

ST.MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW

LL.B THESIS

THE CIVIL JURISDICTION OF FEDERAL COURTS
IN ETHIOPIA; COMPARATIVE ANALYSIS

BY: ABDURAZAKE RESHAD

ADDIS ABABA, ETHIOPIA
AUGUST, 2008

**THE CIVIL JURISDICTION OF FEDERAL COURTS
IN ETHIOPIA; COMPARATIVE ANALYSIS**

BY: - ABDURAZAKE RESHAD

ADVISOR: - ATO TAFFESSE YIRGA

**Submitted in partial fulfillment of the requirements
for the Bachelors Degree of Law (LL. B) at the
Faculty of Law, St. Mary's University College**

ADDIS ABABA, ETHIOPIA

AUGUST, 2008

I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name:-ABDURAZAKE RESHAD

Signed:-.....

TABLE OF CONTENT

ACKNOWLEDGMENT

INTRODUCTION

CHAPTER ONE

GENERAL OVERVIEW ABOUT FEDERAL JUDICIAL SYSTEM

	<u>PAGE</u>
1.1 MEANING OF FEDERALISM	1
1.2 STRUCTURE OF COURT IN A FEDERAL JUDICIARY	2
1.2.1 Parallel System.....	2
1.2.2 Non-parallel system.....	3
1.3 UNITARY SYSTEM OF JUDICIAL STRUCTURE.....	4
1.4 THE ADVANTAGE AND THE DISADVANTAGE OF FEDERAL JUDICIAL STRUCTURE.....	5
1.5 APPLICABLE LAWS IN FEDERAL JUDICIAL SYSTEM	6

CHAPTER TWO

2.1 MEANING OF JURISDICTION.....	8
2.2 ELEMENTS OF JURISDICTION.....	8
2.2.1 Judicial Jurisdiction	9
A Nationality or domiciliary.....	10
B. Consent.....	12
C Place of an Act	13
2.2.2 Material Jurisdiction	14
A. Subject matter Jurisdiction.....	14
Federal subject matters.....	14
State Subject Matters.....	16
B. Pecuniary Jurisdiction.....	16
2.2.3 Local jurisdiction	18

The Basic Place Local Jurisdiction	18
Actually Resides.....	19
Carries on Business.....	19
Personal Works for Gain.....	20
2.2.4 Others	20

CHAPTER THREE

COMPARATIVE APPROACH

3. COURTS CIVIL JURISDICTION	23
3.1. Judicial Jurisdiction	23
3.2. Material jurisdiction	25
3.3 Local Jurisdiction	27

CHAPTER FOUR

4.1 THE CIVIL JURISDICTION OF FEDERAL COURTS OF ETHIOPIA.....	31
4.1.1 Federal first instance court	33
4.1.2 Federal high court jurisdiction.....	35
4.1.3 Federal supreme court	40

CONCLUSION AND RECOMMENDATION	45
CONCLUSION.....	45
RECOMMENDATION.....	47
CHAPTER ONE END NOTES.....	48
CHAPTER TWO END NOTES.....	49
CHAPTER THREE END NOTES.....	52
CHAPTER FOUR END NOTES.....	54
BIBILOGRAPHY.....	56
ANNEX	

ACKNOWLEDGMENT

The writer of this paper would like to forward special thanks for those persons who helped me in preparing and assisting in completion of this paper.

First of all I would like to thank Allah in which he gave me endurance and strength that I faced in preparing this paper. I would also thank my family, that helped me and making me great, especially my brother Dr. Tofike Reshad and my mother, Karewoet Nide and my friend mother Amerch Bekle

I do really also thank my advisor, Ato Taffesse Yirga who advises me the way that the paper should contain and comment on the idea, language usage and all part of my paper.

Last but not least I am profoundly grateful to my friends Ermias Mekonnen, Fiker Getachew, Samson Wondeson, Shume Alemu, Mesele Taye, for their dedication, support and assistance to my success.

INTRODUCTION

Jurisdiction may be broadly defined as the power of court to hear and determine a case. The structure of the judicial system is highly related to the organization of government. The structure of state as a whole that may be federal or unitary system of government. In federal system of government, the judiciaries of that type of government function are in two levels, the federal state, and in member states. In unitary system of government is characterized by vertical organization of courts at the country level.

According to Art 1 of FDRE constitution, Ethiopia also follow federal system of government so, the courts structure are dual court structure. In this research the writer more concerned, problems regarding the civil jurisdiction of federal courts, for instance, the constitution of FDRE Art 80 (1) provide that federal courts and state courts shall entertain the federal subject matters and state subject matters respectively. But there is no law, which squarely prescribes as to the nature and distinction of subject matters.

The main objective of this paper is to show the civil jurisdiction of federal courts of Ethiopia and other federal countries civil jurisdiction of federal courts.

According, the author of this paper has tried to shed a light over major feature, which are attributable to federal legal system in general. In this regard, it is show that the structure of court in federal judiciary. The other point raised in this chapter is meaning of federalism, the advantage and the disadvantage of federal judiciary structure, unitary system of judicial structure and applicable laws in a federal judicial system.

Under the second chapter, the writer has focused on the civil jurisdiction of courts in general. Further more the writer also analyzes the three vital elements of the civil jurisdiction, namely, judicial, local, and material jurisdiction will be elaborated as per the relevant laws of Ethiopia.

The third chapter is concerned about other federal countries civil jurisdiction of federal courts. In this chapter, the author of this paper is more concerned about the civil jurisdiction elements.

The last chapter of the paper can be referred as the heart of the major them of the paper. An attempt is done, in this chapter, the author of this paper tried to show the civil jurisdiction of federal courts of Ethiopia, namely, Federal first instance court, high and Supreme Court and the problems of each courts.

CHAPTER ONE

GENERAL OVERVIEW ABOUT FEDERAL JUDICIAL SYSTEM

1.1 MEANING OF FEDERALISM

The concept of Federalism is ambiguous and does not have very clear or universally accepted meaning. It is very difficult to define it with precision. This is because federalism has come to possess different meaning to different people in different time. The countries which describe themselves as federal do not have the same kind of constitution in relation to the difficulty of defining federalism Elazar says “No single definition of federalism has proved satisfactory to all students primarily because of the difficulties in relating theoretical formulation to the evidence gathered from observing the actual operation of federal systems”.¹

But let’s see some commonly accepted of the concept as given by different author’s Roger H. Davidson says Federalism, also referred as federal government, national or international political system in which two level of government control the same territory and citizen the word federal comes from Latin term *fidere*, meaning “to trust” countries with federal political units usually called states, provinces or territories these smaller political units surrender some of their political power to the central relying on it to act for the common good.² This definition emphasizes on the coordinate nature of the system between the two levels of government.

This definition is almost similar to the above one; Cory and Abraham define it again as follow. “Federalism is a dual form of government, based on a territorial and territorial functional division of power calculated to reconcile unity with diversity.”³

The other emphasis on this definition is on the aim of the system and that is the reconciliation of diversity with unity. What at one can understand from the above definition is that federalism is a system of government according to which two levels of government federal and state side by side, each having a certain assigned powers and functions and each levels of government is autonomous, independent and operates directly up on the people. This means each citizen is subject to two governments.

1.2 STRUCTURE OF COURT IN A FEDERAL JUDICIARY

As stated above the pattern of structure of courts goes with the structure of states. This is to say that unitary states structure subscribes for a unitary court arrangement and a Federal State Structure is usually congruent to a Federal Judiciary in a Federal Judiciary there are two layers of court organization, in the Federal level and in a State level. Thus the Federal Judiciary is mostly dual, though the degree of dual may vary. In this regard it is maintained that if the federal principle were to be strictly applied one would expect a dual system to be established in a federation, one set of court to apply and interpret the law of the general government, and another to apply and interpret the law of each state.⁴

Most Federal States thus opt dual court system. In this context, this writer uses the term dual to express the two layers of courts in Federal Judiciary. Even when there are no subordinate Federal Courts, there is a possibility of having the two layers of courts, though in such a situation the degree of duality is limited. Depending on whether there are subordinate Federal Courts or not the Federal Court structure may be parallel or non parallel.⁵This will be dealt, as follows:

1.2.1 Parallel System

The parallel system of Federal Judiciary is a system where by below the Federal Supreme Court subordinate Federal Courts are established in the states in addition to U.S.A constitution.

In this regard, it is commented that, the Federal Court system has its basis in the provisions of the Federal constitution that the Judicial power of United States shall be vested in one Supreme Court and in such inferior court as congress may from time to time ordain and establish.⁶

In U.S.A there are district Federal Courts in each district besides the State Court as stated above it is such a Federal Court structure that is regarded as parallel.⁷In such a structure the degree of duality of the system is optimum. There are basically two important reasons

which led the framers of U.S constitution to adopt the parallel Federal Judiciary. The desire:

1. To avoid a fear of unjust treatment of litigants from other states.⁸
2. To attain faithful and uniform interpretation and application of the constitution.⁹

1.2.2 Non-parallel system

The non-parallel Federal Judiciary is a system where by there is only one Federal Courts and no other subordinate Federal Courts the existing Federal Court is usually termed as the supreme Federal Court however in case of Australia it is termed as the Federal High Court. The typical example of such a structure is the Indian judiciary. In this regard Gupta stated that. Despite the Federal Supreme Court at the top, each state has its own, judiciary, which administers both union and state law.¹⁰

The Nigerian Court system, as was envisaged in the 1954 federal constitution was non-parallel. The Federal Supreme Court was the only Federal Court envisaged however the 1959 amendment to the constitution, conferred power on the federal legislature to establish any federal court in regions.¹¹ So the Nigerian Court structure can be parallel where the Federal legislature exercises its power.

A similar approach is followed in the Federal Democratic Republic Constitution of Ethiopia. Art 78 (2) of the constitution provides that, Supreme Federal Judicial authority is vested in the Federal Supreme Court. The council of peoples representations may be a two third majority vote, establish, nationally or in some regions of the country, such Federal High and First Instance Courts it deems necessary.¹²

In Ethiopia too there is a tendency for parallel judicial system when the people's representative come to exercise the power vested in them, but presently as the only Federal Court is the Supreme Court, the system is non parallel. Thus ever, the difference between the U.S.A Judicial structure and that of Ethiopia has not resulted from the provision of the respective constitution. Both constitutions vest the power to establish subordinate Federal Courts, though the manner may be different on their respective

Federal legislature. The American congress became parallel, where as the people's representative of Ethiopia has not yet exercised this power and the system is non-parallel.¹³

In Nigeria, the Federal legislature did not opt to establish Federal first Instance Court because of economic and social reasons that is the difficulty of covering the expense for establishing regional Federal Court, and the difficulty of staffing them with judges of adequate experience.

In addition to the economic reasons there is also the fear of the public opinion; i.e., establishing regional Federal Court may be taken as a means of imposing the will of the Federal government on the states on top of this, there is also the fear of confusion of jurisdiction.¹⁴

1.3 Unitary System of Judicial Structure

It is a system of government in which is conceived of as not divided but as belonging to the central government. This has not constitutional limitations placed up on its exercise of power over entities in the country. Unlike in the Federal system, the entities or the regional governments in Unitary system are dependant or subordinate to central government.¹⁵ so all powers are controlled by the central government and no apportionment of the judicial power therefore; in Unitary system court structures are characterized by vertical organization of court structure.

