

Judgment Writing

Teaching Material

Prepared by:

Misker Getahun

(LL.B)

&

Tafese Yirga

(LL.B, LL.M)

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Judgment writing

Course introduction:

Judgment is the process by which decisions are made on a dispute by the competent organs having the power to entertain the case. That is to say a court or judicial institutions having a jurisdiction will be able to see the case and finally to make rulings to the matter and this decision is called judgment.

Judgment does not include only the action of pronouncing or orally passing of decision but also the recording or writing down of that judgment is also included. Therefore, judgment has two basic parts the process of giving or making the judgment and also the step of writing the judgment. So, the matter of judgment explores the issues including the basic task of making and writing judgment.

Judgment writing having its own general view and relation with the process of making judgment it is a wide concept which encompasses different kinds of steps and rules. This course deals with the process, method, requirement, skill and principles of making and especially writing judgment. It tries to accommodate all the basic concepts from the legal or theoretical and practical aspects of making and writing judgment for every kind of decisions of whatever nature and gravity. Moreover, it discusses about the relationship between making and writing judgment by relating with other disciplines which have the same practical concern like case and court management but especially with civil and criminal procedure laws of Ethiopia. More specifically the course tries to evaluate Ethiopian substantive and procedural laws whether they have sufficient rules on process of making and writing judgment or not. It also tries to investigate and indicate basic constitutional principles that need to be observed as procedural formalities while making and writing judgment.

The course will also try to look the current image of making and writing judgment in different judicial organs of Ethiopia. For this reason the different types and levels of judicial organs and their decisions will be considered. In doing so, Ethiopian judicial organs courts and some authorized ADR institutions will be included.

This course in general will show the basic principles and steps of making and writing judgment that need to be observed by the concerned organs of making and writing judgment. In other words, it is to mean that the basic elements or a criterion's that need to be fulfilled while making and writing judgment will be briefly discussed. But primary consideration will be given to the constitutional principles.

Socio legal significance of the course:

The course judgment writing will have a number of advantages to the whole society in general and to the justice administration, justice partners and related individuals in particular. By looking historical development of making and writing judgment in Ethiopia, it will then try to show the current image of making and writing judgment in Ethiopia this will include both practical and theoretical aspects of the law and it will help to find out the problems in this regard together with the possible solutions and corrective measures which need to be taken. For the above task, comparative study with other legal systems will be done. The course will show the basic steps and rules of making and writing judgment which will make the task easy and speedy for the future. Also it will help for the implementation of constitutional principles in all aspects among which judicial tasks are given a better place. Therefore, the court community and other judicial organs will develop the custom of using this basic steps and rules while making and writing judgment. The course after analyzing the legal lacunae in the areas of judgment making and writing it will try to give different solutions hence it will be very helpful for the justice system or stake holders in the field so as the fill the gaps.

Finally, the course will help to avoid the usage of extra time consumption for the making and writing of judgment which affects all the parties and judicial organs. By so doing, it will play its own role in avoiding or at least in reducing backlog and delay. More than anything else, the

course will be helpful in reducing unnecessary delay on the enforcement of judgment because of problems and complexities that are created while making and writing judgment. And this in turn will help to reduce backlog, delay and injustice which are the most serious problems of courts. So, it can make safer and easier ways of enforcement for the judgment made. For this purpose, note only the justice partners and judicial organs that are expected to be familiar with the basic rules and steps of making and writing judgment but also the society is given more attention because it is the heart of the problem to.

Description of the course outline:

This course is divided into ten basic chapters in which each chapter are given equal importance to the subject matter. So, students are advised to allocate their time fairly and proportionally to contents of each chapter. Chapter one- deals with the meaning, nature and significance of judgment writing. For this purpose, it begins with the meaning of judgment. Historical development or evolution of judgment writing, kinds of judgment writing are also discussed. In our country, we can find two basic kinds of dispute resolutions; judicial and alternative dispute resolution techniques and these are discussed in relation to judgment making and writing under this chapter. Also the basic features of judgment together with preliminary process of making and writing judgment will be included. Chapter two deals with the kinds of judgment writing based on different kinds of judgments. Where as, chapter three will explain the laws in relation to judgment writing from both domestic and international orbit. In doing so, international treaties and experiences of other legal systems will be seen first and then Ethiopian laws on judgment making and writing will be explored from both substantive and procedural ones. Chapter four will turn the trigger totally to the Ethiopian context that will examine judgment making and writing reality of our country. In this chapter, the legal system of Ethiopia, historical development of judgment writing, Ethiopian procedural laws and their special feature in relation to judgment making and writing will be discussed. Also the current image of making and writing judgment from practical and theoretical point of view will be seen in short. Chapter five will be concerned with the manner of writing judgment and its effects in general. The inclusions of this chapter includes the concerned bodies in making writing of judgment, the users or stakeholders

of judgment writing will also be dealt. Then factors affecting judgment making and writing together with basic issues for making and writing judgment will be seen.

Chapter six is the most practical part of this course which briefly shows the rules, steps and techniques of judgment writing. Each and every steps of this chapter are indispensable to students so students are advised to exercise themselves with different projects and practical assignments. After looking steps in judgment writing students will be given real sample judgment to understand the contents and steps of writing judgment and to comment of it. The other part of this chapter is basic rules of judgment writing which are very relevant and workable in trial court, appellate and cassation court decisions. The last part deals with features of good and bad written judgment. For this purpose students will be given sample judgments to comment on it. Chapter seven explains the constitutional principles that have relation with judgment writing. Among others human rights of arrested, accused and poisoned persons with due process of law will be explored.

Chapter eight and nine deals with the relation between judgment writing and case flow and court management and with the use of information technology, respectively. In doing so, the role of having good judgment writing to the smooth case flow management and normal court functioning will be seen. Finally, the technology that is helpful to the writing of judgment will be seen with its advantages and demerits. The last chapter, chapter ten, will deal with the relation of judgment writing and enforcement of judgment. More specifically, the good side of having good judgment writing for the proper execution of judgment will be investigated critically.

CHAPTER ONE

MEANING, NATURE AND SIGNIFICANCE OF JUDGMENT AND JUDGMENT WRITING

This chapter deals with the meaning, nature and function of judgment in general and judgment writing in particular. In line with this, a brief discussion will be made on the concept of judicial bodies and ways of dispute resolution. The overall aim is to enlighten the reader with the main features of judgment and judgment writing along with the purpose both serve.

1.1 Historical and Societal Views Of Cases

In the context of the Ethiopian traditional society the term "case" represents the Amharic word "*Muget*" which refers to a dispute between two parties brought before the attention of a certain judicial body seeking a decision from it. Thus, for a conflict to become a case it should be taken, by either of the parties, to a certain judicial body for decision.

Before the enactment of modern laws in Ethiopia, people living in different regions used to take their cases to their local elders, customarily known as "*shimagles*", acting as arbiters. These *shimagles* dispose cases brought before them by applying, almost usually, equity and fairness as there was no a recorded set of rules to be applied. As such, the arbiters normally resolve disputes by weighing evidences and evaluating the material facts of the case as presented by the disputants. Decisions made in such a way had, among other things, the mission of educating the rest members of the community, especially those who are attending the litigation process. However, it should be underlined that decision will be rendered; most of the time, in favor of a party who presented his case in a clear and convincing way to the arbiters and the argument should also be in line with the acceptable way of living and doing things in the society. The mode of litigation involves the use of some kind of tricking metaphors and the argumentation requires some degree of eloquence on the part of the litigants so as to persuade the arbiters. Unlike these days, as there were no prepared court rooms, the process of litigation had been conducted under big trees with in the locality which is suitable to conduct the litigation.

Such places are commonly called "*Chilot*" which has the literal meaning of court yard which denotes a place where any member of the society may come and attend the proceeding.

As such, anybody in the community who felt the denial of justice in some kind of social interaction could bring an action before the attention of the local chiefs and these chiefs shall determine a date on which the grievances of the applicant will be heard after a message is made to reach the other party to present himself before the chiefs and reply to the action instituted against him.

Hence, seen from a historical point of view, societies regard disputes or conflicts of any degree as a case when it is presented before a neutral and impartial third party, usually the local elderly people, for adjudication purpose. Therefore, it should be noted, at this juncture, that the historical view of a case should not be construed to have the meaning of "a legal dispute" of the present day, in the strict sense of the term. This is mainly because, as mentioned earlier the local chiefs (*shimagles*) do not dispose a case before them based on certain rules but on the basis of equity and fairness, in light of the prevailing social, economical, cultural and religious perceptions of the society.

1.2 Evolution of Rendition of Judgment

Being the final result of every judicial proceeding, judgment manifests the conclusion reached at by a judicial body before which all the necessary material facts are presented for its consideration. After considering a case, i.e. evaluating the facts as presented by the disputants, weighing the evidences brought and hearing their verbal litigation, passing a certain judgment with a view to resolving the case is a must to any judicial organ. In other words, judgment marks the closure or the winding up of the litigation process as a whole.

Rendition of judgment refers to the oral pronouncement by the judicial body of its decisions in relations to the case brought before it for adjudication upon the matters at issue between the disputing parties. Rendition of judgment is made officially at the presence of litigating parties. The judgment rendered in such away reveals the rights and duties of the parties to dispute thereby resolving their dispute once and for all with regard to the same judicial body.

In earlier times, when judicial proceedings were led by traditional means, almost every stage of the proceeding was dominated by verbal communications between the litigating parties and with the judicial body as well. As a result, after the judicial body have conducted the oral litigation between the disputants and appreciate the case to its satisfaction by all the necessary means, judgment would be rendered orally, at the spot, in front of the litigants and the larger public with a view to educating the later. As such, there is no business of writing the judgment and consequently the decision of the judicial body will be communicated to the conflicting parties orally. Therefore, in the past, there is no room for us to comment on whether the judgment rendered is logical, consistent, comprehensive and convincing as it will not be reduced to writing.

With respect to rendition of judgment in general and the judicial procedures that need to be followed in particular, the years 1961 and 1965 can be taken as a turning point in the Ethiopian legal system as the period heralded the coming in to force of the newly enacted criminal procedure code and civil procedure code respectively. These codes have come up with certain rules regarding the preparation of judgment and the manner judgments should be rendered.

Accordingly, unlike the experience we had in the past in relation to rendition of judgment, judicial bodies began to render judgments after a given decision is reduced in to writing. As such, judicial bodies read out the judgment from a paper to the conflicting parties and other judicial audiences in an open court. This, of course, led to the ambition of having a systematized way of judgment writing and rendering judgments in a structured manner .This is mainly because the judicial body will have ample time to write the judgment before the rendition date, as the newly enacted procedural codes have introduced a judicial procedure which allows the judicial body to render its judgments through a series of court adjournments.

In the above two sections, an attempt has been made to briefly discuss, among other things, the societal and historical views of cases as well as the evolutionary steps undertaken in connection with rendition of judgment in Ethiopia with a view of preparing a fertile ground for the up coming discussions on judgment and judgment writing. The next section will be devoted

to familiarize readers with the meaning and the core reasons for having judicial organs, with a special emphasis on courts.

1.3 The Need to have Judicial Organs, Especially Courts

In the phrase "Judicial organs " the term "judicial " refers to something which pertains to the office of the judge (court). A court has the purpose of adjudicating cases brought before it. And, the judge is the sole person who serves as an engine for the machinery of justice to run. Thus, it can be safely said that judicial bodies (organs) are institutions which are entrusted primarily with the duty of resolving disputes between parties. As such, judicial organs are vested with the power to entertain disputes when presented to them, and determine the rights and duties of the conflicting parties on the basis of a set of rules made by the competent authorities, with in a given state.

In line with this, it should be noted that the above powers are bestowed upon judicial organs by virtue of the law. In other words, it is only the law which can give the so called "Judicial bodies" the power to exercise their adjudicatory function. Consequently, the decision given by judicial bodies is enforceable by law. Thus, the decision of judicial bodies has the effect of binding the party against whom the decision is made unless and otherwise the decision is reversed by and through the means the law itself has devised.

But, there is also another question that needs to be raised here what necessitates for the existence of judicial bodies? The reason calling for the emergence of judicial bodies heavily owes to the selfish and egoistic nature of human beings in general and the social, economical, political and cultural interactions among the members of the society in particular. Since human beings are self-centered by their very nature ,conflict of interest between and among the different members of the community is likely to arise . As a result of which chaos and instability will prevail with in the state. To overcome the possible danger of this kind, it is indispensable to have the so called judicial organs with in the state. By doing so, the state will be relieved of the threat posed by the possible rise of conflict of interest between individuals as judicial organs help settle disputes of almost all nature and gravity with the prime goal of maintaining peace and order within the society.

To this effect, almost all states in the world have divided the structure of their government in to three broad functions, namely, Legislative, Executive, and Judicial functions, in which case one-third of the government's task is being devoted to perform dispute resolution functions through the judicial organs.

Similarly, the Federal Democratic Republic of Ethiopia (FDRE) Constitution has declared the establishment of these three organs of government both at the federal and state levels as provided under article 50 (2). Thus, by virtue of this provision, judicial organs in Ethiopia are awarded constitutional foundation for their existence. But, what does, the phrase "judicial organs" /or/ mean? Include?

The FDRE Constitution under its articles 78 and 79 has provided five types of judicial organs which are vested with the legal power to adjudicate different kinds of disputes. These include:

1. Regular Courts:- both at the federal and regional levels

a. At the federal level there are three layers of court structure ,namely, federal first instance court , the federal high and supreme court with its cassation division.

b. At the regional level too, in each of the nine regions, there is regional supreme courts, zonal high courts and wereda courts.

N.B: With the exception of the Amhara regional Supreme Court, all regional Supreme Courts have cassation divisions.

c. Both the Addis Ababa and Dire Dawa city Administration courts have organized their own city courts and accordingly have : first instance courts and an appellate court. In addition, they have cassation divisions with in their respective appellate courts.

2. Special ad hoc courts: - these kinds of courts come to existence through legally prescribed procedures. E.g. Martial court.

3. Institutions legally empowered to exercise judicial functions: - this, among others, include: the civil service tribunal, the tax appeal commission labor relation board,

urban land clearance appeal commission etc.... These institutions are commonly known as *quasi-judicial* organs as they have an administrative nature partially.

4. **Religious Courts:** - these are courts that have been legally recognized. They usually adjudicate cases on the basis of the consent of parties and have jurisdiction legally limited matters.

Example: - Sheria courts

5. **Customary Courts:** - there is no, so far, a legally established customary court in the country.

In addition to the above listed kinds of judicial organs, there are also other alternative traditional and modern systems of judicial institutions, like customary systems of judicial institutions, arbitration councils and alternative dispute resolution offices and Addis Ababa city chamber of commerce arbitration center.

Of all types of judicial organs, regular courts are the most commonly and frequently used ones. Some reasons can be forwarded as to why regular courts are preferred to adjudicate the lion's share of the cases quite often. The first reason is that regular courts are well organized both in terms of skilled man power and structural arrangement. The fact that regular courts furnish a rigorous appeal procedure which gives additional venue of dispute for the aggrieved is also the other reason. Regular courts by their nature do not discriminate people on the basis of, religion, culture (custom) or the authority a person might have with in the state. Moreover, regular courts are more accessible than any other judicial body mentioned above in terms of both time to reach them (unlike special or ad hoc courts) and availability as they are established in most parts of the country. In addition regular courts have vast material jurisdictions so as to entertain the lion's share of the cases that arise in the country.

Thus, it can be boldly said that regular courts are instrumental in the maintenance and preservation of peace and order as they resolve the larger portion of disputes arose in the state. Consequently, this calls for the need to further strengthen regular courts both materially and in terms of skilled labor, with out ignoring the need to support other types of judicial organs as they play key roles with respect to settling certain matters amicably.

So far, the meaning of the phrase judicial organ and the need to have it has been an issue of discussion. In line with this, the types of judicial organs are investigated. The forthcoming discussion will deal with the kinds and nature of dispute resolution mechanisms.

1.4 Kinds of Dispute Resolution Mechanisms

It is true that disagreements arise between people who live together with in a community as the result of different kinds of interactions. In these interactions, it is likely that every person will tend to promote his own interest. Consequently, conflict of interest between and among different individuals becomes indispensable.

Even though, it is impossible to avoid disputes arising between individuals in a society, it is imperative to have the means to resolve them.

As there is a consensual understanding that conflicts arise more often than not between and among the members of a society, it becomes necessary for the state to have some kinds of dispute settling methods. Disputes that may arise, of course, could have different nature and gravity. As such, a single mechanism of dispute resolution can not effectively bring about the desired goal which is the prevalence of peace and stability with in a given community in particular and in the state as a whole. Hence it is necessary to adopt as many dispute resolution mechanisms as the type of disputes that arise are likely to be different.

As one means of resolving disputes that arise between individuals with in the society people, usually, tend to take their cases formally organized courts and have their disputes resolved.

However, it is not usually advisable to take all kinds of cases to the regular courts especially, when the dispute at hand does not involve crime. This is mainly because taking cases to courts have some adverse effects like, among other things, waste of time, financial expense, and the failure of courts to take regard to some established values of the society while disposing the case as they solely base themselves on the law. Thus, it is better to make first a resort to means that are other than courts so as to get amicable solutions to certain kinds of disputes.

It is not the purpose of this section to deal, in greater depth, with the nature and features of out -side court dispute resolution mechanisms. However, it is believed to be of a paramount importance if the reader is highlighted about the mechanisms that are being used to settle disputes outside court rooms at this level. Hence, the subsequent part will be devoted to provide a brief discussion of same, with a view to enhance the reader's conception of these out-side court dispute resolution mechanisms.

The most common out-side court room dispute resolution mechanisms include Negotiation, Mediation, Conciliation and Arbitration. Though these mechanisms have a common goal of settling disputes by finding an amicable way outs to a certain problem however, they have their own characteristic features.

Negotiation is a method of solving conflict between parties by which the two disputing parties come together, with out the presence or involvement of a third party, to discuss their problems and reach at agreement. As such, it is unique to other out-side court dispute resolution mechanisms in that the conflicting parties will not let any third party to their endeavor to abridge their differences. Thus, through this method, it is possible to reach at a long lasting solution to their dispute as the mechanism allows the disputing parties to avoid possible future disputes apart from and in addition to the already prevailed conflict.

Mediation and conciliation, being very similar to each other, comprise another alternative dispute resolution mechanism, referring to a process through which a third party, known as mediator(s) or conciliator(s), They come to shoulder the task of bringing the conflicting parties to an agreement through generating and providing options that could help disputants reach at a mutually satisfactory resolution. However, it should be noted, at this juncture, that mediation and conciliation are different in that the role of the mediator is limited to recommending possible solutions to the disputants. Where as, in the case of conciliation, the conciliator(s) usually possess expert knowledge of the domain in which they conciliate as a result of which they can play an additional role of providing a professional suggestion and advice with a view of helping the disputing parties come to settlement terms. In line with the above point, it should be underlined that both mediators and conciliators have no right or authority to pass on decisions as to how the dispute existed between the two parties should be resolved.

Therefore, it can be seen that negotiation, mediation and conciliation are mechanisms of solving disputes usually through the use of equity and fairness. As such, there is no winner and loser in applying these mechanisms of dispute resolution.

The other out of court dispute resolving mechanism is Arbitration. Arbitration a process through which the disputing parties present their case before a third party or parties for decision. Disputants may have their case reviewed by arbitration through two means. The first is when the conflicting parties themselves agree to take their case to arbitration. And, the second is when a court of law orders the case to be decided by arbitration (when either of the parties first took the case to court). A typical example for this is in case of divorce matters. However, it should be noted that arbitration is different from mediation or conciliation in that the arbitrator(s) can make a decision which is binding up on the parties, the parties having given their consent to be abided by, and the arbitrator's decision should only be given on the basis of the working laws in the country. As such, when disputants take their case to the venue of arbitration, it should be clear that either of the parties to the case will end up being a loser and the other a winner, by virtue of the law.

Thus, it can be generally said that the prevalent methods of resolving disputes are negotiation, mediation (conciliation), arbitration and through regular courts, on the basis of the nature and gravity of the dispute (conflict) arose.

1.5 Basic Features of Judgment

So far, a brief preliminary and introductory discussion concerning historical views about cases, rendition of judgment and types of dispute resolution methods is made. In addition, an attempt has been made to deal with the reasons for having judicial bodies in a state. The forthcoming discussion will solely be devoted to deal with the meaning and features of judgment.

Before embarking upon the characteristic features of judgment it seems logical and imperative to dwell first up on the meaning and nature of judgment.

The term judgment is defined by different scholars almost invariably, but with the slight deviation. Judgment, as provided in P.H Collins Law Dictionary, is simply defined as” the official decision given by a court of law” emphasis being given to the body making it.

The term judgment is broadly defined in the Black's Law Dictionary as "the official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. It is the final decision of the court resolving the dispute and determining the rights and obligations of the parties. It can also be defined as a decision or sentence of the law given by court of justice or other competent tribunal as a result of proceedings instituted therein".

As such, according to the above definition, it is a determination of a court of competent jurisdiction upon matters submitted to it, deciding the respective rights and duties of the parties involved in the dispute.

Besides, William P.Statsky has also defined judgment in his book Legal Thesaurus and Dictionary, in almost similar way as:" the official decision of a court in a case brought before it; a judicial determination of the rights and duties of parties growing out of litigation before a court".

On the basis of the above definitions, it can be safely concluded that judgment has the following basic features:-

- a. It should be a decision given on the basis of the law and pronounced publicly (officially). Here, it should be remembered that a mere decision of a judicial organ , after appreciating the case , can not be termed as judgment unless it is officially declared in front of the parties litigating to each other and possibly the larger public (court audience.)
- b. It should be given after the litigating parties submit their case for determination at the disposal of the body giving judgment. Here a note needs to be taken that the judicial body should make sure that it is provided with a case in its hand in order to render a judgment. In other words, the judicial body (or its members) can not make judgments based on their personal knowledge, unless the dispute is brought before them by either of the parties to the conflict for disposition.

- c. Judgment should also be given by the competent tribunal to dispose the particular case before hand. Hence, a decision made by a body which lacks the required legal authority to adjudicate the case can not be regarded as judgment. As a result there will be no room for such kind of decisions to be enforced. In simpler terms, decision given by an incompetent body can not have binding nature at all over the subjects of the decision.
- d. It should contain a determination as to the respective rights and duties of the disputing parties. By having so, judgment is expected to bring an end to the litigation of the parties at hand. In other words, it should reveal the winning and the losing party in the case. Unless a judgment manifests the favored and disfavored party, then it is not a judgment at all.
- e. Judgment is the final adjudication of a case. Once a judicial body gives judgment over a certain case, it can not review the same case for the second time. Thus, judgment should mark the final judicial act in terms of the body which reviews the case unless the law authorizes the same body to review its judgment for reason provided in the law.
- f.

1.6 Nature, Type, and Purposes of Judicial and Non-Judicial Decisions.

Among other things, this section deals with the nature of judicial and non-judicial decisions. Besides, the different types of judicial and non-judicial decisions as well as the purposes each serve will be dealt. In line with this, the meaning of judicial institutions and the inputs used to decisions making and judgment writing will be investigated thereby setting up a safe bridge to embark upon the discussion on the next chapter.

It has been mention in the previous sections that judicial decisions refer to the decision given by a body which is endowed with judicial authority by virtue of the law. In light of this, judicial decisions can be expressed as decisions which are binding over its subjects. In other words, judicial decisions are enforceable at law. This is to mean that decisions given by judicial bodies, established by law, are executable over the party against whom they are made.

