Change of venue

- Questions:
- Who may apply? Both parties or the defendant? Read Arts. 31(1) 8(3) of the CPC and 11(2)(ሠ)Proclamation No. 25/1996
- To what court application lies? To the High Court and the Federal Supreme Court
- What are grounds for such kind of applications?

Grounds

- a fair and impartial trial cannot be held
- some question of law of unusual difficulty is likely to arise;
- Convenience of the parties or witnesses or is expedient for the purposes of justice
- What are the conditions?

Conditions

- The court that is ordered should have material jurisdiction 31(1)(i) CPC
- The application should be made at any time before judgment 31(1)(2)
- OR AT ANY STAGE OF THE TRAIL?
- QUESTIONS
- should the other party to the suit be given notice?
- What does before judgment mean? What about a case at appeal?
- Can a court transfer a suit ONLY by its motion?
- Can a party apply to a federal court to transfer a suit that is tried by a regional court?
- From where the court start the proceeding? In other words, Will it re-try it or proceed from the point at which it was transferred?
- Is an order to transfer appealable? Is it open to revision?

Penalty

- Assume the court to whom an appeal is made dismisses the application for change of venue. Will it impose penalty on the appellant?
- NOTE
- The court while deciding the question must bear in mind two conflicting interests: (i) as a *dominus litis* (Latin, master of the suit) the right of the plaintiff to choose his own forum, (ii) the power and duty of the court to assure fair trial and dispensation of justice .

suits

- The term suit is not defined in the C.P.C.
- But from various decisions it can be said that “Suit ordinarily means a civil proceedings instituted by presentation of a statement of claim
- Civil suit is the institution of litigation for enforcement of civil rights (or substantive rights, it may be against state or individual).
- A suit is resulted into decree.
- Without suit there can not be a decree.
- proceeding by one person or persons against another or others in a court of law wherein the plaintiff pursues the remedy which the law affords him for the redress of any injury or enforcement of a right, whether at law or in equity.

Four essentials of a suit

1. Name of Parties 222(1)(c)

1.1. There must be two opposing parties –the plaintiff & the defendant.

1.2. There is no limitation with regards to number on either side.

2. Cause of Actions

2.1. Cause of action means all essential facts constituting the right and its infringement 222(1)(f)

2.2. it is a set of facts or circumstances that a plaintiff is required to prove.

2.3. The cause of action means every facts which is necessary for the plaintiff(s) to be proved with a view to obtain a decree in his favor.

2.4. where the pleading fails to disclose cause of actions the court shall reject the pleading.

2.5. A person is party to a suit if there is a cause of action against him. Article 33

3. Subject matter

There must be a subject matter (with what respect or aspect civil dispute is).

3.2. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Article 4

3.3. Courts try all civil suits unless barred.

4. Relief claimed by the plaintiff –

4.1. No court will give relief unless relief is specifically claimed by the party

- Relief is of two types-
- alternative relief.
- specific

various stages of civil suits

1. Institution of suit or commencement of suit. Article 80-93, 213-222-236
2. Service of summon. Article 94 ff,
3. Written statement
4. First hearing and framing of issues.
5. Discovery.
6. Production of evidence and final hearing.
7. Arguments.
8. Judgment.
9. Preparation of decree.
10. Execution of decree.

Institution of suit or commencement of suit

- The word ‘suit’ has wider application.
- The suits is instituted by the presentation of the pleading which has particular format
- In other suits like the suit for divorce, the same is instituted by mere presentation of the petition by or on behalf of either spouse. I

Institution of suit or commencement of suit…

- every suit shall be instituted by the presentation of a pleading(article 80) or in such other manner as may be prescribed.
- In every pleading, facts shall be proved by affidavit.
- The procedural framework relating to the institution of a suit is given below:
  i. Preparing the pleading
  ii. Choosing the proper place of suing
  iii. Presentation of the pleading

I. Preparation of the Pleading: statement of claim

- According to Article 222 ff the particulars to be contained in a statement of claim are:

  a) the name of the Court in which the suit is brought;
  b) the name, description and place of residence of the plaintiff;
  c) the name, description and place of residence of the defendant, so far as they can be ascertained;
  d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;33/1 & 34/1/2
  e) the facts constituting the cause of action and when it arose;
  f) the facts showing that the Court has jurisdiction;
  g) the relief which the plaintiff claims; (224)
  h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; (read Article 216/2/3)and
  i) a statement of value of the subject matter of the suit for the purposes of jurisdiction and of court-fees(215), so far as the case admits