There are so many unitary countries that can be mentioned as example like Britain, France. Almost all of the African countries except Nigeria and Ethiopia are follow Unitary systems of government therefore, Unitary system is different from a federal system is that there does not exist in the former a division of power by each level government-central and regional.¹⁶ But in Federal system certain limitations are placed by the constitution up on the exercise of power by each level.

1.4 The Advantage and the Disadvantage of Federal Judicial Structure

As stated above the characteristic feature of Federal government is the allocation of powers between the Federal and the state government. In Unitary structure subscribes for a Unitary court arrangement and a Federal state structure usually congruent to a Federal judiciary. In a Federal judiciary is mostly dual, though the degree of duality may be varied.

The advantage of Federal judicial structure are, as Odiumosun says “Federalism may be said to be the best kind of government for people among whom there is a considerable amount of diversity in respect of language, religion and culture... and varying geographical and economic characteristics. In such situations no other form of government can strive so well and produce such good results as federalism does.¹⁷This means Federalism important principle to people live in one country with deferent culture, religion and language.

Federal Judiciary is a two layer judicial organization. One of the Federal government and the other of the states however, the two judicial organs are not completely separate. There is link and some degree of autonomy in the two layers as this is the tent of federalism. The need for two layers judiciary is to preserve the judicial power of both the Federal government and the state government. Where as if we act for a single judiciary in a Federal system, this would jeopardize the Federal system, since either the power of the Federal government or the states would be curtaile. On the other hand, opting for a completely separate judiciary of the Federal government and the states is equally dangerous, sine there will not be a final arbiter when there are controversies between the Federal government and the states government or between states.¹⁸To compromises the two extremes it is necessary to resort to the Federal structure of judiciary. Whereas the disadvantage of federal judicial structures are, overlapping and conflicting of jurisdictions over federal and state, and each state jurisdiction.

1.5 Applicable Laws in Federal Judicial System

Duality is a manifest able character of federalism in all the three dimensions of a government this fact create a confusion to court regarding the law to applied in relation with certain case. To put in another way, since both the federal state and individual member state have power of enactment of law there may be two legal acts by two different law makers over the same subject matters.¹⁹

Then when a suit with that subject matter is instituted before a court, the court would get problematic to determine the applicable law unless there is a well set out rule in this concern.

In Indian constitution if any provision of a state law is repugnant to provision in a law made by parliament which it is competent to enact, or to any existing list, then the parliamentary or existing law (the existing law that exists at the time the constitution come in to force), prevails over the state laws, and it does not matter whether the parliamentary law has been enacted before or after the state law thus to the extent of repugnancy the state law rendered void.²⁰

Hence, tenderly in India is that state courts apply the federal laws in any case that is, even it the federal laws may contradict with the state laws, and the state courts are bound to implement the federal laws.

In Ethiopia the applicable laws in Federal Judicial system is similar to India. According to Art 6 (1) and (2) proclamation 25/1996 states that federal court shall settle cases or disputes, submitted to them with their jurisdiction on basis of:

- Federal laws and international treaties
- Regional laws where the cases related to same;
- Regional laws to be applied pursuant to above statement here of shall not be applicable where they are inconsistent with Federal laws and international treaties.²¹

Therefore the Federal laws are the supreme laws of the Federal judiciary of Ethiopia this means any regional laws contradict to the Federal laws in Federal court shall not be applied. International treaties in the context of proclamation 25/1996 is ambiguous because which international treaties? Any international treaties or Ethiopia ratified treaties?

I think Ethiopia ratified International treaties because according to art 9 (4) of the constitution states that all international agreement ratified by Ethiopia are an integral part of the law of the land.²² So any international treaties not ratified by Ethiopia are not an integral part of the law of the land. Proclamation 25/1996, International treaties may be refers to ratified international treaties by Ethiopia.

CHAPTER TWO

2.1 MEANING OF JURISDICTION

In ordinary, sense jurisdiction means, authority of court. However, jurisdiction defined by many scholars different ways. According definition jurisdiction means power is constitutionally conferred on a judge to decide whether there has been a breach of law, the cause of the breach, and the kind of prison sentence or penalty that is appropriate for such a breach .The physical and the kind area or geographical district with in which a judge has jurisdiction is called his or her territory is called the territorial jurisdiction.¹ In other hand, jurisdiction refers to the authority exercised by a nation ,a judicial body , or legislative body over person, place, and property. In law, the term usually refers to the right of a court to hear and adjudicate legal matters. The jurisdiction of court may be determined according to various criteria.²For example, original jurisdiction, exclusive jurisdiction; pendent jurisdiction, limited jurisdiction, subject matters jurisdiction, civil jurisdiction, criminal jurisdiction, ancillary jurisdiction, concurrent jurisdiction and son on may determine the jurisdiction of court. Therefore, in a more general sense, jurisdiction may apply to the territory over which a nation has control including the land area, the adjacent sea, and the airspace and the authority of an international body to make decision binding on national entities.³

2.2 ELEMENTS OF JURISDICTION

According to the above definition jurisdiction means, the power of court to see and decide a case. So the first is knowing the jurisdiction of court is to be taken in civil proceeding jurisdiction has three element must be present in a given case there are judicial, material and local jurisdiction. All of these present in a given in order for the court “have jurisdiction”⁴. One of these elements of jurisdiction are not present the court have not jurisdiction for a given case therefore, judicial, material, local jurisdiction are a cumulative requirement for in civil case jurisdiction. The next topic each types of jurisdiction will be elaborate as the relevant laws of Ethiopia.

2.2.1 Judicial Jurisdiction

Judicial jurisdiction refers to the power of court of a particular nation or state to render a judgment binding and individuals or his property.⁵ This means judicial jurisdiction more concerned to the nationality or citizens of the defendants. In other expression, judicial jurisdiction, means the defendant or one of the defendants of the suit are a foreigner the issue of judicial jurisdiction raised but problems of judicial jurisdiction are not likely to arise to frequently in Ethiopia usually both parties are Ethiopians as the transaction which is involved in the suit has occurred here. This, the court assumes that there is judicial jurisdiction extent in the rare case where an objection is raised on this ground however as more international transaction are brought before the Ethiopia courts, the question will arise with greater frequency, and it is ,therefore, necessary to consider the law relating to judicial jurisdiction.⁶ In principle the defendant and the plaintiff are an Ethiopia's the issue of juridical jurisdiction are not raised but the act occurred outside form Ethiopia , like in contract, the contract concluded in England but the parties as jurisdiction may be raised

Judicial jurisdiction may be distinguished

- judicial jurisdiction in personam⁷
- Judicial jurisdiction in rem⁸

According to the teaching material of St. Mary's university college judicial jurisdiction in personam means:-

Personam this is a Latin word which mean 'against a person' involving or determine the person right and interest of the parties. An action is said to be in personam, when its object is to determine the right and interest of parties themselves in the subject matters of the action now ever, the action may be and the effect of a judgment is such an action is merely to bind the parties to it a normal action brought by one person against another for breach of contract is a common example of an action in personam.⁹

For the above expression person refers to nature and regal person. Therefore, judicial jurisdiction in personam may be depending on personal interest of the parties.

In rem judicial jurisdiction, the plaintiff can only bring against to the defendants property it self.¹⁰ According to Robert Allen Selder rem jurisdiction means, essentially an action that is brought against (although an individual may be named as defendant) and the relief sought is with respect to the property it self. That is, the plaintiff does not seek an order binding the person of the defendant the property which may be movable or immovable, corporeal or incorporeal.¹¹ Therefore, in rem judicial jurisdiction of court only depends on where the thing (property) situated .If the property situated in Ethiopia the court of Ethiopia can exercise jurisdiction in rem even if the owners of the property are not an Ethiopia citizen or nationality .

The Ethiopia court will exercise judicial jurisdiction in personam where one of the following requirement shall presented in given case.

- A. the defendant is an Ethiopia nationality or domiciliary¹²
- B. the act which is the subject matter of the suit occurred in Ethiopia or place of an act is Ethiopia¹³
- C. the defendant has consented to exercise of jurisdiction by the Ethiopia court¹⁴

In Federal system ascertainment of judicial jurisdiction of court are not only important to know the real judicial jurisdiction of court are not only which courts are judicial jurisdiction over a given case ,the federal or the state court and which state court has judicial jurisdiction over a given case are important.

A Nationality or Domiciliary

Nationality or domiciles of the defendants are one of the above requirements of judicial jurisdiction of court. The first basic of judicial jurisdiction, and the most common, is the defendant is an Ethiopia's judicial jurisdiction even through the transaction on which the suit is based occurred outside of Ethiopia note, however that it is the defendant's status that the determine judicial jurisdiction on this ground not the plaintiffs.¹⁵ So, who is the

Ethiopia nationality acquires? Who is to consider the domiciliary of Ethiopia? Moreover, what criteria to be fulfilled for a person who considered Ethiopian nationality or domiciliary? All these question are very important question to known the real judicial jurisdiction of court.

In related to acquisition of Ethiopia nationality the FDRE constitution under Art.6 (1) and (2) state that any person of either sex shall be an Ethiopia national where both or either parents is Ethiopia .Foreign may acquire Ethiopian nationalities.¹⁶ According to Art.6 in Ethiopia nationality acquired by descent and law. Under proclamation no 378/2003 (Ethiopian nationality proclamation) Art.3 up Art.12 enumerated or state, acquisition by descent acquisition by law and the condition to be fulfilled foreigners who acquire Ethiopia nationality by law. According to proclamation 378/2003 under Art.3 (2) additionally to the constitution nationality acquired by descent. According to this proclamation, an infant who has found abandoned in Ethiopia shall unless proved to have a foreign nationality, deemed to have been born to an Ethiopian parent and shall acquire Ethiopian nationality¹⁷. In this case the infant whether or not born Ethiopian parents the infant to acquire Ethiopian nationality unless to prove a parent have a foreigner.

According to 183 of the civil code of Ethiopia in related to domicile states that The domicile of a person code of Ethiopia in related to domicile states that principles seat of his business and of his interests with intention of living there permanently.¹⁸

For the above provision of the civil code a domicile said to acquire where the two requirements that is, residence in a place and the intention to reside in that place are cumulatively satisfied. Without the fulfillment of the element of intention to reside permanently in the place residence, however long it may be, does not constitutes a domicile in it self. Similarly, as long as there is an intention to reside permanently it is not necessary that a person should reside for a certain period to acquire the status of a domiciliary.

The phrase “Intention to reside permanently” is difficult to ascertain the intention of a person who resides in a particular place. But this may be solved by he application of

factually tests and in some countries such tests as location of real or personal properties, location of bank account, voting registration, payment of personal income tax, membership in churches and associations have been proposed.¹⁹ It is equally serves for legal personas; they are subject to the law of the court, which established theme. So any association established in accordance with the provision of the civil code or the commercial code is subject to the judicial jurisdiction of Ethiopia, even through the transaction on which suit is brought occurred else where. A question does arise with respect to foreign associations, which are associations created under the law of another state.²⁰ Therefore, in principle an association or partnership established by the commercial code or civil code of Ethiopia is subject to the judicial jurisdiction of Ethiopia

B. Consent

Consent also the alternative formality requirement of judicial jurisdiction of court, under this principle a court in Ethiopia could take judicial jurisdiction if the defendant consented or submits the jurisdiction of the Ethiopia court.

Consent may classified into two:-express ²¹
-Implied ²²

Express consent has given, to the defendant in written form or orally, suppose that foreign businessperson, who have offices in Ethiopia, enter into a contract in Aden, where the also have offices. The contract has too performed entirely in Aden and does not involve their Ethiopia offices at all. However, the parties agree that all disputes arising under the contract shall submit to Ethiopian courts.²³ Both parties are not Ethiopia nationality but both parties agreed to submit disputes to Ethiopia courts for the contract. The contract may be written form or orally.