Judgment being one type, Judicial decisions can have different forms of serving different purposes. As such, judicial decisions may also have the nature of order, decree, or beyene.

(Judgment will not be a point of discussion here as it is already been dealt with in the earlier section.)

Order: - is the discretion of a judge, usually made in writing to resolve some preliminary matter. It is distinguished from judgment in that it does not finally determine the case. An order dismissing one of several defendants, an order to produce or suppress evidence, or any ruling upon a motion which does not finally dispose of the case including ruling for change of adjournment, are some examples over which an order can be given by the judicial body.

Decree: - is better defined (expressed) in terms of its usage or importance in the process of giving judicial decision, especially of giving a judgment. After a certain case is decided some how, it becomes necessary for the judicial body to tell about the respective rights and duties of the parties involved in the dispute. Hence, the part of the judicial decision which stipulates in brief and clear manner the rights and duties of the disputants is called decree. As such, it is important to notice here that decree usually comes as a necessary extension to all judgments seen in light of resolving the dispute before hand.

Beyene:- there is, of course, no clear provision indicating the existence of a type of judicial decision known as 'beyene' in the Ethiopian civil procedure code except the fact that the term is occasionally used under different provisions of the civil procedure code including article 3,353,354and 355.For example ,the term 'beyene' is used under article 3 of the civil procedure code in an attempt to give meaning to the terms 'order' and 'judgment's.(see the Amharic version of the civil procedure code.) As such, note need to be taken that there is no a perfect English term (word) substituting the Amharic word 'beyene' .But, it seems, 'beyene', is some how equivalent with the English term 'decision' as can be inferred from the codes .However, 'beyene' being one form of a judicial decision, it generally refers to a decision of the court having a temporary value with respect to its business of conducting the entire judicial proceedings.

It is true that the purpose of judicial bodies can only be manifested through their judicial decisions. Judicial decisions can have the form of a judgment, decree, or an order. In the earlier sections attempt has already been made to deal with the purpose of judicial bodies. As such there is no need to deal with the purpose of judicial decisions in part.

Non-judicial decisions as the name indicates, means emanate from non-judicial bodies. But what are non-judicial bodies? Non-judicial bodies, normally refer to administrative agencies which do not have the mandate to pass a decision binding and enforceable at law. The decisions made by such kinds of bodies are not usually made on the basis of the working laws of the country. Rather, they usually base their decisions on certain specific directions adopted with a view to promote the interest of a given administrative agency. As such, these bodies can be said to have no legal foundation. So to discharge judicial functions, as a result of which they can not generally render a decision which is enforceable by law. However, it should be born in mind that decisions given by non-judicial bodies can be enforced, ultimately though, when it is found consistent with the existing laws of the country after reviewed by the competent authorities, i.e., courts.

The types of non-judicial decisions, among others, include the decision of certain administrative personnel, head of directorate, or manager of distinct bureau with in a given administrative institution in relation to a single or a group of workers with regard to discipline matters, demotion or promotion cases, firing or hiring issues, etc. The decision so made is usually communicated to the target worker (s) through an officially written letter, stating the reasons for reaching at the decision.

Thus, it can be noticed in here that non-judicial decisions are different from judicial decisions in that the former is not meant to resolve an existing dispute and has no binding force, in the eyes of the law, as against the person the decision is made unlike the case to the later. Moreover, the purpose of non-judicial decisions is, most of the time, to maintain peace and stability within a given working industry and to foster the progress of the concerned administrative agency.

1.6.1 What are judicial Institutions and judicial Decisions?

Judicial institutions are bodies which are bestowed with the sole function of adjudicating disputes brought before them with a view to bringing a resolution to the conflicting parties.

Pursuant to the FDRE Constitution of 1995, judicial powers, both at the Federal and State levels, are vested in the courts, in general. As such, courts of different kind are the prime, if not

the sole, organs which are regarded as a judicial institution. However, there are some other organs in the state which are regarded as judicial institutions by the mere reason that they are endowed with the power to discharge judicial functions.

As per the Constitution, therefore, there are around five types of judicial institution. These are:-Regular Courts, Special or ad hoc courts, religious courts, customary courts and institutions which are legally empowered to exercise judicial functions including, Civil Service Tribunal, Tax Appeal Commission, Labor Relation Board, and Urban Land Clearance Commission. (These institutions are also known as quasi-judicial organs since they are partially administrative in their nature).

Hence, judicial decisions are decisions made by those judicial institutions in their attempt to resolve disputes brought to them. Since judicial institutions are legally empowered to adjudicate disputes, their decisions have the effect of binding the party against whom the decision is made.

1.6.2 Preliminary processes of decision making and judgment writing

This part of the material aims to investigate the preliminary steps or processes through which judicial bodies render judgment and thereby transform the judgment in to a written document. As such , this section will have the purpose of revealing the stepping stones that should be taken into account before and while writing judgment, as every judicial writing never begin simply by setting a pen to paper.

Judgment being the final stage with in the overall adjudication process, there are some necessary and important steps that a given judicial body should undergo in order to reach at this stage. It is only once these steps have been walked over that judges should be set out into writing the judgment. Hence, it is found to be important at this point to have an overview of the progressive steps that need to be applied before and during the writing of judgment. This generally provides an understanding of what judicial writing is all about and how one should proceed systematically with respect to same. The main preliminary steps are the following.

a) Of decision making

1. Communication - before beginning the writing process, the judge needs to review the objectives to be met by writing judgment. The objective may be identified as to do individual justice in individual cases and to resolve a dispute between the parties. A second objective is being to persuade any concerned audience of the reasonableness of the disposition. The judicial writing, therefore, constitutes an argument.

To properly communicate the disposition of a case, the judge must enable the reader to understand and accept the judge's decision. For the reader to understand the decision, the document communicating that decision must also be persuasive. This does not mean that all who read the judicial writing will agree with the disposition, but each reader will understand it and emphasizes with the writer's thought-process in reaching the disposition.

2. Thinking - this preliminary process relates to the legal reasoning process. It refers to a controlled and purposeful mental activity that directs the movement of the mind. It is also defined as any mental activity that helps to formulate or solve a problem, make a decision, or fulfill a desire to understand. Thinking involves a searching for answers as well as search for meaning. The activities involved in thinking include: observing, memorizing, recalling, imagining, inquiring, interpreting evaluating, judging, wondering, ordering ideas and analyzing. These tasks work separately or in combination with each other to solve a problem in the process of decision making and judgment writing.

Reasoning can be taken as correct form of thinking. There are inductive and deductive kinds of reasoning, each used in decision-making. Clear thinking includes the process of explaining in a logical sequence, the reasoning process. A written decision will stand or fall on the reasons stated to solve the issues presented. If the reasoning process is logical, the solution advanced will be durable. If the reasoning is faulty, the solution advanced will not withstand criticism and will be ineffective. Thus, thinking about thinking is a necessary ingredient of good legal writing including judicial writing. In solving a problem, the judge must first understand the

several steps of the thinking process. These steps, when properly taken, make it possible for the judge to solve problems, make decisions and take stands on issues.

The four basic steps that need to be applied in thinking while writing a judgment are:

- a. Define the problem;
- b. Identify alternative solutions;
- c. Select a solution;
- d. persuade

Each of these steps has additional elements. For instance, before defining the problem an investigation process to gather additional information may be necessary. On the other hand, in order to persuade, the judge must ensure that others understand the solution and its justification.

Hasty generalizations and faulty analogies supporting the decision should be a major concern to the decision maker in the decision making process. Judges must learn to critique their own ideas as well as the ideas of others. Each of us easily recognizes the errors of someone else's idea, but to recognize an error in our own idea is not easy as such. This subjective approach to our own ideas creates the greatest obstacle to our effective thinking. A judge should learn to anticipate objections to a solution offered before they occur and overcome them by specifying why the solution is a good one.

2. **The Hearing-** the judge has the power to regulate all proceedings in every hearing before him and to do all the things necessary for the efficient performance of his duties. As long as the judge affords each party the opportunity to present evidence, through depositions, affidavits, and oral testimony, due process has been given.

A formal hearing conducted in a courteous manner, will give the judge good control over the proceedings. The judge should demand professional performance from counsels in representing client's interests-no slipshod arguments, no attacks up on the opposing party, no abusive questing of witnesses and no unwarranted interruptions. The judge establishes the time and place of the hearing or hearing should proceed from day to day until completed. Rulings on motions and objections must be made in a clear manner so that the parties understand them.

In the process of hearing, the judge can identify facts admitted and denied by each of the parties of the case. The Ethiopian civil procedure code includes provisions for hearing in articles 238, 241-249, and ... the Ethiopian criminal procedure code also deals with hearing from articles 123-135. The proceedings of hearing help the judge give judgment on admissions and preliminary objections, to frame issues and to give final decision.

3. **Opening the Hearing-** the judge should open a hearing only after he has acquired a basic understanding of the case by familiarizing himself with the case file. Before opening the hearing, the judge may find it helpful to prepare a hearing sheet and an Exhibit sheet. The hearing sheet should include those material facts that are admitted, agreed or stipulated, the material facts remaining in dispute, the witness who will discuss the disputed facts, the applicable law, identification of the elements to be met and the issue(s) to be decided. The same is true for the elements of the Exhibit sheets

The civil procedure code of Ethiopia has incorporated provisions for hearing of suit and examination of witnesses under its articles 257-273 (read the provisions). For instance, article 273 states that after the evidence have been concluded and the address and reply under the provision for statement and production of evidence, if any, have been made, the court shall give judgment. Besides this there are provisions in the civil procedure code with respect to hearing of appeals (see article 337-349).

In the criminal procedure code of Ethiopia, provisions for hearing are included from articles 123- 149. Accordingly, there are provisions for opening of hearing (article 126), attendance of accused (article 127), objections to the charge (article 130), settlement to object (article 131), judgment and sentence (article 149), etc. From these, it can be understood that the Ethiopian procedural laws give high concern to the hearing requirement as a preliminary step before making decisions on the respective civil or criminal cases.

5. Limiting the scope of hearing- if no effort is made by the judge to structure the hearing, the judge will find it difficult to frame the issues, to draft the facts, and even to complete his work. Thus, it is important for the judge to begin the hearing by limiting its scope to inquiry. Once the scope of the inquiry is limited, the issues have been fixed. Before taking any testimony, the judge

should require each attorney or advocate stating the nature of the case and the area of dispute. An attempt should be made also to have each attorney agree to those facts and exhibits that are not in dispute. Before taking any evidence the judge should habitually state the nature of the case, state the areas of agreement, and frame the disputed issues in his own words. At the same time, the judge should state the legal principles and standards through which the case will proceed and the manner the judge will be guided. The principles and standards are those elicited from the attorneys at the beginning of the hearing or the judge's interpretation of those principles and standards.

Counsel, at times, will not want to agree to anything. However, if the judge starts with very obvious factual matters, once that it would be most difficult to contest under any circumstances, the attorneys will realize how unreasonable it is to disagree with everything. The issues to be decided should also be framed in the judge's own words, eliminating the uncontested matters.

6. Stipulations- the judge's findings are conclusive if they have been stipulated by the parties. When evidence is not controverted or challenged, it should be treated as admitted. Once the judge completely understands the stipulations, the hearing should begin. It is unnecessary to hear evidence in support of any matter already stipulated. (Black's law dictionary defines stipulations- as a voluntary agreement between opposing parties concerning some relevant point or as a material condition or requirement in all agreement. A stipulation relating to a pending judicial proceedings, made by a party to the proceedings or the party's attorney is binding without consideration).

When there is no stipulation, the judge can begin the proceedings by asking each counsel to give his idea of what needs to be decided or what issues or facts are in dispute. It is important to remember that after hearing from both councils preliminarily, the issue to be decided must be framed in the judge's own words and announced to counsels or parties. Thus, in an ancient metaphor, it is said that the judge must separate the wheat from the chaff.

7. **Exhibits and Agreements** – when exhibits and agreements are to be offered in to evidence, the judge should attempt to persuade each party to agree to the admission of such documents, raising objections only when a document offered seems to have no logical connection with the disputed issues.

8. **Evidentiary Ruling**- the judge has the responsibility to admit and exclude evidence. Once the judge has ruled on the admissibility of evidence, it is also within the judge's discretion, as the trier of fact, to determine the weight given to such evidence. Further, the judge may determine which items of evidence are not relevant or are cumulative. Evidence is relevant if it has a tendency to make the existence of any material fact more probable or less probable. The weight given to any piece of evidence admitted is to be determined by the judge. In the admission or exclusion of evidence, the judge should make sure that the record clearly reflects the reason for the admission or exclusion. Admission of evidence is the rule and exclusion of evidence is the exception.

The requirement of a trial is not to provide error free proceedings, but rather it is to have proceedings fair and free of prejudicial error. If the judge uses a standard guide as to how the proceedings should be led with a view to come up with individual justice to all individual cases, it becomes easy for the judge to manage the proceedings and to determine whether justice is or is not being done. It is only when the error adversely affects a substantial right that its commission may be prejudicial and that it may result in a reversal upon review.

9. Pre-writing – before the trial or argument, the judge should review the documents filed in the case to determine what claim(s) are being made by each side. If resolution of the case relies upon a statute or a legal theory unfamiliar to the judge, the statute or theory must be examined. During the trial or argument, the judge should always keep an open mind. The proof and arguments made by either party can receive adequate consideration only if the judge is willing to listen fairly to the contentions of each side.

While listening to the trial or argument the judge will gather information which addresses his concerns .Obviously, listening is a major part of the judge’s task. Note taking is also a wise and often an essential part to the listening process. It can help to make clear the position being advanced, the unanswered areas and any fallacies in the reasoning. The Judge should make inquiries about any missing elements or theories which would support an opposite conclusion.

After the trial or argument the judge should reach at a preliminary conclusion as to the appropriate disposition of the case. This must be done while the facts and the arguments are still fresh.

b) Of judgment writing

Writing – this is one method or form of communication which is used to tell a story or make an argument. In writing, the five ‘**W**’s of journalism should be answered. These are: **Who? What? Where? Why? And When?** And decision markers, usually, add another element **How?** This refers to the technique of writing.

Legal Research must include both the fact and the law. A list of the material facts should be made. This can be done by underlining the notes taken of the trial or the argument. The research should determine how the law is to be applied to those facts. At this stage the preliminary conclusion made under the prewriting stage may be changed .The issues, factual or legal, should be concisely identified. The point of the discussion must be known before the writer can attempt to answer it .The possible alternative solutions can then be listed. This provides the working guide for the writing process.

Drafting can begin now .The judge should start by making a choice of the legal precept to be followed. Then, an outline should be drawn organizing the materials into a logical sequence. Some items that were considered necessary to the pre-writing phase can be eliminated. Other items may be added .At this stage, the goal is to articulate why the reasoning is correct, and how it supports the conclusion being advanced. The writer’s main objective is to persuade the reader that the result reached is the only logical way to dispose of this particular case.

During the drafting phase, while focusing up on the facts and then the law, new solution and ideas become readily available. Justification for one conclusion may disappear while justification for another may be discovered. Progressive reasoning may require several changes

in the direction of the writing. Drafting is peculiarly suitable for the exploration of ideas. It is the vehicle used to examine alternatives in reasoning while offering a means for testing that reasoning. Thus, flawed reasoning becomes immediately discernible. When this happens, it may alter the entire course of the writing .Such changes can be made easily during the drafting phase and are an indication of a healthy approach to the judicial task of decision making. Drafting gives the judge flexibility and permits changes before the actual writing beings.

The draft is now ready for revision and the actual writing may begin. Once the draft is satisfactory, the sequence may be changed for an easier understanding. An item that adds nothing to the discussion may be eliminated. Repetitions of words, phrases, or ideas may be removed to shorten the writing as long as the meaning remains clear. The original materials may be completely reorganized or rewritten. Additionally, materials presented in one way may be more efficiently presented in another. Any change that will aid understanding or readability should be made.

Editing follows next. Once the revised draft has been produced, the sentences may be restructured with a view to adding strength or more precise meaning. Grammar, spelling and punctuation should be corrected. Form should be checked for consistency in the use of capitalization, spellings, and hyphenation. Missing letters words or phrases should be added. Redundant information should be deleted. Over use of a word or phrase should be strike out.

An unintentional emphasis or deemphasize should be eliminated. The logical development of the discussion and the flow of the reasoning should be examined. Transitional sentences should be added to improve the reader's understanding. There should be consistency in the use of the same word to refer to the same thing. Thus, editing produces the final draft, i.e., the judgment. Once retyped, it should be proof read carefully. It should represent a cohesive dialogue with a logical progression of ideas starting from the beginning, proceeding through the reasoning process and concluding in the disposition. In case of hand written judgments, which are prevalent especially in countries like ours, the judge's hand writing is also an important concern in judgment writing.

CHAPTER TWO

KINDS OF JUDGMENT WRITING

In the previous chapter, among other things, an over view of judgment and judgment writing, the need to have judicial organs and the purpose of judicial as well as non-judicial decisions is made. This chapter is primarily set out to deal with the basic tenets of judgment writing and the different kinds of judgment writing. In line with this, the grounds to classifying judgment writings will also be investigated.

However, it is believed to be of paramount importance to deal first with the necessary ingredients to all types of written judgments before embarking up on the different grounds used to classify judgment writing. Hence, the subsequent part will delve in to discussing the most important elements that every written judgment should incorporate.

It is said that judgment is the final result of every legal proceedings which provides a solution to a certain conflict. As such, it calls the need to have judgments in a written form so as to facilitate their effective execution. Delivering a clear execution order by giving precise instructions in the judgment to be written will contribute to bring about an amicable solution to the conflict thereby bringing an end to the dispute arose.

2.1 purpose of making judgments

All written judgments should have the following four main purposes in view when prepared by the judicial body to which the conflict is submitted for resolution.

I. To clarify the judicial body's thought

This is believed to be the most important secret behind good judgment writing. If judgments tend to be wordy, unclear, pompous or dull the overall purpose of rendering judgment will be defeated. Thus, it is a key to all written judgments to be clear, concise, interesting and accessible both to the litigants, in particular, and to the audiences of written judgments, in general.

In order to write a clear judgment, there should be a clear thinking on the part of the body rendering the judgment. Clarity of thinking can, basically, be seen by looking at the structure and style of the written judgment. But what do structure and style of written judgments are all about?

a) **Structure:** - it is true that all written judgments should be prepared in a structured manner for an easier understanding to audiences of written judicial decisions as well as to the disputants.

Primarily, the judiciary needs to stipulate, in the written judgment, the story of the case emphasizing the facts in issue and facts not in issue.

Secondly, it is important for a written judgment to have a part that deals with the relevant provision of the law or case law in connection to the case submitted to it for resolution.

Thirdly, The application of the pertinent law to the facts should be seen in the judgment. This helps the judgment to win acceptance on the part of the parties and the public at large as it will be shown that the decision is the result of the objective application of the law to the facts that have been found.

Finally, the written judgment needs to incorporate the conclusion part as an inevitable consequence of the application of the law to the facts.

By doing so, it is possible to have a structured judgment which can express itself in a clear and logical way thereby providing an easy way for the audiences of the written judgment so as to grasp the message behind the judgment as a whole.

b) **Style:** - equally, it is important for the judicial body, in producing a written judgment, to be concerned about the style through which the judgment is written so as to come up with a judgment which is adequately accessible to the public.

Style in writing a judgment refers mainly to the use of correct rules of grammar, syntax and punctuation. It also deals with principles of composition, matters of form, words and expression. The following are some of the basic styles that need to be observed while writing a judgment.

1. Avoid the use of cliches: a good judgment normally is free from repetition of a similar word the use of which is not necessary.

2. Be precise and to the point: it is also important in judgment writing not to use a lot of words in order to present the case and reach at conclusion. To the extent of possible a written judgment need to be precise and to the point. Otherwise, verbosity is likely to invite confusion on the part of the reader, in order to grasp the out come of the judgment, as it tend to create errors on the over all idea of the case.

3. Use the active voice rather than the passive: judgments are best written in the active voice than in passive voice as the former convey the message of the judgment to the reader in more direct and rigorous way.

4. Be particular rather than vague: while writing judgment, it is important that the writer should limit himself to only addressing the conflict before hand. This helps to avoid vagueness in understanding the judgment on the part of the reader.

5. Try not to use language that excludes: this is to mean that written judgments should not make discrimination between citizens on the basis of, for example, sex, age, race, social status and the like. It is preferable to use terms which are equally applicable to all kind of persons.

6. Use simple and direct prose rather than abstruse wording: in writing judgments, the judicial body should always avoid the tendency of using difficult vocabulary and constructing sentences which are difficult to grasp their message.

7. Avoid obvious errors: usually judgments need to be written formally for the better understanding of the message they embodied which is also the ultimate goal of judgments in general. As such, judgments which are written by using colloquial oral language result in the lack of effective understanding and even execution of the judgment which will normally refute the prime purpose of having written judgments.

In line with the above, while writing judgments in a formal manner, it is necessary for the judicial body, mainly, to be concerned about the following issues, so as to avoid the most obvious and repeatedly committed errors.

- a- Subject and verb agreement
- b- Making each pronoun agree with their antecedents
- c- Ensuring the absence of dangling participles (verbs used inconsistently)
- d- Make sure that clauses are joined properly
- e- Avoid the use of run-on sentences which lacks the necessary usage of punctuation

- f- Avoid the use of double negation
 - g- Avoid the use of mixed metaphors
 - h- Ensure the inexistence of too frequent use of many adverbs
 - I- Avoid the use of too many redundant and unnecessary words
 - j- Avoid the use of fragmented sentences
 - k- Avoid the use of splitted infinitives
 - l- The use of the correct apostrophes
 - m- Ensure the use of a foreign term only when there is no an adequate word in the language the judgment is being written.
9. Try to be interesting: it is said that clear thinking is a key to clear writing. A clearly expressed judgment will create ample opportunity to demonstrate the interesting nature of the subject matter involved and the exposition of the legal reasoning incorporated in the judgment.

II. To explain the decision to the parties

Communicating the decision to the parties involved in the case or their lawyers, if they have, is crucial as it helps, especially, the loosing party to know the reason(s) for loosing the case. This is mainly because it tends to be likely to someone who lost his case will feel aggrieved (disenchanted) with the body which gives the decision, in particular, and the legal system, in general. Thus, it is important that the reasons for reaching at the judgment show that the losing party has been listened to, that the evidences has been understood, the submissions comprehended and a decision reached. This is, particularly, important in the case of an unrepresented litigant.

In addition to these, it is the right of a party to receive a judgment which shows the reasons. This is, basically, because a judgment that lacks a reason for its decision would make it impossible to file a well founded appeal against the judgment. As such, the right to appeal normally includes the right to know the reasoning of a judgment, as is provided for example, under article 14 of the International Covenant on Civil and Political Rights (ICCPR).

On the other hand, it is believed that the duty to provide reasoning for the judgment reached at on the part of the judicial body makes it more difficult for a judge to hide his/her true motivation for making the judgment. Thus, may have been not so much influenced by the law and the facts but more by payments of one party or by the sheer lack of the judge's legal knowledge. The reasoning of a judgment need to convince the parties that their position has been fully considered. It must show why some facts presented by the parties are regarded as important while others are regarded not to be important. Furthermore, the reasoning of a judgment must show the application of the relevant law provisions step by step, article by article and law term by law term. Therefore, it is not a sufficient reasoning if the court has just used the phrase "having seen all facts and the law the court has decided..."