Other rules regarding the contents of a statement of claim

a) In money suits the statement of claim shall state the precise amount claimed 226

b) Where the subject-matter of the suit is immovable property, the statement of claim shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the statement of claim shall specify such boundaries or numbers 225

c) Where the plaintiff sues in a representative character, the statement of claim shall show not only that has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it

d) The statement of claim shall show that the defendant is or claims to be interested in the subject matter, and that he is liable to be called upon to answer the plaintiff’s demand 222(1)(h)

e) Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the statement of claim shall show the ground upon which exemption from such law is claimed

Other rules regarding the contents of a statement of claim…

f) Every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extend as if it had been asked for. 224

g) And the same rule shall apply to any relief claimed by the defendant in his written statement.

h) Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. 224(2)

i) Where the Court orders that the summons be served on the defendants in the manner provided it will direct the plaintiff to present as many copies of the statement of claim on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.223/2

Questions

How would you state where the relief you seek is

1. Profit
2. Unsettled amount between the parties
3. For movables in the possession of the defendant
4. For debts of which the value he can not estimate

Rejection of Pleading article 229 & 231

A pleading shall be rejected either by a registrar ot a c/t

It shall rejected by a registrar in the following cases:— Article 229

a) it is not in the form provided for by Art. 222;
b) it is not accompanied by the annexes provided for by Art. 223 or
c) it is not verified in the manner provided for by Art. 92

Admission 230

1. The particulars of the SC shall be entered in a book kept for the purpose
2. Such entries shall be numbered in every year according to the order in which the SC are admitted.214
3. examine and compare the original and copy of any document attached to the statement of claim and, on finding the copy to be correct, shall certify it to be so and file it and shall return the orginal to the plaintiff after marking it for purpose of identification; and
4. submit the statement of claim and annexes to the court.

Rejection of Pleading by A Court 231

a) it does not disclose any cause of action; or
b) the suit is outside the jurisdiction of the court.
c) A claim for recovery shall be rejected where the plaintiff fails to produce the securities required by Art. 1403 of the Civil Code.
d) On rejecting a statement of claim
e) the court shall record why it has rejected the SC

Effect of Rejection

- Where a pleading is rejected, by the registrar s/he shall return the SC+ annexes to the Plaintiff explaining why s/he has done so.
- Where the plaintiff is dissatisfied with rejection s/he may apply to a court for the revision of the rejection within 5 days
- Where the SC is rejected by a c/t the plaintiff shall be refunded with the **prescribed portion** of the court fee paid on filling the SC and enter a note of the rejection in register of civil suits.
- The rejection of the pleading on any of the grounds hereinbefore mentioned shall not of **its own force** preclude the plaintiff from presenting a fresh pleading in respect of the same cause of action.

II. Time and Place of Presentation

Question:

1. what is the time and place to present a pleading?
2. Can a judge or registrar accept a pleading at her/his resident?
3. What about if the day is the last day of limitation?

III. Presentation of the pleading or commencement of the suit…

- ✓The pleading may be presented either by
- ✓the affected person himself, or
- ✓by his advocate or
- ✓by his recognized agent article 57 ff or
- ✓by any person duly authorized by him.

Summons and subpoena

Questions:

1. What is the differences and similarities between summons and subpoena?
2. Does Ethiopian Civil Procedure contain the term subpoena?
3. If not, what term it uses instead?

Issue and service of summons to defendants 233 and witnesses

- Issue of summons 94
- Mode of service 95
- Summoning and attendance of witnesses 111-121

Issue and service of summons to defendants...

- ✓ Where the court accepted the statement of claim article 233
- ✓ It sees that the SC is served with its annexes
- ✓ Together with summons which states

1. To appear with his statement of defence(SD)
2. On a day specified in the summons
3. And if s/he fails to appear or appears without SD the court will proceed with the case

Mode of service 95 ff

Subject to the following articles the summons shall be served on a defendant(s) in person 95

1. The service may be done by a serving officer
2. Where are there are more than one defendant each defendant shall be served with the summons

Question

3. Does the statement “unless otherwise provided” under article 95/2 indicate a possibility of serving with one summons though there are more than one defendant?
4. Please illustrate this by example(s)

On Agent or pleader 96

1. Agent empowered to accept provided the court has not ordered otherwise
2. In case of an armed officers and who could not obtain leave to attained the proceeding the summons shall be served on the commending officers or
3. by a prison attendant where the defendant is in prison and could not obtain leave to attained the proceeding