Implied consent, when the defendant does not raise objection to jurisdiction implied consent according to Selder, implied consent will found where a party does in fact submit to court's jurisdiction, although he does not expressly admit that he has done so. In such a

case, he cannot later deny that the court can exercise jurisdiction over him.²⁴ Because according to Art.244 (2) (A), of the Civil Procedure Code of Ethiopia, shall decide such preliminary objection as may be taken the parties. The first one is that, the court has not jurisdiction but the defendant not arise before proceedings with the trial Art 244(2) (A) of the Civil Procedure Code of Ethiopia, that is, the court has no jurisdiction.²⁵ In this case, the defendant considered as to agree a court jurisdiction.

C. Place of an Act

The final basis of judicial jurisdiction, in other expression, the final requirement that may be fulfilled alternatively to the above requirement of judicial jurisdiction, namely, nationality or domiciliary and consent is the place of an act or the act which is the subject matter of the suit occurred in Ethiopia. For example, A is a Sudanese national and he is domiciled in Sudan. A come to Ethiopia as a tourist A, while driving, injured B an Ethiopia, B sued A in a high court in Ethiopia claiming compensation .The Ethiopian court has, judicial jurisdiction over a because the act that is he injury, which is the subject matter of the suit occurred in Ethiopia.²⁶ In this case the nationality or domiciliary of the defendant or the plaintiff are not important because the act that gave rise to the action has occurred here in Ethiopia.

Therefore, the act, which is subject matter of the suit, occurred in Ethiopia or although some of the act occurred out side Ethiopia, but the transition has sufficient transition. For instance, two businessmen having their main place of business in has sufficient contract with the transaction to make it reasonable that the defendant defend a suit on that transaction here. Therefore, there is judicial jurisdiction based on the dong of an act, the performance of the contract in Ethiopia.²⁷

Therefore, an act that is the subject of the suit happened in Ethiopia. It can be by contract or extra contractual liability (accident). The accident is by or against a foreigner. The only exception of the pace of an act jurisdiction is a diplomatic case.

2.2.2 Material Jurisdiction

Material jurisdiction is one of the cumulative elements of jurisdiction. It refers to the power of the court to hear the kind of case that is before it. Usually it will involve the question of which level of courts should hear the case.²⁸ This means which courts (Federal or State) and which levels of court (First Instance, High or Supreme) have jurisdiction over the issues? In Federal systems of government structure of court is dual court structure, so, the material jurisdiction of court categorized into two aspects.

- A. The type of the case or subject matters of the case.²⁹
- B. Pecuniary jurisdiction with refers to the amount of money involved.³⁰

A. Subject Matter Jurisdiction

The subject matter aspect of material jurisdiction refers to the type of case could be Federal case or State case. The Federal subject matter to case that to be seen determined by Federal Courts only. Whereas, State court can also see and determine state matters.³¹ Therefore, subject matter jurisdiction most of the time reflected by Federal form of government counters, like Ethiopia, U.S.A and Indian.

According to article , 51 and 55 of the constitution land article 3 of proclamation number 25/1999, enumerate the Federal laws (laws that has enacted by the house of peoples representation) and the Federal courts jurisdiction judicial power, so the state laws are laws that has proclaimed by the legislative bodes (state council) of states.

Federal Subject Matters

According to the above expression, Federal matter those types of cases that are to be seen and determined by the Federal court only. According to proclamation 25 of 1996 part two, Art.3 provided the Federal jurisdiction of Federal Courts, there be, case arising under the constitution, Federal laws and place specified in the constitution or in Federal laws .So, according to this proclamation that is 25/96, Federal courts subject matters jurisdiction of material jurisdiction are provided under according to Art.3(2) of

proclamation 25/1996 state that “parties specified in federal laws”.³² Parties specified in federal laws means, the parties listed under proclamation 25/96 Art.4, (1 up to 12) and Art.5, (1 up to 10). I have not concerned to the criminal parts of subject mater jurisdiction of material jurisdiction.

In civil case, the Federal Courts Civil Jurisdiction of material jurisdiction in terms of subject matter is enumerated under are 5 sub articles 1 up to 10.

Article 5 civil jurisdiction federal

Civil jurisdiction federal courts shall have jurisdiction over the following civil case.

1. Case to which a federal government organ is a party.
2. Suits between persons permanently residing in different regions.
3. Cases regarding the liability of officials or employees of the federal government in connection with their official responsibilities or duties.
4. Cases to which a foreign national is a party ;
5. Suit involving matters of nationality.
6. Suit relating to business organization registered or formed under the jurisdiction of government.
7. Suit regarding negotiable instrument
8. Suit relating to patent, literary and artistic ownership right.
9. Suit regards insurance police.
10. Application for habeas corpus.³³

Under the provision of Art.3 (3) of proclamation 25/96 provided that “places specified in the constitution or in federal laws”. Depend on the teaching material of St. Mary’s university college places specified in the constitution or in federal law means, Art.11 (1) (b) and Art.14(2) of proclamation 25/96 provided that case the that arise in Addis Ababa and Dire Dawa shall be under the jurisdiction of Federal Courts. In other courts case that arise in Addis Ababa and Dire Dawa with in the material jurisdiction of court .So, any kind of cases the arising in Addis Ababa and Dire Dawa which has local jurisdiction and which has the power to the pecuniary limit.³⁴ Therefore, all the three sub article of article 3 of proclamation 25/96 is the subject matter of material jurisdiction of federal court.

Note that, according to proclamation, 25/96 Art. (1) provision intention is that case which has constitutional provision, as their background, but it should not interpret the constitution in Ethiopia. According to Art.62 (1), the power to interpret the constitution has the house of Federation.³⁵

State Subject Matters

The Federal Constitution in its Art.80 (1) clearly provided that “the Federal Supreme Court shall have the highest and final judicial power over Federal matters.³⁶ While sub Art.2 of the same provision stipulates in similar fashion the state Supreme Court shall have the highest and final judicial power over state matters.³⁷ So, state cases that arise on the case of state law and that not Federal case. A state case must submit to state court or in other words, the state court have subject matter or material jurisdiction over state case. Therefore, the state matter jurisdiction of state courts to see and determine state subject matter or state case has given to them by the constitutions.

B. Pecuniary Jurisdiction

The provision of the code dealing with material jurisdiction represents an attempt to appropriation the judicial business among the various level of court in the hierarchy essentially material jurisdiction has based on the amount of money that is involved in the case. The theory is that the important case should hear by the court higher in hierarchy, and in the absence of a better method, the importance of a case has determined by the amount of money that is involved.³⁸ The current court level in Federal courts is three namely, Federal Supreme, High and First Instance Court with original jurisdiction .Where as, under the regime of Civil Procedure Code, Ethiopia has original jurisdiction. Where Awraja Guezat court and Woreda Guezat court with original jurisdiction. Where Awraja Gueuzat court and Woreda Gueuzat court with original jurisdiction .³⁹

Jurisdiction to proclamation, number 25/96, Art.8 the Supreme Court has a first instance jurisdiction on suit arising offences for which officials of the federal government are held. Liable in connection with their offences responsibility with out prejudice to

international diplomatic law and custom, offences for which foreign ambassador, consuls as well as representations of international organization and foreign ambassador, consuls application for change of venue from one federal high court to another or to itself.⁴⁰ In accordance with the law, the Federal Supreme Court did not have original jurisdiction in terms of pecuniary jurisdiction. However, in terms of subject matter all the above Art.14 of proclamation 25/96, Federal subject matter cases that involve an amount less than or equal to birr five thousand (br.5000) will be within the jurisdiction of the Federal First Instance Court. Whereas according to Civil Procedure Code and subsequent proclamation, the jurisdiction of Woreda court has jurisdiction in claims that involve cases up to 50,000 birr for movable property and up to 10,000 birr for immovable property.⁴¹

Application for divorce, application of a change of name, application for a declaration that a will legally valid will etc. are all applications that cannot be expressed in money so, when such kinds of cases are Federal cases because of the place where they arise, they will be under the jurisdiction of the federal first instance court.⁴²

Under the Civil Procedure Code, jurisdiction of the High Court has been provided as those to be called pecuniary and non-pecuniary ones. Concerning pecuniary jurisdiction, it is provided that it shall have jurisdiction to try all suits, not regarding immovable property, where the amount involved exceeds Ethiopia birr 5,000. When the suit regards is on all suits that involve the amount exceeding 10,000 Ethiopia birr.⁴³ However, according to proclamation 25/1996 Art.11 the High Court has given first instance jurisdiction on such cases which fall under the competence of the Federal government and whose subject matters involve a value exceeding Ethiopian birr 500,000.⁴⁴ Another deviation, in respect of the first instance jurisdiction of high court under proclamation 25/96 art 11(2) states that regarding private international law, nationality, application regarding change of venue from one federal first instance court to another or to itself, in accordance with the law and application regarding the enforcement of foreign judgment on decision.⁴⁵

Therefore, in case of material jurisdiction, the jurisdiction of court has depended on the pecuniary amount of the suit and the subject or suit. The subject matter jurisdiction of

material jurisdiction of courts that may be federal or state subject matters, where as the pecuniary jurisdiction of material jurisdiction of court has depend on the amount of money In the suit. Depend on the amount the case that may be see and determine by federal (supreme, high or first instance) court or one of the state count's have not concerned in this but in material jurisdiction, the two most significant questions in the area of material jurisdiction concern. The first one is that how is determined how much money is involved in case. Moreover, when the matter is not be brought before the court at all the answer to this question in provided in Art.226 up to 228 the civil procedure code of Ethiopia.

2.2.3 Local Jurisdiction

Local jurisdiction refers the important elements. Once a person has ascertained that his case can be entertained in Ethiopia court, after that he has know which court in Ethiopia means federal or state and which federal or state court has the power to see and determine this case. So local jurisdiction refers, in case of Ethiopia, the area of same in which the case is to be tried.⁴⁶

When we see the provision of proclamation 25/96 on local jurisdiction, they are very general, they tell us about what would happen when the residence of a person and his business seats differs. When a suit is regarding aboard, when a suit is against the federal government, when a suit is regarding immovable property, when the suit regarding contract, when the suit regarding legal person, when a suit regarding several cause of action and soon. However, these and related other questions are answered by the civil procedure code regarding local jurisdiction, in chapter three Art.19 to 31. But not assured by proclamation 25/96.

The Basic Place Local Jurisdiction

Art 19(1) of the civil procedure code of Ethiopia state that:

Which prejudice to the provision of the following articles and to such special place of jurisdiction as may be provided for by any law, every suit shall be

instituted in the court of the place where the defendant actually reside or carries on business or personally work for gain.⁴⁷

Therefore, the purposes of local jurisdiction the most important place is what may be called “the basic of local jurisdiction” therefore, the basic place of local jurisdiction is set font in Art.19 and it is the place where the defendant actually resides or carries on business or personally work for gain.⁴⁸ The loss of local jurisdiction gives the plaintiff alternative place where he can bring his case.