Last but not least, judgments are normally expected to have some information with respect to the right of the parties to lodge an appeal. This holds convincing and acceptable to many as the mere existence of the right to appeal would be worthless if the conflicting parties do not know about this right. As such, a judgment should, for fairness reasons, include information about when, how and where parties can submit an appeal against the judgment. This is true, especially, when the parties are not represented by legal counsels, as there will be almost nobody to inform them of their right to appeal. This information must exactly say where an appeal has to be submitted, what formalities have to be observed and what deadlines have to be kept.

III. To communicate the reasons for the decision to the public:-

This is mainly because unlike any other institutions, courts are hardly provided with the means to release their work (day-to-day produces i.e. judgments) to the larger public so as to create a meaningful communication between the judiciary and the community members within a state. As such, a judgment should be written in a clear and precise manner having included everything necessary with a view to preparing a fertile ground for the larger public to fully understand the judgment easily as to why a decision is reached at in a certain way.

IV. To provide reason for an appellate court to consider:-

Though it is not as crucial as the above mentioned purposes of writing judgment, it is normally important for written judgments to include the main reasons, on the basis of which, the decision is reached at. This also holds true as it will furnish a ground for the appellate court, to evaluate the decision of the lower court.

After considering the judgment on the basis of the reasons stipulated by the lower court so as to reach at the judgment rendered, the appellate court will reverse, modify or affirm the judgment of the lower court by putting its own reasoning for reaching at its decision.

Apart from the need to have the above mentioned purpose in view while writing judgments, it is also said that it is necessary and important that courts should follow a certain standard format in producing judgments in a written form. In line with this, it seems there exist a general consensus among many that a judgment when reduced to writing should incorporate parts dealing with: - summary of the nature of the matter dealt within the case, summary of the facts provided in the case indicating the facts which are in issue and those not in issue, relevant provisions of the law in connection to the case and finally the decision reached at along with adequate reasoning. In doing so, it should also be made sure that all these are done in as short, and precise manner as possible. Moreover, it should also show by using clear terms the question(s) involved in the case and, where it is important issues related to the actual determination of the case in hand.

And finally, it is said that it should be clearly shown in the judgment that on what facts the decision is based on. This, of course, is in line with the motto which reads "It is not enough that justice is done but justice must be seen to be done."

2.2 Grounds of classification of judgment writing

It can be safely said that judgments, in particular, and written judgments in general have the prime goal of achieving a universal objective; which is the just resolution of conflict, which is regarded as the core business of almost courts in the world.

There are different kinds of judgment writings based on the nature of litigation involved, the type of legal systems in which the judgment is to be written, the kind of interest to be replied and the magnitude of the complexity of the matters involved in the cases to be brought before the court.

The forthcoming sections will be devoted to the discussion of the different kinds of judgment writings in detail.

2.2.1 Nature of litigation: civil vs. criminal

Cases that are usually brought before courts of law for resolutions can be broadly categorized in to civil and criminal. Hence, it becomes important to have a general overview about the nature and characteristics of civil and criminal cases, at this juncture, before dealing with the nature of judgments to be written in both civil and criminal cases.

A civil case refers to a suit which is instituted before a court of law by a person (physical or legal) including the state with the prime purpose of obtaining redress for an allegedly committed wrong against him/her/it. In most of the cases, the person will seek the payment of money and sometimes a specific relief, hence it can be seen here that a civil action can be brought before court of law either by a natural person, legal person or the state (government). But it should be underlined in here that the state can be a party in a civil case being represented by its different administrative agencies so as to protect or enhance the interest of the public at large. Thus, the over all aim of civil actions is recovering damages for an injury sustained to property or person. The party who brings a civil action is called *plaintiff* where as the party against whom the suit is instituted is called the *defendant*.

A criminal case, on the other hand, refers to a suit which is instituted by a government with in a state having the purpose of securing obedience to its laws through punishing or correcting the law breakers. In here, it can be noticed that the party which brings an action before court of law pertains to be the state or the government. The body, with in a state, which is solely entrusted with the function of instituting a suit is usually the ministry of justice through its different prosecution (public) offices. Where as, the other party against whom a criminal action is brought could either be a physical person or a legal person. In the Ethiopia context, the duty to bring a criminal action in courts is discharged through the federal and regional public prosecution offices. As such, it can be seen that in order to determine whether a given case is civil or criminal one, it depends on the following three parameters. These are: the party instituting the action, the purpose for which the action is instituted and the relief requested to be delivered by the court.

It has been said that judgment is the result of an application of the law to the facts. In order to reach at a judgment, the judge normally collects the facts from both sides in a fair trial. At the beginning of the judgment, there must be a summary of the case as presented by the parties. If there are disputed facts, the judge has to raise evidence and determine which facts he/she sees as proved by the evidence presented and which not. This part of the judgment is called the findings of the facts. It also includes a selection of those facts which the court thinks are necessary to base its decision. Finally, the judge applies the text of the pertinent law step on step on these facts examining carefully if the given facts fulfill the legal conditions setup by the law.

In civil cases, the facts in issue are determined by the pleadings. The pleadings will reveal what facts are not in dispute and what facts have to be determined. This is because it is important to resolve each of the facts in issue for the decision making body.

From the above point, it can be understood that civil litigations are a means to handling private disputes. It is not always because laws have been broken that civil cases arise but when it is sure that individual rights have been violated in some way. Civil cases include, among other things, litigations with respect to property, family, personal injury, and labor matters.

With respect to weighing of evidence, the burden of proof required in civil litigations is lower when compared to that of the case in criminal litigations. Preponderance of evidence is always sufficient for a party to convince the court and win an award in case of civil litigation.

Generally speaking, judgment in civil suits provides, such compensatory relief as well as help secure some kind of important preventive measures that would not result from a criminal action alone.

Thus, as it has already been said judgments in civil cases, involve parties namely the plaintiff and the defendant. And the body of the written judgment will incorporate, basically, summary of the facts as presented by the parties, orders on preliminary objections, if raised by either of the parties, facts in issue, mention of the relevant provisions of law thereby applying the pertinent law provision to the facts in the case and finally the decision of the court before whom the case is brought for resolution.

A criminal case, as opposed to civil case, refers to litigation between two parties namely the public prosecutor, representing the interest of the society and the allegedly criminal offender which could be a physical or a legal person. The basis upon which a criminal litigation (case) will be held is the criminal law which is the body of law that determines criminal offences and the penalty to be imposed on convicted offenders. As such, criminal litigations can be expressed as an endeavour to penalize a malicious intent on the part of the offender and to deter potential criminal offenders from committing a similar act in the future with a view to enhance the peace and security of the society at large.

Unlike civil cases, the cause for a criminal case to be instituted before court of law is an alleged violation of the working laws in a state. And hence, a person against whom a criminal suit is instituted is usually alleged to have violated the law. As such, it becomes necessary for the public prosecutor, which brought the case before court, to convince the court the commission of a crime through the violation of the law by the defendant.

It is necessary, however on the part of the public prosecutor, to gather the necessary evidences upon which he would base his prosecution against the suspect so as to win his purpose. In other words, the prosecutor, while instituting a criminal suit, before court, should establish a *Prima facie* case. Otherwise, the file he brought will not have acceptance by the court and the suspect will automatically be acquitted without the need to defend himself. However, if the prosecutor brings his suit in a manner that the suspect could commit the alleged crime, the court will order the defendant to present his statement of defense and the litigation will proceed.

In case of criminal litigation, the standard of proof required is some what higher in the sense that the court needs to be convinced/ satisfied fully that the defendant has committed the offence with which he is charged. In some legal systems even there is the so called the standard of beyond reasonable shadow of doubt. This is to mean that the court should prove the guiltiness of the defendant with out the slightest room for hesitation that the alleged crime is committed by someone else. As such, it should be emphasized at this juncture that evidence which is brought before a criminal court is not equally and necessarily admissible as an evidence that is presented before a civil court with respect to same matter.

The party bringing a criminal action before the court of law is called the *prosecution* or the *public prosecutor* while the party against whom a criminal action is brought is called, the defendant, as is the case in civil litigation.

Thus, it can be generally said that judgments in a criminal litigation will normally come up with the determination of whether the defendant is guilty, or not, of the crime he/she is charged with. If the defendant is found guilty of the crime he is charged with, the court will order punishment in terms of usually, imprisonment or fines or both.

Therefore, judgments in criminal litigations are normally expected to have the following parts (elements) as opposed to judgments in civil cases. These, among other things, include the record of proceedings before judgment and the judgment itself. By the record of proceedings we mean the details of the suit the prosecutor brought against the defendant, the reply (response) the defendant presented in terms of both preliminary objection and defenses, the hearing of evidences of all kinds, ruling of the court on the preliminary objections, the types of different kinds of evidences presented (the testimony given by each witnesses), the decision of the court as regards the guiltiness of the defendant, and when the defendant is found to be guilty of the crime with which he is charged, the comments of both parties as to the magnitude of punishment to be given by the court and finally the sentence that is pronounced by the court.

2.2.2 Legal systems: Continental law (civil law) vs. Common law

In the earlier section, an attempt has been made to deal with the nature of judgment and judgment writing in civil and criminal litigations. This section is to deal with the features of judgment writings in relation to the two well known legal systems; namely the continental law legal system and the common law legal system.

The nature of the legal system or the legal tradition that a country adopts can also be another factor influencing the manner of writing of a judgment. Due to their respective legal traditions the judges in common law and civil law legal systems follow different pattern of writing judgments. The main differences existing between the two legal systems lies, among other things, on the institutional organization of the two systems, the system of court decision making, legal education and professional practice/tradition.

In common law legal systems, all laws are not codified as a result of which the judges play the role of law making, or precedent in their attempt to resolve disputes which are submitted to their jurisdictions. Thus, the courts apply both written and unwritten laws. Where as, in civil law legal systems, courts usually apply written laws, as this system is expressed in terms of a system whose laws are not found being embodied in a code. For instance, in countries like Britain, which is an example of common law legal system, there is a detailed analysis of facts and laws as the judges will have time and may make laws by their decision. But in France, which is a typical example of the civil law legal system, judges do not play the role of law making but simply apply the written laws to particular problems. Hence, there is usually case load as they can not analyze facts in detail and can not refer to precedents and polices. And their decisions are short when compared to the judgments rendered in common law legal systems. In common legal system, there is what is called "the jury system" which examines facts in criminal litigations, but not in case of civil law legal systems.

With regard to the legal education tradition and professional practice, it can be said that the civil law education system is not skill or practice oriented but principle or abstract analysis oriented. Practical skill is covered only after graduation in the form of apprentices or special training. Where as in common law legal system, for example in USA, legal education is professional training, which is treated just as a second degree programme. Hence their curriculum system emphasizes on methods such as separation of relevant fact, legal analysis, case brief, legal reasoning, trial advocacy, legal research, judgment writing etc. However, in France, which the country known for adopting a continental legal tradition, trainings are given for judges, prosecutors and advocates. But, in common law tradition, no special training is required after graduation so that the graduate will be fit to all tasks.

Apart from these, the common law legal tradition is different from the civil law legal system in that the former is characterized by the existence of parallel relationship between judges and attorneys. As such, the judge seem answering or responding to the opposite attorney's arguments. Where as in civil law legal tradition, the judges simply tend to decide the case by applying the law on the dispute rather than answering to the attorney's arguments.

On the other hand, in the common law legal tradition, each judge writes his own judgment and should show the draft for collegial judges. And the dissenting opinion if there is any, will be given on the basis of the draft judgment of the majority. Where as in civil law tradition, dissenting opinion will be written on the same judgment file unlike the case in common law legal system.

Therefore, a judge in common law legal system should study precedent decisions before writing the judgment. In other words, the judge need to update himself with the latest publication of judgments within the same legal system and if he want to deviate from the already given judgments, he is required to present strong argument, in his judgment. But, in case of civil law legal system, as there is no such thing as precedent, no need for the judge to get acquainted with the judgments given prior to his judgment but to be in line with the existing laws of the country.

Generally speaking, judgment writing in common law legal system can be defined as one which; describes facts in detail, show alternative solutions, is longer in size and broader in content, gives answers for each arguments or points and show the point of dispute carefully. On the other hand, judgments in civil law legal system, can be characterized as one which; uses long statements, which sounds like preamble having a proclamation like tone, applies the law on facts in the form of conclusion, fails showing alternatives, explains the facts in short or in general and do not include opinion about the past and the future.

2.2.3 Interest to be replied: Public vs. Private

In this section the reader is required to pay attention to written judgments in light of the interests replied by the court in its judgment. It is said earlier that judgment writing is nothing but a process through which a dispute between two different parties can be resolved thereby satisfying the interest of either of the parties. As such, judgments can also be characterized in terms of the interest to be replied by the resolution which the judgment comes up with.

Generally, interests which can be achieved by virtue of the judgments rendered by a court could have private or public nature.

In line with this, it is important to forward some points about the two basic features a law namely, private law and public law. Private law as the name indicates refers to those areas of laws which are applicable to private kind of litigations. Private litigations are litigations between two non-governmental persons (legal or natural). Some examples of private law include: contract law, property law, family law, extra-contractual law etc. On the other hand, public law refers to the area of laws which are applied when litigation involves the interest of the public at large. A typical law which is regarded as having a public nature is the criminal law.

However, it should be clear in here that knowing the parties involved in litigations may not always be helpful in identifying the private or public nature of the litigation. In other words, the kind of parties that might be involved in litigation will not always help in determining the nature of the interest to be replied by the court as private or public. For example, a case may be submitted to the court involving an individual citizen on the one hand and the state on the other hand with regard to a civil matter. Thus, it should be underlined that by the mere fact one of the litigants appear to be a government organ will not make the case a public law matter. This is mainly because, when a government is involved in a civil law matter litigation through its different administrative agencies with a view to safeguarding the interest of the public, it will only be regarded as a single individual (person) attempting to vindicate his/her right before court of law.

However, it is true that sometimes cases can be characterized as having private or public nature by simply looking at the parties involved in the litigation. For instance, a case involving a public prosecutor in one hand and a natural or legal person (s) on the other hand is usually a public law matter. In criminal law matters, the public prosecutor represents the interest of the society at large as there is a huge public interest attached with the maintenance and preservation of peace and order with in the society and the state in general.

Apart from this, cases involving private matters calling for the application of laws are characterized by the litigation between two persons on both sides for the fulfillment of private/individual interests. In here, as said before, the basic motivation for instituting a suit before court of law is seeking for a reward/compensation for a damage incurred, in most cases, and sometimes for seeking a certain kind of relief other than money redress.

Therefore, judgments could have some differences during writing them based on the interests they are going to reply, as the issues/points to be raised in case of private litigation and public litigation are quite different. This holds true mainly because, the party instituting the action, the purpose for which the action is brought and the relief that is sought by the party instituting the suit are different in both cases.

Cases involving private interests are mainly characterized by the presentation of an overall story of the case or the description of facts to the court. As such the court will be left with the task of investigating the facts as presented by the parties and weighing of evidences which could support the allegations of both parties. Besides, the court will only have a responsibility to amicably dispose the case/dispute before hand. As such, the court will have no other purpose, such as, coming up with a decision which necessarily has a public implication. Thus, the very important duty of the court will only be appreciating the factual issues adequately and applying the pertinent law to the facts presented in the case.

Therefore, while a judgment is being written involving a private matter, the judgment need to incorporate, basically, the factual allegation of both parties thereby indicating their respective interests, the issue of the case, the weight of the evidences presented by the parties, the relevant area of law to be applied on the case, the pertinent provision used to reach at a decision and the decision of the court along with its reason.

Matters involving public interests are, on the other hand, characterized mainly by the allegation that a certain rule of law is violated by a person (be it physical or legal). As such, the litigation will aim at whether the said violation of law is committed or not. The over all purpose of public law is to protect as well as promote the interest of the society at large. To this end, a need arise to safeguard the interest of the society, when it is proved that a certain rule in the state is broken thereby affecting the overall interest of the society.

Hence, a court writing a judgment over a case involving a public matter should make sure that a law is violated with in the society by its member or (by a legal person like a legally established organization) to the effect that societal interests are jeopardized. Thus, the overall endeavor of the court will be directed towards achieving this end.

As such, judgments involving public interest matters normally incorporate sections which deal with the general allegation presented against the defendant indicating the exact law which is said to have been violated, the response along with the defenses presented by the defendant, the analysis of the legal provision which is said to be broken, the weight of evidences presented so as to incriminate the defendant and those presented by the defendant to defend himself, and the judgment of the court. In addition to these, opposed to judgments in private matters, judgments in public matters should incorporate the words of both parties with respect to the punishment the court should order, and finally mention as to the over all purpose of punishment, the nature and seriousness of the crime committed or the magnitude of the societal interest affected thereby evaluating the dangerousness of the defendant. Besides, the judgments usually incorporate statements to the effect that the punishment is ordered having the purpose of correcting the offender and giving a lesson to other potential offenders. This boldly marks, a judgment where a public interest is involved in the case as opposed to a judgment involving a private interest.

2.2.4 Complexity of Cases: Simple, Medium or Serious

Cases submitted to courts could be simple, medium or serious seen in light of the nature of the litigation and the magnitude of complexity involved in the case. Thus, on the basis of the degree of complexity of cases, we may have a variety of judgments reduced in to writings.

Suits instituted before court of law can be characterized as simple, medium or serious (complex) on the basis of the number of issues that needs to be resolved by the court, the number and nature of legal provisions relevant to dispose the case, the number of persons and the number of interests that need to be replied, and though a single, the nature of the issue involved. Hence, after reviewing these factors, it is possible to classify cases in to simple, medium or serious (complex). Apart from these, sometimes a case may appear to be simple, medium or complex based on the availability of adequate legal regime so as to effectively address the case.

Some judgments can be written easily without the need to take much time, provided that the interest required to be replied by the court is simple and the issue in the litigation can be easily framed and the relevant applicable law is clear. Such kinds of judgments are usually mechanical and can be dealt with quickly.

Other judgments can not be made easily, especially, when they tend to be complex in that the litigation involves more than one party on each side, the issues to be addressed are more than one, and there are a lot of relevant applicable legal provisions to dispose the case. As such, these kinds of judgments require deeper thoughts on the part of the court before which the case is submitted.

In cases which involve simple or medium degree of complexity with in the litigation, there will be no difficulty in writing the judgment. As such, no exception to the judgments written by the court since it is almost mechanical in its nature. In other words, if the case is simple or medium, the judgments to be written will normally deal with the type of interest required to be replied, the issue to be addressed, the weighing of evidence presented by both parties and the application of the pertinent law to the facts with a view to reaching at a decision.

Where as, in case of writing judgments involving a serious or complex litigation, the court should be cautious in dealing with the general conflict presented before it and the need to address each kind of argument posed by the parties. To solve the different issues framed by the court, appreciate the true nature of the issues involved, and investigate the necessary and relevant areas of law with a view to dispose the case by applying the pertinent provision of the law to the case. And finally, the judgment should incorporate a decision which addresses exactly and effectively the questions of law and question of fact arose from both sides thereby preparing a fertile ground for the effective execution of the judgment.

Therefore, it can be seen from the above point that written judgments involving simple or medium litigation and those involving complex litigation are different in that the former are possible to be written quickly and with out the need to waste much time to dispose the case. Besides, they are shorter in length and shallow in depth as there will not be many issues to be resolved. Where as written judgments involving complex issues will normally be long and broad in scope as they are expected to cover adequately all issues raised in the litigation and address all interests claimed by the parties.

However, it can be said by way of conclusion that all kinds of written judgments share some common and important elements that need not be forgotten. These, of course, can be taken as a minimum requirement that all written judgments should have. These, among other things,

include; heading of the case, summary of party statements, finding of facts, execution order, reason for the decision and information about right to appeal.

Heading of case is placed at the top of the judgment which includes the details about the parties, their lawyers and the topic of the claim. It also includes the file number, the name of the deciding judge(s), the name of the court and the date at which the judgment is rendered.

Summary of the case, as presented by the parties, is important to be included for a reason that it should be clearly pointed out on what facts the decision is based on. This also helps the disputed parties to accept the judgment as they will see that the judge has attentively noticed all their statements.

Finding of facts also constitute an important part in the written judgment as it will show the facts up on which the judge has based his /her decision. This also includes a reason as to why some disputed facts are regarded to be proved by the judge due to his weighing of the relevant evidence.

Reason for the decision is another important ingredient as every party in the dispute has the right to receive a reasoned judgment so as to file a well founded appeal against the judgment.

Execution order is also important in a written judgment because the parties will be informed about what the court orders them to do and how the decision shall be executed. This part of the judgment formulates the decision the judge has made. Since the given order is to be enforced, it has to be very precise naming exactly the parties involved in the case, their respective rights and duties, the amount of money to be paid, including the interest rates.

Information about the right to appeal is also an important element that needs to be incorporated in the judgment seen from fairness of the reasons in particular and helping justice to prevail within the society as a whole.

CHAPTER THREE

DECISION MAKING AND JUDGMENT WRITING IN ETHIOPIA

(An overview of the Ethiopian legal system)

This chapter has the prime goal of dealing with decision making and judgment writing in the present Ethiopia with a view to familiarize the reader with the current forms of judgment writings in our courts at different levels. However, in line with the above purpose, the writer has opted to give the reader a brief account of discussion concerning the legal system of Ethiopia as a whole in addition to dealing with the history and tradition of judgment writing in our country as an introduction.

3.1 Introduction

The legal system of Ethiopia

Inter alia, a legal system of a country can be expressed in terms of the working laws, the legal institutions entrusted with the task of dispute resolution, especially the structure and the jurisdiction of these judicial bodies and also the law making process and the hierarchy to be maintained as between the different laws existing in the country.

Similarly, Ethiopia being a country having adopted a continental law legal tradition, its legal system can be seen in light of the above stipulated factors.

Currently, There are around seven basic families of law in Ethiopia prepared in code form namely, the civil code, the civil procedure code, the criminal code, the criminal procedure code, the revised family code, the commercial code and the maritime code. In addition to these codified laws, there are a number of laws which are enacted in the form of proclamation; the labor proclamation is a typical case in point. As such, it can be seen from these that almost all legal disputes submitted to the judicial bodies at different levels will be governed by and through these laws along with the Federal Democratic Republic of Ethiopia Constitution (FDRE). However, it should be reckoned that international instruments which are accepted and ratified by Ethiopia also form part and parcel of the working laws of the country.

In line with this it seems important to forward some points in relation to the process of making these laws. Reading directly from the FDRE Constitution, the House of Peoples' Representatives (HPR), being one of the three major organs of the government, is endowed with the power to enact laws which have the effect of application across the country. Besides enacting different kinds of laws which have domestic application, HOPR is mandated to ratify the various international legal instruments after the executive body in the country has rendered an approval for same.

In addition to enacting laws in the form of proclamation, the HPR also issue laws in the form of regulations through delegation. Besides the power of the House of Peoples' Representatives to enact laws, the executive body in the country is also entrusted with the power of making laws which have less status in terms of applicability when compared to laws which are to be made by the parliament.

Regarding the hierarchy of the various laws existing in the country, the Constitution is placed at the apex of the ladder of hierarchy to be followed by proclamations which are made by the HOPR .Regulations are the next in the ladder of hierarchy followed by directives and legal notices which are to be made by the various institutions of the executive.

Apart from the above, legal institutions are also the most crucial reflections of any legal system. As such it deems necessary to highlight the reader with the prevailing legal institutions in Ethiopia so as to evaluate the over all legal system of the country.

