CHAPTER 1&2
THE TRIAL AND OTHER PROCEDURES

- The **trial stage** Procedure regulates:-
  - **1**. Production of **Evidence**,
  - **2**. The **Conduct** of ***Trial***, and
  - **3**. Giving **Judgment** and passing the **Decree**.
- There are **two types** of Proceedings
- 1 . **Ordinary Proceedings**
- **2. Special** Proceedings

Ordinary Proceedings

1. Production of Evidence

- Evidence is produced to **prove factual allegation affirmed** by one party and **denied** by the other.
- When a party **files his pleading**, he **includes**
- a **list of witnesses** to be called,
- Their **address** and
- The **purpose** for which they are to be called

Procedure for obtaining the attendance of Witness

- As **parties have primarily responsibility** **Court** issue the **summons** in **its own motion only in exceptional circumstances**.
  - See Art. **264** of Cv.Pr.C
- **What if *a witness summoned fails to appear*** *??*
- *The* **court** *must:-*
  - *Determine whether the* **summons has been duly served**.
  - **Order** the **issue of a fresh summons** *if the summons has* **not been duly served**
  - ***Order* arrest warrant** *if the witness has* **failed without good cause**

- There are **two** rules that govern the **admissibility** of **documents**
  - **1. T**he rule of **authentication**/ eg. **Signed**/
  - **2. T**he **best evidence rule**/ eg. **Original**/
  - See Art. **140** & **223** CPC
  - **Read** also Art, 233(1), 234(1)] 264 (1)& 267.
- In a **nutshell**, CPC. bestows **the court broad powers to compel**

Conduct of The Trial

- **Order of Proceeding** Art. **258[1]**
- **Burden of proof includes**:-
  - Burden of **persuasion** and
  - Burden of **going forward with the evidence**
- **Burden of persuasion** is **convincing** the court of an issue, and it **not shift** during the trial.
- **Burden of going forward with the evidence** is **on the plaintiff at the start** of the trial, but this burden may **shift to the defendant** if defendant **raised called affirmative defenses**.

Examination of Witnesses rests with the Parties

- As per **Art. 261**, there are **three stages to examination of witnesses**.
- These are:
  - **1**. The **examination-in-chief** (Proponent)
  - **2**. The **cross-examination**; (Opponent)
  - **3**. The **re-examination** **(Rehabilitate & clarifying)**

Form of Questions in examination-in-chief Art. 263

- **Only** relate to facts **relevant to the issues**,
- **No leading** question
- The **court may permit** the asking of **leading questions** in **three** situations:-
  - **1**. **Introductory** matters
  - **2**. Where the witness **cannot remember** some or all of the matters
  - **3**. To **assist child witnesses** who have difficulty in testifying

Power of Court during production & Examination of Evidence

- CPC has given the **courts broad power**.
- Ethiopian **court has power to**:-
  - **Order amendment** of pleadings on its own motion,
  - **Frame issues** for trial.
  - **Put a /any kind?/question** to a witness at **any time** during the examination.
  - **Call** a witness even though **not called by the parties**
  - **Order any person** to produce any **document** …..
  - **Recall** any witness who has been examined
    - See Art. **268** in tandem with **Art. 118**[**2**][b]

Judgment and Decree Art 273

- The court pronounce **judgment** in **open court**.
- See Art. **180**

- **Contents of the judgment**
  - The **points** for **determination**,
  - **Decision** and **Reasons** for such decision,
  - In case where **several issues** have been framed, **decision on each separate issue**
- But **court may not give** judgment on any matter **not specifically raised by the parties**.

Decree:- **Operative part of the judgment**

- Judgment itself **cannot** be **executed**, and so, it has to be **reduced to decree** that **contain**:-
  - 1. The **number** of the **suit**,
  - 2. The **names** and description of the **parties**,
  - 3. The particulars of the **claim**,
  - 4. A clear **order** to **do** or to **no to do** …
  - 5. The **amount of costs incurred**, and by **whom** to be **paid**,
  - 6. Particulars susceptible of **execution**; and
  - 7. **Time** within which it shall be executed.