Actually Resides

“Resides” is to be understand in the ordinary sense of the term the pace where a person resides is simple the place where he lives. As a laymen would has a house in Addis Ababa, where he spend most of his time, but goes to visit his parents in Dessa every other week end, he is residing Addis Ababa and not in Dessa within the meaning of Art.19.⁴⁹ Individual in most are mobile and hence it may be difficult to find them for legal purpose.⁵⁰ This is characteristics of all human being. So one person may be reside more than one place. According to Art.177 (2) of Civil Procedure Code of Ethiopia, state two types of residence, principal residence, and the other that of secondary residence. In this case, principal residence refers the place where he actually resides⁵¹ the question, is that, in which of several residence can the defendant sued? In fact, the Civil Procedure Code dose not answered this question .But the plaintiff may sued the defendant.

- He can be sued in the count that is found in any one of his residence or⁵²
- He has to be sued at his principle residence. The principal residence of the defendant may be a more convenient place for him to defend the suit⁵³

Carries on Business

This is also, one of the alternative local jurisdictions of the defendant. It refers a person many have business or may work in a place different from the place where he resides.⁵⁴ Suppose that a judge of Ambo First Instance Court in Oromiya who has his residence and family in Dire Dawa. In this case, the residence and the work place has found in different

region, Oromiya and while Dire Dawa is the city under the federal government. The plaintiff can use in Ambo and Dire Dawa.

Therefore carries on business refers Jurisdiction, the fact of owning interest in Business and or sharing the profits. It does not need the person involvement of personal efforts.

Personal Works for Gain

According to Art.19, personal works for gain is one of the alternation places of local jurisdiction. It refers to only nature person personal works for gain means a place of business it needs his personal involvement or efforts on the business. For instance a person has residence (home) in Harar and he has business in Addis Ababa run by agent and personal working for gain in Deberzeyt. So plaintiff can suit every where means one of the above places.

2.2.4 Others

According to Art.25, govern local jurisdiction in a suit regarding contract. It refers to four kind of contract

- (1) contract generally ⁵⁵
- (2) contract of carriage ⁵⁶
- (3) Contract of insurance ⁵⁷
- (4) Contract of pledge, deposit or bailment ⁵⁸

Under the provision of art 25(1) up to (4) provided different kind of contract, each type of contract place of local jurisdiction also different, in addition to art 19 of civil procedure of Ethiopia local jurisdiction.

According civil procedure code, art 24(1) provided contract general. This indicate that, the place of local jurisdiction regarding any types contract of carriage insurance, pledge, deposit or bailment is the place where the contract was made or was to be executed. In addition, the plaintiff could also sue in a place where the defendant resides, works for gain or carries on business according to Art.19. But it the in another place, the plaintiff

has to institute the action in such place.⁵⁹ This means that in such a case plaintiff may either sue in a place authorized by Art .19 or at the place where the contact was made or to be execute in accordance with Art 22(1) suit regarding contract of carriage are to instituted in accordance with the provision of maritime code (carriage by air) .Suit involving contract of carriage by seas are to instated at the court sitting at the port of arrival of the goods according to Art 208 of the maritime code of Ethiopia .In other hand suit- involving contract of carriage by air to instituted according to Art.647 of the Commercial Code of Ethiopia.⁶⁰

Art 647- jurisdictions

- 1) Any claim for damage under this title (carriage by air) may be brought, in the disc reaction of the plaintiff, either before the count of the place where the carrier is domiciled has his principal place of business or has agent who makes the contract or before the contract of the place of destination.⁶¹

According to the provision is Art.647 of the Commercial Code of Ethiopia, the term domicile not refers to nature person domicile. Therefore, the term domicile refers where the organization (carries) has formed or registered.

Suit regarding a contract of insurance, According to Art.24 (3) of the Civil Procedure Code a contract of insurance may instituted in the court of the place where the head office of the insurance company concerned is situate or registered in Ethiopia or where the object insured is situate.⁶² suppose that a car has damaged in Dire Dawa insurance in Gonder. According to the example the determination of local jurisdiction a rise with the right to sue depend on the law of local jurisdiction give us alternative place. There are Dira Dawa (the insured object situated) Addis Ababa (the insurance suit regarding a contract of insurance may be instituted in court of place where fore, head office of insurance company is situated or registered or where the object insured situate. In addition, the plaintiff could also sue in a place where the defendant resides, work for gain or carries on business according to Art.19. But if both parties may be agree that in case of dispute a rise, the suit will be brought in another place, the plaintiff has to institute the action in such place.⁶³

In case of extra contractual could sue the defendant according to Art.27 Civil Procedure Code, place where the defendant actually resides, carries on business, personally works for gain, or such wrong was done from the collision at car or any other contractual liability. Therefore, according to Maritime Code of Ethiopia Art.237 authorizes, the plaintiff to sue one the following four places (1) the place of collision, where the defendant is domicile; (3) the place of registry of the ship of owner against whom the action is instituted (4) the place where the ship has been arrested. However, not sue according to according to Art.19 because the provision is mandatory (shall be) but in case of suits involving immovable property, like land and house in principle, it must be instituted at situate or at the place where the immovable property is hold by or on behalf of the defendant and the relief can be obtained entirely through his personal obedience. The plaintiff may in statute the action at the suites (the place where the immoveable property is situates) or according to Art.19 of the Civil Procure Code at the court of the place where the defendant actually resides or carries on business or personally works for gain.⁶⁵

According to Art.217 of the Civil Procedure Code of Ethiopia, allows the plaintiff to join his causes of action against the same defendant or several defendants .This is an option to the plaintiff this means, according to Art.29 of the Civil Procedure Code, the local jurisdiction of court that may be any one of the court having jurisdiction, because of one of such cause of action.⁶⁶

Under Art.31 of Civil Procedure Code any person who is alleging that the forum is inconvenient for both parties and the court can no deliver impartial judgment or that an unusual issue of law has a risen may apply for a change of venue before evidence on the case in heard. In case of Federal Court similarly according to Art.11 (2) (d) of proclamation 25/1996 provided that applications for change of venue from the Federal First Instance Court to another or to it self, in accordance with the law.⁶⁷ Therefore, the local jurisdiction of Federal First Instances Court may be changed by the application of the parties (the defendant or the plaintiff) to Federal High Court.

CHAPTER THREE

COMPARATIVE APPROACH

3. COURTS CIVIL JURISDICTION

In any Federal system of government court structure is dual court structure. India also one of the Federal system follower, so the India government structures are the government that means the power of government separate in to two level of government. India is a Federal republic. Its central government, modeled after the British parliamentary system, is composed of three branches executive, legislative and judicial.¹

Therefore, the Federal or State government in India may be established three department of government. This means both level of government can exercise legislative executive and judicial power within their jurisdiction as provided for in the constitution. This implies throughout the territory of each state two governments operate-the Federal with its administrative, judicial and legislative organization for the enforcement of federal laws, and the state with its administrative, judicial and legislative organization for the enforcement of state laws. But now I have concerning only with the Federal judicial of court civil Jurisdiction elements, namely, judicial, material and local jurisdiction.

3.1. Judicial Jurisdiction

There are two major types of judicial Jurisdiction in General

Personal (person) Judicial Jurisdiction

In rem (against the thing).

Personal Jurisdiction also known as in personal (against the person) jurisdiction gives a court the authority to make decisions binding on the person involved in a civil case. Every state has personal Jurisdiction over person within its territory conversely. On state can exercise personal Jurisdiction and authority over person outside its territory unless the persons have manifested some contact with state.²

In U.S.A personal Jurisdiction based on citizenship consent and waiver.³ In case of citizen ship a defendant is subject to the personal jurisdiction of his/her its home state⁴ home state means, for individual by residence citizenship and domicile of person. Personal Jurisdiction based on domicile even though the defendant was absent from the state at the time; for corporation by the state of incorporation conduct it principal operation,⁵ where as in Ethiopia personal judicial jurisdiction personal judicial jurisdiction of count has based on the Nationality or the domiciliary of a person and consent of a person.

In U.S.A consent to the court's personal jurisdiction in advanced of a suit, and such consent, if expressly made, function to cure any jurisdictional defects that might other wise exist.⁶ Waiver in U.S.A and implied consent in Ethiopia are similar that means, in U.S.A when a non-resident defendant objects to a state's personal jurisdiction over him/her on due process ground, he/she, must preserve such objection or risk waving it, waiver need not be express. It is enough that a party act in a way which is in compatible with the party's argument that forum lacks a bases for asserting personal jurisdiction over him/her.⁷ In other hand in Ethiopia personal jurisdiction in case of implied consent when the defendant does not raise objection to jurisdiction at first hearing,⁸ the defendant considered agree to the court jurisdiction.

The U.S.A court held, that, the court constitutionally exercise jurisdiction over a non resident defendant of the defendant had sufficient contact with the sate such that foreign the person to litigate in the forum din not offend Traditional notions of play and substantial Justice.⁹ So the personal Jurisdiction the U.S.A court may be depending on the sufficient contact with the state person. The communication of individual or corporation not physical present in state may invoke personal Judicial Jurisdiction by making a single contact with the state by telephone mails or facsimile transmission.¹⁰

The U.S.A federal court personal Jurisdiction states or governed by rule 4 of the federal rules of civil procedure, rule 4 directs each federal district court to follow the law on personal Jurisdiction that is in force instate court where the federal court located,¹¹ this means one of U.S.A federal count can exercise personal Jurisdiction the act occurred in U.S.A territories.

In term judicial jurisdiction, the term comes from Latin word this means, for (against the thing). In rem jurisdiction applies where the dispute involves the property itself. A court exercising in rem jurisdiction has the authority to make a decision a to the property ownership that will be binding on all the world.¹² Means the U.S.A court in judicial Jurisdiction only exercise the property situates in U.S.A the property that may be movable or immovable. In Ethiopia also similar to the U.S.A court, the Ethiopia court can exercise in rem judicial jurisdiction for the property situate in Ethiopia.

3.2. Material Jurisdiction

Any countries that do follow Federal form of government in which there are dual court structure, apportionment of judicial power among federal and state court is based on subject matter distinction. That means the distinction of jurisdiction as between Federal court and state court is on basis of subject matter. Now I have concerned to India federal court subject matter jurisdiction relatively from the Ethiopia Federal Court subject matter jurisdiction. In India government, both governments can exercise different power that means both governments can establish legislative, judiciary and executive separately so the court structure of India are dual court structure namely, Federal Court and State Court.¹³

In India, according to the provision corresponds to Art 131 and S 204 of GI Act 1935. the main part of sec (1) is reproduced for comparison with the provision of the constitution, original Jurisdiction of Federal Courts, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the provinces or any of the federated states, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.¹⁴ This means the Federal Courts of India are original jurisdiction over a dispute among tow or more than two states on conflict time. For instance conflict or dispute arise between Calcutta and bomba whatever reasons of dispute; the dispute shall be settled by the Federal Court of India.

The Supreme Court in India is the Ultimate interpreter of the constitution and the laws of the land. It has appellate Jurisdiction over all Civil and Criminal matters involving substantial issues concerning the interpretation of the constitution.

The court has the original and exclusive Jurisdiction to resolve dispute between the central government and one or more states and union territories as well as between different states and union territories.¹⁵ Additionally the supreme court of India is also empowered to issues advisory ruling on issues referred to it by the presidents. The Supreme Court has wide discretionary power to hear special appeals on any matter from any court except those of the armed services.¹⁶ It also functions as a court of record and supervises every high court.¹⁷ Therefore, the supreme court of India are the final appellate courts of India courts this means the Federal Supreme Court has the final appellate court of Federal Court and State Court of India.