NB

Pleader is any person entitled to appear and plead for another in court and includes an advocate and an attorney. He represents his client in various stages of the litigation and takes necessary steps for properly presenting the case of the client before the court 63+57+58

Body corporate 97

1. on the secretary
2. Any director or
3. Principal officer
4. Sending it by post address that is registered
5. Or at a place where the body corporate carries on business
-

Service on partners 98

1. Where the partners are sued as partners in the name of the firm the summons shall be served

1.1. upon any or more of the partners

1.2. upon any person who has the control or management of the partnership at the time of service

1.3. upon all persons who could be liable where **a partnership** is dissolved to the knowledge of a plaintiff before the institution of the case

As a partner/controller or manager

Question

Why it is important to inform the capacity or status at which the summons is served upon him/her as it is provided under article 98(3)?

Service upon a person who carries business for another 99

1. Where a person upon whom the service is supposed to be serviced resides outside the jurisdiction of a court that issued the summons
2. He/she has a person who carries that business on his behalf
3. The suit is related with the business the summons shall be issued on a person or manager who runs that business

Immovable 100

Read the article

Service on a member of a defendant’s family

Conditions

1. The defendant could not be found
2. He has no agent empowered to be served with
3. The family member upon whom the summons is to be served on should reside with the defendant
4. **Question**:

4.1. can a member of the defendant’s family refuse to accept the summons? Read article 110

4.2. Is a servant a member of a family?

4.3. Is a summons served on a minor or unsound mind valid?

Service of summons by post 106

Conditions

1. In lieu of or in addition to the manner provided in the preceding articles the court could order the summons to be delivered by registered post to the defendant or his agent empowered to accept the same
2. At the place of residing/ carrying on business/ or personally work for gain
3. The acknowledgement has to be signed by the defendant/agent who is empowered to that end
4. An endorsement by a postal employee that the defendant/agent refused to accept the delivery may constitute a prima facie proof of service

Where the defendant resides outside the jurisdiction of a court that issues the summons 107

1. The summons shall be delivered to a court that has jurisdiction in the place where the defendant resides/doing business or working for gain

2. The court to whom the summons is delivered shall serve the summons as if it is issued by it and return the summons to the original court with a record, if any, to that effect

Question: Can a Court refuse to serve a summons received for service within its jurisdiction?

Summons to a defendant who resides outside Ethiopia 108

1. It shall be delivered by registered post to a place he is residing
2. And if his address is not known a notice of the summons shall be published in a a news paper circulating in Ethiopia

Service on a public servant 109

1. The defendant is a public servant/employee of organization institution/company
2. The summons shall be sent to that organization where the defendant work for so that the organization serve the summons on the defendant
3. Where the court believes this is the most convenient to serve the summons upon the defendant

Duty of person to whom the summons is delivered/sent for service 110

1. Where the summons is delivered as per article 96(1) or 109
2. Such person shall be bound to serve it upon the defendant who acknowledges his reception by his signature and
3. Shall return the summons explain that the summons is served upon the defendant
4. Where it is not served it shall be returned with an explanation why it could not be served

What about if a defendant/ agent refuses to accept the summons or

1. The serves of the summons shall be verified by the signature of the defendant/agent
2. Where s/he refuses to accept the summons, the following steps will be taken

2.1. the one who is to serve the summons shall return the same to a court accompanied with affidavit explaining the facts prevented him from serving the summons

2.2. the following shall be accomplished

Where the defendant is avoiding the service

1. It shall be affixed in the compound of the court
2. Or it shall be affixed in the house where the defendant is believed to have last lived/ carried on business/ personally work for gain
3. Send it by registered post
4. Publish the notice of the summons in news paper
5. To that end the plaintiff has to enter application supported by affidavit 203 ff

Questions

1. what is the time range in which the plaintiff is supposed to apply?
2. What about if s/he fails to apply within that range? Read article 105 & 70.

Written statement

3. Why it is important to state on the copy of the summons the day/time at and when the summons was served on the defendant?