As Ethiopia is presently a federal state, it exhibits a federal state structure with nine regional member states and two (Addis Ababa and Dire Dawa) administrative cities under the federal government making up the federation. This, of course, has a direct and necessary implication on the nature of the legal institutions the country owns. As such, there exist two layers of administration i.e. the federal state and the self-governing regional states. Thus, Legislative, Executive, and Judicial functions are exercised at both the federal and regional levels with in the limits of powers defined in the Constitution. The 1995 FDRE Constitution has allocated state power between the federal government and the regional states.

Therefore, the various legal institutions found in the country can be seen at both the federal and state levels.

I. Federal Institutions:

1. The Federal Legislature: - The Federal legislature constitutes the HOPR and the House of Federation (HOF), both having their respective power and function. The (HOPR) is, basically, endowed with the power to enact federal legislations. Where as, the house of federation has the principal power of interpreting the constitution.
2. The Federal Judicial Organs: - federal judicial authority is vested in federal courts tiered along three layers based on their competence as provided for by law. These are the Federal Supreme Court, the Federal High Courts and the Federal First Instance Courts. As the FDRE Constitution recognizes religious and customary courts and envisages their establishment by law, the federal sheria courts are established at the federal level forming part of the federal judicial system. These courts are established along the structure of regular federal courts and exercise judicial authority mostly on marital matters, covered under sheria law. The common and specific jurisdiction of federal courts are provided under the FDRE Constitution and various piecmeal legislations (especially proclamation number 25/96 and its subsequent amendments.) respectively.
3. The Federal Civil-Service Tribunal: - this is a body to which the employees of the federal government lodge their grievances over their employer government agency after exhausting all available remedies with in the said agency. With respect to quasai-judicial functions, the tribunal has two powers: to look in to matters put before it and gives an authoritative decision that is capable of enforcement. However, it should be noted that where there are disputes on points of law, resort to regular court will be made. Analogous bodies exist also at the regional level.
4. Municipality Courts: - these are courts where defenses of a less serious nature like violations of traffic regulations are submitted for resolution. The Addis Ababa and the Dire Dawa city Administration courts are cases in point.

5. Social Security Appeals Tribunal: - this is a court which is empowered to render authoritative decisions on cases where people feel aggrieved by the social security authority in relation to social rights and benefits.
6. Federal and Regional Labor Relations Boards: - these boards have the power to decide over disputes having collective effects on employees and that may arise from labor relations specified by the law. They are responsible for the implementation of the labor law. Their orders and decisions are considered as those decided by civil courts of law. They are appeal able in the regular courts of law.
7. Investigation Commission for Unfair Competition and Trade Practices:- this is a legally established body having members from the government, private institutions and consumers groups with a view to probe in to complaints of unfair competitive practices and take appropriate administrative actions in accordance with the specific rules embodied in the law establishing it. The decision made by this body is appeal able in the high court. However, it should be noted that a party aggrieved by the decision of this body has only thirty days to make an appeal.
8. The Human Rights Commission: - this is a body established in accordance with proclamation number 210/92. It has the prime purpose of ensuring respect for human rights. In line with this it has the mission of ensuring that laws (proclamations), regulations, directives, government decisions and orders do not contravene the basic human rights of citizens.
9. The ombudsman/person :- this is also another legal institution established pursuant to proclamation number 211/92 having the major functions of, among other things, supervising administrative directives issued and decisions made by executive organs with a view to make sure that their practices do not contravene the constitutional rights of citizens.
10. The Public Defender Office for the Indigent:- this is a body staffed by legal professionals having the sole responsibility of representing those category of accused persons who are adjudged to be so impecunious so as to litigate on their own and with out the requisite resources to pursue court proceedings.
11. The Federal Prosecution organs

- a) The Ministry of Justice: - this is a body exclusively responsible for the prosecution of federal crimes throughout the country. It has specific powers and functions of prosecutions relating to offences subject to the criminal first instance and appellate jurisdiction of federal courts provided by law. The ministry, also institutes causes to be instituted or intervenes in civil proceedings affecting the public and the federal government.
- b) The Federal Ethics and Anti-corruption Commission: - this commission carries out investigation and prosecution of offences of corruption falling under the jurisdiction of the federal government similar institutions are also established in some regional states.
- c) The Special Prosecution Office: - this is an institution constituted by law to conduct investigation and prosecution of crimes of genocide and crimes against humanity committed by members and officials of the previous regime. This special prosecution institution would only function for the duration of the proceedings. Once the proceedings are over (which are nearing completion) it shall cease to exist as an institution.
- d) The Customs Prosecutions:- this is another kind of the few special prosecution institutions which exercise the power of investigation and prosecution of offences in respect to the violation of federal custom regulations. Its powers are derived from the powers delegated to it by the ministry of justice which has the exclusive statutory power over prosecution of federal crimes including customs offences save in specific cases where some institutions are empowered by law to exercise prosecutorial functions as mentioned here including customs prosecutions.

12. The Federal Police Commission: - the federal police commission is established by law with major responsibilities of investigation of federal crimes and the prevention of crimes. It carries out its functions in close working relationships with the regional police commissions as it has not organized its regional

representations where upon the regional commissions, to a large part, undertake federal investigations by themselves except a few specific cases where the federal commission is itself involved directly.

13. The Federal Prisons Administration Commission:-it is established by proclamation number 90/2003 having the prime purpose of executing sentences and convictions which are rendered by decisions of federal courts. Among others, this institution has the functions of warding and work to reform prisoners under custody, producing prisoners in court with warden escort from a federal to a regional prison or from one prison to any other prison.
14. The Bar Association: - this is an association of voluntary lawyers who practice law professionally at the federal level. It is a registered entity with the ministry of justice. As a member based organization it promotes chiefly the interest of its members drawn together around a common profession. It is represented in the various public bodies that affect the interest of its members.
15. Attorney's Administration Service: - as it is a mandatory requirement under the law for one to be licensed if one wishes to practice law professionally. Excepting a certain category of persons specified under the law on the basis of their professional experience and academic status, it is again obligatory for those who wish to join the bar to pass an examination set for the purpose. The examination is set and administered by a board composed of members drawn from universities, courts, the bar, prominent individuals and the ministry of justice. The Attorney's administration service, as part of the ministry of justice, takes care only of such administrative matters as relate to attorneys.
16. Notary Offices: - public notary services are provided in Addis Ababa by offices established for this purposes. In regional states this is generally offered by regional justice bureaus.

II. State Institutions

1. State Councils: - state councils exercise exclusive legislative power on matters failing under the state jurisdictions provided by the Federal Constitution and over matters not expressly given to the federal and/or state councils in the FDRE Constitution. The major

as well as the specific legislative power of the various state councils is provided under their respective regional constitutions.

2. State Courts: - state judicial power is vested in state courts. The structure of the state courts comprises state supreme court, state high courts, and state first instance courts (Woreda courts). These courts found at different levels, exercise judicial authority with in their respective state jurisdiction and with in the jurisdiction of federal courts, especially the state high and supreme courts, as they are delegated by virtue of the Federal Constitution. In some regions there are sheria courts with analogues structures to the regular courts that exercise state judicial functions mostly over marital matters falling under sheria laws.
3. Regional Justice Bureaus: - these are charged with the prosecution of criminal offences falling under the jurisdiction of state courts in their capacities and carry out other functions which in most cases are similar to the functions of the Federal Ministry of Justice.
4. State Police Commissions: - regional police commissions are responsible to conduct investigations in relation to offences falling under state jurisdictions and also undertake investigation of federal crimes in cooperation with the federal police commission. Regional police commissions, normally, have duties and discharge them almost in analogous manner to that of the federal police commission.
5. State prisons Administrations:- these institutions are responsible to enforce judgment rendered by state courts and rehabilitate individuals convicted of a crime. The specific powers and functions in relation to enforcement of judgments and rehabilitation are fairly comparable to that of the federal prison administration.

So far an attempt has been made to list down the major actors entrusted with different duties within the Ethiopian legal system and to shed some light on their respective nature and function. As such it can be seen that the Ethiopian legal system is organized in such a way as to include the above mentioned legal institutions bearing various powers and responsibilities.

3.2 THE HISTORY AND TRADITION OF JUDGMENT AND JUDGMENT WRITING IN ETHIOPIA: THE LAW AND THE PRACTICE

In the above section a discussion concerning the overall feature of the Ethiopian legal system is made thereby introducing the reader with the various legal institutions working in the country both at the federal and state levels. This part of the course material will try to deal with the historical and traditional way of rendering and writing judgment in Ethiopia along with ancient applicable laws of the country.

For the prime reason that there is no adequate source material to deal with the entire history and tradition of judgment and judgment writing in Ethiopia only, a brief account of discussion on the topic will be made in the forthcoming section. As such, the discussion will be based on the period from the reign of Emperor Zar'a Ya'eqob,(1434-1468) which marked the end of monarchical rule and the beginning of a new era.

In the legal history of Ethiopia the first codified law of the country is coined with the name Zar'a Ya'eqob, who directed the compilation of the then existing legal norms by and through the Ethiopian Orthodox Church scholars. This law was known as "*Fewuse Menfesawi*", which has the literal meaning of "spiritual remedies". The contextual translation of same is "canonical penances." Emperor Zar'a Ya'eqob was not only the reason for the compilation of the then existing legal norms of the country in to a code, but he is also credited for making an order which resulted in the bringing of the copy of the so called "*Fetha Negest*" (the law of the kings) from Egypt and had it translated in to Ge'ez, which was the then working language of the country.

Another incident which has a historical as well as legal significance in the country came at the year 1931, which unfolded the promulgation of the first written constitution of Ethiopia by virtue of the then reigning Emperor of the country, Haile Sellasie I, which established a two - chamber parliament (members of which were appointed by himself).

In between these great historical incidents i.e., the promulgation of the first ever written constitution of 1931 and the compilation of the '*fewuse menfesawi*' oral as well as some foreign travelers' travel memories (diaries) give evidence to the fact that the people of Ethiopia, then

administered by local chiefs and tribe leaders, having their own small area to administer, were subjected to a particular norms and custom that were prescribed by the chief of the society.

Emperor Haile Sellasie I had replaced the 1931 Constitution by enacting the Revised Constitution in 1955 which among others came up with one of the chambers of parliament as elective body. In addition to these, the Emperor had managed to have promulgated six new modern law codes all between the years 1957 and 1965. These include; the civil code, the civil procedure code, the penal code, the criminal procedure code, the commercial code and the maritime code.

Basically there are two main criteria of identifying laws in to the three major legal families in the world: namely the Romano Germanic (Romanistic-German) family, the common Law family, and the socialist family. These are: the criteria of ideology (which is the product of religion, philosophy, or political, economic or social structure) and the criteria of legal technique.

Generally speaking, the major sources of the codified laws of Ethiopia seems to be the codes of continental or civil law systems, most of which were based on Roman law and jurisprudence. These western laws and jurisprudence, i.e., the Romanistic-German, were believed to have been transplanted in the Ethiopian legal system through reception when Ethiopia accepted the "*Fetha Negest*" in the fifteenth century, which was mostly based on Roman-Byzantine law.

However, it is important to say a few words, at this juncture, concerning the nature and application of laws in the country prior to the coming into force of the codified laws. Especially before 1936, cases were entertained in Ethiopia on the basis of the then existing customary laws, which could be different at different localities, and on natural law. Natural law, mainly, referred to be a moral law, has its basis on natural justice. It, originally, was meant to refer to a law of common-sense which could be applied by any reasonable person within a given society. Later, it was developed and elaborated so as to have application in light of religious edicts. Thus, it must be noted here that there was an administration of justice in the country even in the absences a written provision of law made by the state.

In the above mention has been fairly made with regard to the existence of applicable laws in the distant past as well as their nature and the source they were taken from. Apart from these, it is necessary to investigate in to the overall administration of justice and the manner of rendering and writing of judgment in Ethiopia, as a whole.

With respect to administrating justice in Ethiopia prior to 1936, it can be said that Ethiopians have a rich culture of participating in the administration of justice. This holds true, as it was considered as a “Civic duty” to take part in the administration of justice on the part of the people.

In the past, cases were used to be brought before any person in the locality and the person for whom the case is submitted for resolution was required to adjudicate as a judge or settle as an arbitrator. This kind of settlement of dispute was designated by foreigners as a “Road-Side-Court”. The person so requested would hear the dispute in the presence of people who happened to be there and finally decide the case as his conscience dictated him. If he found the case submitted to him for disposal is, however, complicated he would take the disputants himself or send them to the court of first instance by tying their clothes together, where the case was then made to be resolved (decided) in accordance with the customary law of the locality.

Hence, it should be underlined here that judgments given during these times were solely based on the personal appreciation of facts and on a person’s individual conception of justice. And customary laws, which mean without the existence of a written law, and more importantly the judgments, were given orally. As such, it appears difficult to deal with the features of the judgments being rendered then.

It is the year 1942 which heralded the coming in to existence of a structured court system in the history of the Ethiopian legal system. The Administration of justice proclamation of 1942, March 30, had also established a four-tier court system which later added the governor-general, sub-district and local judge courts. A court of this nature had been exercising both civil and criminal jurisdictions within the same territorial limit.

By virtue of the administration of justice proclamation on March, 1942, there were created five hierarchically arranged courts in Ethiopia. These are, in accordance with their hierarchy from bottom to top, Yafer-Dagna or Yessir Dagna (court of first instance), yakal Dagna (district court), Shaleqa court (provincial court), the court of Afe-Negus (Appellate court of the chief justice) and finally the Zufan chilot (Crown court) where the emperor himself preside.

In the early times judges used to adjudicate cases in the name of the emperor or king of the state as the emperor was thought to be the fountain of justice and the judges were called “Afe-Negus” which literally means the mouth of the king. As such, the conceptual thinking embodied in the decisions rendered by judges was considered to show some principles of law. Such norms of both substantive and procedural laws were referred to as “*Atse-Ser’at*”. which has the meaning of presidential jurisprudence that developed out of case law or judge-made-law. Of course, the basis for this *Atse Ser’ at* law was judgment. When a case is decided at a local level and endorsed by a national court of appeal, the ruling becomes ,from that moment on wards, king’s rule or *Atse-Ser’ at*. As such, it could be cited in the future as law in deciding cases of similar nature.

However, Case law, unlike other Ethiopian laws, is not found in an adequate quantity being recorded in a case digest in Ethiopia. Hence, it poses difficulty so as to illustrate the nature and characteristic features of judgments rendered in the past. As a result, due to the lack of recorded written judgments rendered in the previous period, it becomes impossible to evaluate the judgments given during the past.

However, there are a few decisions known to the society through various means, especially historical tales, and literature. Let’s see the features of some of these decisions.

Among other things, finding of truth, weighing of evidence, due process of law, equity and fairness can be mentioned as a basic tenets of those judgments. However, since it is only the report of the case and the judgment that is accessible, so far, more can not be said on the issue of judgment and judgment writing at this level.

Therefore, by way of summary, it can be said that only little is known and hence few things can be said about the history of judgment and judgment writing due to the simple reason that there are not adequate recorded written judgments rendered in the past.

3.3 SPECIAL FEATURES OF ETHIOPIAN PROCEDURAL LAWS ON JUDGMENT WRITING

a) The Criminal Procedure Code: - the Ethiopian criminal procedure code has dealt with making and writing judgment under its article 149, which mainly tries to incorporate what the content of a criminal judgment should be.

Pursuant to article 149 of the Ethiopian criminal procedure code a criminal judgment shall, basically, contain:- the summary of the evidence presented, reasons for accepting or rejecting evidences and the provision of the law on which the judgment is founded, in case there is conviction, the specific provision of the law under which the conviction is made.

In line with this, it is said that it is also important for a criminal judgment to include the pertinent provision of the law upon which a sentence is passed. And, where there is no conviction, the judgment shall have an order of acquittal, and in some cases where appropriate, an order for the release of an accused from custody.

In addition to this, it is provided that the criminal judgment should include the comments given (forwarded) by both the prosecutor and the accused on the sentence to be ordered by way of aggravation or mitigation, given that the accused is found guilty and he/she is convicted with the charge he/she is brought against.

It is also provided that a criminal judgment should finally have a mention as regards the right of appeal both to the prosecutor and the accused.

As such, it can be seen from the above point that the Ethiopian criminal procedure code does not dictate a comprehensive kind of judgment to be written by the pertinent judicial body, the courts.

Thus, seen in light of the general principle of writing judgments, the judgment to be written in accordance with the Ethiopian criminal procedure code can be put as one which lacks the requisite elements so as to provide the judgment audiences with an accessible kind of judgment. Accessible judgments are those that provide the reader of the judgment with every kind of information including the details of the suit along with the final judgment rendered by a court.

In this respect, it can be safely said that the Ethiopian criminal procedure code has lacked the necessary comprehensiveness so as to include the record of some important court proceedings in the judgment including, among others, mention as to the response of the accused in connection to the objection of the charge and plea of guilty, mention as to the need to order the accused to defend the charge instituted against him/her and also mention as to giving the order not to defend the charge brought against the accused.

Equally importantly, the Ethiopian criminal procedure code does not dictate criminal judgments to include the details of the suit as instituted by the prosecutor, and fails to mention as regards the preliminary objections that might be presented by the accused, the ruling of the court on the preliminary objections forwarded by the accused and the defenses of the accused to the charge he/she is brought against.

As such, if a judgment is written pursuant to the criminal procedure code as provided under article 149, it will be impossible to fully appreciate or to understand the overall criminal proceeding conducted by the court on the part of the judgment audience in general and the parties to the dispute in particular.

Moreover, the Ethiopian criminal procedure code seems to be lenient with respect to the format that needs to be followed in a written judgment. This holds true as the provision which is devoted to deal with judgment and judgment writing, article 149, has made no mention about the heading of the case which includes the details about the parties or their lawyers, the topic of the claim, the date on which the judgment is given and the file number of the case.

Furthermore, the Ethiopian criminal procedure code does not manage to dictate the inclusions of an execution order to be given by the court in the written judgment, which is considered as an important element of every written judgment. In criminal proceedings the execution orders that will be given by the court would help in enforcing of the decision of the court. These execution orders which are made at the end of every criminal judgment usually tend to be directed towards the prison administration office, and sometimes to the police officer.

Even if the procedural code incorporates adequate procedural rules to effectively direct the proceeding, it can be seen that the code has failed to produce at least in some respects, a comprehensive kind of judgment as it stipulates restrictively the elements that need to be incorporated in the written judgment.

Hence, it can be concluded by saying that the Ethiopian criminal procedure code exhibit special features regarding judgment writing in that it only listed a few elements to be incorporated in the judgment to be written by the court leaving aside some very important and crucial elements that could be of more help to the judgment audience so as to easily understand the court proceedings including the decision reached at by the court.

b) The Civil Procedure Code: - in relation to judgment writing, the Ethiopian civil procedure code has provided relatively ample provisions, when compared to the Ethiopian criminal procedure code which dealt with same subject matter in a single article, dealing with the time, form and content of the judgment to be rendered, along with the feature of the judgment to be reduced in writing.

Pursuant to article 180 of the civil procedure code the court of rendition is required to pronounce its judgment after a formal hearing process is conducted in which the parties to the dispute will be given the chance to express their side of the story and present their legal arguments to the court.

Interestingly enough, the civil procedure code has incorporated a provision, which the criminal procedure has missed, to the effect that a judgment to be pronounced by the court should also be reduced to writing. Besides, the civil procedure code is different from the criminal procedure code in that it provides, in case where there are more than one judge to dispose the

case, the meaning and nature of the judgment rendered thereby incorporating the concept of majority decision and dissenting opinion, in a judgment.

In addition to these, the Ethiopian civil procedure code has briefly dealt in a concise manner, as regards the contents of a judgment to be given by a civil court under its article 182. Pursuant to same provision, a judgment is, basically, said to have included four main things namely; points for determination, decision on the issues framed, the reasons for reaching at the decision and a concise statement of the case, provided that it is a judgment to be given by a court in its first instance jurisdiction.

When a judgment is given by an appellate court, similarly, the written judgment shall include the points, and the reasons as to how and why the decision is reached at, provided that the decision of the ruling court is reversed. In addition to these, the judgment of an appellate court will have a statement as to the relief to which the appellant is entitled. As such, the judgment will be enforced easily by the body authorized to effect execution.

A court of first instance may only include a decision in its judgment which is specifically raised by the parties to the dispute where as the judgment to be written by the appellate court may include any decree or order which ought to have been passed or made or other decrees as the case may require by virtue of this procedure code.

Besides, it is stipulated in the code that in case where the court has framed more than one issue in order to resolve the case before hand the judgment to be written is expected to have a decision on each separate issue provided that the decision to be given on one of the issues is not sufficient for disposing the case.

Unlike the case in the criminal procedure code, the civil procedure code has devoted a separate provision with a view to deal with the operative part of the judgment, i.e., decree in the judgment under its article 183 for judgments both at the first instance and appellate levels. As such, the judgment to be written by civil courts seems to be relatively comprehensive as it will have a decree, which among other things include; the file number of the case, names and

description of the parties, a clear order to do or to abstain from doing something or to pay a definite sum of money or to deliver a particular thing or to surrender or restore immovable property as the case may be. And, where appropriate, the amounts of costs are to be covered. In addition, when the decree is to be made by the appellate court, mention as to who, the appellate court or the ruling court which heard the case first, will be responsible for the execution of the decree will be made.

However, in light of the basis of judgment writing in general, the Ethiopian civil procedure code can not be characterized as one which dictates the inclusion of all the necessary ingredients that a standard written judgment should possess. In order to elaborate this, we can evaluate a judgment which can be written in accordance with the Ethiopian civil procedure code exhibiting the following defects.

To begin with, it is stipulated in article 182 of the code that a judgment to be given by a first instance court shall contain a concise statement of the case. However, it is not clear enough to adequately understand this phrase. This is because, one can not take for granted whether the judgment will include the claim presented by the plaintiff and the reply given by the defendant along with the issue to be framed by the court. As such, it can be said that the code lacks clarity with this respect as to what exactly should be incorporated in the written judgment.

Besides, the judgment to be written by virtue of this code is true to be condemned on the ground that it is devoid of a part which deals with the weighing of evidences as the same is not dictated to be included in the written judgment . As a result of which the parties to the dispute in particular and judgment audiences in general will face difficulty in understanding the reasons behind accepting or rejecting the various evidences presented before the court.

With regard to a judgment to be written by an appellate court, it is provided under article 182 of the code that the relief the appellant is entitled will be included without mentioning as to the need to incorporate the relief sought by the appellant in the judgment. Hence, the judgment to be written by the court can not be evaluated on the basis of the issues it resolved as the judgment will not embody the question rose by the appellant.

In line with this, even if the code makes it a pre-requisite for a party interested in instituting an appeal application to adequately mention the grounds for an appeal resulting in the objection of the judgment of a ruling court under article 328, same is not made to be included in the judgment. The fact that the judgment misses the ground for an appeal, will hamper anyone who reads the judgment from seeing whether the judgment given by the appellate court is appropriate or not as court are always expected to give decisions only to points raised by parties.

In addition, the code does not state as to the inclusion of summary of the case, and decision of the trial court in the judgment to be written by the appellate court. Summary of the case presented in the first instance court and mentioning the decision of the ruling court along with its reasoning are deemed to be important to be incorporated in the judgment of the appellate court so as to give a full picture of the case to the judgment audiences.

Last but not least, the Ethiopian civil procedure code can boldly be criticized for not allowing a statement regarding the right of appeal of parties in the judgment to be written both at the first instance and appellate court levels.

