Civil Code), withdrawal of interdiction (Arts 377 Civil Code), opposition to marriage (Art 592 Civil Code), widowhood (Art 596 Civil Code) as well as in cases of applications to consult or to be issued with certain powers or documents or to be authorized to depart from certain instructions (Arts 129, 209, 239, 287, 523, 528, 535 and 630 Civil Code)

- Where an application is made for the correction or cancellation of records or entries in the registers (Arts 121,127, 1623 and 1630 Civil Code) or for approval or confirmation (Arts 146,628,633,749,763,766,767 and 804 Civil Code and Art 441 Commercial Code) or registration or certification, the court may, without further proceeding, but after having ordered such investigations as may be necessary, give such directions as are appropriate in the circumstances, or issue a certificate evidencing approval, registration or certification or endorse the fact of approval, registration or certification on the relevant document, as the case may be, together with the date and number thereof where appropriate.
- In a nutshell, you have to understand that, the provisions discussed in this section are designed to facilitate the disposition of cases where the claim is not likely to be disputed or where the nature of the claim is such that an immediate decision is required and feasible. They provide an expeditious remedy in appropriate cases and avoid full-scale proceedings where such proceedings are unnecessary and perhaps undesirable.

Other Procedural Matters

- They are not the major problems of procedure but for the most part they consist of technical rules or special procedures.
- A few are more complex and are not essentially procedural in nature. However, all of these matters have been designed to give students a picture of the extent of coverage of the Civil Procedure Code, and to familiarize them with its contents. To address the above objectives, the subject matter will be discussed in the following manner.
- These procedures come when a proceeding is initiated by the plaintiff and the plaintiff and the defendant demand a temporary relief until the case is disposed. The life of such relief depends on the original claim.

Arrest and Attachment before Judgment

- The provisions that we are going to discuss here under are different from those providing for arrest and attachment as part of the proceedings in *execution*.
- This section is different because it involves arrest and attachment prior to the time a judgment has been rendered.
- To have coherence, we will first consider the arrest of the defendant [what is called security for appearance], and then consider security for the production of property.