Written statement

1. Statement of claim 222-233
2. Statement of defence 234-240

Statement of Defence 234

Statement of defence is a defence

- in writing and
- filed by the defendant in which he deals with
- every material fact alleged by the plaintiff in the SC and
- also states any new facts which may be in his favor,
- adding such legal objections as he wishes to make to the claim

Essentials while writing SD

1. Know the rules
2. Make research in the legal claims made in the SD
3. Respond to the factula allegations in the SD
4. Assert affirmative defence, counter claims and third party claims

1. Know the rules

Find out if additional requirements that govern the filing of a SD , such as

1. whether one can assert a general denial of all factual allegations or whether he must respond to each allegation individually
2. The number of pages allowed in preparing SD

Research the Legal Claims Asserted in the SC.

Before drafting an answer, one must be sure to research the claims made in the SC which will help to determine whether one can assert

1. specific affirmative defenses, 234/1/c
2. counterclaims, 234/1/f
3. cross-claims, or
4. third-party claims.

NB: Identifying defenses could lead to

- the dismissal of the adversary’s complaint or
- resulted in a substantial reduction in the damages to which the adversary may be entitled

Illustration

On December 9, 2016, C traveled to *Sporting World*, supper market which is located at X Avenue in Z city, . There was snow storm for two days that resulted in accumulations of twelve to fourteen inches snow. Upon entering parking lot of the Sporting World C realized that the owner of the Sporting world had taken no steps to remove the snow in order to render the lot safe for customers. While searching for a parking spot, C who admittedly was later found to be intoxicated with a blood-alcohol level of .12, struck P, a pedestrian who was exiting *Sporting World* with her ten-year old child. P suffered damage at her leg and her child lost one eye. Write a SC for P and her child.

Respond to the SC's Factual Allegations

Typically, one must respond to **every factual allegation** in the complaint by:

(1) admitting the truth of the allegation; 234/1/e or

(2) Denying the truth of the allegation; 234/1/e or the consequence is article 235/2

(3) partially admitting or denying the truth of the allegation; or

(4) lacking the information to state whether the allegation is true or false.

(5) The response must be accurate and avoid general or summary response, i.e., specific 234/1/e and the consequence is 235/1

(6) Avoid explanation for it prejudice the interest of your client by revealing harmful information the litigation strategy

Admitting the truth of the allegation; 234/1/e

- Actual admissions, oral or by documents;
- The express or implied admissions from the pleadings
- By agreement or by notice.
- **The admissions need not be proved unless the court otherwise** is of the opinion or requires the same to be proved.

Denying the truth of the allegation; 234/1/e

The allegation shall be denied

- ✓ Specifically
- ✓ By necessary implication
- ✓ By stating not admitted in the pleading of the defendant
- ✓ The exception is admission by a person under disability **read Article 235/2 English and Amharic**

How should the ct. treat admission

- The Court may in its discretion require any fact so admitted to be proven otherwise than by such admission. Rationally
- They can be gratuitous (Done without any good reason or purpose and having harmful effect) or erroneous.
- The admissions can be withdrawn or explained away.
- Admissions could be proved to be wrong.

Judgment of Admissions 242

- The admission is made either in the pleading or during the examination as per article 241
- And the ct. renders judgment upon those admissions ሰበር ሰሚ ቅጽ 19 ገጽ59 እና 70
- What does article 243 regulate?

Statement of Defence…

c. the facts, if any, showing that the claim is inadmissible on grounds of want of capacity or jurisdiction, or limitation; 244

d. a concise statement of the material facts on which the defendant relies for his defense 'and generally of any ground of defense which

1. If not raised would be likely to take the opposite party by surprise or,
2. to raise issues of fact not arising out of the statement of claim;

Denial to be specific 234/1/e+235/2

- ✓ It shall not be sufficient for a defendant in his written statement to deny **generally** the grounds alleged by the plaintiff,
- ✓ but the defendant must deal **specifically** with each allegation of fact of which he does not admit the truth.

Specific denial 235/2

- ✓ Every allegation of fact in the SC, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:
- ✓ Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

Evasive-denial 235/1

- ✓**Not willing to give clear answers to a question**
- ✓Where a defendant denies an allegation of fact in the SC, he must not do so evasively, but answer the point of substance.
- ✓Thus, if it is alleged that he received **a certain sum of money**, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else
- ✓set out how much he received.
- ✓And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances. The case of Independent and dependent variables
- ✓If the defendant admits certain facts pleaded by the plaintiff but pleads new facts to displace the effect of the admission, such a pleading is said to be by way of a confession and avoidance

Precise amount of money

- The plaintiff should state the precise amount of money he claims
- And the defendant should deny that he owes the plaintiff that precise amount of money.