Special Proceedings

- **Special proceeding includes:-**
  - **1. Summary** procedure- a procedure by which the plaintiff may prosecute his claim **without** a **full-scale suit**.
  - **2. Accelerated** procedure - **immediate** hearing of certain kinds of cases **speedily** and **without a full-scale suit**, because the **nature of the case requires**

➢ Both are **applicable in different kinds of cases**, they are related as cases determined **without full-scale suit**.

1. Summary Procedure Art 284

- This procedure is **available** where plaintiff seeks **only to**:-
  - **Recover a debt** or
  - **Liquidated demand in money**
- The claim to **recover** a **debt** or **liquidated** demand in **money** payable by the defendant is **arising**:-
  - **1**. Upon a **Contract**, such as on a **Bill of exchange**, **Promissory note, Cheque** or **simple contract debt**, or
  - **2**. On a **bond** or **contract** for payment of a **liquidated amount of money**, or
  - **3**. On a **guarantee** claim against **principal** is in respect of a **debt or liquidated**

Summary procedure... **cont**...

- Summary procedure is **designed** for cases where the **defendant is not likely to have any defense**
- The plaintiff should be **required** to submits an **affidavit**/ **swear** that he believes this to be so.
- The statement of **claim** is **not served** on the defendant.
- The court serves defendant by **special summons** /Second Schedule No 17/
- This summons **advises** defendant that he has been sued for a **sum of money on a specified obligation** and **he must obtain leave to defend the suit**.

Purpose of Summary procedure

- To enable the plaintiff to **avoid a full-scale suit**.
- Why? (**Rationale Behind**)
- **Save time** b/c the **defendant is not likely to have any defense**

2. Accelerated Procedure Art. 301

- This procedure is **available for** certain **kinds** of applications **like**:-
  - Where the claim is **not likely to be disputed** or
  - Where the **nature of the claim** calls for **an immediate decision** is **required** and **feasible**,
  - Where **speedy remedy is appropriate** cases,
  - Where **full-scale** proceedings are **unnecessary** and perhaps **undesirable**.

➢ The proceeding at this point is **ex-parte**, and the **defendant is not served** with notice.

Arrest and Attachment before Judgment

- **Arrest before Judgment**
- These rules are applicable **only** to **suits not involving immovable property**.
- A **warrant** of **arrest** may be issued against the defendant where the court is **satisfied** that the defendant with **intent** to **delay** or **obstruct** execution of **judgment** :-
  - **1**. **Removed property** from such limits; or
  - **2**. Is to **leave Ethiopia** affording a **probability** that the **plaintiff may be obstructed**
  - ➢ See Art. **147**

Purpose

- To require the defendant to **furnish security**

➢ The defendant **avoid arrest** by paying **the sum specified in the warrant**, **sufficient** to satisfy the plaintiff's **claim**.

Refusal to furnish security

- Court may order the defendant to be **detained in the civil prison until**:-
  - He **complies** with the **order** or
  - The **decision** of the suit or
  - The decree **satisfied**:
- However, the defendant may **not be so detained for more than six months**.
  - See **Art. 150**

Attachment before Judgment Art 151

- This rules is designed to **prevent the defendant** form **disposing** of or **removing** his property so as to **prevent execution**.
- This rule is **applicable to all suits**, including those involving **immovable** property.
- The **action** to attach **taken where the court is satisfied** that the defendant, to **obstruct** or **delay** **execution** against him is about to :-
  - **Dispose** of the whole or any part of his property or
  - **Remove** such property from the local limits of the court's **jurisdiction**.

Where the court is satisfied that the property might be disposed of or removed

- **Direct** the defendant to **furnish security**, or
- **Produce the property** or its **value** as may be **sufficient**,
- **Order** that he **appear** and **show cause why he should not furnish security**.