Therefore, it can be generally said that the Ethiopian civil procedure code is some what unique in that it deviates, to certain extent as shown above, from the basic principles of writing judgments. This holds true as the code fails to dictate a comprehensive kind of written judgments which also could have been a great help to facilitate the communication between the judicial body and the judgment audience at large.

3.4 THE CURRENT IMAGE OF ETHIOPIAN JUDICIAL ORGANS (ESPECIALLY COURTS) ON JUDGMENT WRITING

Mention has been made in the earlier chapters concerning judicial organs in general and courts, in particular, as one integral part of the judiciary, in relation to judgment and judgment writing. It is the purpose of this section now to deal with primarily the characteristic features of written judgments presently in Ethiopia. However, it should be noted that as regular courts are the most crucial bodies which are highly related with the task of rendition of judgments in their day- to- day activities, the discussion on this part will basically focus on judgments to be given by regular courts.

In order to tell the current image of Ethiopian courts with regard to judgment writing, it seems proper to set some standard parameters, which among others should include, their attitude in collecting the necessary evidences before reaching at final decision, their capacity to deal with the relevant area of law and applying the pertinent provision of the law on the case before hand, their ability to present the full picture of the litigation including framing of issues in the dispute and addressing the issue(s) framed by themselves.

Generally speaking, a judgment to be written by the first instance courts, among other things, is expected to include the nature of the action submitted to the court along with the relief sought by the party instituting the case, summary of the facts as presented by the parties together with the evidences they came up with, the issue the court has framed for determination, the proper area of law to the case at hand, the pertinent provision of the law which is made applicable so as to resolve the dispute, and finally the disposition of the case i.e. the conclusion.

As a consequence of the fact that Ethiopia is a federal state, courts are arranged both at the federal and state levels. As such currently, there are three hierarchically structured courts namely, the federal first instance court, the federal high court, and the federal supreme court at the federal level and wereda courts, zonal high courts and state supreme court at all regional state level. Therefore, the assessment to be made, on Ethiopian courts, with respect to judgment writing is believed to be appropriate if it is done in two categories, i.e. at the federal level and at the regional states level.

Both at the federal and regional states levels, it can be safely said that there is no standard pattern of judgment writing which can be exhibited from the mere observation of the various judgments written by different courts. This, of course, is resulted from the absence of any kind of training on judgment writing to the working judges. Moreover, it can be raised at this point the fact that there is no law course which is directly and fundamentally related to judgment writing in law schools of Ethiopian colleges and universities which could have a direct bearing in the development (betterment) of written judgments.

As a result of the above, different judges working at different benches, both at the federal and state levels have developed their own way of writing judgments. Thus, it has become normal

to come across various kind of written judgments by different courts even when the case submitted to the courts tend to be similar in terms of the nature of the litigation, the issue to be framed, the relevant area of law to be used and the pertinent provision of the law used to dispose the case.

Speaking of the Ethiopian courts currently working in the country, it can be said that there is a good deal of similarity in terms of their task of judgment writing. But, this should not be construed, by no means, to convey the message that all or most courts in the country have mastered judgment writing presently. Thus, it ought to be borne in everyone's mind that the courts manifest, although to a certain extent, some basic problems with regard to judgment writing.

It is a predominant way of writing judgments by Ethiopian courts, which give decision in their first instance jurisdictions, to incorporate the following parts in the written judgment. These include: heading of the case (file number of the suit, date of rendition of the judgment, name of the court rendering judgment, name of the judge(s) rendering judgment, names of the parties and their attorneys, if there is any), summary of the suit brought by the plaintiff along with the relief sought and the evidences he/she submitted, the reply from the defendant, the issue framed by the court, mention of the oral litigation between the disputants, hearing of witnesses, when necessary, analysis of law under which the dispute submitted should be governed, the pertinent provision of the law used to resolve the dispute, conclusion/decision of the court, and finally the decree as to the details of the execution of the judgment rendered. However, it should be noted, at this juncture, that this is the pattern of judgments written by of most federal courts, if not all, when they render judgments in their first instance jurisdictions.

Apart from the judgments to be written by civil courts, majority of the criminal courts tend to write judgments having the following elements. In similar fashion to that of the judgments to be written by civil courts, criminal written judgments begin by putting the heading of the case (in this case the plaintiff is always the government being represented by the public prosecutor office- the name of the prosecutor will be written.) Besides the heading, mention of

the suit as presented by the public prosecutor by citing the provision of the law under which the defendant is charged with, will be briefly incorporated.

Next to this, statement as regards whether the accused has objection on the charge brought against him will be made. The response of the accused, on the basis of the question of the court, concerning the issue of plea of guilt will be given part in the judgment to be written before the court order the prosecutor to effect the hearing of his witnesses and presentment of evidences. In addition to this, mention as to the satisfaction of the court on the evidences heard and order as to the need for the accused to defend his case or not will be made. If the court is convinced that the accused need not defend his case, mention as to the release of the accused will be made in the judgment.

Where, on the other side, it is believed by the court that the accused should defend his case; order of same will be incorporated in the judgment. Accordingly, the judgment to be written will have part where the defenses and evidences of the accused will be mentioned. After all this, the weighing of the evidences by the court will be revealed which directs to the decision of the court as to the guiltiness of the accused. If the accused is adjudged not guilty by the court, then the judgment writing task will be finalized by ordering acquittal of the accused and release of same from custody, as the case may be.

However, if the accused is adjudged guilty of the crime he/she is charged with, the judgment to be written will normally have part mentioning the comment of the prosecutor and the accused consecutively as regards the degree of punishment the accused should be sentenced by way of mitigation and aggravation. Then, by taking into account the comments forwarded by the two parties; the judgment will incorporate a part which deals with the decision of the court as regards the sentence to be passed on the accused.

Lastly, the judgment will embody an execution order as to how and who to materialize the judgment rendered.

Without having a significant difference with the judgments to be written by civil courts rendering judgments in their first instance jurisdiction, judgments to be written by courts in their appellate jurisdiction normally includes the following elements. Among others, nature of the suit, summary of the case, judgment of the ruling court along with its reasoning, the relief sought by the appellant, issue framed by the appellate court, the reply of the respondent, analysis of fact and law, decision of the court and decree.

Similarly, judgments to be written by criminal courts in their appellate jurisdiction will have parts including: summary of the suit instituted by the public prosecutor to the court, a brief summary of the proceeding conducted in the trial court as regards preliminary objection and plea of guilt, summary of evidences presented by the public prosecutor, the judgment of the trial court, the grounds for appeal, and the relief sought by the appellant, analysis of the evidences presented by both parties along with the analysis of facts and the relevant law, and finally decision/conclusion of the appellate court and lastly the decree which facilitate the execution of the judgment will be put in place.

As such, it can be concluded by saying that the current Ethiopian courts, both at the federal and regional state levels, with respect to writing judgments are working towards having a uniform pattern of judgment writing. However, there are still grave problems in writing judgments, especially when we come to woreda/first instance courts owing to low academic competence of wereda court judges who are almost working having only certificate and diploma at the required discipline, i.e., law education.

Among many others, the major problems prevailing in the decision making in general and judgment writing in particular of Ethiopian courts relate to:- using ambiguous language, irrelevancy of facts, evidences and laws, delay in decision making, missing important /relevant facts, missing authorities of law, lack of comprehensiveness, poor organizational structure, lack of balance , the usage of hypothetical cases, making decision more than necessary, inclusion of personal/emotional feelings, usage of defamatory terms, technical terms, errors in writing names of parties, witnesses etc. Also in the list are copying the parties pleading/lack of writing them in the courts own words/expression, making partial decisions/judgments, lack of consistency and

coherence, uniformity among different benches and judges, and even in the same bench, failure of editing, writing long judgments with repetitions, problem of executability, laconic judgments which create gaps to understand, making decisions before maturity of the case i.e before hearing evidences, before making decisions on preliminary objections etc, beginning writing before making decisions using proverbs, metaphors, slang or colloquial, mistakes in writing letters, places, citing documents, references etc, making decisions deviating from the written law, hand writing problems, lack of awareness as to the impact of judgment on the audiences or identifying audiences, lack of understanding uniformly and clearly the techniques and rules of judgment writing on the part of judges, absence of a good culture of commenting and especially by researchers, scholars and law students.

3.5 KINDS OF DECISION MAKING AND JUDGMENT WRITING

An attempt has been made, in chapter one, to deal with the kinds of dispute resolution mechanisms which has a direct implication on the kinds of decision making and judgment writing. The decision to be given and the judgment to be written with respect to a given dispute may vary based on the nature of the litigation that may be involved in the case and the nature of the body for who the dispute/case is submitted for resolution. Apart from this chapter, chapter two has incorporated a discussion with respect to the nature of litigation and its bearings on judgment writing. The forthcoming part will be devoted to investigate briefly the kinds of decision making and judgment writing in light of the body rendering the judgment and the nature of the litigation involved in the case.

3.5.1 BASED ON THE ORGAN RENDERING THE JUDGMENT (A.D.R & J.D.R.)

As mentioned before, judgments could be rendered either by or through Judicial Dispute Resolution mechanisms (JDR) or the so called Alternate Dispute Resolution mechanism (ADR). By Judicial Dispute Resolution mechanisms, we mean when parties opt to take their cases to those governmentally established regular courts found at different levels owning their own sphere of jurisdiction. And when we say judgments could also be rendered through Alternative Dispute Resolution Mechanisms, we are referring to those bodies which are mandated to give

judgments on disputes submitted to them provided that they are assigned by the parties involved in the litigation, usually pursuant to their prior agreements.

The manner of making decisions and writing judgments (the contents of written judgments) within the regular courts in Ethiopia are clearly provided under the civil procedure code and the criminal procedure code for civil matter judgments and criminal matter judgments respectively. As such, regular courts are required to observe these procedural laws while conducting their task of rendition of judgment and reducing their decision in to writing.

Earlier in this chapter, the preliminary proceedings to be conducted by regular courts before reaching at a decision and the pattern to be followed while writing judgments both in criminal and civil matters are discussed. Hence, the reader is advised to make reference to same topic on earlier sections in this chapter.

Apart from the judgments to be rendered by regular courts, it is imperative to have a resort to the manner used by the so called Alternate dispute resolving bodies in terms of the decision making and judgment writing task. As both the types and characteristic features of alternatives dispute resolution mechanisms (ADR) were discussed in chapter one of same material, they will not be a point of discussion in this part.

Although there are different kinds of Alternative Dispute Resolution (ADR) mechanisms, it is only arbitration which exhibit a similar feature with that of regular courts in terms of its decision making and judgment writing task. Thus, the subsequent part will delve in to the investigation of arbitration, as one and most commonly used out of court dispute resolution means in connection to decision making and judgment writing.

However, it seems very important to throw some light as to its general nature and procedures to be followed by a given arbitration council in conducting the task of dispute resolution before embarking up on the nature and characteristic of the decision to be made and the judgment to be written by arbitration councils.

To begin with it can be said that arbitration councils are similar to that of regular courts in that they will normally base themselves on the working law of the country both to direct the litigation process (proceedings) and to dispose the case submitted to them for resolution. As arbitration councils have achieved a legal foundation under the Ethiopia law, and there is a

conducive legal environment in the Ethiopia civil procedure code, they are required to discharge their task of resolving disputes solely based on the law. As a consequence, decisions made and judgments written with a view to resolving a dispute submitted to the jurisdiction of arbitration councils will have a full force of law, with respect to its execution. In other words, the parties to the dispute in an arbitration council will definitely be bound by the judgment rendered by the council.

Under normal circumstances, arbitration councils come to the task of dispute resolution when it is found that the disputing parties have prior agreement to the effect that their future disagreements would be settled by and through the means of arbitration than making a resort to regular courts. In addition to this the reader need to be reminded at this juncture the fact that arbitration councils assumes jurisdictions only on civil matters as criminal matters are with in the exclusive jurisdiction of regular courts.

Generally speaking, there is no a significant difference, with regard to the manner of making decision and writing judgments, between regular courts and arbitration councils. This is mainly because, as mentioned above, arbitration councils will totally be dictated by the law and only the law while conducting their task of dispute resolution. However, for the clear understanding of the overall feature of resolving disputes by arbitration council on the part of the reader, the manner arbitration council's discharge their task of dispute resolution is summarized as follows.

Content wise, decision to be given and judgment to be written by arbitration councils will incorporate, among other things, heading of the case (including:- the date on which the judgment is rendered, name(s) of the judges in arbitration council, details about the parties and/or their attorneys, if any) , mention as to how the case is submitted to the arbitration council, details of the suit which among other things include the facts in general, the relief sought by the plaintiff, the evidences presented, the reply given by the defense including preliminary objection, if there are any, the ruling of the council as regards those objections, mention as to the investigation made by the council on both the written and oral litigation of the parties along with identifying the issue(s) to be determined by the council, the manner of weighing the various evidences presented to the council from both parties, addressing each issue(s) framed separately and in depth, making an extensive analysis on the facts, evidences and the relevant area of law, and

finally the council will by way of conclusion, provide the decision of the case in clear and concise manner.

In comparison to the general format and content of judgments to be made and written by regular courts, it can be easily observed that judgments to be written by arbitration councils do not normally have such things like file number of the case, name of the body giving the judgment (except it posses a general title reading “Arbitration council”) and a separately provided, with a distinct heading, decree. On the other hand, judgments written by arbitration councils need to be signed by the judge(s), on every leaf of the judgment, who rendered the judgment.

3.5.2 BASED ON THE NATURE OF THE LITIGATION (CIVIL, CRIMINAL)

In chapter two among other things, the nature of civil and criminal suits, the very purpose of instituting the civil and criminal suit, the nature of the relief sought by the parties instituting the civil and criminal cases, the type the parties involved in both kind of cases and the manner of weighing the evidences presented before courts in general and the pattern and way of writing judgments, both, in cases involving civil and criminal matters in particular were discussed.

This part, however, deals with the manner of judgment writing, both in civil and criminal cases, especially in current Ethiopia courts. Besides, an attempt will be made to investigate in to some written judgments given by the Ethiopia courts working today.

The judgments being written by the courts in Ethiopia are basically, directed by the two procedural codes, namely civil and criminal procedural code, which have come in to existence during the 1960’s. As such, it is normally expected that the judgments to be given (written) by Ethiopian courts will highly influenced by the rules provided under these two procedural codes.

In the earlier parts of this material, the rules stipulated in these two procedural codes, civil and criminal, with respect to judgment and judgment writing are made. Hence, the forth coming part will make an overview of the judgments rendered by Ethiopian courts (especially federal courts) both in civil and criminal matters. In line with this, an attempt will be made to investigate the nature of civil and criminal judgments, being rendered in current Ethiopian courts, separately.

To this effect, with a view of creating a fertile ground on the part of the reader so as to easily understand the over all nature of judgments being written by Ethiopian courts currently, an attempt will be made to overview some written judgments given both at the first instance and appellate jurisdictions.

A. JUDGMENTS IN CIVIL LITIGATION

Generally, Ethiopian courts which give judgments at their first instance jurisdiction exhibit the following format.

- Name of the court rendering the judgment and its bench (at the left top corner)
- Number of the file and date at which judgment is entered(at the right top corner)
- Name of the judge(s) presiding over the bench (at the middle).
- Name of the plaintiff and his/her attorney (if there is any)
- Name of the defendant and his/her attorney (if there is any)
- Judgment and
- Decisions (decree)

With respect to the content of the judgment, among other things, the date on which the suit is submitted, details of the suit (facts), relief sought by the plaintiff, reply of the defendant, both preliminary objections,(if there is any) and defense proper, the issue framed by the court, ruling on the preliminary objection (if any), (if the preliminary objections are accepted by the court, the case will be closed), if the preliminary objection is rejected , the oral litigation of the disputants, hearing of evidences, and ruling (decision) of the court on the overall issue of the case and the decree will be included. The decision will also normally incorporate analysis of facts and evidences, analysis of the relevant area of law and, application of pertinent provisions of the law. On the other hand the decree, being the last part of the judgment, embodies mention as to who should bear costs and expenses, mention as to the right of the party who is favored by the judgment, mention as to the return of documents, if they are brought before the court upon its order as per article 145 of the civil procedure code. Mention of an order to the effect that, (if there was any order in relation to temporary injunction or attachment), an order be strike out (dismissed), and mention as to the

mode of execution of the judgment, when necessary and finally mention as to the right of appeal, and mention as to the closing of the file and order for its return to the archive.

However, it should be noticed at this juncture that the size of judgments to be written by Ethiopian courts currently may vary based on the nature of the litigation, the number of issues the court frame, the area of law to be made applicable to resolve the case and sometimes the number of the parties involved in the case.

Apart from the judgment to be written by Ethiopian courts at their first instance jurisdictions, the judgment to be given by Ethiopian courts on their appellate jurisdictions exhibit its own distinctive features.

Speaking of the general format of the judgments of appellate courts it can be said that the format (pattern) to be followed by appellate courts is almost similar with that of the format used by courts of first instance jurisdiction, except that the name of the parties will be changed from plaintiff and defendant to applicant/appellant and respondent respectively. Besides, the judgment of an appellate court will have a different feature in that the decree part will normally incorporate parts which mention about the affirmation, modification or reversal of the trial/ruling court decision and it embodies mention as to who should effect/execute the judgment. And in certain circumstances, the appellate court may criticize the conclusion of the ruling court and remand the case to the trial/lower court as per article 343 of the civil procedure code and hence mention of the order of remand may be included in the decree.

Regarding the content of the judgment of an appellate court, it is usually expected that the judgment to be written by Ethiopian courts with an appellate jurisdiction to include:- brief summary of the proceeding in the lower court, which among others include mainly the suit submitted to the trial court the relief sought, the preliminary objection (if any and the ruling of the court) and the defenses presented by the defendant, the issue(s) framed by the trial court and the judgment of the court, ground(s) for an appeal, the issues framed by the appellate court, analysis of facts and relevant areas of law made by the appellate court & judgment of the appellate court. And with regard to the decree, the decree part of the judgment to be written by appellate court is normally expected to include: - mention as to the

return of the trial court file (Provided it was brought before the appellate court through its order) to the archive of the first instance court in a manner it was brought to the appellate court, order as to the communication of the decision of the appellate court (result of the appeal) to the lower court, regardless of the fact that the judgment of the lower court is affirmed, modified or reversed. And finally mention as to the affirmation, modification or reversal of the trial court.

In line with the nature and feature of written judgments, to be prepared by appellate courts, it imperative to notice the fact that judgments of appellate courts may have two forms, especially when the appellate court confirms the decision of the lower court. The judgment to be rendered by the appellate court may be given either on the basis of article 337 or article 348 of the civil procedure code. If the appellate court is of the opinion that the ground(s) of appeal presented by the applicant is not acceptable from the out set (i.e. found no legal ground to opposes the judgment of the lower court), the court may dismiss the appeal as per article 337 of the civil procedure code with out the need to call up on the respondent before it. In this particular case the judgment of the appellate court will have the following features.

The general format being similar to the one mentioned above in case of a judgment to be given by appellate courts, the content of the judgment simply manifest the position of the court that the appeal submitted to the court is not accepted both from factual and legal point of view as a result of which the decision of the lower is confirmed as per article 337 of the civil procedure code. Besides, the decree part will reveal in clear terms that the appellant's request is rejected and it mention as to order that its decision be communicated to the trial/lower court, and mention as to the closing of the file and order as to its return to the archives.

A part from the above, the court may also accept the request of the appellant for some reasons and, frame the issues that need to be investigated and call up on the respondent to present his/her/their reply to the court. However, after the appellate court has gone through the over all trial proceeding held at the lower court and found out that no mistake is committed by the trial court in its decision both in terms of appreciation of facts and weighing of evidences and the relevant and pertinent law provision, the appellate court may dismiss the appeal on the basis of article 348(1) of the civil procedure code. In this case, the

judgment of the appellate court will normally exhibit the general format that appellate court judgments have, as listed above. And the decree will incorporate mention as to the confirmation of the decision of the lower court, order as to the communication of its decision to the lower court, etc. In some cases, the appellate court may also modify parts of the decision of a lower court in which case same will be mentioned expressed both at the judgment and its decree.

B. JUDGMENTS IN CRIMINAL LITIGATION

Owing to the basic nature and purpose of criminal law and criminal litigation, it is true that judgments to be written by criminal benches will have some unique and different features than that of the judgments to be written by civil benches in civil litigations.

In similar fashion to that of the judgments to be written/ given by the civil benches in their first instance jurisdiction judgments in criminal litigation exhibit the following format with some deviations.

- Name of the court rendering the judgment and its bench (at the top left corner).
- File number and date at which judgment is entered (at the top right corner).
- Name of the judge(s) presiding over the bench(at the middle)
- Name of the parties (here caution must be taken that unlike the case in civil judgments, the parties involved in criminal judgments are always the government, represented through the public prosecution office and a person respectively.) N.B. the public prosecutor office again shall be represented by one of its officers whose name will be identified and written as a prosecutor. And the person to be accused could be of either a natural person or a legal person.
- Judgment of the court.
- Comment as to penalty
- The penalty
- Decree

Looking at the content of the judgment to be written by criminal benches at their first instance jurisdiction in Ethiopian courts currently, the following can be said. The judgment basically embodies the suit details of the prosecution which includes among others - details of the facts and the specific provision of the law said to be violated by the person charged against,

mention of the hearing of the evidence presented by the prosecutor, decision of the court as to the need whether the accused should defend him/herself or not.

If the court is convinced that the prosecutor has come up with the so called "prima facie" case which is capable of incriminating the accused, mention as to plea of guilt or not and reply of the accused and order for the accused to present his/her oppositions and defenses, mention of the opposition of the accused (if he/she has any) and the defenses presented, mention of hearing of evidences of both sides, (when witnesses are provided, the words of each of the witnesses), judgment of the court embodying analysis of facts, weighing of evidences as provided by litigants, and analysis of pertinent provision of the law along with the decision of the court as regards the guiltiness of the accused will be included .

If the court finds the suspect guilty of the crime he/she is charged against, mention as to the comments of both parties as regards the magnitude of the punishment that should be decided by the court, mention as to the decision of the court on the magnitude of the punishment on the basis of the comment forwarded by the parties and the pertinent provision of the law will be included. In most cases, courts while deciding the magnitude of the punishment on the accused may take in to account among other things, the age of the accused, mental status of the accused, the living standard and condition of the accused, the advantage the accused has brought on to the nation and its citizens, the present character/behavior of the accused, the antecedents (record for crimes committed in the past) and the general purpose of penalizing (punishing) offenders.

However, if the court is not satisfied that the public prosecutor did not bring a "prima facie" case as to incriminate the accused then the judgment will contain mention as to the order of acquittal of the accused. And similarly, after the court has ordered the suspect to defend him/her self and weigh the evidences of the litigants finds the accused not guilty of the crime he/she is charged against, then mention as to the order of acquittal of accused from custody will be incorporated.

Finally, the judgment to be written by criminal bench of a court shall also have a decree which among other things include mention as to an order with respect to bail and bail bond, if

there are issues of same, mention as to the closing and return of the file to the archives. Decrees in case of criminal litigation are usually directed towards either to the police office or prison administration office which is responsible for the effective execution of the judgment.

Apart from the judgment to be written by a criminal bench in its first instance jurisdiction, the judgment to be written by an appellate court of a criminal bench basically includes the grounds for appeal, brief mention of the proceeding at the lower court and the decision of the lower court along with its reasoning, the issue framed by the appellate court, analysis of facts, evidences and the relevant and pertinent provision of the law and judgment of the appellate court. And the decree part embodies mention as to confirmation, modification or reversal of the decision of the lower court, order to the prison administration office for the execution of the judgment and order as to closing and return of the file archive.