Question

Illustrate this through examples

New facts must be specially pleaded 83

The defendant must raise by his pleading **all matters** which show

- the suit not be maintainable, or
- that the transaction is either void or voidable in point of law, and
- all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or
- would raise issues of fact not arising out of the SC, as, for instance, fraud, limitation, payment, performance, or facts showing illegality.

Particulars of set- off 236

Conditions

1. The suit is all about the recovery of money
2. Which is ascertained sum of money
3. Legally recoverable from the plaintiff
4. It should not exceed the pecuniary jurisdiction of the court
5. both parties fill the same character as they fill in the plaintiffs suit,
6. Effect

The SD shall be regarded as SC entered by the defendant

Appearance and Examination of Parties 241+69

- The parties appear in person or represented by their pleaders
- The ct. identifies the parties read the pleadings to ascertain whether s/he admits or denies such allegations of fact as are made in the statement of the other party
- While examining the parties the questions could be raised by the ct. itself or by the opposing party

None-appearance+ Consequences

The scenarios are

- Where both parties fail to appear 69/2.
- The consequence is striking out the case
- Where the defendant fails to appear 70 what is the consequence? Read vol. 15 p. 191 and vol. 14. p. 144
- Where the plaintiff fails to appear 73 what is the consequence? Vol. 12 F# 55078

Appearance in person is necessary 241(3)+65

- ✓Where the pleader/any such person able to answer any question refuses or is unable to answer any material question relating to the suit
- ✓The court considers that the party whom he represents ought to answer and is likely to be able to answer if examined in person,
- ✓The court may adjourn the hearing to a future day and direct that such party shall appear in person on that day.:

Appearances 66+67+68

- Appearance of one of several plaintiffs or defendants 66
- Appearance of partners 67
- Appearance of those who may represent a body corporate 68
- Please read those articles

Preliminary Objection(s)

A preliminary objection is an objection that is raised in relation to preliminary points

- A preliminary point is that point or issue the decision whereof in a particular way is sufficient to dispose of the whole suit.
- It comprehends all points of law or fact which may prevent the court from disposing of the case on merits.
- It is one which when decided in favor of the plaintiff permits the progress of the suit, but when decided against him/er concludes the suit

What are the grounds?244

a) the court has no jurisdiction;
b) the subject-matter of the suit is res judicata;
c) the suit is pending in another court;
d) the other party is not qualified for acting in the proceedings
e) prior Permission to sue has not been obtained, when this is required by law,
f) the suit is barred by limitation; or
g) the claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement.

Steps before rendering decision/s

What are the steps to be taken by a ct. before deciding on the objection? Read article 245/1

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Decision/s

- in the case of an objection is raised in relation to
  - the subject-matter of the suit is res judicata;
  - the suit is barred by limitation the ct.
- dismiss the suit and,
- in other cases, i.e.,
  - ✓ the court has no jurisdiction
  - ✓ the suit is pending in another court;
  - ✓ the other party is not qualified for acting in the proceedings
  - ✓ prior Permission to sue has not been obtained, when this is required by law,
  - ✓ the claim is to be settled by arbitration
- strike out the suit and/or make such other order as it thinks fit.

Question

1. What is the difference between dismissing the case and striking out the case?
2. Can a ct. pass judgment on matters admitted before rendering judgment on PO?

Consequences of Striking out

- Read article 71

Framing Issue/s 246

- The issues are the back bone of the suit. Do you agree?
- They must be defined/identified at the outset of the case
- Framing issues helps each side fully aware of the exact questions to be tried and facilitates her/him to produce evidence important/essential to the issues
- Right decisions depend on the framing of correct issues
- When do issues arise?
- When a material proposition of law /fact is affirmed by one party and denied by the other
- What are the material propositions?

Material propositions

- They are propositions of law /fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence
- Each material proposition affirmed by one party and denied by the other forms the subject of distinct issue

Kinds of Issues

- They are to kinds

1. issues of facts
2. Issues of law

Question

3. Is it the duty of a court to frame issues? If yes at what stage of the trial? Read article 246/1
4. Where the case involves both issue of fact and law which issues does the ct. resolve first? Why? Read article 247/4

The ct. framing the issue/s

1. At the first hearing
2. Reading the SC and SD
3. Examine the parties
4. Deciding on PO if any
5. Identify the material propositions of fact/law on which the parties are at variance
6. Frame and record the issues on which the decision of the case depends

Question: what is the role of the parties?