The U.S constitution provides for federal question jurisdiction whenever a case arises under the constitution, federal laws as enacted by congress and international treaties.¹⁸ Similarly to India Supreme Court, the U.S. Supreme Court may take jurisdiction any Civil or Criminal matters arise under the constitution, laws or treaties of the United States.¹⁹

Where as in Ethiopia Federal Court jurisdiction provided under proclamation 25/1996 part two, Art.3, the jurisdiction of Federal Court, the federal court shall have jurisdiction over a cases arising under the constitution, Federal laws and international treaties; parties specified in federal laws and place specified in the constitution or in Federal laws.²⁰ In other hand the Federal Supreme Court shall have exclusive first instance jurisdiction over offences for which officials of the federal government are held liable in connection with their official responsibility; with out prejudice to international diplomatic laws and custom, offence for which officials foreign ambassadors, consuls as well as representative of internationals and foreign states are healed liable; application fore change of venue from one Federal High Court to another or itself, in accordance with the law.²¹The constitution of Ethiopia also enumerate in its article, Art.80 sub Art.3 (a) states that, the Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law.²²

Therefore, the two countries court means India and U.S.A courts jurisdiction provisions are more similar to the provision of the Ethiopia federal court proclamation and the constitution of Ethiopia.

In case of pecuniary Jurisdiction, the pecuniary limit of the court is different from one country to other countries pecuniary limit because of the economic development and the value of the currency of the counters. Now I have not concerned the pecuniary limit of the court because the pecuniary limit of each courts clearly enumerated in law of each countries some time the practical case may be exist some problem.

3.3 Local Jurisdiction

According to chapter two of this paper, local jurisdiction refers; the area of some in which the case is to be tried. Such a question come to play when we try to find an convenient place for the parties to institute there case and defend the same so the local jurisdiction of court are one of the cumulative elements of jurisdiction in India, the local jurisdiction of court regarding immovable property shall be instituted in the court within the local limits of whose jurisdiction the property situate in India.²³ One of the India court can exercise the local Jurisdiction means, suit to be instituted where subject matter situate. Subject to the pecuniary or other limitation prescribed by any law, suit regarding for the recovery of immovable property with or with out rent or profit, for the partition of immovable for the determination of any other right to or interest in immovable property and for recovery of immovable property actually under distraint or attachment.²⁴ This means all the above issue regarding immovable properties is settled by India courts the court may be Federal (First Instance, High or Supreme Court) or State (First Instance, High or Supreme Court) of State of Federal Courts.

Incase of compensation for wrong to immovable property additional local Jurisdiction other than the immovable property situate in India this means, a suit to obtain relief respecting, or compensation for wrong to immovable property held by or no behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience be instituted wither in the court within the local limit of whose Jurisdiction the

property is situate, or in the court within the local limit of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain,²⁵ where as in case of suit for compensation for wrongs to person or movable property, the plaintiff can sue a defendant, if the Jurisdiction of one court and the defendant resides or carries on business, or personally work for gain, within the local limits of the Jurisdiction of another court of India, were as In Ethiopia In case of extra contractual could sue the defendant according to Art.27 of Civil Procedure Code provided that suit for compensation for wrong done to persons or to movable property may be instituted in the court of the place which such wrong was done or in accordance with the provision of Art.10. The provision of Art .19²⁶ place where the defendant actual resides, carries on business or personally works for gain.

In case of other suit that means the case regarding immovable, movable or other types of case within territory of India. Every suit shall be instituted in a court within the local limits of whose Jurisdiction.²⁷

The defendant, or each of the defendant where there are more than, one, at the time of commencement of suit, actually and voluntary resides, or carries on business or personally work for gain, or any of the defendants either the level of the court given, or personally work for gain.

In case of other suit that means the case regarding immovable, movable or other types of case within the territory of India. Every suit shall be instituted in a court within the local limits of whose jurisdiction.

The defendant or each of the defendant where there are more than one, at the time of commencement of suit, actually and voluntary resides, or carries on business or personally work for gain, or any of the defendant either the level of the court given, or personally work for gain ads aforesaid, acquiesce in such institution or the cause of action, wholly or in part; arise.²⁸ Therefore the India court of local Jurisdiction more similar to the Ethiopia court local Jurisdiction. In chapter two of the paper was took about the element of Jurisdiction within the Laws of Ethiopia. According to this chapter, in case of immovable property like land and house the suit must be instituted at situate or at the

place where the immovable property is situated the only exception of the general rule is that. Where the immovable property is has by or on behalf of the defendant and the relief can be obtained entirely through his personal obedience.

In India Change of venue of local Jurisdiction allowed. Where a suit may be instituted in any one of two or more courts and is instituted in one of such court only defendant, after notice to other parties may, at the earliest possible opportunity and in all cases where issues are settled at before such settlement, apply to have the suit transferred to another court, and the court to which such application is made after considering the objection of the other parties (if any), shall determine in which of the several court having jurisdiction the suit shall proceed²⁹ that means change of venue transfer a case according to S 25 of the Civil Procedure Code of India read with Art.139 (A) of the constitution where the matters is at investigation stage, question of transfer does not arise.³⁰

In Ethiopia according to Art.31 of the Civil Procedure and proclamation 25/96 states where it is made appear to the High Court, before judgment, by application of either party. In Federal government of Ethiopian Federal Court, the Federal Court Proclamation in its Art.11 (2) (d) provided that applications for change of venue from one federal first instance court to another or itself, in accordance with the law.³¹ So in both countries means in India and in Ethiopia change of venue of court may be changed by the application of the parties (the defendant or plaintiff). Where the several courts heaving Jurisdiction are subordinate to the same appellate court an application under section 22 shall be made to appellate court. This means the application shall be made to say High Court and where such courts are subordinate to different high within the local limits of whose Jurisdiction the court in which the suit brought is situate.³² Situate in this context means the court situate in India.

In India court local Jurisdiction in case of contract, a suit for breach of contract can be filed at the place performance which is also part of cause of action. Inference of ouster of Jurisdiction of court depends on the facts of each case.³³ In other hand in Ethiopia the local Jurisdiction of court in case of contract, the law provided under Civil Procedure

Code Art.24(1) that indicates a general contract in this article the place of local jurisdiction are the places where the contract was made or was to be executed.³⁴

In India objection of Jurisdiction shall not be allowed by any appellate or revision court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of Justice³⁵ where as in Ethiopia objection of Jurisdiction states under Art.9(1) says that a statement of claim filed in a court not having material Jurisdiction shall be rejected in accordance with Art.231, and Art.10 (1) says the same thing as to a statement of claim filed in a court not local jurisdiction. Judicial Jurisdiction is not express mentioned in this context. Since at the time of the filing of statement of claim the court cannot determine whether all the bases of judicial jurisdiction are lacking, it is submitted that Art.231 must be read in light of Art.9 (1) and 10 (1) which only authorize rejection for lack of material and local jurisdiction.

The court should not consider the question of lack of Judicial Jurisdiction unless the defendant raises an objection on that ground at the first hearing.³⁶

CHAPTER FOUR

4.1 THE CIVIL JURISDICTION OF FEDERAL COURTS OF ETHIOPIA

In a Federal Judiciary, there is an apportionment of the judicial power between the two layers of government, the Federal and State government. In such a situation, there must be a mechanism to determine the competence of each court.

Now, Ethiopia is the follower of Federal system of government. So the court structure of Ethiopia shall be depending on the federal court structure principle according to his principle the power of court proudly classified in to two. Namely, the Federal Court jurisdiction and the State court jurisdiction. In the constitution of Federal democratic republic of Ethiopia (FDRE), the final and highest power of jurisdiction over both Federal and State matters is given to the Federal Supreme Court and the State Supreme Court respectively. Provided that there is delegated with power of court on whatever sort of matters pursuant to this same instrument the jurisdiction of the Federal High Court and First Instance Court respectively.¹ That means, the courts shall exercises power of the jurisdiction of those Federal Courts simultaneous with their jurisdiction over state matters.

Therefore, the Federal Court Jurisdiction has the matters, that is Federal matters in other hand the State Court Jurisdiction has also jurisdiction over state matters. The question is which one is Federal matter and State matters? According to proclamation number 25/1996 (Federal Court Proclamation) states that the Federal Court shall have jurisdiction over case arising under the constitution, Federal laws and International treaties.² In this provision the phrase “International Treaties” is ambiguous because which international treaties? Ethiopia ratified International treaties or any International treaties? I think Ethiopia ratified International treaties because according to Art 9 (4) of the constitution provided that, all International agreements ratified by Ethiopia are integral part of the law of the land.³ Actually this is a mere guess of the writer of this paper. The writer of this

paper doesn't bother whether this guess has got the inner intention of the proclamation number 25/1996 or not.

It is remembered that in the previous chapters, I have made an effort to show that the federal constitution presupposes the existence of dual structure of court when it's specifically provides that judicial powers both at Federal and State levels are vested in the courts. The constitution did to divergent interpenetrations in different scholarly writings the "arising under clause" most often is assigned the meaning that state do have concurrent jurisdiction over Federal matters. In particular, it is to the Federal Court, State do have concurrent jurisdiction said that if there are matters that are expressly given to the Federal Court, State Courts are believed to usurped of such jurisdiction in such a way that only Federal Court would have exclusive competence over these matters. On the basis of this analysis, Art 3 (1) of Proclamation shall be construed in such a manner that it is a general rule of law that show us that matters arising on the basis of Federal law generally belong to the sphere of Federal Court Jurisdiction.⁴

The principle under Art 3 (1) of the proclamation holds the idea that Federal Court shall have jurisdiction over all case that may arise under the constitution, Federal laws and international treaties. However, Art 4 up to 8 of the proclamation on the other hand enumerates a very small number of federal laws that fall within the sphere of competence of Federal Court. It can be argued from this circumstance that blanket provision of Art 3 (1) is simply meant to show as a matter of principle what falls under the Federal matter group.⁵ In this connection, it can be well argued specifically that Federal laws in both criminal and civil areas give us the meaning that there are as fall within the range of exclusive jurisdiction of Federal Courts. Therefore, cases arising under laws falling beyond the areas specifically enumerated under Art 4 up to 8 would presumably rest with the ambit of concurrent jurisdiction.

Another ground for conferring jurisdiction to Federal Court relates to parties of the case. Art 3 (2) of proclamation No. 25/1996 provides that, as a matter of principle Federal Court would have jurisdiction over parties specified in Federal Laws. So to speak in all those cases where one of the parties (the defendant or the plaintiff) is a Federal

Government or foreign national, the suit is against official or employees of the Federal Government in connection with their official responsibility or the suit is between persons permanently residing in different state, then, in such cases, will fall with the ambit of the Federal Court Jurisdiction.⁶

The last but not list, ground on basis of which proclamation No. 25/1996 grant Federal Courts with jurisdiction is with respect to those case, which arise in certain places that are enumerated under the constitution, or other Federal Law as can be understood from article 3 (3) of the same proclamation. Article 11 (1) (b) and 14 (2) provide that case arising in Addis Ababa and Dire Dawa are within the jurisdiction of Federal Courts. Therefore, all cases arising in Addis Ababa Dire Dawa are by virtue of this fact only fall with the scope of Federal Courts jurisdiction.⁷

The Federal and state Courts jurisdiction also divided in to three level of Court. In Federal Court structure, the power of jurisdiction of courts are classified in to three level of court namely, Federal first instance, high and Supreme Court. Similarly the state court power of jurisdiction are also classified in to three levels, there are state first instance, high and supreme court. The writer of this paper only concerned on the three levels of Federal Courts of civil Jurisdiction of Ethiopia.

