# Jurisdiction of courts

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# Jurisdiction

**Definition- the** power of the court to hear and render a valid judgment

**Conditions to be taken into account when assigning jurisdiction**

- Sovereignty over
  - properties,
  - actions taking place within the territory of a country and
  - persons
- Allocation of resources
- Complexity of the subject
- Business interest
- Expertise knowledge

**Three requirements for a court to hear a case**

- Judicial jurisdiction
- Material jurisdiction
  - Pecuniary jurisdiction
  - Subject matter jurisdiction
- Local jurisdiction

**A. Judicial jurisdiction**

**Definition-** The power of the court of a particular nation or state to exercise control over a

particular person or item of property. The court will have jurisdiction to

adjudicate the plaintiff's claim against a defendant

**Basis for judicial jurisdiction**

**In personam**

**In rem** **because the defendant owns property**

**Quasi-in –rem**

### 1. *In personam* jurisdiction

It is about personal claims against the defendant. It is possible to try him in the forum country when

- **the defendant has been served a Summon within the forum state**
  - If it is proved that the defendant has been served a summon within the territory of the forum Stat, even for a short time, the forum state will have jurisdiction over that defendant.
- **Citizenship**
  - If the defendant is a citizen of the forum state, the forum state will have jurisdiction over him even when he is not physically present in the state.
- **Domicility**
  - Even if the defendant is not an Ethiopia citizen, if his domicility is in Ethiopia it would suffice for Ethiopian courts to exercise jurisdiction over him.

In both cases the defendant has a systematic and continuous relation of with the Forum State that shows a substantial interest. While one has a substantial interest from his contact, then it becomes reasonable to expect the society to show same interest over the defendant. I.e. if a person takes advantage or benefits out of his contact, he shall then be subjected to that jurisdiction which offered him the benefits

- **Consent of parties**
  - Ethiopian Courts will have to secure the **consent** of the parties. This consent can either be **Express** or **Implied**. Express consent is when parties agree that Ethiopia Courts will have jurisdiction in times of disagreement. Implied consent – comes up in a few ways e.g.
    - Being plaintiff- subjects to counter-claim
    - Assignment of an agent

- Failure to bring timely objection
  - Objection to jurisdiction must first be raised at the first day of answering the claim. Failure to object will be assumed to have consented. Objection at a later stage is not possible. Once the party is presumed to have consented, he/she cannot withdraw. They cannot take away the jurisdiction of the court once jurisdiction is presumed.

- **Reciprocity (public policy)**

These traditional methods alone were not enough. The complicated relations between nations have necessitated the introduction of other parameters. The defendant must have a **sufficient minimum contact** with the forum state so that it **would be fair to force** the defendant to defend a lawsuit there

The basis for this type of jurisdiction is

- **The doing of an act**

it is an **isolated contact** with the Forum state (non-presence).

The suit must arise from the contact he chose to do or results

substantially from his actions e.g. sale of immovable, damage

- **flow of commerce**

**2. In-rem jurisdiction**

***In*** means against. ***Rem*** means thing- so ***in-rem*** means against property. It is

the jurisdiction of courts based on the property being in the forum state regardless

of the whereabouts of the defendant.. The claim is brought directly against the

property. It binds the whole world with regard to the disposition of that property.

E.g. ownership of a lost property, confiscation, distribution of assets, eminent

domain, status against who denied or infringed it

**3. Quasi in –rem**

Basically, it is a personal claim. Courts adjudicates the rights of the named parties

because the defendant has properties in the forum state upon which judgment

could b executed

Commonly it is used when jurisdiction over the defendant is unobtainable due to his/her absence from the state. Any judgment will affect only the property seized, as an in-personam claim is unobtainable However before allowing the plaintiffs to exercise quasi-in rem jurisdiction over the money or other negotiable instruments, the court needs to examine the nature of the respondents' contact with the state and the relation of the property to the underlying dispute.