Materials from which issues may be framed

a. allegations made in the pleadings;
b. the contents of documents produced by either party; or
c. allegations made by the parties, or by any persons present on their behalf, or made by the pleaders of such parties in the course of the examination held under Art. 241. i.e., in answering to interrogatories /examinations delivered in the suits

Article 137/1 & 249

The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intended to rely, and which (2) The commission shall specify clearly and distinctly the facts to be has not already been filed in court, and all documents which the court may order to be produced.

Where the court considers that the issues cannot be correctly framed without the examination of some person not before the court or without the inspection of some document of a kind other than that mentioned in art. 137 (1) but which the Court deems relevant, it may adjourn the framing of the issues to a future day, and may compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Adjournment of the suit before determining of the issues

1. Where the .parties disagree as to the amount or value of the subject matter of the suit,250
2. To examine witnesses/documents 249
3. Where issues both of fact and of law arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. 247/3

Power to amend and strike out issues 251

Conditions

1. It has to be made before judgment
2. Where it is necessary for determining the matters in controversy between the parties the ct. may amend the existing issues or/and frame additional issues

Strike out

3. Before judgment
4. It appeared to the ct. it is wrongly framed or introduce

Questions of fact/law stated in the form of issues 252

Please read this article with article 1712 objects of the contract, i.e., to give, to do or not to do

Parties at issue/are not at issue 254 &255

Questions

1. What does the ct. do where the parties are at issue?
2. What about where they are not at issue?
3. What steps does the ct. take where a document that essential to frame issue is not produced by any party?
4. What about where the document is negotiable instrument?

Hearing of suit and examination of witnesses

I. Summoning of witnesses 111-121
II. Witnesses are summoned to give evidence, to produce documents or other material objects 249 & 257
III. Thus witnesses are summoned either by the parties or by the ct. 111
IV. The rules relating to service of summons issued to the defendant and proof of service also apply to summons to witnesses 116

Particulars in the summons 114

1. The time and place at which the witness is required to attend
2. The purpose why the witness attends

- To give evidence, personal appearance is necessary
- To produce documents personal appearance may not be necessary 115
- Or both
- Reasonable time for travelling and preparations 117

Expenses 112, 113

Expenses are

- ✓ Ordinary: travelling and other expenses
- ✓ Expenses for experts: additional payment for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.
- ✓ Additional payment 113/1/2
- ✓ What about if the party failed to pay the witness the sum required 113/3

Where witness fails to appear 118

Causes could be

1. Failure of the party to serve the summons duly or
2. The witness failed to comply with the summons or
3. Intentionally the witness avoided the service
4. Where it is found that the summons is not duly served and the evidence/document the witness produces is material the ct. orders a new summons to be issued
5. Where it is proved that the summons is served duly… the witness could be forced to attend

Penalty for default

In order to compel a witness to attend, the ct. may take the following measures

1. Issue a warrant for his arrest 118/2/b
2. Attach and sell his property?
3. Impose a fine?
4. Order him/her to furnish security for his/her appearance and in default commit him to the civil prison 120/2

Question

5. Are these measures available in the CPC?
6. Are these orders appealable?

Hearing of the suit and examination of witnesses

Right to begin

- The one who alleges the fact has to prove it.258
- So the plaintiff has to prove his/her case and therefore must begin
- The defendant begins, however, where s/he

1. Admits the facts alleged by the plaintiff and however
2. Contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which the plaintiff, seeks

Read volume 20 F# 114816

Cassation Decisions

Read decision in vol. 15. p.103

Statement and production of evidence 259

Questions

1. Where the burden of proving issue/s is on the defendant , the defendant has the right to begin. Do you agree, why or why not?
2. What is the advantage to be the one who is making the opening statement? Read article 259

Illustrative question

Who has the right to begin where a termination/invalidation of a contract is requested invoking minority?

Evidence where there are several issues 260

To understand this article please read a case between **National Fertilizer Ltd v Municipal Committee**, Bhatinda, (All Indian Review (A.I.R.) 1962 P. & H. 432

Manner of giving evidence 261, 263

- ✓The party entitled to begin calls his/her witness first to examine the same. This is called chief examination
- ✓Then the witness will be cross-examined by the other party
- ✓Then the witness will be re-examined by the one who begins
- ✓The court may put questions to witness where it finds it necessary for a proper determination of the case
- ✓If a party wishes to give evidence on his own behalf, s/he shall do so before calling his witnesses and he shall **then for all practical purposes be deemed to be a witness.261/2**

Form of questions 263

✓Question raised in examination-in-chief shall relates to:

1. Facts relevant to determine the issues

2. such facts of which the witness has direct or indirect knowledge

Questions

1. What is direct knowledge? What about indirect knowledge?
2. Can you ask your witness/es a leading question?
3. What is the purpose of cross-examination?