3.6 KINDS OF JUDGMENT WRITING IN ETHIOPIA

In every legal system it is true that by the end of every judicial proceeding, be it civil or criminal, regardless of the nature of the parties involved in the case and the magnitude of complexity of the cases, judgment is indispensable to be given by the court of rendition.

This is mainly because it is only with a view to securing a decision which is capable of bringing an amicable solution to their disputes that parties submit their cases to courts or any dispute settling body.

In the earlier sections of this material, mention is made as regards various kinds of judgments to be rendered by courts. As such in the following part a brief account of the manner of rendering judgments by the various dispute resolving bodies in Ethiopia will be made.

To this effect the forthcoming discussion will be developed to give a summary of written judgment, both on the basis of the traditional way of judgment that was used to be made and the modern kind of judgment writing being at place presently in Ethiopia which helps know and compare the present and past written judgments of the country.

Generally, as cited above in order to effectively, investigate the kind of judgments written so far in Ethiopia it is possible, for the purpose of convenience, to divide the whole time span in to two, namely traditional and modern kind of judgment writing. As such, the time span before the 1940's will be seen as a period during which a traditional kind of judgment was being rendered and after, the 1940's, especially after the coming in to effect of the presently working procedural codes and other substantive law codes were promulgated will be taken as a period in which a modern kind of judgment writing come to existence.

3.6.1 THE TRADITIONAL WAY

In Ethiopia, Judgments before the promulgation of the two procedural codes, which are still working today, were not given in a written form as a result of which some difficulty was faced. So to view the overall nature of judgments that were given at that time, it is only after the 1958 that judgments started to be rendered in an official manner and in a written form.

However, it can be seen that judgments to be made by the various judicial bodies found at different levels in the country exhibit a number of judicial proceedings before reaching at the final decision.

The traditional way of conducting a judicial proceeding and rendition of judgment in Ethiopia, especially before the 1930's can be expressed as having incorporated the task of instituting of a suit, hearing of parties, framing of issues, hearing of evidences of both personal and documentary (but only the evidence of the plaintiff shall be heard especially in civil matters). Besides, it should be mentioned here that parties in the litigation could be represented by attorneys and witnesses are not required to be under oath in order to testify before the court.

Under the traditional judicial proceeding in Ethiopia, the poetic and irony presentation of their respective arguments by the parties along with providing a gratitude to the presiding judge(s) is customarily expected before reaching at the final decision by the court. This is, of course, could be similar to some extent to what is called "final comment" of the parties before judgment in modern court proceedings.

In addition, it should be remembered that the traditional way of judicial proceeding in Ethiopia allowed the existence of the so called "*Techwoch*" (assessors) a group of people selected partially by the litigants and partially by the court among from the audiences, numbering

from 6-8, having the aim of supporting the judge(s) in investigating the facts as presented by the disputing parties and to forward their recommendation as to the party which should be favored by the court.

Techwoch (assessors) are normally expected to summarize the facts as presented by the disputing parties and express their opinion as to which party will win the case. By the way, it is important at this juncture to remember that the so called *techwoch* had a similar role with what is called jury system in countries which follow the common law legal tradition even today, especially in criminal law matters, even if the influence of the *techwoch* is not known on the court's decision.

After the *techwoch* expressed the opinion as to who should be favored on the basis of the litigation of the parties presented before the court, then the court will be left with declaring its decision officially to the parties and audiences around. As such the judge(s) after making an oath before the two parties in order to make sure that they will decide having the purpose of serving justice and grounded only on truth, shall pronounce the judgment orally. (Mind that every proceeding including the pronouncement of the judgment shall be made orally as there was no organized court structure having offices like the registrar and so on.)

After the judgment is declared orally and officially by the court of rendition, an aggrieved party is allowed to go for appeal. Appeal is allowed to be brought by an aggrieved party to submit to an upper (appellate) court only on the basis of the decision of the court as regards facts and orders that were given by the rendition court, which is primarily subject to checking by the *techwoch*. However, if the appeal of the aggrieved party relate to one of a legal issue or manner of interpretation of a given law, then the appeal should be directed to the so called, *Afe Negus*, which is the chief justice in the supreme court and not to the ordinary appellate courts. And if the appeal is accepted then, a more or less a similar proceeding is conducted at the appellate court level and finally a judgment shall be given.

Therefore, it can be concluded by saying that the traditional way of rendering judgment in Ethiopia was predominantly oral in its nature. As such, there was no an organized written judgment which can be assessed in light of the basics of judgment writing. However, in traditional Ethiopia judicial process it is important to notice that there were two kinds of

judgment, , namely the judgment proper which is rendered at the end of the legal proceeding, and temporary injunctions or orders from which an aggrieved party could bring an appeal to the appellate court.

3.6.2 THE MODERN WAY

The modern kinds of judgment writing can be said to have commenced following the coming in two forces of modern laws (codes) in the country which among others include, the two procedural laws, civil and criminal. These two procedural codes dictate the manner of conducting the judicial process in general and the patter of preparing a written judgment by courts in particular.

Among others, modern judgments are mainly characterized by the fact that it should be reduced in to writing, and declared publicly. In modern judgment writing, there are certain rules that need to be observed while preparing the written judgment. To mention some of the most important requirements, identification of the court rendering the judgment, identification of the parties involved in the litigation, naming of the judge(s) presiding over the bench, number of the file, details of the suit, hearing of parties and evidences, framing of issues, analysis of facts and the relevant area of law, decision of the court and inclusion of decree for the effective implementation of the decision of the court.

In line with the above point, there are basically three kinds of judgment writings in Ethiopia which are presently at work, on the basis of the two procedural laws effective currently in the country. The first is the pattern to be followed while writing the judgment proper i.e. a judgment rendered and reduced after the court of rendition has conducted every necessary court/judicial proceeding. Among others this includes: hearing of parties, hearing weighing of evidences, framing of issues, and analysis of facts and laws. This kind of judgment writing is usually, if not always, used by courts which give judgments in their first instance jurisdiction. The second kind of judgment writing is the patter followed when the suit submitted to the court by the plaintiff is rejected or the case is closed and judgment is entered by the court on the basis of one of the reasons listed under article 244 of the civil procedure code or article 130 of the criminal procedure code, provided that the defendant/accused came up with a preliminary objection as per the law. A court found at any level with in the court structure in the legal system

may render this kind of judgment. In this kind of judgment it is imperative that the defendant/accused be present before the court and forward his reply to the suit instituted against him/her. And it is only when the court is satisfied with the preliminary objection the defendant/accused has come up with that the case will be closed in the latter's favor. The third kind of judgment writing relate to appellate courts only (including cassation divisions) particularly when a judgment is given by an appellate court by affirming the decision of the lower /trial court pursuant to article 337 of the civil procedure code. In this case, the judgment shall simply be given, usually within a page, with out calling up the respondent after reviewing the appeal of the appellant and learning that the trial court has not committed either a legal or factual mistake in reaching at the decision the appellant appealed from.

Chapter Four

Manner and Effect of Judgment Writing

In this chapter we will see the manner and effect of judgment writing. It will explain the form to be followed while writing judgment in relation to audiences of judgment and other factors which need to be considered.

4.1 Responsible Organs for Making and Writing Judgment

As it has been clearly discussed under chapter one, judgment writing comes after making the judgment therefore the responsible organ for the making of judgment is very determinant to the writing of the judgment. Under Ethiopian civil procedure code article 180 puts that judgment is pronounced after the hearing stage of the suit as soon as possible by the court of rendition. And article 181 adds some elements that the form and manner of pronouncing judgment should not only be oral but it should be reduced into writing, signed by the members of the deciding judges and pronounced by the presiding judge. It includes that even if the number of judges is more than one all of them are responsible for the making of the judgment and it will be made by majority vote for this purpose. From the above provisions one can understand that;

1. the organ who is assigned with the task of making judgment
2. The act of making judgment is always the first step but since it is not enough to make the process of making judgment it is followed, immediately by the process of writing. Therefore it will be relevant to raise the discussion of responsible organs for making and writing judgment. Under chapter one, it has been seen that there are two types of proceedings to deal with legal disputes, these are, alternative dispute resolution and judicial proceedings.
 - A. Under ADR, the result is not binding except some cases and it is not subject to stringent procedural requirements but it is driven according to the interest of the parties most of the time. The venue will be held absolutely in private manner that the

discussion and bargaining will be so personal. Or it may be open to the third party involvement at different degree for the case of mediation and arbitration.

B. Coming to JDR, it is not common name for different techniques unlike ADR rather it is always problem dealing with court of law whose final decision is always called judgment. Note-the agreement of ADR mechanism may or may not be binding but most of the time, it is open for the choice of the parties. In such cases the agreement to be binding it needs the acceptance and compliance of the parties, or the process exceptionally to be binding like court annexed mediation and arbitration. Whereas, judgment of court proceeding is always binding irrespective of the parties feeling and pleasure. So it has serious procedure so passing this judgment which includes writing formally this judgment. Under this chapter judgment only considers the formal resolution of JDR process. Coming back to our topic regarding the responsible organ for making and writing judgment the primary and only responsible organ will be the judges and the court of law with jurisdiction which is assigned to see and decide on the case. This is manifested in article 181(1) of Ethiopian civil procedure which says the judgment shall be reduced in to writing, signed by the members of the court and pronounced by the presiding judge, without any difference whether the judges bench is marked by one or more judges. So whatever the judgment made is justified or not, whether it is written in good or bad manner that is going to be asked directly is the judge or the judges who heard and passed the decision. It is to mean that though we use different sources for decision and though different parties have participated on the litigation process and in finding the truth like the advocates, witnesses, public prosecutors, experts, police etc the final task of blessing the judgment or passing and writing decision is on the shoulder of the judges.

Since the task of writing the judgment follows the act of making the judgment in case of responsibility the same persons are under a strict duty to write the judgment fulfilling all the rules and formalities. Therefore, the rules, steps and feauteres of good judgment writing need to be observed and for this purpose the judge should know the effects of their writing in all directions in relation to enforcement of judgment, case and court flow management and for the reason of review of judgment.

4.2 Audiences of Written Judicial Judgment

The next question after identifying the responsible organ for the task of making and writing judgment is to point out who are the audiences of written judicial decision. This discussion will answer two basic questions:

- a. for whom that we are writing – is it for clients, parties, for judges , advocates , government or the public?
- b. What we are trying to accomplish? Is it to answer these specific questions, to advise readers generally on the state of the law in particular area, persuade readers to adopt a particular course of action, to solve a dispute etc?

These questions will be given a great concern especially in judicial writing for various reasons including the existence of opposite parties. Each judicial writing will be read and studied by a number of different audiences but more widely in case of judgment. So, it is important for the writer to identify the audience most likely to have the highest level of concern with the judgment or opinion of the judge and this identification should take place before the writing takes place. The benefits are apparent that before any words are put on paper, the writer is forced to ascertain the goal and function of the writing. It gives direction to and limits the scope of the writing. Then, the writing can be structured for the particular audience and can meet its recognized goal and function of the writing. The relationship between the goal and function of writing with the audience can mathematically be represented as Goal plus Function equals Audience.

$G + F = A$ or $A = G + F$ this shows how much they are pre-requisites to each other and this expression needs to be understood in both directions. It is explained as follows.

The first goal for any judicial writing is to inform a particular audience. For this purpose it requires the writer to tell what the case is all about and to explain what action is being taken and why it is taken. The second goal is to persuade. It is for a particular audience that needs to be persuaded by making the content meet the criteria and justifications enough for that audience. The “why” of the case must be made convincing enough to encourage those particular readers to

agree with the analysis and to accept the result. The chosen goal must be kept in mind as the writing is developed.

Judicial writing serves these two functions; the dispute resolution function and the law making function. The first function is representing the fundamental purpose of a judicial writing, is always present. Sometimes, it is the only function being sought. A decision or opinion involves the law making function.

Making function when, for example, it establishes a new principle of law, expands existing law, sets new policies, resolves conflicts of authority, or traces the historical development of a specific law. The first function is closely related to the goal of informing the disputing parties; further that the law making function is closely related to the goal of persuasion and requires the writer to write convincingly.

The early identification of the audience is important. Its probable response, its needs and requirements, as well as the intended goal and function of a particular judicial Writing, will determine how the writing should be done. Writing is unlike other forms of communication because there is an absence of direct contact with the receiver of the communication. This eliminates the possibility of any instant feedback. To anticipate how the audience will respond, the writer must first decide who makes up the audience being addressed? Is it the litigants, the legal community of judges and attorneys, the public, the news media, industry, reviewing court, or perhaps just the writer himself?

Early identification enables the writer to focus on the needs and expectations of the concerned audience. The writer can use appropriate language to convey the message, select the correct tone, choose the best words and employ the most effective style. The writing then is tailor made for the specific audience.

There are several distinct types of audiences, ranging from the writing judge or panel to the public generally. Fundamentally, however, there are only two levels of audience with which the judicial writer should be concerned: the original audience and the ultimate audience.

1. Original Audience – It is purely judicial and has two identifiable classes- *Solitary and collegial*. The writer's first concern must be to gain the approval of the original audience. The original audience, while often ignored as a necessary audience, must be satisfied before the writer can shift his emphasis to meeting the needs of the ultimate audience. The first-line challenge to a decision/opinion is often overlooked by the writer (writing judge). The original audience consists of the writing judge himself and any participating judges when the decision is collegial. If this audience is not convinced that the decision and attendant reasoning are legally sound and consistent with precedent, the decision/opinion can not be accepted. Rewriting will be necessary.

1. Solitary Audience: - The writer himself is an audience and must be satisfied with the product he has written. In one writing may see the faults in reasoning and be forced to write to the opposite or perhaps with some other conclusion.
2. Collegial Audience:- In a collegial decision, the writer must satisfy the participating judges that the reasoning is sound. The writer must persuade his colleagues to join in the result. The goal will be to avoid any separate concurrences or dissents.
3. Ultimate Audience:- The ultimate audience sometimes referred to as the decisional audience includes any court, person, group or agency that has some interest in the outcome of the case.

A. Judicial Audiences:- There are various levels of judicial audiences. Each court or administrative agency must be cognizant of the various levels of review to which its decision/opinion will be subjected. The reasoning must be precise, and the writing should persuade those judges involved at each level.

- I. Trial court or Administrative Agency:- This audience includes judges or administrators who are directly affected by the decision. They have made a prior decision that is being affirmed or reversed any they need to know why. If they must act in accordance with this decision/opinion, either on remand or in future cases, they must understand precisely what they are expected.

- II. Associate Judges:- This audience consists of other judges in the same level of court who may be persuaded by the logic and rationale of a decision /opinion and use it as precedent in future cases. They may use it as de jure or de facto precedent as the case may be. The writer should consider this possibility when his decision/opinion concerns a new remedy or defense that may influence case law in his jurisdiction.
 - III. Reviewing Judges:- This audience includes judges or supervisory courts that may be required to pass upon the correctness of a decision on appeal. The decision /opinion must be detailed enough to provide a solid basis for examination; the reviewing court should have no difficulty understanding why the court ruled as it did.
 - IV. Court of Last Resort:- The opinion of the court of last resort established both policy and precedent. The same is true for the opinion of the FDRE Federal Supreme court cassation division according to proclamation no. 454/2005. Such an opinion must be clear and concise, not only to facilitate immediate compliance but also to promote uniform application by the courts bound by the opinion. The audience for that opinion includes all who fall within the supervisory sphere of the court of last resort.
- B. Public Audience:- The distinct types of public audiences and their particular concerns and needs should be considered in the writing process. The classes of public audiences are parties, the bar and the public and special interest groups.
- I. Parties:- This group includes those directly involved in court proceedings including attorney's for the litigants in court proceedings, there is no case absence of parties. The writer must communicate clearly and precisely of the parties will understand the holding and its impact upon them. This also will enable them to assess realistically the value of further appeal. The writing should have a convincing quality so that the reasoning will withstand scrutiny.
 - II. The Bar and the Public:- This group includes all who may be affected indirectly by the decision/opinion, such as advocates or attorneys, law students, or legal scholars who may use it as precedent or as the basis of argument in other cases, legislators who may use it as a basis for proposing new legislation or amending, repealing the existing law, or the ordinary citizens who may have an incidental interest in the proceeding. The logic and reasonableness of the decision/opinion must be explicit.

III. Special Interest Groups:- This audience includes those who have no direct connection with the particular case, but have a special interest in the outcome because of this audiences may rely upon the decision in ordering their lives, in lobbying for new legislation in running their businesses, or in maintaining future litigation. If this is the case, the extent and limitation of the decision should be clearly expressed. For example, in a practical court decision between the case commercial bank of Ethiopia and tax authority in Amhara region, decision was rendered for priority claim to the tax authority on the proceeds of the bank mortgaged immovable property, and immovable property, claim to the tax authority on the proceeds of the bank mortgaged immovable property, and the regional supreme court was taking the same stand on similar cases. Because of such decisions, all government and private banks have moved together and took the problem to the federal tax authority being special interest groups to the particular case. Finally, the banks association succeeded to get directive from the ministry of finance that gives recognition of priority right to the banks, and then the problem has been permanently solved by the revised tax proclamation by giving priority right to the banks on mortgaged property.

Secondly, in the federal Supreme Court cassession division's decision on labor case such as the issue of severance pay, etc may be taken as workers other than persons in the dispute who have special interest so they are special interest groups. The above levels of audience are also classified into four categories of written decision or opinion as:

Primary audience/parties/

Secondary audience /the bench bar, public

Territriary audience /special interest groups/

Solitary or quarterly audience- the writing judge

All these are involved in the hearing and reading of the judgment in different levels of interest to be affected in one judgment. Note- the interest to be affected and closeness to the case is reducing when we go from the primary to solitary audience.

4.3 Factors Affecting Making and Writing Judgment

We have seen that judgment is very relevant to the fact that it affects many stakeholders and it determines the effectiveness and competence of the court with the parameters of due process of law and constitutional right of citizens. In this respect the following are most significant factor among others which may put their negative and positive impact for the making and writing of the judgment.

1. The Constitutional Authority of Courts:

The first important factor that need to be noted or that will give validity or which will otherwise abandon the value of the judgment is whether or not the judgment made and written is made accordingly to the legal sources of the state especially the constitution which clearly separates power among different branches of the government. This power of courts to made decision whether they have the power to interpret the laws, constitution and polices of he country, power to make and cite precedent decisions, power to cite instruments other than ordinary laws as binding authority, and their material and local jurisdiction on other issue is one of the most relevant influencing factors that matters on the quality, content, persuasiveness etc of the decision. As per article 13 of the FDRE constitution, the judicial organs of the government at all levels have the responsibility to respect, enforce and fulfill the basic laws and rights given under. It has two basic ideas first, this organ of the government has the duty to respect and fulfill the laws by itself. This need to be with in the bounds of the law which is given under article 78 of the constitution as a judiciary part of the government. But here under the interpretation of the constitution is given for the House of federation based on article 62 of the same constitution. Secondly the courts while doing their job, i.e., while interpreting laws, making and writing judgment shall follow procedural laws of the country including all the elements and steps. Moreover, the courts are expected to enforce and create good acceptance for the laws of the country by other organs and citizens of the state. (Chapter six will discuss in detail about the steps and process of making and writing judgment.)

To sum up, if the court is passing judgment it must consult the laws of the country which gives interpretation of laws except the constitution. It must go in line with laws that demark the

jurisdiction of courts to entertain and decide on cases about material and local elements. Then the judges located within these bounds of the law must satisfy the steps and rules of judgment making and writing and the like based on articles 182 and the following from the civil procedure law of Ethiopia. It is to meet the constitutional power of courts and to achieve independence and impartiality of courts together with the judge's cognizance or observation of their roles in the justice administration.

Conforming to the principle of The Universal Declaration of Human Rights, International Covenants On Human Rights and International Instruments adopted by Ethiopia. The powers of courts are regulated by the federal and respective regional constitutions as well as special proclamations. For example, according to court constitutions as well as special proclamations. For example, according to court proclamation of 1962, Art. 15, all decisions on matters of law given by superior courts had been binding on all subordinate courts. Similarly, according to Federal court remanding proc. No. 454/2005, interpretation of law by the federal supreme court rendered by the cassation division shall be binding on federal as well as regional council at all levels.

So, the constitutional power of courts or their scope of material and local jurisdictions including the degree of their independence or impartiality has its own impact on their decision making and judgment writing task.

2. The judges cognizance or observation or understanding of their role in the justice administration, is also an other influencing factor. For example, the role of judges in the enforcement of the accuser's constitutional rights, the role of judges in the implementation of international human rights instruments or enforcement of the constitution, their roles in the protection of prisoners rights, and etc. Here it may be relevant to remember a saying, which states when you act as a judge or in adjudicating and making decisions you should always put yourself in the shoes of the parties, like in the shoes of the accused.

3. The expectation of the public about the roles of the judges, i.e. expectation of the audiences. The judges' discussions, demonstrations and etc give practical examples in the Ethiopia case.

4. The judges professional competence, i.e. knowledge, skill and experience. The level of their training or education and experiences also matters on the effectiveness, efficiency, quality and predictability of decision and judgment writing.

5. The judge's diligence, attitude or ethics, corruption, ideology (political, religious etc), third parties interference (such as government, friends, etc), confidence, interests, etc also other influencing factors with various degrees.

6. The nature of legal system followed by a country or the legal tradition and educational system:- Because of the legal tradition, common law system judges and civil law system judges follow different styles of judgment writing. The differences of the two legal systems/traditions in relation to institutional organization, system of court decision making, legal education and professional practice/tradition are the basis for variation in judgment writing. This will be separately discussed in the following sub-section.

4.4 Judgment Writing in Continental Versus Common Law Legal Systems

The major bases for the comparison of the two systems are institutional organization, the legal education and professional experience, tradition of judicial decision making and judgment writing.

1. Intuitional Organization

In common law legal systems, all laws are not codified so that the judges play role of law making, precedent. The courts apply both written and unwritten laws. Where as, in civil law legal systems, courts usually apply written laws. For example, in Britain there is detailed analysis of facts and law as the judges will have time and may make laws by their decision. But in France, the judges do not play the role of law making, but only apply the written laws to particular problems. There is usually case load so that they can't analyze facts in detail and cannot refer precedents and policies. The decisions are also short. In common law legal system, there is jury system that examines facts but not in civil law system.

2. The Legal Education Tradition and Professional Practice

The civil law education systems is not skill or practice oriented, but principle or abstract analysis oriented. Practical skill is covered after graduation in the form of apprentices or special training. But in common law system, like the USA, Legal education is professional training, treated just as second degree study. Their curriculum system emphasis on methods such as advocacy, legal research, judgment writing, etc.

In France special trainings are given for judges, persecutors and advocates. But in common law tradition, no special training is required after graduation so that the graduates will fit to all tasks.

3. Judicial Decision Making Tradition

- a.** In common law tradition there is parallel relationship between judges and attorneys. The judges seem answering or responding to the opposite attorneys arguments. But, in civil law tradition, the judges, the judges seem deciding the case applying the law on the dispute than answering to the attorneys arguments.
- b.** In common law tradition, each judge writes his own judgment and should show the draft for the collegial judges. The dissenting opinion will be given on the basis of the draft of the majority. In civil law tradition, the dissenting opinion will be written on the judgment file unlike the common law.