4.1.1 Federal First Instance Court

The Federal first instance courts are the one level of court of Federal government. The Federal first instance court jurisdiction is depending on local, material and judicial Jurisdiction. The Federal First instance court is jurisdiction over Federal matters over both criminal and civil matters.

The writer of this paper, have not concerned the criminal jurisdiction of the Federal first instance court but. Generally, the criminal jurisdiction of this court enables the court to see criminal case, related with one of these offence; offence against the fiscal and economic interests of the Federal Government; offences regarding Counterfeit Currency;

offences regarding forgery of instruments of Federal Government; offences regarding the security within more than one region or at the international level; and offence regarding foreign nationality.⁸

When we comes to the first instance civil jurisdiction of the Federal first instance Court according to Art 14 of proclamation 25/1996 provided that, the Federal first instance Court shall have jurisdiction over Federal matter cases that involve an amount less than or equal to Birr Five hundred thousand ($\leq 500,000$ Birr) will be within the limit of the Federal First instance court jurisdiction. But sometime, the case can not be determined in terms of money. In this case, there are also the jurisdiction of the Federal First instance court, case arising under the constitution, Federal laws and International treaties, parties specified in Federal and places specified in the constitution or in Federal laws (Addis Ababa and Dira Dawa). In addition to these, the Federal first instance court civil jurisdiction also enumerated under sub-Art (1) (2) (3) (6) (7) (8) (9) (10) of Art 5 of proclamation 25/96, there are, cases to which a Federal government organs is a party, suit between persons permanently residing in different regions; cases regarding the liability of officials or employees of the Federal Government in connection with their official responsibility or duties. Suit relating to business organization registered or formed under the jurisdiction of Federal Government organs; suit regarding Negotiable instruments; suit relating to patent, literary and artistic ownership right, suit regarding insurance policy and application for habeas corpus.⁹

All the above Jurisdiction of Federal first instance court is first instance jurisdiction; means original Jurisdiction. In original jurisdiction, the court status as first court that has authority to hear a particular claim.¹⁰ So an appellate Jurisdiction is not delegated to a first instance courts in the current court procedural law that means the Federal first instance is delegated with a Jurisdictional power to state High Courts, over both civil and criminal case. Therefore, the Federal First Instance courts not appellate Jurisdiction over Federal and State matters.

4.1.2 Federal High Court Jurisdiction

For the objective of this paper, it is not necessary to proceed in to details of the criminal jurisdiction of the Federal high court. In short terms, first instance criminal jurisdiction of the Federal High Court could extend over the following types of offenses offences against the constitutional order or against the internal security of the state; offences against the constitutional order or against the internal security of the state; offences against foreign states offences against the law of nations offences against the safety of aviation; offences regarding illicit trafficking of dangerous drug.¹¹ And others criminal cases arising in Addis Ababa and Dire Dawa and falling under the jurisdiction of the High Court pursuant to other laws enforce.

The Federal High Courts are authorized to see criminal judgments of federal first instance court in its appellate jurisdiction this rule also applies for civil cases.

In the proclamation, the Federal High Courts civil jurisdiction enumerated under Article 11 sub Art 1 and 2 of proclamation number 25/96.

The Federal High Court shall have First instance Jurisdiction over the following civil cases involving an amount in excess of Birr five hundred thousand (> 500, 000).¹² This is a pecuniary jurisdiction of the Federal High Court. Therefore those matters which have fallen under the jurisdiction of the Federal High Court in accordance with this principle, are required to have minimum value of Birr 500,000 of first instance jurisdiction provided that, the value of the matter in controversy exceeds the amount of 500,000 of Ethiopia Birr.

In addition to the requirement of pecuniary limit, the Federal High Court's civil jurisdiction listed under Art 3 and Art 5 of proclamation 25/96 for suit which arise in to a Federal Government organ is a party; suit between persons permanently residing in different regions; cases regarding the liability of officials or employees of the Federal

Government in connecting with their official responsibilities or duties; cases to which a foreign nation is a party; suit relating to business organization registration; suit involving matters of nationality; suit regarding negotiable instrument; suit relating to patent, literary and artistic-ownership right; suit regarding insurance policy; and application for Habeas corpus.¹³ All these power of jurisdiction of the Federal High Court is in the hand of state Supreme Court by delegation of power of the Federal High Court to the state Supreme Court.

The Federal High Court by first instance Jurisdictions is extensive over a few cases on the basis of the subject matter of a suit. According to Art 11 (2) of proclamation 25/1996, case regarding Private International Law; case regarding Nationality; application regarding enforcement of foreign judgment or decisions; and application for change of venue from one Federal First instance Court to another or to itself, in accordance with the law.¹⁴ Are put under, the Federal High Court first instance Jurisdiction. The first instance Jurisdiction of the Federal High Court over these cases is exclusive that means, the Federal High Court is the sole Court in which an action may be heard or tried as no other courts or tribunals have authority over the person or the subject matter.

Still now, there is no Code or Proclamation related to Private International Law in Ethiopia, on judicial jurisdiction. Therefore, we means the provision scattered in different codes and the corpus of decided case, under civil code (183-191), under commercial code Art 6477; under maritime law (Art 208, 237) and also provided under civil procedure code. Art 8 and 20.¹⁵

For the above reason, most of the time the judicial Jurisdiction of the courts overlap each other. In related to this, the case of **Global Hotel Vs Mister Nekola Ass Papa chetu** is more relevant to the topic.

The suit was originally instituted at Federal first instance Court with the plaintiff, now the applicant (Global Hotel); claiming that the paying order instrument drawn by the

defendant are duly dishonored (amount stated). So that a specified amount of money shall be paid. Pursuant to claim the court for whom the suit presented struck of the case for lack of jurisdiction on foreigner and matter involving Private International Law. The next higher court (the Federal High Court) having received an appellate, application also decide similar way of the Federal First Instance court.

Then, the cassation bench mentioning back again, the Federal First Instance Court proclamation No 25/1996 looked at the legality of the federal First Instance and High Court decision and described the basis of its own final binding decision as follows.

The proclamation 25/96 logical behind in assigning matters that raises Private Intentional Law to Federal Court, because it assumed when the private International Law comes to force in the future by default the jurisdiction is the Federal High Court .Under current circumstances where a conflict of jurisdiction occurs or the case at hand us possibility by any two or more countries law, proclamation No 25/96 made to be returned by the same High Court.

Giving the explanations enumerated before, the cassation bench by referring to its own decision made February 2007, concluded, the Federal First Instance Courts decision towards lack of jurisdiction involves fundamental error of law because parties to the suit did not raised the question of Private International Law. So this end, the case is remanded to Federal First Instance Court.¹⁶

Before simply we discussed the substantive matter raised in the case, it is better to look into what requirements should be fulfilled in order to determine that a certain court has jurisdiction to entertain over a case.

As has been tried to discuss, in the pre chapters; in order to say a certain court has jurisdiction over a case, there are three **cumulative** requirements should be fulfilled such are the *local, material and judicial jurisdiction*. All of these elements of jurisdiction must be cumulatively fulfilled in a given case in order to say a court has jurisdiction to adjudicating a case.

When the writer has discussed chapter three of the thesis, it has tried to come up with explaining what the objection of jurisdiction implies.

Accordingly, as it is stated under article 9(1) of civil procedure provided that a statement of claim filed in a court not having material jurisdiction shall be rejected in accordance with art 231 and Art 10 (1) of the Civil Procedure Code of 1965.

Having taken in to account of the above discussed points, the writer wants to give insight what masseurs have been taken in each level of courts. As we can understand from our case, the Federal First Instance Court has rejected the suit brought by the plaintiff by saying that when one of the parties is a foreigner, the case will be subjective for involvement of Private International Law. And also according to article 11 (2) (a) of the court establishment proclamation, it is the power of the Federal High Court to entertain such a foreign element involved case.

In this regard, we can make sure that the reason why the court has rejected the suit is that, it does not fulfill the three commutative requirements to adjudicate over a case, because, even if it has fulfilled the local and the judicial jurisdiction, it lacks the fulfillment of one of the requirements of civil jurisdiction. In the belief of the writer of this paper, the court has taken a good measure of legal basis. That it is empowered to struck out a certain case by its own motion due to lack of one of the requirement i.e. material jurisdiction. It cannot entertain the case since there is a court which has specifically given a power to that effect. So the writer has strongly agreed with the statement made by the first instance court. It is proper raising an objection of jurisdiction and rejecting the case by struck out.

The party, who is dissatisfied by the decision made by the first instance court, brought an appeal to the upper court of the Federal High Court claiming a judgment in favor of him. But, this appellate court has rejected the suit and reaffirmed the decision what has been made by the lower court of the Federal First Instance Court.

By observing the cumulative decision made by the Federal First Instance and High Court, we can make sure that both levels of courts have agreed up on the power to entertain the case is fall under the jurisdiction of the Federal High Court. This is also clearly provided in article 11 (2) (a) of the Federal Court proclamation.

If it is not necessary, the legislator does not need specifically mentioned the name of the court to which the power is allotted, because even if, it is not clear, the legislator has its own justification when it specifically granted this power to the Federal High Court.

The writer has strongly agreed with the statement made by this appellate court. Because, it shows that when the Federal High Court required the decision of the lower court, it seems that, the court has convinced that the power is specifically given to it. That it is satisfied with the power granting provision of art 11 (2) (a) of the court establishment proclamation. It is also what the provision has confirmed.

When we are looking the position holding by the Cassation Court, it is not clear by what criteria's it reached on this conclusion. Because, as it can be understood from the practice of other countries and the principles embodied in some International Conventions; exposes that each countries Private International Law has to determine to which court is the application should be made in case of a foreign element is involved. Ethiopia also does the same thing. we can inferred it from article 88 (B) of the draft proclamation rule of Private International Law of that it provides an application of recognition and execution of the foreign judgment shall be made to the division of the Federal High Court.

This tells us that, it is the Federal High Court to which empowered adjudicating a foreign element evolved case. Because when a judgment is a foreign judgment it has a foreign element in it.

So, the writer does not agreed with the statement made by this court. Because it does not taken in to consideration of the provision which provided in clear terms. Even if there is no rule and directive, the court what precaution should be taken in case of Private

International Law element in the country; that it is at the draft level; the provision embodied in the court establishment proclamation, is applicable to determining case involved foreign element.

If the intention of the legislator was for the future will be enacted rule of Private International Law, it does not need to incorporate this provision in the court establishment proclamation. It would rather enact it in the will be in force law of Private International Law.

The appellate jurisdiction of the Federal High Court are all decision of the Federal First Instance jurisdiction over both criminal and civil matters .All decisions of the state High Court on federal matters are appealable to state Supreme Court in this case, the jurisdiction simply, it is sufficient to know that the case is decided by high court of the same state.

4.1.3 Federal Supreme Court

The principle under Art.3 (1) of the proclamation held the idea that Federal Court shall have jurisdiction over all cases that ma raise under the Constitution, Federal Laws and International treaties¹⁷. Federal Supreme Court has also jurisdiction over Federal matters. This indicate that a person, who institute a suit on a Federal subject matter doesn't have any better and higher remedy than brining the case before the Federal Supreme Court in accordance with the relevant procedural rule. The Constitutional of FDRE and proclamation No 25/1996 both can not give a clear vision as to what the detailer types of matters of cases that fall under the federal Supreme Court Jurisdiction.

