CHAPTER TWO
JUDICIAL SYSTEMS IN ETHIOPIA AND JURISDICTION OF COURTS

- **Jurisdiction** of courts is the **power of a court to hear and render a binding decision.**
- So, courts should **first of all**, have **jurisdiction** over the case submitted to them.

The Ethiopian Judicial System: Past and Present

- **Up until the end of the 19th century**, there was **no adequately articulated and/or formally institutionalized** system.
  - **Marked** by **greatly diversified customary practices and traditional justice administrative structures**.
- **Governors' 'Womber-Rasses'** the '**Afe-Negus**' a

The Unitary Court Structure: Historical Background

- **The 1931 Constitution** marking the **beginning** of in the **establishment** of the **modern judicial system**.
- **Proc. No 21/1942** instituted **six levels of courts**

The **first upper three**, namely,

1. The **Supreme Imperial Court**,
2. The **High Court**, and
3. The **Provincial** (Teklay-Gizat) Courts were set up:

The remaining **subordinate three courts**; i.e., t

4. The **Awraja** –Gizat Court,
5. **Woreda-Gizat** Court and t
6. The **Mikiti-Gizat** Court were also subsequently instituted

✓ **Up until 19 95 strongly unified** and firmly **centralized**.

The Present Dual Court Structure

- By **adopting a Federal state structure**, **FDRE Constitution** provides for the establishment of **two sets of courts**:-
  - 1. one at the **Federal** and
  - 2. the other at the **State** level.
- Both the **Federal** and the **Regional** Courts are endowed with their **respective structure of courts-tiered along three layers**- -each having **distinctive jurisdictions** of their own and **different places of sittings**.
  - 1. the **supreme**,
  - 2. the **high** and
  - 3. the **first** instance courts

‘Woreda Courts’ in the States???

- **Disparity** of **nomenclature** between the Federal Constitution and the practices of the States’ laws???
- Legally speaking, **unconstitutional**??
- And, hence, demanding for a **renaming**??
- Its **Jurisdiction**? eg. **Criminal** matter?

Religious and **Customary** courts

- The Constitution explicitly **recognizes??** **religious** and **customary** courts and envisages their **establishment by law**.
- See Art. ....???
- The Constitution also **strictly forbids** the establishment of **special or ad hoc courts**.
- See Art...??
- **Contradiction**? b/n above Arts of the Constitution**???**

Adjudicative bodies /Legally empowered Institutions/

- **Adjudicative** bodies that are **not properly so-called courts**, but constituted to **review administrative decisions** include **tribunals** like:-
  - ‘**Labour** Relation Board’,
  - ‘**Tax** Appeal Commission’,’
  - **Civil Service Tribunal**’ and
  - ‘**Privatization Agency**’ and its ‘Board’.
- Lastly, with **constitutionality question**
  - **Kebele-Social** Courts
  - **Addis Ababa City Courts**

Jurisdiction of Courts: Essential Elements

- '**Jurisdiction** of courts, refers to **the power of courts**, to **hear** and **determine a case**; thereby, **rendering a binding judgement**.
- So, courts should **first of all**, have **jurisdiction** over the case submitted to them.
- There are **three essential elements** that **establish jurisdiction** of courts; **namely:-**
  - **1**. **Judicial** jurisdiction,

1. Judicial jurisdiction

- **Judicial** Jurisdiction refers to **legal competence of the courts** of a particular **nation or state** to exercise a judicial power
- Issue of judicial jurisdiction **arises when** there is a '**foreign element**' in a case appearing before a court of a given state.
- **A case is said to have a foreign element** if:-
  - **1**. **Either of the parties** is a **foreigner** to that state or
  - **2**. The **transaction**, which is the subject matter of the suit, **occurs outside of the territorial boundaries** of that state or,
  - **3**. The **property**, which is the subject matter of the suit, **is situated outside of the territorial boundaries** of that state.

Judicial jurisdiction in Ethiopia

- **There is no law in Ethiopia** that **specifically** govern the issues of **judicial jurisdiction.**
- So, Ethiopian courts jurisdiction on cases involving **foreign elements** is **determined** on **general legal principles**
  - i.e on the basis of **nature of the action**, and the **type of the relief sought**,
- These **grounds** are distinctively put as '**in Personam**'(**over a person**)

Jurisdiction in Personam (over a person)

- **As usual court practices**, Ethiopian courts **assume judicial jurisdiction in Personam** where **either of the following requirements are fulfilled**:-
  - The **defendant** is an **Ethiopian national** or
  - The **defendant** is **domiciliary** Ethiopia **or,**
  - The **defendant** has **consented** (**expressly**/**impliedly**) **or,**
  - The **act** which is the subject matter of the suit **occurred in Ethiopia or,**
  - The **act** which is the subject matter of the suit **situated in Ethiopia**

Jurisdiction in Rem

- Latin term 'in **rem**' means, '**against the thing/property**'
- **Jurisdiction** for such an action is **established** in the **courts of the place** where the **thing** i.e. the **property located**.
- **Only the courts of the state** wherein **the property is situated** that can exercise **in rem jurisdiction**.