The common law judge should study precedent decisions before writing the judgment. To deviate from the presented, he should present strong argument. But in civil law system, there is no precedent. However, in the Ethiopian legal system, precedents system has been introduced for the decision of cassation division of the federal supreme court. There was also such tradition according to the 1962 court proclamation.

Comparison of Judgment writing

Common law tradition	Civil law tradition
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Describes fact in detail	Uses long statement, sounds like preamble
Shows alternative solutions	Have proclamation tone
Longer than civil law	Applies the law on facts in the from of conclusion
Give answers for each arguments/points	Fails showing alternatives
Shows the points of dispute carefully	Explains the facts in short/general
	Do not include opinion about the past and future

Keeping these factors in a way they will assist on the process of judgment writing positively. The next point is that as far as judgment writer or the judgment is concerned the following points need to be noticed. These are:

1. The content- the internal inclusions of the judgment that should be substantially relevant to the issue, reasons and legal points concerned. It needs to be full in this respect.
 2. It need to be coherent having logical sequence.
 3. Scope and limitation of the judgment and relevance of the legal suggestion.
- (The next chapter will have detail discussion on this topic.)

4.5 Issues in Making and Writing Judicial Decisions

After the writer of judgment has identified the factors that will exert positive and negative effect on the process of making and writing judgment, it is inevitable that the writer shall determine how to shape the following points. These are steps, time, content, form, type, process, style, nature, audience, etc of the writing of the judgment. It answers the question that how the writing needs to be held so that the goal of the writing of the judgment can be achieved. Let us try to see each of the issues independently.

- A. Step- judgment writing is not ordinary act of writing which does not have its own flow. There are points that comes first and then on. The writing of the judgment follows the step of the trial proceeding from the first up to the end. The missing out of the proper step of the judgment writing will create problem finally on the goal of the judgment aimed to

be achieved. (Chapter six in detail will raise the step of making and writing judgment in detail. So students are advised to get the detail of the discussion there.)

In short the basic steps are:

1. To decide on the controversy of the parties, which is first made by hearing of the parties and their evidences followed by oral judgment.
2. To communicate the decision- after it has been made the judgment, it needs to be communicated in written and oral forms to the parties.
3. Journalizing the judgment in the form of judgment to be different from ordinary decision given in the court by the judges themselves. It is the normal or legal form of judgment to be awarded.

B. Time-is the other issue that needs to be considered while writing judgment. It is obvious that time is one of the ingredients and factors that have great effect on the validity and enforcement of the judgment. It seems for this purpose that Ethiopian civil procedure code under article 181 in general terms put that the judgment shall be made immediately. But article 183(2) clearly provides that the judgment shall be signed and dated to be used as reference or to be used for any other purpose. It is because that as procedural requirement for appeal or any other kind of review of judgment shall be made with in a certain time format and this shows the time of making the judgment in writing need to be clearly considered while writing. So the time when the judgment shall be made and written is as soon as possible after the hearing is over. In addition, it shall have a time clause or date of reference in the content of the judgment.

C. Content of the judgment – regarding the internal body, what need to be included in any judgment should not be subjective according to the personal interest of the judges but it must follow common standards of the law. That is why article 182of the above code says that any judgment shall contain the points for determination, the issues, the decision thereon and the reasons for such decision. It shall include the following points accordingly; the reasons for the decision which can show the parties why the court pronounces the decision in that manner. It must focus only on the points raised by the parties that the decision shall only rely

on the issues which the court was previously dealing. If the issues are more than one the judgment need to be separate.

D. Form and type of the judgment –form of the judgment means the manner of writing the judgment. Article 184 of Ethiopian civil procedure code deals with the copy of judgment and decree, together with the consecutive seven articles. Shortly, the writer of the judgment shall make the judgment in writing, as the issue is involved in the case need to be made in the formal way as it is given in a sample in the provision stated above. The other issue is that the judgment to be written must clearly separate the type of the judgment. As we have seen under chapter two types of judgment are various and it need to be reflected when the act of writing the judgment is held.

E. Style and the process-style is about the way to be followed by the judge writing the judgment. It shall be attractive, clean and precise. Therefore, the following elements need to be used to make the style of judgment writing good.

- I. Accuracy-there should be no miss-statement of facts. The judge is not the author of the facts but only the recorder of the reality. It needs to be only on the relevant points of the case.
- II. Selectiveness- effecting judgment need only those factors and facts that usefully serve for the purpose of reaching at the conclusion i.e. the judgment must give complete factual citations but it does not mean that you should bury your reader under facts. It includes eliminate facts that are not relevant or decisive for the judgment directly. It needs not to be too much detail in short.
- III. Sequential- it needs to be presented in chronological order. That audience can grasp the idea from the very beginning up to the end.

F. Audience- is the other issue to be under consideration while making and writing judgment. (The details of this topic are contained under 5.2 needs to be kept valid so that students are advised to recapitulate what we have raised under that discussion)

4.6 Effects of Judgment Writing

Up to now, we have seen the important points regarding judgment writing starting from the meaning up to the factors and issues that need to be considered well. The act of judgment writing has multi-dimensional effect on individuals from different perspectives. We can see this from two basic angles:

- 1) From the courts point of view- this includes the task of the court and future responsibility that will occur to the courts of law.
- 2) From the parties and societies point of view-which may be measured in light of rights and duties constitutionally and legally given to the public trust and confidence that will be forwarded by the society to the courts. So to discuss on this directions based on the effect of judgment writing the following specific steps ad disciplines are concerned.

A. On the court litigation – as it has been raised previously the time of making and writing judgment is after the hearing stage. And hence the hearing stage is one of the basic steps of trial proceeding. It is to mean that, when we come to the effect of judgment writing whether it has prospective, retroactive or both kinds of efforts out of the three stages of court litigation. Of course, though it is an indirect effect of the judgment making and writing has one basic relevance to the pre-trial and trial stage, i.e. it is the closing mark or the final destination to this steps. The overall aim of pre-trial stage and trial step is to achieve judgment through the travel is not yet over. Out of this, the effect of judgment can be seen in two ways:

I. On the trial stage- the trial stage is clearly concerned with evidence of the parties which may be presented in different ways and listens their arguments and examinations of all kind. So it is to say that the controversy of the parties will reach to its peak at this stage since it is the first and the final moment that the parties will forward their debating's. and then the final whistle that can cool down and bind the parties argument against each other is only the judgment made s not formal until it is written own and copied to the parties. So, in this regard judgment writing serves as a demarcation between the parties controversy showing which claims and rights are legally recognized.

Here it serves to set up the right and duties of the parties. The other relevance is that the justice right of the parties get response at this level basing the judgment on the facts, laws of the country when it is written down.

N.B so, here the judgment writing will be the closing remark of the trial stage telling who is the wining and losing party.

II. On the post trial stage- here also the effect of judgment writing may be perceived from two angles since we have sold that the trial stage creates two kind of parties the satisfied and dissatisfied party. The effect of the judgment writing on these parties may be seen in two forms on the post trial stage.

- 1) Serving as an order and document, so that the enforcement of the judgment of would be easy and speedy. Enforcement of the judgment is the remaining assignment of the parties after the trial stage is closed with the pronouncing of decree. Shortly, the written judgment serves by giving authority and validity to the judgment creator and being a task (duty) to the judgment debtor which reduced the homework of the enforcement organ.
- 2) It is important for the dissatisfied party or for the losing party to be a ground of appeal or any other kind of review of judgment. Because, the court needs sufficient reason to make review of judgment as to the error of fact or law found in the case. So this things need to be scrutinized out of the written judgment. Had it not been for the presence of written judgment, it would have been difficult to refer any oral kind of judgment passed priorly. The other is that it serves as a reference to se the fulfillment of time interval and other procedural requirements that should be met while-asking review. Finally, if the case of review of judgment is accepted and if the appeal or cassession is held the act of previous trail or decision is given at ordinary court can only be gathered from the written judgment. N.B judgment writing has very great role in the trial and post-trial stage being the benchmark of the final whistle of the trail and enforcement of judgment base or source of reference for the review of judgment to be held on. (In relation to the enforcement of judgment chapter ten have wide discussion.)

- A. On a case flow management- for the proper handling of cases without any delay and backlog, judgment writing plays a great role. It can be seen as: because of the existence of good or bad writing of judgment the proper or smooth flow of cases may be maintained or affected. In short it may throw a stone to avoid backlog and delay and injustice if it is held properly or the reverse. (The detail of this discussion is found under chapter eight)
- B. On the court management –this is about the administration and leadership role of courts on their homework and human resources. This is by considering courts as service rendering institution so that their function should be just and speedy. In this regard, judgment writing may ask qualified judges, the application of technology or the allocation of enough budgets to handle this act in good manner which is the main dealing of the court flow management.(similarly chapter eight will have deeper discussion on this topic.)
- C. On constitutional rights and the administration of justice-judgment writing is not on ordinary document written by anyone without any reason. Rather it has its own goal, manner to be made and rules how to be conducted. This is mainly because, the writing of the judgment is the instrument that sets the rights and duties have legal sources and ways to be held or administered. In other words, it is to mean that judgment writing will be a witness to the laws of the country especially the constitution showing how it guarantees the right and duties of citizens. It is the source to evaluate whether the procedure and final words of the court are constitutional and legal or not. In other words, it is the source of evaluating how the administration of judgment is held in the country. It is because all the steps held by the court are pronounced as a single document i.e. the judgment can be good source of evaluation to see how justice is administered. (Detail discussion is held on this topic under chapter seven)

CHAPTER FIVE

RULES AND STEPS IN JUDGMENT WRITING

It is said that all judicial bodies, especially courts conclude their activities, i.e. judicial proceedings, with a formal pronouncement of the result in the proceedings, which is rendition of judgment. judgments rendered may be good or bad seen in light of the consequences they could bring both to the parties involved in the particular case submitted to the court and the general picture of the judicial system of a country.

Good judgments have the out come of enhancing the image and perception associated with the overall justice delivery process and could have the power to raise the confidence of the public over the judiciary. Usually it is agreed that a well-written judgment based on a comprehensive analysis of facts and law is not only an indication of an individual strength of a judge but also is a sign of a worthy judicial system. As such, it becomes indispensable that judges acquire the skill to write good judgments. In order to come up with a good judgment, among other things, knowledge, proficiency and aptitude of the judge(s) are crucial.

As mentioned earlier in this material, judgment is a purposeful undertaking in that it addressed to the litigants in whose favor or against whom the court resolved the case by and through making clear the judge(s) own view. Besides, it leaves a ground for any aggrieved party to bring an appeal there by making reasons available for an appellate court to consider.

Nevertheless, for any judgment to serve the purpose it is meant for, the judicial body in charge of reducing the judgment in to a written form, i.e. the judge(s), needs to observe some very important steps and rules while writing the judgment. The forthcoming discussion will delve in to the task of familiarizing the reader with some of the most important steps and rules that should be observed by courts in the process of preparing written judgments.

5.1 STEPS IN WRITING JUDGMENT

Decision Making VS Judgment Writing

It seems imperative, at this level, to remind the reader that there is a conceptual as well as procedural difference between what are called "decision-making" and "judgment writing." By

decision making we are simply referring to the process that should be undertaken by a given court and disposing the case before it. In connection with the case submitted to the court it normally relates to answering two fundamental questions: how the case should be disposed and why should be so? Where as, judgment-writing, generally refers to the manner of providing the decision of the court officially (publicly) and in a written form. Hence, it is highly linked with the pattern of communicating the decision of the court both to the parties and the judgment audiences. As such, decision making precedes judgment writing in that the former serves as an input to the later. However, it can be seen that the two tasks are two sides of the same coin.

The steps that need to be observed in decision-making are dealt earlier in this material, so no need to repeat them here at this level. The major or important steps that should be observed by a court (judge) while reducing its decision in to a written form make up the subsequent discussion in this section.

Acquainting Oneself with the Nature of the Case

The first thing the court is expected to do before (while) writing a judgment is to get acquainted with the nature of the case or the action submitted to it for disposition. This, among others, include, how the action is brought before the court, history of the case, the type of the dispute between the litigants that should be determined by the court, type of the relief sought and the nature of the judgment to be rendered (summary judgment, accelerated judgment, proper judgment.) Thus the judge should make sure before starting writing the judgment that it has familiarized itself with these above mentioned things.

Listing Material Facts

Next to acquainting oneself with the nature of the case or the action instituted in the court, it is important that the judge (court), before beginning the task of judgment writing, list the material facts as presented by the litigating parties and classify them in to facts in issue and facts not in issue. "Facts- in- issue" means in any dispute any fact that the parties disagree on it as a result of which the fact becomes a point of disagreement or controversy as between the disputants calling up the need to be determined by the court. On the other hand, "facts not in issue" are those facts presented by either of the parties but no disagreement raised by the other

party as regards their veracity. Hence, the court is expected to classify the type of facts after listing the material facts presented by both parties before embarking up on writing the judgment.

And, while writing a judgment it is not proper to set-forth all the facts that may be related with the case. Only narrative statements of the controlling facts should be made, hence the author is expected to be selective in presenting facts. The judge must know which facts are material to his readers in relation to an easy understanding of its decision. He must choose the type and nature of the fact to be used in a decision. Facts should be stated in the past tense and propositions of law should be stated in the present tense. Facts are presented in a chronological order.

In line with the above, the court should also manage to limit itself only to relevant and important facts while reducing its decision in to a written form. "Relevant Facts" refer to any fact which directly or inferentially leads to one of the conclusion necessary to proof or disproof of a fact in issue. As such, relevancy can be seen to have always linked with facts in issue.

5.2 CLASSIFICATION OF FACTS

Facts can be classified as incidental, informational, relevant, evidentiary, issuable, essential, controlling and ultimate or conclusionary, even if some of these overlap to each other.

- An Incidental fact: - is a fact that is not necessary to establish the right of recovery.
- An Informational fact:- is one that provides some insight or bridge from one piece of information to another that the reader may better understand the findings and conclusions.
- A Relevant fact: - is usually related to a fact that is disputed or at issue.
- An Evidentiary fact: - is presented during the trial or it is otherwise admitted in to evidence. This may be in the form of testimony, exhibits, stipulations, admissions, depositions, or affidavits. Evidentiary facts form the foundation upon which the judge relies in drawing an ultimate or conclusionary fact.
- An Issuable fact: - is required by the pleadings to be proven. If proven, this fact entitles recovery under the particular legal theory that is being tried.
- An Essential fact: - is one that is necessary to support the disposition of the case.

- Controlling facts: - are those facts which, when added together, enable the judge to come to some actual conclusion that affects the outcome of the case.
- Ultimate or conclusionary facts: - is a fact reduced from the evidence, and is used to resolve the case. Such a fact is substantiation for the application of the legal principle chosen. Thus, it determines the case. The judge's findings as to ultimate or conclusionary facts must be founded upon a reasonable inference that logically flows from the evidentiary facts. Such facts are used to make factual findings upon which conclusion of law will rest.

Therefore, it is important to identify and distinguish what are called Non-essential facts, irrelevant facts and immaterial facts from those facts that are needed to decide the case. A conscious effort should be made to recognize and eliminate them. If non-essential, irrelevant or immaterial facts are included with in the fact finding process, the judge will find his task more difficult than it needs to be. It should be understood that whether a given fact is material or immaterial will depend upon the issue raised by the case. Facts to be included with in the judge's factual findings should only be facts that have some direct bearings upon the issue being raised. All other facts should be eliminated from consideration.

LIMITING FACTS

After listening and classifying the material facts on the basis of the above discussion the court is expected to limit the facts to those which are necessary to the out come of the case. As a guide line the judge(s) must consider four things in determining how the facts will be presented; these are being accurate in recording facts, being selective in choosing the facts, eliminating unnecessary facts and identifying those facts immaterial to the reader's understanding of the findings and conclusions.

There must be no misstatement of the facts. While the writer may interpret the law liberally or strictly, he must not take this kind of liberty with the facts. He is not the author of the facts; he is merely the recorder of them. The facts must also be recorded objectively. The judge must adhere precisely to the facts in the case. An improper factual recitation can result in an irreversible miscarriage of justice. The reviewing court, which may be called up with a view to independently determining the reasonableness of the legal reasoning contained in the findings,

will give due attention/consideration to the facts found by the trial judge. The trial judge has had the opportunity to observe the witnesses and hence, unless the facts are clearly erroneous or an objection is properly lodged, the facts will be accepted and remain unaltered.

Besides, in order to write effective findings, only those facts that serve a useful purpose in understanding the conclusion should be selected and set forth. Legal descriptions, contracts, and statutes quoted in full, or testimony quoted at length, are rarely necessary to an understanding of the findings of facts and conclusions of law. To give a complete factual recitation does not mean to bury your reader under facts. These should be summarized. Stating testimony verbatim or touching upon every fact presented is not only pointlessly burdensome but also runs the risk of having irrelevant facts expressed to the exclusion of relevant facts. This could be fatal to the acceptance of the findings by the reader.

Relevant and material facts are necessary to understand the analysis of the case and the result reached at. Too much detail, however, is ineffective. For instance, if no question was raised as to the timeliness of the defendant's motion for a continuance, the judge accomplishes nothing by stating that the motion was timely made. When details which have no bearings upon the outcome of the case are included, the reader is needlessly required to sort out and discard that which is unnecessary to the disposition. This is a job no reader should be made to perform.

Finding of fact and conclusion of law should set forth only those facts that are material to a disposition of a case. The writer must resist the temptation to include other facts merely because they are interesting or unique; it is a disservice to any body reading the document to make him wade through facts that have no bearing on the disposition. It is the writer's job to identify immaterial facts and eliminate them.

Facts usually are presented in chronological order. Of course, this is not a rule and there are exceptions. Sometimes, for instance, it may not be necessary to know when a certain event occurred, but only that it did occur. In such a circumstance one need not be concerned about the chronological order. In most cases, however, the chronological order of events is significant to a determination of the case and for that reason the sequence is important. In the sequence of facts of plaintiff usually come first to the facts of defendants and substantive facts precede evidentiary facts.

LISTING OF EVIDENCE

In addition to the above point, it appears indispensable for the court of rendition to conduct a proper hearing of evidences of the parties and classifying them in to admissible and inadmissible ones and in to relevant and irrelevant evidences.

Evidence refers to a body of rules which governs what facts need to be proved in the court of law, i.e. facts in issue and facts relevant to facts in issue. Thus, when one presents evidence it must relate to the fact needing proof in the court. There is need of relevancy of evidence. It may relate to the issue as it may be cause of that issue, effect or motive. The purpose of evidence is to elicit the truth in a dispute with less cost and time.

It should be noted at this level that all facts in a case may not be facts needing proof. There are facts needing no proofs which are categorized in to three types namely: facts needing no proof because of judicial notice, facts needing no proof because of legal presumption, and facts needing no proof because of admissions/ facts admitted by the parties.

There are, basically, three methods of proofing facts. These are proofing facts by oral evidence, proofing facts by documentary evidence and proofing facts by demonstrative evidence. These methods may be used separately or in combination as the case may be. In connection with using the methods of proof, there are principles or rule of admissibility and weight of evidence. In most cases, the party who alleges the existence or non-existence of a fact has duty or burden of proof. Generally, if evidence is irrelevant to proof a fact then it will be inadmissible.

Speaking of the Ethiopian legal system, the evidentiary rules are found being scattered in the substantive and procedural laws (for example for proof of marriage articles 94-97; proof of filiations articles 154-162 of the revised family law; proof in relation to contracts articles 2001-2026 of the civil code; about the admissibility of documentary evidences and relevancy ; examination of oral evidences (witness), civil procedure code articles, 137, 138, 263-272; and evidence in criminal procedure code articles 136-148 etc.)

Relevancy of evidence is determined on the basis of logical reasoning and legal reasoning /logical and legal relevancy/. Of course, in court of law we should not expect absolute truth as existent in scientific research, and there is a reasonable doubt. Thus legal relevance of evidence means worthy of evidence not conclusive evidence. There may also be legal restrictions for relevancy of evidence, like loan agreement of more than 500 Ethiopian birr (article 2472 of the civil code) and mortgage contract.

IDENTIFYING THE RELEVANT LEGAL PROVISION AND APPLICATION OF THE LAW

After going through the above listed processes, the court will be left with making conclusion of the law or deciding the case on the basis of the law. The legal conclusion should cover each of the legal elements required to decide the case.

CONCLUSION OF LAW

A conclusion of law may be defined as a judicial statement that sets forth the law to be applied to specific facts in a specific case. It expresses a legal deduction made by the decision maker naturally arising from the facts found and carrying with it some form of legal consequence. It is also known as a proposition of law.

The judge arrives at a given conclusion of law, by examining the controlling facts and making a bridge between those facts and the existing state of the law. A conclusion of law is drawn by using those individual facts first found in a case as a result of which it is a case-specific. It must support in those factual findings already drawn by the judge. It is the expression of a legal deduction made articulated in statement form. When a conclusion of law is added to any other conclusion of law drawn, it determines the rights and duties of the parties. Therefore, a conclusion of law is made after and as a result of finding certain previously enumerated facts.

Therefore, a conclusion of law, therefore, is a single statement with a legal significance supported by those facts previously found by articulating the law applicable on an issue or element necessary to determine a disputed principle of law used along with other conclusions of law to determine the rights of the parties. It is an application of the law supported by a factual

finding or findings made by the judge. It usually does not state the facts from which the duty arises. A legal conclusion can be said to be a single statement that has a legal significance, drawn by evaluating the controlling facts and making a deduction.

ARGUMENT ON THE BASIS OF AUTHORITY

Understanding Statutory Language: - as a judge before handling a rule of law efficiently one must understand statutory languages fully. This involves understanding two basic things; the language of the rule and its function. The general purpose of law is to maintain social, economic, political and cultural orders. And, the specific purpose of the rules is related to one or more purposes of the law in general. Statutory language needs interpretation and operative words require careful analysis before applying them properly.

Understanding the function of a rule means to understand what the statute does, i.e. what kind of rule it establishes, what the legislature or other promulgating authority intended to accomplish by it. Statutes may have many different types of functions. For example the criminal code article 538 on aggravated homicides, establishes at least two functions.

1. It defines the crime of aggravated homicide; it states what the accused must be proved to have done before he/she can be convicted of that crime.
2. It states what kind of punishment may be imposed upon conviction.

Contextual Application and Cross-Referencing of Rules

In applying a rule as authority, it is also important to recognize what the rule does not do. Individual code articles leave many questions unanswered. For example, under art 538 of the criminal code the meaning of "intentionally," "Homicide" and "rigorous imprisonment for life, "or" death" is not answered by art 538, but answered by articles 58,537, etc. This is to mean that a single code article almost never answer all the problem of its subject. Therefore, the context of the article or statute need to be kept in mind and the need for cross referencing between articles whose subject matter is connected. Keep in mind the articles near by the article you are reading. They will often contain a clue to the meaning of your article. Each code article must be read in the context of the whole law. The function of an article is almost always elucidated by its surroundings. Cross referencing may be used for many different purposes like to provide

exceptions, to make applicable articles of other portions of a given code see art. 2632(2) of the civil code.