**B. Material Jurisdiction**

It can be classified as pecuniary jurisdiction and subject matter jurisdiction.

**Pecuniary Jurisdiction**

Pecuniary Jurisdiction is the jurisdiction of courts on the basis of the **amount of the claim**, some cases fall within the power of the high court while others fall within the power of the first instance courts. See **Art 12 – 15 (1) of the civil procedure code**- see also **Proc. 25/96 Art 11 and Art 14 (1); Proc. 1234/13 Art 11 and Art 14 (1).** *See also state laws in this regard- E.g* ***Proc. 223/07 of the Amhara Region***

**Under the Amhara state proclamation the pecuniary jurisdiction of courts**

**For movables ≤ 300,000 birr- Woreda Court**

**>300,000 birr – High Court**

**For immovables ≤ 500,000 birr- Woreda Court**

**>500,000 birr – High Court**

Amhara Courts will have the power to entertain cases involving claims the amount of which falls within the limits assigned to them. However determining the amount will not always be an easy task. In such cases one has to refer

- Arts 226-228 to determine the amount of the claim
- Art. 11 of the civil procedure code discusses about **consolidation**-

Conditions to be satisfied for consolidation are same parties same/similar

question of law and fact **e.g.**

B moved agains A claiming that A should pay him 300,000. Court decided that A shall pay 123,000. Both appealed independently. The appeals can be consolidated.

C claimed cancellation of a contract concluded between him and D. D in return brought another suit on C claiming that contract be performed together with damage. The two cases can be consolidated. Jurisdiction is determined by the higher claim among the claims- it is not going to be aggregated.

When cases are consolidated they loose their independent existence but without losing their nature.

- **Plurality of claims (Art 17)**

**(1)** **Several claims**- all will be aggregated to determine the Jurisdiction of the court e.g. claim for compensation for injury to the person and to the property- claims will be aggregated

**(2)** **Principal and accessory**- e.g. recovery of land together with mesene profit – principal is **recovery of land** - accessory is mesene profit**.** Under these circumstances whichever is higher determines the jurisdiction of the court. .

**(3)** **Counterclaim**- whichever is higher determines Jurisdiction- if counter-claim is above the jurisdictional power of the court which entertains the principal claim, the case must be transferred to the court that entertains the counter-claim- [Art 17+ 30+ 90 (5)]

**Issues**

**What happens when one claims his share in the succession which involves both movables (valued to be 290,000 and immovable (valued 500,000? Which is a principal claim and which is an accessory claim? And which is a higher claim? What if the value of each is 400,000?**

**Art 16 of the civil procedure code**- see the Amharic and the English text

The English discusses about the **subject matter of the suit** while the Amharic discusses about the **amount of money claimed** (ክሱ የቀረበበት የገንዘብ ልክ)- Are they the same? If not which value must be taken into account?

Others are claims which cannot be quantified interns of money like paternity *claims, declaration of absence etc for example cannot be valued in money terms.* These claims will be entertained in the first instance courts or Woreda court.

**Subject matter jurisdiction**

It is the power of the court to exercise power **over** **the type** of the case on which the lawsuit is based **or** **who the subjects** are.

**On the basis of the type** of the case, some **subject matters** are excluded from being adjudicated in courts (except by way of appellate jurisdiction) e.g.

- labour law
- tax appeal commission
- city courts
- government employees (Proc. 171/02)

Whereas others like [Art 15 (2)]

- negotiable instruments
- insurance policies
- Liability of public servants for acts done in discharge of their duties (has it been amended under Proc 223/2007? Can Woreda courts entertain it?)
- Habeas corpus etc are entertained in the high court based on the nature of the case (it has been amended by Proc 223/07 But what happens when there is a conflict with the federal law? Which shall prevail? Can Woreda courts entertain it? )

**The same holds true** if you have a look at proclamation 25/96 Art. 5 (which amended the procedure law on matters stated herein under

- habeas corpus

- citizenship
- litigants sitting in different states- **diversity (when do we say there is diversity?)**
- federal government employees etc are all considered to fall within the exclusive jurisdiction of federal court (by their subject)

The above are exclusive powers of the Fed Gov't. States would entertain them by way of delegation only.