The three remedies

- The following **three remedies** are employed to **insure** that the purpose of bringing suit will **not be defeated** by **action** that occur during the **pendency** of the case
  - 1. **Temporary Injunctions**
  - **2. Interlocutory Orders and**
  - **3. Appointment of Receiver**

Temporary Injunctions

- **Temporary injunction** is issued during the **pendency** of the suit to **prevent certain action** that would **prejudice the other party** from taking place.
- CPC **authorizes** the issuance of a temporary injunction in **two kinds of situations**:-
  - **1**. Where **action** taken with respect to **property** will **prejudice** the other party;
  - **2**. Where, in a suit to **restrain** the **breach** of a **contract** or the **commission** of an act, the **defendant is threatening to breach the contract or do the act pending litigation**.

Temporary injunction to prevent dealing with Property

- In this regard, an **injunction may be granted** if the **court is satisfied** that:-
  - **1**. The property in dispute is in **danger of being wasted**, **damaged** or **alienated** by a party to the suit;
  - **2**. The property in dispute is in **danger** of being **wrongfully sold in execution** of a decree, or;
  - 3. The **defendant threatens** or **intends** to **remove** or **dispose** of this property to **defraud** his creditors.
    - See **Art. 154**

Violation of an Injunction

- **Punishable** in **two ways**:-
- by the **attachment** of the **property** of the person or,
- by **contempt** proceedings under article
- ….it is also a **crime**???
- See Art **156(1**)
- Criminal Code….Art?

Interlocutory Orders

- It is **any order** that the court considers **necessary** to be made pending the determination of the suit.
- Art. **165**
- The court may at **any time** make such orders and this **includes**:-
  - Orders for the **custody** of a minor
  - Orders for **payment** of **alimonies**
  - Order for the **Detention**, **Preservation** or **Inspection** of property
    - See Art **160** -Art. **163**

Habeas Corpus

- **Latin** word to mean, "You have the **body**".
- **Prisoners** often seek release by filing a **petition** for a writ of Habeas Corpus.
- The **petition** must show that the court ordering the detention or imprisonment made a **legal** or **factual** **error**.
- **Federal High Court** is given an **exclusive jurisdiction** on suits regarding to Habeas Corpus
  - See Art. 15(2)i of the CPC & Proc. No. 25/96 Art. 5(10) & Art.11 & 14
- **Procedure for Habeas Corpus**
  - See Art. **177-179** of Ci.Pr.C

Procedure in Arbitration and conciliation

- Read... >>>>

- **CHAPTER THREE**

REVIEW OF JUDGMENTS

Quiz 2

1. Explain the situations in which the court may permit the asking of leading questions at examination –in cheave
2. Explain cases to which Summary procedure is available with the rationale behind it
3. Explain cases to which Accelerated Procedure is available with the rationale behind it

s. no	Course Title	Course Code	EtCTS	Department	Exam Date
1	Criminal Law	**Laws-M2050**	10	Law 2nd	15/06/2013
2	General Property Law	Laws2041	7	Law 2nd	17/06/2013
3	Intellectual Property Law	Laws2042	5	Law 2nd	18/06/2013
4	Psychology and Forensic Science	Laws2034	3	Law 2nd	19/06/2013
5	Sociology and Criminology	Laws2035	3	Law 2nd	20/06/2013
6	Land Law	Laws2043	3	Law 2nd	21/06/2013

1	Law of Civil Procedure	Laws3042	10	Law 3rd	15/06/2013
2	Law of Criminal Procedure	Laws3041	5	Law 3rd	17/06/2013
3	Conflict of Laws	Laws3044	5	Law 3rd	18/06/2013
4	Law of Evidence	Laws3043	5	Law 3rd	19/06/2013
5	Legislative Drafting	Laws3052	3	Law 3rd	20/06/2013