2. Material /Subject-Matter /Jurisdiction

- This is a process of determining the **level of competent court** from among the judicial structure in the **hierarchy** of courts in the country.
- **Material** jurisdiction **refers** to the **power of a particular court** to determine the **type or kind of a dispute** involved in a case on the basis of the **type of the case** and/or **amount of money** involved therein.

The three issues that need to be cleared from the outset

- Currently with the advent of the **federal** form of government, **determining the material jurisdiction** of a court **requires** basically **three issues** :-
  - **1**. Determining whether the case is **not falling outside the judicial power of ordinary courts**.
    - **Differentiation** between cases that are meant to be dealt with by **other tribunals or administrative institutions** with delegated or quisi-judicial power.
  - **2**. **Horizontal distinction** between the **Federal** and **Regional/States** matters jurisdiction and,
  - **3**. **Vertical distinction** as to **which level of court** is competent, i.e., from among a given structure to see a given law-suit.

The two criteria to determine the material jurisdiction of courts in Ethiopia

- There are **two broad criteria** commonly employed to **determine** the **material jurisdiction** of courts in Ethiopia.
- These are:-
  - **1. 'Subject Matter' jurisdiction** and
  - 2. **'Pecuniary' jurisdiction**.

1. 'Subject Matter' jurisdiction

- **Subject matter jurisdiction** depends on the '**type' of the case**, involves:-
  - **Identification** of matters/cases **falling within and outside the regular court structure**, and
  - **Drawing** a **distinction** between '**Federal**' subject matter and '**State**' subject matter.

Matters outside the Jurisdiction of Courts

- Courts are made to see cases so long as only they are **justiciable** ones.
- Justiciable matters may broadly be **defined** as **inclusive of all cases unless the law provides otherwise**.
- See, for instance, **Art 37 of the FDRE Constitution**
- Prominent **administrative** tribunals established in Ethiopia **include**:-
  - **Tax Appeal Commission**-sees cases related to tax **complaints**;
  - **Civil Service Tribunal**-entertains **grievances** concerning civil servants; and
  - **Labour Relations Board**-competent to deal with employee-employer (labour) **disputes**. etc....

Exhausting all the available remedies

- For cases that fall under the jurisdiction of **administrative** tribunals, party may **not directly file his case to a regular court before exhausting all the available remedies** in that system.
- However, an **appeal is allowed** to be taken to the **regular** court from the decision of these tribunals; **particularly on issues of law**.

Federal Vs Regional Subject-Matter Distinction

- There are **two ways to determine** the respective competence of the **Federal** and **Regional** courts.
  - **1st** On the **basis** of the **power-sharing method** **of the Constitution** in consonant with the theory of '**federalism**',
  - **2nd** On the basis of **specific subsidiary law**: **--> the Federal Courts Establishment Proclamation, Proc, No 25/1996**.

1. **On the basis of power-sharing method of the Constitution**

- In consonant with the **theory of 'federalism**, FDRE Constitution, **broadly defines** the powers and functions of both the Federal and Regional governments
- Accordingly, **Art 80(1&2)** provides **Federal Supreme Court** has the **final say on Federal matters** while **Regional Supreme Courts** shall have the **final** authority on **Regional matters**.
  - Q.What is **Federal matters/Regional matters??**
- This being so **broad**, requires **resorting** to **another alternative**, **Proc. No 25/1996**.

2. **On the basis Proclamation No. 25/1996**

- As per proc. No. 25/1996 the **laws**, **parties**, the **place** and **type** of the suit are **general factors that determine** cases falling within the **jurisdiction of the Federal Courts**.
- Under its **Art 5**, proc. No 25/1996 employed **the following parameters** so as to **determine civil** subject-matter jurisdiction of the Federal Courts on a given law-suit:-
  - **1**. **Nature** and **Status** of the **Law** on which the case is based;
  - **2**. The **place** where the case arose; and,
  - **3**. The **nature/type of the suit** itself.
  - 4. The **status of the parties**