Objectives of cross-examination263/3

To show

1. What is erroneous,
2. Doubtful or
3. Untrue in the answers given in examination-in-chief.

Questions

4. Can you ask your adversaries witness/es a leading question/s?
5. What is the purpose of re-examination?

Objective/s of re-examination

clarifying matters which have been raised in cross-examination.

Court may examine other persons 264

1. A person who is present in a ct.
2. May be examined by the ct. or asked to produce documents in his/her possession/power
3. where the court considers it necessary at any time to examine any person not called as a witness by a party to the suit,
4. may of its own motion summon such person as a witness on a day to be fixed and may examine him as a witness or require him to produce such evidence.

Question: what are the conditions for the ct. to act as per # 4?

Conditions

1. Where the ct. considers that such person should have been called as a witness by either party
2. The testimony of the witness is essential for proper determination of the suit. Read volume 20, F# 109563

Questions

3. Illustrate article 265
4. What could be the objective/s of calling again a witness as stated under article 266?
5. What is the consequence of refusing to give evidence or submitting documents by a party who is ordered by a ct.? Article 267 Articles 118+119

Article 268

Rules as to witnesses to apply to parties summoned

It reads

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him as far as they are applicable.

Question

Identify those witness/es provisions which shall apply to the party

Recording 269, 270 & 271

Recording evidence

1. Name, age, occupation and address. What is the purpose of recording occupation?
2. And that the witness has sworn/affirmed
3. The testimony shall be reduced to writing
4. It shall be divided into chief examination, cross-examination, and re-examination

Question: what is the relevancy of noting where the cross-examination and re-examination have started and ended?

How do you understand article 269/4? Signed by a judge

Article 270

When an objection to a question is raised by a party the ruling of the ct.is either

1. To reject the question or
2. To sustain the question

Write down the steps the ct. shall take where the question is sustained?

steps

The ct. shall record

1. the question.
2. the answer,
3. the objection and
4. the name of the person making it
5. the decision of the court thereon.

Question: **what could be the rationally?**

Evidence recorded by another ct. or judge271

1. Where ct./judge that has first recorded evidence, for various reasons, may not be able to receive a certain evidence and

2. Another ct./judge recorded the evidence

3. The ct./judge shall proceed the trail from where the record is done recognizing the evidence recorded by another ct./judge as if that evidence recorded by it/him/her

A process-verbal 272

1. Where inspection of a property/ thing in relation to which a question has aroused is required
2. The ct. inspects the property/thing and
3. The ct. draws process-verbal
4. That verbal shall be recorded as part of the evidence

Judgment

Conditions

1. The evidence is concluded
2. The address and reply if any is made 259/2/3
3. The ct. shall give judgment. Read the Amharic version of this article

Procedure in suits after Hearing

Judgment and Decree 180-184

Conditions to pronounce judgment

1. The suit has been heard
2. The pronouncement has to be in open court
3. At once or
4. on some future day to be fixed by the court.

Question

5. How long this future day is?
6. What is the importance of the phrase “**the suit has been heard**?”

The importance

1. The judge is not expected to write his judgment before the finishing of the entire evidence and hearing the arguments of the parties and
2. If the judge does so s/he commits a gross irregularity in the trail of the case. Mst. Kaushila v. Arat Lal, 1933 A. 196

Question

What are the contents of a judgment?

Contents of judgment 182

a) A concise statement of the case provided judgment is given in the first instance
b) The points for determination
c) The decision thereupon and
d) The reasons for such decision

e) The points for the determination
f) The decision thereon
g) The reasons for such decision
h) Where several issues have been framed, the court shall state its decision on each separate issue unless the decision on anyone or more issue is sufficient for the decision of the case.