First instance Jurisdiction of the Federal Supreme Court are exclusive under proclamation No 25/96 provided that the Federal Supreme Court shall have exclusive First Instance Jurisdiction over the following matters .

- Offences for which officials of federal government are held liable in connection with their official responsibility.¹⁸
- With out prejudice to international diplomatic law and custom, offences for which foreign ambassadors, consuls as well as representatives of international organization and foreign states are held liable.¹⁹
- Applications for change of venue from one federal high court to another or to its self, in accordance with the law.²⁰

Suit based on matter enumerated above can be treated by the Federal Supreme Court and only by this court .The writer of this paper more concerned to the civil jurisdiction of the Federal Supreme Court, the writer feels to talk over the civil matters suit given to the Federal Supreme Court.

Applications' regarding change of venue is the only first instance civil jurisdiction of the Federal Supreme Court change of venue is one of the critical issues related with the jurisdiction of courts. Even of the court has a power to cases with a particular type of subjects of controversy and with the type of personality of parties involved, the law may not authorize them to see the case .For the jurisdiction of Federal High Court is delegated to state courts there will not be as many applications.

It would be faced. In general change of venue, the place of local jurisdiction of the Federal High court in different situation and the place of local jurisdiction of the Federal High is in convenient for both the plaintiff and defendant or one of them in one way or another .In these case, the plaintiff or the defendant can applies change of venue application to Federal Supreme Court²¹. By this application the Federal Supreme Court has exercise first instance jurisdiction.

In addition to the above exclusive jurisdiction of he Federal Supreme Court on first instance jurisdiction, the court can also see the case by appellate and cassation jurisdiction. The appellate jurisdiction of the Federal Supreme Courts are enumerated under the provision of proclamation number 25/1996 and the Constitution of FDRE

.Under those court rendered in its appellate jurisdiction in variation of the decision of the Federal First Instance Court. Decisions rendered by a state Supreme Court on Federal matters are appellable to jurisdiction of the federal supreme court.²²

In case of the decision of the state Supreme Court on federal matter is appellable to the federal Supreme Court but the Federal Supreme Court are not appellate jurisdiction over the decision of state Supreme Court on Federal matter rendered in appeal over decision of state High Court unless the decision of High court is varied.

The jurisdiction of the cassation division of FDRE court are enumerated under the constitution and proclamation No 25/96 .Let us reproduce these provision Art.80 (3) (A) of the constitution states that the Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law particulars shall be determine by law and the Federal Supreme Court has a power of cassation additional to the constitution enumerated under proclamation No 25/1996. In its Article, the jurisdiction of the cassation provided in case where they contain fundamental error of law the Federal Supreme Court shall have the power of cassation over.

- Final decisions of the federal high court rendered in its appellate jurisdiction.²³
- Final decisions of the regular division of the federal supreme court.²⁴
- Final decisions of the regional Supreme Court rendered as a regular division or in its appellate jurisdiction.²⁵

All the above jurisdiction of the cassation bench are appellate jurisdiction .The cassation court by its nature has not first instance jurisdiction or original and exclusive jurisdiction.

The provision of the constitution, Article 80 (3) (A) which goes on say that the cassation power of the Federal Supreme Court extends over any final court decision, if taken as it is, will have a tendency to encompass review by cassation over all matters including that of state perhaps this will violate Art 50 (2) of FDRE constitution, which clearly rule that both Federal and state government would have distinct legislative, executive and judicial

powers. Again as cassation over purely State matters, no doubt orders the judicial power of state courts its goes against the principle of component unit's autonomy, which is the pillar up on which the Ethiopia Federalism is built. Besides, the issuance of proclamation No 454/2005 (a proclamation to reamend the federal court of proclamation No. 25/1996) which makes the decision of cassation decision of the Federal Supreme Court binding over all state courts without any qualification as to whether such a decision pertains to Federal or otherwise state matter adds to the prevailing penumbra complicating the matter further. The complication goes to the extent of imposing the Federal supreme court as the law giver over states if we adherer to the manning of Art 80 (3) (A) of the FDRE constitution which empowers the federal supreme court to review via cassation "*any final court decision*" including state courts decision over purely state matter. This seems to be dangerous for at least three fold reasons.

First, it is dangerous because the Federal Supreme Court is going beyond its sphere of competence. This means, judicial province ultra virus in to the sphere of law making. Under the constitution of FDRE in its Article, Article 55 (1) states that "the house of people representatives shall have the power of legislation in all matters assigned by this constitution to federal jurisdiction".²⁶The same Article under sub article 2 of the constitution enumerates the types of matters. The following matters are the jurisdiction of legislative organ of the federal government (HPR), there are utilization of land and other natural resources of river and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more states. Inter - sates commerce and foreign trade, Air, raul, water, and sea transport major road linking two or more states, postal and telecommunication services, enforcement of political right established by the constitution and electoral law and procedures; nationality, immigration, passport, exits from and entry into the country, the right of refugees, and of any asylum; uniform standards of measurement and calendar, patents and copyright, the possession and bearing of arms. It shall also enact a commercial code, labor code, penal code; civil law.²⁷In other hand the Supreme Court of Federal government can enact a law. Accordingly, whether it can enact a law or not is a current issue. However this matter is disputable, proclamation No. 454/2005 in its Art. 2(4) has provided that "interpretation of law by the Federal Supreme

Court rendered by the cassation division with not less than five judges shall be binding of Federal as well as Regional council at all level The cassation division may however render a different legal interpretation some other time.”²⁸

This provision of proclamation no. 454/2005 is inconsistency from the constitution because the law maker of the Federal government is the House of People Representative (HPR).

The second problem of proclamation number 454/2005 is that the Federal Supreme Court as appeared by a new law maker over state matters without any consideration for autonomy of state. The state council is also to enact a law both criminal and civil matters. According to Art.50 (5) of the constitution states that “the state council has the power of legislation on matters falling under state jurisdiction, consistent with the provisions of this constitution on the council has power to draft, adopt and amend the state constitution.”²⁹ But, under proclamation no.454/2005, states that the Federal Supreme Court rendered by the cassation division shall be binding of Federal as well as Regional council at all level. These two provision means, the constitutional provision and the proclamation are absolutely contradict each other.

The third problem of this provision is that, it’s violates the principle of separation of power between the Federal government and the State government that means, according to Art.50(2) of the FDRE constitution which clearly states that both Federal and State governments would have distinct legislative, executive and judicial power but the provision of proclamation 454/2005 permit to the judicial organ can exercise legislative power; in other expression the Federal Supreme Court by cassation division can enact a law both Federal and State matters.

CONCLUSION AND RECOMMENDATION

Conclusion

The 1995 FDRE constitution provides that sovereignty is vested in these signatories, the nations' nationality and peoples of Ethiopia. Accordingly, power was divided between the Federal and State government. Both government have legislative, executive and judicial powers as per determined by the constitution. The highly Unitary system was, then, restricted in line with Federal principles.

In many ways of Federal judiciary have its typical features which are not attributes of a unitary one. A structure to court is one the points of difference between a Federal judiciary and a unitary judiciary. There is no need of having courts functioning in two layers in a unitary judiciary since all the power is in the hand of a government which operates only in one stratum. But when we come to a federal judiciary the power of courts divided in to two levels, namely, the federal judicial organ and state judicial organ. If the Federal Courts are established in more than one level, one can deduce that a structure of court adopted by that judiciary is parallel court structure and if the federal judiciary functions through one federal court only it is evident that the structure of court that particular judiciary is a non- parallel one.

With respect to jurisdiction of court, apportioning the power between the Federal and State government. Both the Federal and each state's can organize three levels of courts in each level of courts. Both the Federal and State Courts are different types of jurisdiction exercised, that jurisdiction may be common, exclusive or original. The FDRE constitution provided for judicial Federalism, that is a dual court system with parallel structure namely Federal and State Court. This was based on the principle of Federalism that ensures constitutional division of power as per Art 50(2) and (7) coupled with Art 80 (1) and (2) of FDRE constitution. Accordingly, each level of court has final decision making power in their respective jurisdiction. An important issue in relation to judicial

Federalism is whether or not it's possible to review decision of State courts on state matters, by way of cassation over cassation of the Federal Supreme Court.

The very important principle cassation presupposes a uniform application of laws through the country. In this respect there are two lines of arguments, whether or not cassation over cassation is legally accepted in Ethiopia. Some argue that cassation over cassation is provided under the FDRE constitution and proclamation No. 25/96. They further argue such revision power enable federal supreme court to supervise uniform application of laws through out the countries. On the other side, opponents of the concepts of cassation over cassation argue that such concept is against Ethiopia Federalism which provides for separate jurisdiction between the Federal and State courts. They further strength defined that cassation over cassation is against the constitutional division of power and erodes the very purpose of decentralization and self administration.

The cassation division of the Federal Supreme Court shall have cassation power over Federal matter, not only Federal matter but also over State matter. In addition to its task, the cassation division of the Federal Supreme Court can enact a law according to proclamation No.454/2005 provides that "Interpretation of a law by Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on Federal as well as regional council at all level..." Therefore, the law makes cassation decision binding at all levels of courts including on regional matters. Thus, it supports the concept of cassation over cassation and aims attaining uniform application of law. However, the author believes that it is against principle of Federalism it is also showing that Ethiopia follows common law legal system (judicial precedent).

Recommendation

Having taken into consideration of the above stated facts in the conclusion the writer wants to highly recommend the following points.

The FDRE constitution provides for constitutional division of power and separation of jurisdiction of courts. However, the Federal Supreme Court cassations bench has been reviewing regional matters. So the writer wants to recommend that the Federal Supreme Court should have reconsider its involvement and strictly adhere to the spirit of the Federal Democratic Republic of Ethiopia Constitution and refrain from reviewing state matters.

Construction of constitutional issues is out of mandate of the federal Supreme Court. But at all interpretation of the FDRE constitution sub Art.3 (A) of Art.80 is necessary, the word “*any final decision*” should be interpreted as to refer to any decision of courts regarding to question of federal law because, the divisibility of sovereignty and self administration does not go in line with cassation over cassation.

The federal Supreme Court cassation bench may be alleges that states courts violation right of citizens by applying wrong interpretation of law. However, such claim of basic error of law by state court on regional matters should not go against the principle of Federal Court structure in general. It should focus on supporting regional state court capacity to strength their judicial system.

The rule of precedent is against the Ethiopia legal system. So, the new proclamation, Proclamation number 454/2005 that provides for binding effect of the decision of federal cassation bench in all level should be reconsidered and repealed.

CHAPTER ONE

End Notes

1. International Encyclopedia of the social sciences (1968), Vol. 5. P 353.
2. Microsoft R Encarta R 2007. C 1993-2006 micro soft Corporation.
3. J.A. corry and Henry J. Abraham, Elements of democratic government.
4. Wheare, quoted in B.D nawabueze, the machinery of justice in Nigeria (London, Butter uzorthes 1996) P. 82
5. Birtukan Mideksa, Applicability of civil procedure code of Ethiopia in the Fedeal judicial system of Ethiopia (Addis Ababa University, unpublished, 1996) P. 5
6. ----- “Courts”, American Jurisprudence, 2nd vol. 20, 1996. P. 393
7. Ibid P.393
8. Mohammed Ali, New Trends in the Development of the court system in Ethiopia (a comparative study) (Addis Ababa, unpublished 1993) P.6
9. Ibid P. 6
10. M.P. Jain, Indian constitution Law (Bombay N.M tripletail private 2+2 1992p.
11. Where, quoted in Birtukan Mideksa. Applicability of civil procedure code of Ethiopia in the federal judicial system of Ethiopia 1996) P-6
12. The constitution of federal democratic republic of Ethiopia 21 Aug1995 Art 78(2)
13. Birtukan Mideksa opt cit P.10
14. where, opt P.7
15. Mengistu Arefaine, The principles of federalism in light of the constitution of FDRE (Addis Ababa University, unpublished, 1995) P. 4
16. Ibid P.5
17. Birtukan Mideksa. Opt P.4
18. Ibid P. 10
19. Ibid P. 11
20. M.P. Jain opt. P.
21. A proclamation to provide for federal court proclamation, Negarit, year 2 No 13, proclamation no 25/1996. Art.6 (1) and (2).
22. The constitution of federal democratic republic of Ethiopia 21 August, 1995 Art.9 (2).

