

Chapter Three: Review of Judgment

Review at Court of Rendition:

- ❑ Procedural Irregularities
- ❑ Newly discovered Evidences
- ❑ Opposition

Review at Appellate Court:

- ❑ Appeal:
 - ❑ appeal on judgment and
 - ❑ appeal on orders

❑ Revision in Court of Cassation:

3.1. Review at court of Rendition

A. Procedural Irregularities: Art 207

- non-compliance with the provisions of the Code
- *substantially affect* the disposition of the case.
- Mere mistakes are not irregularities. Art 208
- Before preliminary objection: can be raised as objection
- During judgment: can be set aside
- Sh'd be taken to trial court first before,
- Exceptions: lack of *material jurisdiction* or irregularities *alleged to exist in the judgment or decree*.
- **Irregularity happened at trial stage may not affect the proceeding of first hearing.**

- **B Newly Discovered Evidence**
- No appeal has been taken from the judgment or no appeal lies;
- Discovered new and important fact
- the newly discovered evidence *must affect the decision*,
- discovered *after the judgment is rendered*,
- the evidence *must be of such nature as to suggest improper conduct*, which tainted the judgment with fraud. i.e., forgery, perjury, bribery or the like.
- Must be filed within one month.
- No appeal shall lie from the decision given.
- See Art 6 of Civ. Pr C

Cont'd.

C. Opposition: *Art 358-*

Raised by Any person:

□ *who should or could have been made a party to a suit and whose interests are affected*

✓ *sh'd or could have been party*

✓ *Whose interest affected*

✓ *Application filed prior to execution*

- *indispensable party, real party in interest or person liable for contribution or indemnity*
- should be rejected if the applicant was aware of the suit prior to judgment(except indispensable parties)

3.2. Reviews by Appellate Court

Appeal : a legal proceeding by which case is brought before appellate court for review of the decision of a lower court

- **Art 320**
- The most common method of obtaining review
- Application to the high court
- Appeal is not retrial but review of subordinate court's decision.
- A party aggrieved/ either one or both parties may appeal-cross objection.
- Where local remedy available no appeal before exhausting that remedy: Art 320 Art 211 and 6
- **Types of Appeal:** Appeal on final judgment and appeal on order

- **Ground of Appeal:**
- All objections to the decree must be stated in the memorandum of appeal. [Art 327](#)
- Any fact which was not in evidence in the subordinate court may not be raised-[Art 329](#)
- Trial is limited to issues framed at first hearing/questions raised there.(Except material jurisdiction and objections on indispensable party)
- New legal arguments on the decision is permitted.
- Memorandum of appeal: see Art 327 and ff
- **Time for appeal:** 60 days (30 days for labor)
- **Cross appeal:** a successful party challenge certain aspect of the decree
- **Cross objection:** in response to the appeal of another party(taken as cross-appeal).

Cont'd

- The court may bring additional parties-Art 40(5)
- Stay of execution: Art 332-335
- Appellate court may frame issues for trial Art 343
- Additional witnesses-Art 345
- Judgment-Art 348
- Remand: sending back the appeal case to trial. Art 341
- **2nd appeal**: appeal against the decision of appellate court. (Oromia Courts Proc No 216)
- Restitution: Art **349**(If the decision has been excuted before the ruling at appellate stage)

Revision in Court of Cassation

- FDRE Constitution-Art 80(3(a))-Federal supreme court has the power of cassation
- FDRE Const Art 80(3(b))-State supreme courts have the power of cassation.
- Federal Proclamation no. 454/2005
- Fundamental error of law- not error of fact.

CHAPTER FOUR

EXECUTION OF DECREES