Decree 183

Contents

1. the number of the suit or appeal;
2. the names and description of the parties;
3. when the judgment has been given in frist instance, the particulars of the claim;
4. 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 to surrender or restore immovable property, as the case be, and , where appropriate, a description, in the form provided for by Art. 225, of the subject-matter of the case;
5. the amount of costs incurred in the suit or appeal, and by whom, or out of what property such costs are to be paid:

judgment

- Review of Judgment 6
- Judgment for or against one or more parties Judgment may be given:37

Review of Judgment

An application on the discovery of new matter should show that

1. Such evidence was available and of undoubted character
2. That the evidence so material that its absence might cause a miscarriage of justice and
3. That it could not with reasonable care and diligence have been brought forward at the time of the decree and the applicant has to satisfy that there was no remissness on his part

Review of Judgment

Say true or false

1. The discovery of new and important evidence alone entitles a party to apply for a review
2. The fact that the decision on a question of law on which the judgment of the ct. is based has been reversed or modified by the subsequent decision of a superior ct. in any other case, shall be a ground for the review of such judgment.
3. Application for Review and appeal proper could be done simultaneously.

Question: 1. what is the difference between review and appeal proper?

What is the difference between review and revision?

Review

1. The discovery of new and important matter which was not within the knowledge of the party when the decree was made
2. The decree can not be reviewed on the ground of the happening of some subsequent event

Execution

1. What is execution?
2. What is its difference from execution of order? In other words what is order

Execution

1. Execution is the enforcement by the process of the ct. of its own decree
2. Order is the formal expression of any decision of a civil ct. which is not a decree

Commencement of Execution Proceeding378

All proceeding in execution are commenced by an application for execution

Question

1. Can a decree-holder apply for payment of money orally where the decree is for payment of money?
2. What measures would the ct. take under such circumstances?
3. What particulars are included in the application for execution where it is made in writing?
4. What is a condition where application may not needed?

Particulars

1. The number of the suit
2. The names of the parties
3. The date of the decrees
4. Whether any appeal has been preferred from the decree
5. What payment, if any, or other adjustment of the matter is controversy has been made between the parties subsequent to the decree
6. If previous application have been made for the execution the decree, the dates of such application and their results
7. The amount with interest due upon the decree
8. The amount of the cost, if any, awarded
9. The name of the person against whom execution of the decree is sought

Particulars...

10. The mode in which the assistance the ct. is required, whether:

10.1. by the delivery of any property specifically decreed

10.2. by the attachment, or the attachment and sale, or by the sale without attachment, of any property

10.3. by the arrest and detention in prison of any person 386/4 ff

10.4. By appoint of a receiver

10.5. otherwise as the nature of the relief granted may require

Notice of the application for execution

Questions

1. Who may apply for execution?
2. Is it a requirement to issue a notice to a party against whom execution is applied? 386

Who may apply

1. The decree-holder
2. What about where the decree is passed jointly in favour of persons more than one?380
3. What about where the interest of any decree-holder is transferred by assignment in writing or by operation of law? 381
4. What steps are taken where the interest of any decree-holder is transferred by assignment?

steps

Notice of the application for execution shall be given to:

1. The transferor
2. The judgment-debtor
3. The ct. shall hear their objections, if any, to its execution

Questions to determined by a court executing the decree375

1. All questions arising b/n the parties to the suit in which the decree was passed, of their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the ct. executing the decree and not by a separate suit
2. Where a question arises as to whether any person is or is not the representative of a party, such question shall, be determined by the ct.

Questions

1. Is a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed parties to the suit?

2. What about a purchaser of property at the sale in execution of a decree?

3. What about all questions relating to the delivery of possession of such property to such purchaser or his representative?

Payment of money394

1. Attachment and sale of judgment-debtor property
2. The value of the property attached shall. as nearly as may be. correspond with the amount due under the decree.

Attachment404 and Appeal320

1. The CPC seems follow the exclusion approach, rather than enumerating those properties which could be attached. Do you agree?
2. how are agricultural products attached 407/3 and 408/2
3. Read article 409/2
4. Question: can a ct. order a bank to effect payment for the judgment holder? Is the bank obliged to notify the judgment debtor?
5. Illustrate article 410
6. What about if the salary/money to be attached is already attached by a previous ct. order?

Appeal 320

Points to be discussed

1. When appeal lies 320
2. Courts having appellate jurisdiction 321 and articles 9 (10?)13 FCTS Proc.
3. Form and time of appeal and contents of memorandum of appeal323 & 327
4. Rejection or amendment of memorandum 330
5. Appeal filed out of time and aapplication for leave to appeal out of time and decision on application 325 &326

Stay of proceeding and execution 332-336

Who orders stay of proceeding and execution?

ADMISSION AND HEARING OF APPEAL337-349