In matters of diversity jurisdiction, the purpose is to protect the non-locals from the local bias.

What happens if plaintiff is Bahir-dar and defendants are residing n Bahir-dare and Wollega? Will it be a federal matter? What happens if plaintiff is Bahir-dar and defendant is in Addis Ababa? Is Addis Ababa a State under the Constitution?

Another is jurisdiction based on **who the subjects** are

- *suits relating to officials and servants of the Federal Government*
- *Suits between persons residing in different states*
- *Suits between persons permanently residing in different regions*
- *Cases to which foreign national is involved*

### C. Local jurisdiction

The actual location where the case is to be heard. See Art 19-30. The basic idea is that the lawsuit shall in principle be submitted to the court of the place where the defendant resides. **It is non waivable**.

But there could also be other additional or substituted places

Substituted places of jurisdiction – like Art 23, 25

Additional places of jurisdiction- Art 24 except Art 24 (4)

Have a look at article 19 and 21. Can a plaintiff (residing in Dessie) institute a case against the head office of Municipality (Bahir-dar) and two other defendants (Gondar) in Dessie high court?

**Change of venue (See Art 31)**

**Objection to jurisdiction**

**Art 9-**

Lacking material jurisdiction will always be challenged when the parties raise the objection and even when they have failed to object it. The court can raise it *suo moto* (of its own). **This is because it is related to the competence of courts**

**Art 10**

Normally a court which does not have local jurisdiction must be rejected under art 231. Lack of local jurisdiction may or may not be challenged. Decision without local jurisdiction will be upheld unless there is miscarriage of justice Art [Art 10 (2)].

## Federal and state matter Jurisdictions

The constitution and other laws can serve as a political tool to divide power between the Federal government and the States. There are two approaches in dividing power between them.

- The "either or thinking" approach
- The multi-jurisdictional approach

The "either or thinking" approach –

Every state will exercise judicial power assigned to it i.e. as regards the assignment it is either the power of the State or the Federal government. Sometimes this creates tensions between the Federal government and the States on certain areas. This is because the fact that one is clever enough would not be a reason to possess a substantial amount of the power to its jurisdiction.

The multi-jurisdictional approach

On certain areas, both the States and the Federal government will divide power among themselves while they enjoy judicial power concurrently in many other areas [The idea being that States have the ability and the willingness to protect federal interests].

When it comes to our law, the title of the constitution under Art 52 discusses about possibilities for enjoying concurrent power. This possibility has surfaced under Art 80 as it discusses about the concurrent power of courts. This has been realized under Proc. 25/96 which identifies the exclusive powers of the federal gov't. On Fed laws which have not been reserved exclusively to the Fed gov't under this law

is to be enjoyed concurrently both by states and the federal gov't. It is an indication that we are adhering to the multi-jurisdictional approach.

So every Federal law [Proclamation 25/1996 Art. 3 – it defines what federal matter is for the purpose of judicial duty], outside the exclusive jurisdiction of courts [Art 5 & 8 of Proc. 25/96], is to be entertained both by the Federal government and the states. The enjoyment of the State courts by virtue of this, however, will not change the federal matter into state matter. It remains to be a Federal matter. When these matters exhaust their appeal in State courts, the cassation claims shall not be entertained in the state cassation Bench. This is because the Federal sovereign law must be entertained by the Federal sovereign court. Each must be the final expositors/interpreters of their own law. The States will also enjoy the same right on their own laws.

The Federal government cannot be final expositor of Sate laws for it would defeat sovereignty principle under Art 51 of the constitution. The word **every matter** under Art 80 (4) shall not be misleading to intervene in State matters. It only exists as a corridor to protect Federal interests as equality, due process rights etc.