CHAPTER TWO

End Notes

1. Jurisdiction Law definition, <http://www.yourdictionary.com> 5/25/2008 p.1 of 3
2. Microsoft R Encarta R 2007 .C 1993-2006 Microsoft corporation p
3. Ibid p
4. Selder, Robert Allen, Ethiopian civil procedure Addis Ababa oxford University Press 1968 p.19
5. Ibid p.19
6. Ibid p.19
7. The Teaching material of St.Mary's University College civil procedure module p.26
8. Ibid p.29
9. Ibid p.27
10. Ibid p.31
11. Selder Robert Allen. Opt.p.25
12. Ibid
13. Ibid
14. Ibid
15. Teaching Material of St.Mary's University college opt p.21
16. A proclamation to provide for federal court proclamation Negarti Year 2 No 13 Proclamation No 25/1996 Art 6(1) and (2)
17. Proclamation to provide for Ethiopia Nationality Proclamation Negarti year 10 No 13 proclamation No378/2003 Art.3(2)
18. A Civil Procedure Code of Ethiopia Negarit year 25 No3 Decree No 52 of 1965 Art185
19. Wongel Abate. Original civil jurisdiction of the FDRE courts suits between persons permanently residing in different states Regions (Addis Ababa University Unpublished.1996) p.50
20. The Teaching Material of St.Mary's University College opt.p.29
21. Selder Robert Allen opt.p.24
22. Ibid P.24

23. Teaching material of st. mary's university college opt.p30
24. Selder, Robert Allen opt.p.22
25. A civil Procedure code of Ethiopia opt.244(2)
26. Teaching material of St. Mary's University College optp.29
27. Selder, Robert Allen opt p.22
28. Ibid p.28
29. Teaching Material of St.Mary's University College opt p.52
30. Ibid p.52
31. Ibid p.52
32. A proclamation to provide for Federal Court Proclamation Negarit Year 2 No
33. Proclamation No 25/1996 Art.3
34. Ibid.Art.5
35. Teaching material of St.Mary's University College opt p.54 and 55
36. The constitutional of federal democratic republic of Ethiopia. 21 August 1995
Art 62 (1)
37. Ibid Art.80(1)
38. Ibid Art.80(2)
39. Sedler Robert Allen opt.p27
40. Ibid p.28
41. A proclamation to provide for federal court proclamation Negarit year 2 No 13
proclamation No 25/1996 Art 8
42. Sedler Robert Allen opt p.27
43. Teaching material of St. Mary's University College p
44. Selder Robert Allen opt.p.29
45. A Proclamation to provide for federal court proclamation opt Art 11(1)
46. Ibid Art.11(2)
47. Selder Robert Allen opt.p.33
48. A civil procedure code of Ethiopia Negarti year 25 No 3 Decree No52 of 1965
49. Sedler Robert Allen opt p.33
50. Ibid p.33

51. Wongel Abate. Original civil jurisdiction FDRE court suits between persons permanently residing indifferent states/regions (Addis Ababa University Unpublished. 1996) p.49
52. A civil procedure code of Ethiopia opt Art.177(2)
53. Teaching material or St.Mary's University College opt.p.33
54. Ibid p.33
55. Ibid p.33
56. A proclamation to provide for federal court proclamation opt Art.19(1)
57. Ibid19(2)
58. Ibid 19(3)
59. Ibid 19(4)
60. Teaching material of St.Mary's University College opt p.40
61. Selder Robert Allen opt. p 37
62. A Commercial code of Ethiopia, Addis Ababa 5th may, 1960 proclamation No166 of 1960.
63. Teaching material of St.Mary's University College opt p.43
64. Ibid p.43
65. A civil procedure code of Ethiopia opt Art.27
66. Selder Robert Allen opt. p.33
67. Teaching material of St.Mary's University College opt p.41
68. A proclamation to provide for federal court proclamation opt .Art.11(2)(d)

CHAPTER THREE

End Notes

1. [Http://www.answers.com/topic/original-jursidication? Cat=biz-fin](http://www.answers.com/topic/original-jursidication? Cat=biz-fin)
2. <http://www.answers.com/topic/personal-jurisdiction? Cat=biz-fin>
3. L a.hrif=<http://law.jrank.org>
4. Ibid
5. Ibid
6. Ibid
7. Ibid
8. Selder, Robert Allen. Ethiopian civil procedure Addis Ababa Oxford University press 1968 p.20
9. L a hrif=<http://law.jrank.org>
10. Ibid
11. Ibid
12. Ibid
13. Mengisitu Arefaine, The principles of federal in light of constitution of the FDRE (Addis Ababa University Unpublished 1995) p.26
14. Jain M.P Indian constitutional law New York Capricorn book press, 1964 p
15. <http://www.answers.com/topic/original-jurisdiction cat=biz-fin>
16. Ibid
17. Ibid
18. Jain M.P, opt p
19. <http://www.answers.comhope/original-jurisdictionin cat=biz-fin>
20. A proclamation to provide for federal court proclamation negarit year 2 No 13; proclamation No25/96. Art3
21. Ibid Art.8
22. The constitution federal Democratic Republic of Ethiopia 21, august 1995 Art.8(3)(a)
23. P.K Majumdar, The code of civil procedure, 1908(orient publishing company press) p.21

24. Ibid p.21
25. Ibid p.22
26. A civil procedure code of Ethiopia negarit year 25 No 52 of 1965 Art.27
27. P.K Majumdar, opt p.22
28. Ibid, p.23
29. Ibid p.25
30. Ibid .25
31. A proclamation to provide for federal court proclamation negart year 2 No 13
proclamation No 25/96 Art.11(2)(d)
32. P.K Majumdar. Opt, p25 and 26
33. Ibid p.23
34. A civil procedure code of Ethiopia Negarit year 25 No 52 of 1965 Art 24(1)
35. P.K Majumdar. Op.p23
36. Selder, Robert Allen opt p.21

CHAPTER FOUR

End Notes

1. Birtukan Mideksa, Applicability of Civil Procedure code, of Ethiopia in the Federal Judicial system Addis Ababa University (un published) P. 25
2. A proclamation to provide for Federal Court proclamation Negarit, Year 2. No. 13 Proclamation No 25/96 Art 3 (1)
3. The constitution of Federal democratic republic of Ethiopia 21 august 1995 Art 9 (4)
4. Federal Court proclamation Opt. Art 3 (1)
5. Muradu Abdo, Some Question Related to the Cassation Power of FDRE supreme court, Addis Ababa University unpublished, 1998 P. 68
6. Ibid P. 70
7. Federal court proclamation opt Art 11 (1) (b)
8. Ibid Art 5
9. Ibid Art 5
10. [Http//www. Answer.Com/topic/original jurisdiction? Cat = biz-fin](http://www.answer.com/topic/original-jurisdiction?cat=biz-fin)
11. Federal court proclamation opts. Art 12
12. Ibid Art 11 (1)
13. Ibid Art 3 and 5
14. Ibid Art 11 (2)
15. Samoule Teshale, Towards rationalizing Judicial jurisdiction in Ethiopia. Unpublished.
16. Global Hotel Vs Mister Nekola Ass papa chetu (Federal Supreme Court, cassation bench 2008 (unpublished).
17. Federal Court proclamation, opt Art 3 (1)
18. Ibid Art 8 (1)
19. Ibid Art 8 (2)
20. Ibid Art 8 (3)
21. Birtukan Mideksa, opt P. 30
22. Federal Court proclamation, opt, Art 9

23. Ibid Art 9 (1)
24. Ibid Art 9 (2)
25. Ibid Art 9 (3)
26. The constitution of federal democratic republic of Ethiopia, 21 august 1995 Art 55 (1)
27. Ibid Art 55 (2)
28. A proclamation provide for, a proclamation to reammend the Federal Court proclamation No 25/96 Negarit year 42, proclamation no 454/2005 Art 2 (4)
29. The constitution of FDRE opts. Art 50(5)

BIBLIOGRAPHY

TABLE OF BOOKS

1. International Encyclopedia of the Social Sciences (1968), Vol. 5.
2. J.A. Corry and Henry J. Abraham, Elements of democratic government.
M.P. Jain, Indian Constitution Law (Bombay N.M tripletail private 2+2 1992)
3. ----- "Courts", American Jurisprudence, 2nd vol. 20, 1996.
4. Birtukan Mideksa, Applicability of Civil Procedure Code of Ethiopia in the Federal Judicial System of Ethiopia (Addis Ababa University, unpublished, 1996)
5. Mohammed Ali, New Trends in the Development of the Court System in Ethiopia (a comparative study) (Addis Ababa, unpublished 1993)
6. Wheare, quoted in B.D Nawabueze, The Machinery of Justice in Nigeria (London, Butter Uzorthes 1996)
7. Selder, Robert Allen, Ethiopian civil procedure Addis Ababa Oxford University Press 1968
8. The Teaching material of St.Mary's University College Civil Procedure Module
9. Wongel Abate. Original Civil Jurisdiction of the FDRE Courts suits between Persons Permanently Residing in different states Regions (Addis Ababa University Unpublished.1996)
10. Mengisitu Arefaine, The Principles of Federal in light of Constitution of the FDRE (Addis Ababa University Unpublished 1995) p.26
11. P.K Majumdar, The Code of Civil Procedure, 1908(orient publishing company press)
12. Samoule Teshale, Towards Rationalizing Judicial Jurisdiction in Ethiopia. Unpublished.
13. Muradu Abdo, Some Question Related to the Cassation Power of FDRE Supreme Court, Addis Ababa University unpublished, 1998
14. M.P. Jain, Indian Constitution Law (Bombay N.M tripletail private 2+2 1992p).

LAWS AND ARTICLES

1. Federal Court Proclamation, Negarit, year 2 No 13, Proclamation no 25/1996.
2. The Constitution of Federal Democratic Republic of Ethiopia.
3. Ethiopia Nationality Proclamation Negarti year 10 No 13 Proclamations No 378/2003.
4. A Civil Procedure Code of Ethiopia Negarit year 25 No 3 Decree No 52 of 1965.
5. A Commercial Code of Ethiopia, Addis Ababa 5th may, 1960
6. A Proclamation to reamend the Federal Court proclamation No 25/96

WEBSITE

- 1.<http://www.Answers.com/topic/original-jurisdiction? Cat=biz-fin>
- 2.<http://www.Answers.com/topic/personal-jurisdiction? Cat=biz-fin>
- 3.L.a.herf= <http://law.jrank.org>
- 4.Microsoft ® Encarta ® 2007. © 1993-2006 Microsoft Corporation.

TABLE OF CASE

1. Global Hotel Vs Mister Nekola Ass Papa Chetu (Federal Supreme Court, Cassation bench 2008 (unpublished)).