1. Nature and Status of the Law on which the case is based

- This approach categorises the type of the case on the ground of **Federal laws** vis-à-vis **States' laws distinction**.
- If the case is based on the **Federal Constitution**, **Federal laws** (laws enacted by **HPR** or by Federal executive agencies)-on **matters that fall within the powers** of the Federal Government, or, **international agreements or treaties** (as they are adopted by HPR) then, it **falls under the Federal Courts' subject-matter jurisdiction**;

2. The status of the parties

- If Parties to a suit are those **specified** or **administered** by the **Federal laws**, for instance, if **either** or **both** of the parties to a law-suit is a **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**, then the power to entertain the case resides in the Federal Courts.
  - (See, Art **5(1)-(4)** of Proc No 25/96),

3. **The place where the case arose**

- With regard to **the 'place' where the case arose** test, disputes arising in **Addis Ababa** and **Dirre-Dawa**; would be within the competence of the Federal Courts- regardless of the identity of the parties
- See Art. ....
- Why?....

4. The nature/Type of the Suit

- Suits involving matters of **Nationality**, or,
- Issues of **business** organizations **registered** or **established** by the Federal Government; or,
- Those regarding **negotiable instruments** (such as, cheques, letter of credits, etc.), or,
- Which relates to **Patent**, **Copy** rights, **Insurance** policy; and, an application for **Habeas** Corpus.

(See, Art 5(5) (10) of the Proc No 25/96)

Suit based on Regional State Law

- Q. Can it be always under the jurisdiction of Regional State Courts??

➢ Not necessarily be all the time.

- Why?

➢ Because there are instances in which cases arising under **State Laws be regarded as Federal subject matter**

- What are these instances??
- **State cases** that can always fall under the jurisdiction of Regional State Courts are cases that **arise on the cases of State Law** and that are **not categorized under Federal cases**

Conditions in which Suits arising under State Laws can be regarded as Federal subject matter

- There are **Conditions** and **instances** whereby cases arising under State Laws be regarded as Federal subject matter:-

➢ Where the **parties** to the litigation on disputes arising on the grounds of States laws are **those listed under Art. 5(1)-(4)** of **Proc No 25/96**;

- ✓ i.e if **either** or **both** of the **parties** to a law-suit is a **federal organ** or **official** (employee); or,
- ✓ **Permanently residing in different Region**al States; or,
- ✓ One of the parties is a **foreign national**
- ✓ Where disputes arising on the grounds of States laws arose in **Addis Ababa** or **Dire Dawa**
  - ➢ See, **Art 80** of the FDRE **Constitution** and **Arts 11(1)(b)** and **14(2)** of Proc No 25/96).

2. **‘Pecuniary’ jurisdiction**

2.1. Jurisdictional Limits of Courts:- Pecuniary Amount Vs Types of Cases

This is to **apportion** **the judicial business** among **levels of courts** in the hierarchy-on the bases of **amount of money** involved in the proceeding or the **nature/complexity** of the case

Pecuniary Amount: Federal Vs States' Courts Jurisdictional Limits

A. Federal Courts: General Vs Limited Jurisdiction

- **Two grounds** employed to determine the jurisdictional limit of the Federal Courts:
  - **1**. The **Amount of Money** and
  - 2. The **Type of the Case**.

  See Art. **11&14** of Proc No 25/96

1. Amount of money

- Civil cases which involve an amount **not exceeding Birr 500,000**, are subject to the jurisdiction of **Federal First Instance Courts** while, amount **in excess of Birr 500,000** are entrusted to the jurisdiction of **Federal High Courts**.

2. Type of the case

- **Nationality**,
- Enforcement of **foreign judgements**,
- **Change** of venue, and
- **International law**..etc are **exclusively given to the Federal High Court**.
  - See Articles 8 & 11 of Proc.No25/96).

B. States Courts: Original Vs Appellate Jurisdiction

- Rules of the **Civil Procedure Code** on **material** jurisdiction considered to be **inapplicable** to the jurisdictional limits of States Courts
  - See Art **13** of the **Civil** Procedure Code
- But currently State Courts **material** jurisdictions are **determined** by **laws issued by respective State Councils.**

3. Local Jurisdiction

- Rules on Local Jurisdiction take us **to the specific court** to which a law-suit is to be submitted.
- Enable one to refer the case to a particular court **convenient for the parties and their witnesses, particularly, the defendant.**
- The rules also accomplish another significant task of **curbing inconveniences** arise from '**forum-shopping**' tendencies of some litigants.

The Basic Place of Local Jurisdiction

- **Art. 19(1) of Civ. Pr. Code** stipulates basic place of local jurisdiction lies with "...the **court of the place where:-**
  - **the defendant actually resides or**
  - **carries on business or**
  - **personally works for gain**.
- This rule is **non-applicable** if different place of local jurisdiction is

Suits Regarding Contracts

- **Article 24** provides **four** types of rules on suit regarding contracts, for the purpose of determining local jurisdiction.
- These are:
- 1. Contracts **generally**,
- 2. Contracts of **carriage**,
- 3. Contracts of **Insurance**,
- 4. Contracts of **pledge**, deposit, or bailment

Rules on Suits Regarding Contracts in General

- As per **Art 24(1),** suits arising from contracts, in general, may be instituted at:-
  - **Place mentioned in the contract** or
  - **Place where the contract was made or**
  - **Place where the contract was to be executed**

In **addition**, the plaintiff could also institute his case **in a place where the defendant resides**, **works** for gain or **carries on business**, according to **Art 19** of the Code.

Suits regarding contracts of carriage

- There are **two types** of suits regarding contracts of carriage.
  - 1. ***Carriage by See*** and
  - ***2. Carriage by Air***
- **1**. ***Carriage by See-*** As per **Maritime Code Art.208**, suits involving contracts of carriage by sea are to be instituted at the **court sitting at the port of arrival of the good**.
- ***2. Carriage by air-***suits concerning contracts of carriage by air are to be instituted according to **Art 647 of the Commercial Code**

Suits regarding Contract of Insurance

- As per to **Art. 24(3)** of the Civil Procedure Code, Suits regarding a contract of insurance may be instituted in the court of **the place where**:-
  - the **head office** of the insurance company is **situated** or
  - the insurance company is **registered** or
  - where the **object insured is situated**.

Suits Regarding Pledge, Deposit or Bailment

- Suits concerning pledges, deposits and bailment are instituted in **the court of the place where the property is located**.

Suits Involving Immovable Property

- **Art. 25** provides that suits involving **immovable property must** be instituted **at the place where the immovable property exists**.

Suits for Wrong Done to Persons or Movable Property

- **Art. 27(1)** of Civ. Pr. Code, suits for wrong done to persons or movable property as **extra contractual liability**, may be instituted in the court of **the place where the wrong was done** or in accordance with the provisions of **art 19**.

Suits Regarding Successions

- **Art 23** of the Cv. Pr. Co. suits regarding succession, which is being liquidated, shall be instituted in the court of **the place where the succession was opened**.

Suits upon Several Causes of Action

- Where a suit is based upon **several causes of action arising in deferent places**, the suit may be instituted **in any court that has jurisdiction over one of the causes of action**.

- Art 25 **Joinder of causes of action**
- The plaintiff **is not allowed** to join suits **involving immovable property** where the property is situated within the local **jurisdiction of different court**.

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

- **Art 31 - Transfer of Suit**
- **Transfer** is to be ordered where there exists a **problem** and there are **three grounds** that justify transfer.
- **1st** an **allegation** that a **fair and impartial trial cannot be made** ...
- **2nd Question of law of unusual difficulty**. i.e **complicated issues of law** which **cannot** be resolved by the court treating it
- **3rd** The court seized of the case is **found to be inconvenient to the party** so demanding.

Exception to the general rule, so, **Narrow interpretation**

- Rule on the **transfer of suits** is an **exception** to the general principle, so, **narrow interpretation** should be adopted when the need arises.

Removal or withdrawal of Judges

- **Proc No 25/96** Art **27** **to achieve impartiality**, a judge may withdraw or be removed **if the judge**:-
  - has some **relations** to a **party** or an **advocate**; or,
  - was a **tutor** or legal **representative** of a party; or,
  - has some **prior connection** with the case; or,
  - has a **pending case** somewhere else with a party or advocate thereof; or
  - Any other **Sufficient Reasons(?!)**

Conflicts of Jurisdiction

- As a rule, a suit arising from a single cause of action may **not be instituted** and/or tried by **more than one court at a time**.
- But there are **instances** that could give rise to the problem of conflict of jurisdiction which **includes**:-
- **1**. Parties might have filed **separate suits** that **actually involve the same claim**.
- **2**. There could be a **possibility** for **two or more courts to assume jurisdiction** over **the same** cause of action

Priority, Pendency and Consolidation of Cases

- Civil Procedure Code resolves **problem of conflict of jurisdiction** through the rules of **Priority**, **Pendency** and **Consolidation**.
- **Priority- Art 7**
- The court in which the **suit is filed first** should have jurisdiction
- **Pendency- Art 8**
- Pendency serve as grounds for **preliminary objection** as per Art **244(2)**
- **Consolidation- Art 11**

CH 3 **PARTIES** TO AND DIMENSION OF SUITS