Argument/Legal Reasoning

Argument is defined as an attempt to show that something is true by providing evidence/authority for it. Legal reasoning is deciding what law applies to a given dispute and then applying that law to the specific facts or circumstances of the case. It is a broad way of reasoning in law in which it takes much more consideration than rules of law, acts and evidence. It incorporates different elements some of which are principle, policies, experiences, ethics, morality, and norms of a given society as the case may be. Formal logic is also one and important part of legal reasoning. It is one and the best way of structuring our reasoning so that it can be organized and persuasive. The legal process is a rational process, i.e., legal decisions are made on the basis of reasons that are understandable by educated people. In court decision making, the reasoning process often ends with a reason derived from a statute or rule of law. This is fundamental role of authority or argument on the basis of authority. The role of judge's decision making also differs from laymen or elders decision, because of the duty to use legal authority in the court decision making and reasoning processes. In using law in judgment writing, while facts are presented in the past tense, provisions of law are usually presented in the present tense. The law exists at the time you write and so it should be stated in that manner. The past tense is appropriately used when your discussion includes a reference to a repealed or an ineffective law. Sometimes, it may also be necessary to refer to the original law and various case interpretations, before discussing the existing law. In such cases, you can present the law in past tense form.

According to **Neil McCormick**, the function of argument/reasoning is for the purpose of justification or persuasion on the basis of authority. He has introduced three fundamental theories or principles of reasoning, these are: consistency, coherence, and consequentiality. **Consistency** refers to a type of argument in deciding a case upon ruling in accordance with an existing established rule of the legal system or specific law. **Coherence** refers to the observance of the general principles of the legal system or relevant body of laws in legal argumentation. Argument by analogy is also concerned with this element of "coherence". **Consequentiality** is a type of argumentation refers to arguments showing the acceptability or unacceptability of a ruling one

way or the other having regarded to their consequences: like legal, economic, social, political and cultural consequence.

Formulating the Point of Dispute, the Issues

Issues are the points on which the opposing sides come to grip. They should always be stated as questions. They are questions, for which one party likes to be answered yes or for another party No by the court. They are always presented in the form of question and need final answers by the court. Issues should be fragmented questions, but they should not be too broad or too fragmented. Issues may concern questions of fact or of law, or both, depending on the nature of the case. They can also be stated with varying degree of specificity. For example; issues in a criminal case will almost always be "is the defendant guilty?" where as in cases the issue to be framed is generally, "is the defendant liable?"

The answer to the issues should control the out come of the case or an important part of it. The statement of issue should catch attention on the particular facts or propositions of law which are crucial. Statement of what may be called the "overall" issue, such as the question of guilty or liability does not help much in this direction. As a general rule the more you can pinpoint an issue, the better will be the result. At the same time you should not multiply the issues unduly. Avoid the extremes of over generalization and excessive fragmentation of the issue. Experiences and criticisms will be best guides. In considering the issue, try to analyze the reasons each advocate would give in support of his position on each case.

In our legal system, the task of framing issues has legal standards as it is regulated by the existing procedural laws. The reader is better advised to refer this study to both the civil procedure law and criminal procedure law. For example the reader may look at the following articles in the civil procedure code. Article 246 Framing of issues, Article 247 Issues defined, Article 248 Material from which issues may be framed, Article 249 court may examine witnesses or documents before framing issues, Article 251 power to amend and strike out issue, Article 252 questions of fact or law may be stated in from of issues, Article 253 judgment on agreement executed in good faith, Article 254 parties not at issue, Article 255 parties at issue.

Deciding What to Decide

The pleading and discovery stages each provide an opportunity to define and redefine the issues. The hearing stage offers the judge an opportunity to eliminate insignificant issues while at the same time framing the significant issues. The judge's definition of what is and what is not in issue at the outset determines the evidence to be presented and limits what will be heard.

Before beginning the writing process the judge must decide which issues are significant in the particular case; that is, which issues demand resolution in order to dispose of the case. Each case presented for decision is unique in some way. Deciding what to decide in a case is the first and most important decision to be made by any decision maker. Of course, this decision limits the issues to be resolved.

Where the facts and the law are both clear, the case usually will be settled by the parties themselves before trial. Where the facts are in controversy, credibility judgments will come into play to determine the facts.

The legal issues necessary to a determination of the case must be presented concisely and specifically. The judge should spend enough time in drafting the issues to make them as brief and clear as possible.

Preparing Outline of the Decision

Preliminary Decision

It is important that the judge has all the information needed to find the facts necessary to a decision. If information is missing, supplemental evidence should be allowed where justice so requires. If the attorneys were well prepared and the hearing was conducted efficiently the record should be sufficient for the judge's work.

Preliminary decision should be made immediately following the hearing while everything is fresh to the judge. While the preliminary decision may not withstand the subsequent scrutiny of research, it offers a sound base from which the judge can prepare a draft. The first step towards writing a draft finding is to review all the materials accumulated. Issues needing further research should become evident during this process. An effective way to outline issues that can be preparatory to writing is to underline material facts in the notes taken during the hearing

process. At this stage, the preliminary conclusion is likely to be changed. Possible alternative resolutions can then be listed. As such, the judge now has a working guide for the writing process.

A working Outline

Just as each paragraph has a central idea, the entire finding has a single theme. The writer does not have freedom of choice as to what the central theme will be. He is limited by the questions raised in the case. When a formal outline is not necessary, the writer should simply jot down the relevant facts, major issues, and authorities to be discussed so that he can make his work easier. This includes, among others, gathering the materials, reviewing the hearing notes and eliminating unnecessary material and expanding pertinent materials.

Ideas that are irrelevant, no matter how interesting, should be discarded. Ideas then must be arranged in a logical order for discussion. In this way the judge may dispose effectively of each idea, step by step, to reach the central idea of the case. Once drafted, they should be corrected, edited, and written in final form. This, then, should be the final product. As the judge writes more findings, he will need fewer drafts. There is no such thing as “good writing.” There is only good re-writing.

Writing the judgment

Drafting - the drafting process really begins during the hearing. It is at that time that the judge makes notes as to the testimony supporting the controlling facts for future inclusion within the findings. Drafting is peculiarly suitable for the exploration of ideas. It is the vehicle used to examine alternatives in reasoning, while offering a means for testing the reasoning.

Citation - apply the law to the facts of the case, using authorities to support your view of the law only where they are needed. If you treat every point of law raised in the case as equal and offer many citations, as to each, their individual importance is lost. To emphasize everything is to emphasize nothing.

Final Revision - the draft is now ready for revision and the final writing effort may begin. It is at this time that the writer may decide to change the sequence for easier understanding. Items that add nothing to the discussion should be eliminated. Repetitious words, phrases and ideas should be removed to shorten the writing without disturbing the meaning. Any change that will aid understanding or readability should be made at this point.

Editing – the next step is editing. Sentences may need to be restructured for further strength or more precise meaning. Grammar, spelling, and punctuation should be corrected. Missing letters, words, or phrases should be added. Redundant information should be deleted. Over used words or phrases should be stricken. The writing should be examined carefully to be sure the discussion is developed logically and the reasoning flows smoothly and evenly. Transitional sentences should be inserted where they will assist the reader in understanding the progress of facts or the reasoning. There should be consistency in the use of the same word to refer to the same thing.

As a result of multiple drafts, rewriting, editing, cutting, polishing, revising, etc, a final draft is produced. Once again it should also be proofread carefully. If done properly, the completed writing will represent a cohesive dialogue with a logical progression of ideas starting from the beginning, proceeding through the reasoning process and concluding in the proposed proposition. Finally, the written decision will be read to the parties and certified copies of judgment shall be furnished to the parties. (Read article 181 and 184 of the civil procedure code.)

However, if the bench is by three or more judges there will be one more step left before declaring the written judgment to the parties and the judgment audiences. Discussion on the written judgment is important between and amongst the presiding judges with a view to ensuring that the written judgment has incorporated every thing necessary to be included in a judgment and that their full consent is embodied without being vitiated by the writing judge. This is mainly because judgments are normally reduced to writing by and through a single judge.

5.3 RULES ON JUDGMENT WRITING

In the previous part an attempt has been made to deal with some important steps necessary to be undertaken while writing a judgment. The forthcoming discussion will be devoted in to investigating the most important rules that the judge(s) need (s) to observe in writing judgments. As such, the following section will deal with the major constitutional principles as well as the most important laws, both substantive and procedural, that should taken in to account while writing judgments. Besides, the essential elements which are expected to be included in every written judgment will be investigated.

5.3.1 CONSTITUTIONAL PRINCIPLES

It is provided under article 9 of the FDRE constitution that the FDRE constitution is the supreme law in the country as a result of which any law, customary practice or a decision of an organ of state or public official which are in contravention to the provision of the Constitution will be of no effect.

As such, courts being one major organ of the government, they are required to discharge their task of decision making in line with the basic principles of the Constitution. Otherwise, their decisions shall have no effect in the eyes of the law.

The FDRE Constitution has, of course, provided a bundle of basic principles and rights of citizens that should be observed by any organ in the country, including courts. As a result the following are some of the most crucial constitutional principles that need to be considered by any judge while writing a judgment.

In writing judgments, among other things, the judge(s) is/are expected to respect the basic human rights and freedoms which emanate from the very nature of human kind as those rights are inalienable and inviolable by definition. In line with this, Democratic rights of citizens as enshrined in the FDRE Constitution should be taken in to account by a judge(s) writing a judgment (Article 10). Apart from respecting the basic right of citizens the judgment to be written should reveal that the overall court proceeding including the manner of giving judgment and the judgment itself is transparent thereby exhibiting some degree of accountability on the part of the government (Article 12).

In addition to the above point, judgments should be written by taking in to consideration some basic rules provided in the Constitution in favor of the larger public. These among others include:- the right to life, security of person and liberty , the right to be protected against inhuman, cruel or degrading treatment, safe unless on such grounds and in accordance with such procedure as are laid down/established by law (Article 5,14,15,17,18).

Moreover, all judges writing a judgment should, normally , have in view the fundamental principles incorporated in the Constitution which includes the principles prohibiting double jeopardy, principle of equality and the principles provided regarding crimes against humanity (Article 23 and 25).

Besides, some basic rights bestowed on citizens by the Constitution including, the right to honor and reputation, the right to privacy, the right to religion, belief and opinion, and the rights of persons arrested and person accused should be always taken in to account while writing judgments (Article 24,26,27,19,20).

The above mentioned principles and rights of citizens are only some of the basic and fundamental ones that should be remembered and applied by the judge(s) while writing the judgment. However, the FDRE Constitution has provided a number of other principles and rights of citizens that a judgment writing judge should take in to account.

Therefore, it should be emphasized at this level that judgments being an act to be performed by one of the major government organs in the country are expected to be made inconformity to the wordings of the supreme law of the country, which is the Constitution. In line with this, it is imperative to forward a few words with respect to the possible consequence of a court rendering judgment which is in clear contravention to the basic rules and principles enshrined in the Constitution. The likely out come of an un constitutional judgment is to end up being with out effect. The person aggrieved by the decision /judgment of a given court alleged to be unconstitutional may take the case to the House of Federation, a body which is entrusted with the power to interpret the constitution, which in turn will organize the so called the council of constitutional inquiry, through which the House of Federation decide the submitted constitutional dispute with in thirty days of receipt (Articles 62, 82 and 83 of the FDRE Constitution).

By way of summary, it can be said that judge(s) should always be mindful of the basic rules and principles provided under the Constitution while writing judgments so that the judgment produced could achieve effective execution in the country.

5.3.2 SUBSTANTIVE AND PROCEDURAL LAWS

Apart from the responsibility of judge(s) with regard to observing the basic rules and principles enshrined in the FDRE Constitution, they should also be in line with the sprit and wordings of the provisions found in both substantive and procedural laws existing in the country.

Speaking of the need to observe substantive laws of the country while writing a judgment, the issue relates to one of the application of the relevant area of law and pertinent provision of same with a view to resolve the case before hand amicably. In other words, as it

appears to be of paramount importance for the court to identify the relevant area of law and the pertinent provision of the law so as to settle the dispute arose between the litigants, it is also equally important for the writing judge both to observe and apply the appropriate legal provision. This is to decide the case there by creating a room for an easier understanding as to on what ground the case is resolved on the part of the parties involved in the case. This, of course, leaves an opportunity for an appellate court to consider the case provided that one of the parties appealed against the decision.

As such, the court needs to make a resort to the relevant area of law at first and is expected to identify the appropriate provision of the law in order to effectively determine the respective rights and duties of the parties litigating in the case. And the judgment writing judge(s) should embody the same in the written judgment to ensure that the court has investigated into the relevant area of law with a view to amicably settle the dispute before it.

On the other hand, the quest that those procedural laws should be observed while writing judgments mainly refers to two things namely: the whole court proceed to be under taken to reach at the decision making stapes and the content of the written judgment.

It is repeatedly said that judgment is the final product of any court proceedings in the sense it comes to picture after going through various processes by the court with a view to finding the truth and determine the case before hand. And it is also discussed in the earlier parts that procedural laws refer to those bodies of rules which dictate the manner as to how one exercise his/her rights, embodied in the substantive laws, before court. Besides, attempt has also been made in the earlier parts of this material that the Ethiopian procedural laws (the civil procedure and the criminal procedure laws) have incorporated some rules dealing with what things should a written judgment contain.

As such, in order to come up with a judgment which is in compliance to the existing procedural laws of the country, judgment writing is expected to observe carefully those rules related to court proceeding and content of a judgment. This is to mean that courts should conduct every proceeding in accordance with the procedural rules provided under the two working procedural codes in addition to being dictated by same while writing the judgment with respect to its content. Thus, it can be seen that judgments which are rendered and written by a court

without observing the relevant procedural laws, will remain both defective and even unacceptable in the eyes of the law.

5.4 Essential Elements of a written Judgment

Mention, as regards the possible content of written judgments has been made at different levels in previous discussions in this material. It is also seen that judgments to be written by a court could have different forms based on the nature of the case, magnitude/seriousness of the case, the nature of the litigation, the nature of the parties involved and so on. Consequently, it is true that one may come across varying kinds of judgments in our legal systems. However, it should be underlined that all written judgments exhibit some common and essential features despite the fact that the nature of the case/Litigation is different.

It is possible to sort out the following elements as an essential and common feature to almost all kinds of written judgments. For the purpose of convenience, let's see written judgments by categorizing them broadly in to civil judgments and criminal judgments.

Essential elements of civil written judgments:-

1. The name of the court giving the judgment and its bench.
2. Date and file number of the case.
3. Name of the judge(s) presiding over the bench.
4. Name of the parties involved in the case and their attorneys, if any
5. The judgment, Which should necessarily include:-
 - Summary of the case
 - The issue(s) framed for determination.
 - Mention as to the hearing of the parties and their evidences
 - Mention as to analysis of facts, evidences and the relevant laws
 - Application of the pertinent legal provision to the case.
 - Decision of the court along with the reasons for making the decision.
6. The Decree which among other things should necessarily make mention of the respective rights and duties of the parties involved in the case.

Essential elements of criminal written judgments:-

1. Name of the court giving the judgment and its bench.
2. Date and file number of the case
3. Name of the judge(s) presiding over the bench
4. Name of the parties, involved in the case usually the prosecution and the person alleged to have committed an offence.
5. The judgment of the court – which should incorporate
 - The offence said to have been committed
 - Mention as to preliminary objections and plea of guilt on the part of the accused.
 - Hearing of evidences of the parties.
 - Mention as to analysis of facts, evidences and relevant laws
 - Decision of the court with respect to the guiltiness of the accused.
6. Comment of the parties as to penalty, provided that the accused is found guilty of the crime he/she is charged with.
7. The penalty
8. The decree, usually as to how and by whom the judgment should be executed

However, the reader should take heart that the above presented features of a written judgment are only the basic and essential elements that even written judgment, under normal circumstances, need to incorporate and not the only elements that could be enshrined in all written judgments.

In the above discussion, an attempt has been made to deal with the basic constitutional principles, substantive and procedural rules that need to be taken in to account while writing a judgment. Moreover, the essential elements in almost all written judgments are discovered. In connection to these, the forthcoming section will try to investigate the judgments to be written by trial courts, appellate courts and cassation division of supreme courts as a distinct venue of adjudication.

As has been repeatedly said, the task of judgment writing is not only a purposeful undertaking but also is a task requiring some rules to be followed in conducting it. Judgment writing has its own rules. The rules that should be observed while writing judgments may govern the nature, purpose, content, and structure of the overall judgment to be written. As a result, the

coming discussion exhibit some degree of similarity with the steps of decision making and judgment writing.

5.4.1 NATURE AND STRUCTURE OF TRIAL-COURT DECISIONS

Basically, a formal decision is expected to have five major parts; namely, the nature of the action, the facts, the issues, the law and reasoning and the disposition.

It is important for a decision to provide the parties and the reader with the general nature of the action instituted in the court in clear and concise manner. This helps the reader of the written judgment to have a full understanding of the case. This is to mean that the decision should be written in plain language in a manner that a person out of the legal-profession can read and grasp the idea incorporated in the judgment.

Besides, the decision is expected to reflect the most condensed version of the relevant facts and the point of controversy (dispute or issue of the case along with the evidences which can be admitted by the court and are relevant to determine the case before hand. As such the writing judge should make sure that the facts presented are not more than that necessary to dispose the case. And, the issues to be framed should not be such fragmented and too general creating an impediment to the court so as to resolve the case effectively.

It is also required that the written judgment should come up with the analysis of the relevant area of law and the application of only the appropriate (pertinent) legal provision to the case along with providing the reasoning as this will help the parties on what grounds and reasons decision is reached at by the court.

And, finally the written judgment should embody the opinion (intent) of the court (judge) at the end expressed usually in a single paragraph which becomes the decision of the court. The disposition is normally the result of the coming together of the relevant facts, the relevant and applicable laws and the decision of the court with a view to bringing the controversy to an end.

5.4.2 NATURE AND STRUCTURE OF APPELLATE DECISION

Generally speaking, appellate courts are courts of higher level entrusted with the prime purpose adjudicating cases of higher magnitude (both in terms of pecuniary value and seriousness of the case) than that of first instance /trial courts. Besides they have the purpose of

reviewing the decisions of trial courts thereby creating additional forum for a party aggrieved by the decision of a trial court.

Due to the responsibility that appellate courts are entrusted with, the number of judges presiding over appellate benches is in most cases three, unlike trial court benches which usually have single judges. As a result, the decisions to be rendered by appellate courts adjudicating cases at their first instance jurisdiction are made after a rigorous discussions and deliberations between and among the three collegial judges presiding over the bench.

However, it should be also noticed that appellate courts may constitute only a single judge especially when the court entertain cases at its appellate jurisdictions (like the case in Ethiopia). As the cases are originally of a nature to be adjudicated at the first instance court by way of appeal a single judge will also review the case with a view of checking the correctness of the decision rendered by the trial court.

But in countries where there presides more than a single judge in an appellate court bench, it is true that decisions may not be reached easily in disposing certain cases. As such in cases where not debates and differences arise as between the collegial judges as to the manner of determining the case before hand, it is mandatory that judgments should be entered by majority vote where by the judge(s) with minority vote are expected, to present the position they held in disposing the case, in the same written judgment separately.

Even in cases where all the presiding judges over the appellate bench reached at a single decision with respect to the disposition of the case before hand some strict rules should be followed before writing the judgment. These among others included, reviewing of the brief, investigating the record on appeal, conducting the hearing of oral arguments and evidences of parties, interact with each other as regards the manner of disposition of the case, and after the position agreed by them is reduced in to writing as a judgment, going through the wordings of the decision with a view to ensuring that the final judgment is in line with the agreement reached at by all presiding judges as regards the disposition of the case. Thus, the writing judge need to be checked by the rest collegial judges as to his task of reducing the decision of the appellate court reached by consensus is correctly turned in to a written judgment with a view to discharging their collegial responsibility.

Generally, it can be said that there are two types of appellate courts, these are; appellate courts which are recognized as the court of last resort since it offers the final opportunity to have a case reviewed with in the state court system. And the other is called the intermediate appellate court as parties are allowed to take the case to even higher court (Supreme Court) by way of appeal provided that the party taking the case to appellate court was a respondent at the intermediate appellate court level. In most states the former court is known as the Supreme Court.

However, it should be underlined here that both kinds of appellate courts have a dual function in the sense that they have a reviewing function directed as an examination of the correctness of the procedures used during prior court proceedings which is aimed at seeing that justice was done in a given case. Secondly, appellate courts have an institutional function that is directed at a progressive development of the law relating to constitutions, statutes and policy for general application. Review of a case by appellate courts could be question of law or question of fact or both. Review, normally, implies a case being looked for a second time as a result of which appellate court decisions are sometimes termed as Reviews.

In a decision of a collegial body, appellate courts act only by agreement of a majority those judges assigned to hear the case. Those members of the collegial body who disagree with the majority form the minority. In writing an opinion, the writing judge is involved in a joint venture. The end product is not his opinion alone, but rather that of all the members of the panel who form the majority.

As such, with regard to discharging effectively the responsibility of collegiality observing the following guide- lines is important. These includes:-

1. Acting with deliberations and with intellectual honesty
2. Acting in an ethical fashion. Confidentiality is always a key factor
3. Participating in the administrative process of the court
4. Reading the briefs before the oral arguments and before signing the written judgment
5. Avoiding the one -judge opinion syndrome, (the opinion may also include the thinking of those members agreeing with the majority.)
6. Considering the interests and sensibilities of collegial judges
7. Expediting the work of collegial judges

8. Disclosing any problems resulting from an honest disagreement early
9. Whenever a colleague's work raises a concern, discussing one's feeling that there should be further examination as this will allow one to reexamine the case.
10. Not-using sarcasm in a dissent. Discussing the case as one understands it and try to reason out the dissent. Avoiding opening an attack against other members of the court.
11. To be open- minded. Listening to the comments of colleagues supporting their reasoning before making up one's mind.
12. Trying to avoid separate opinions when it is possible since several separate opinions, whether dissenting or concurring, give the appearance of conflict. The writing judge, when there is disagreement about the conclusion or determination of the case, must adopt the view of each conclusion, one at a time/alternative ground if possible.

Apart from dealing with the nature of appellate courts and decisions in general it seems to be of paramount importance to investigate in to the overall structure of appellate decisions especially when they are reduced in to a written judgment.

The work of an appellate judge, normally, begins after a file is opened in the court and service is made to the respondent. The judge becomes more familiar with the case as the pleading are presented in a developed manner and the facts are refined. This, in turn, let the judge know the general picture and direction of the case, especially when the matter is being tried.

With respect to the scope of review of appellate courts, it can be said that appellate courts are principally limited to determining whether error was committed, and if there has been an error committed by the lower court, determining whether it is prejudicial. By the way errors could have three types, the commissions of which have varying consequences. These are:-

1. **Harmless errors:** - are such errors which do not interfere with justice being served as a result of which no correction is needed to be made by the appellate courts. These kind of errors are expected to be committed usually /routinely/ during conducting trial.

2. **Plain-errors:** - are those errors which are capable of tampering with the service of substantial individual justice. As such, errors of these kinds demand correction by the appellate courts.
3. **Institutional error:** - this kind of error is said to have been committed when a determination is made in a way that the progressive development of the law is not being followed or that the uniform application of the law is being avoided. Under such circumstances, the case must be either reversed or modified.

On the other hand, the structure of the opinion/decision of an appellate court can be said to have shared those components necessary to the drafting of a formal opinion, as has been seen in the earlier section. The traditional structure of an appellate court decision reduced to written judgment usually incorporates five main elements. These are: the nature of the case, the general statement of the issues presented the facts, the errors assigned and a dispositional selection.

1. Nature of the case: - this is segment, usually presented with in a single paragraph, which includes background information needed in order to understand the appeal. It provides the reader with notice of where the case has been and where it is headed. As such, it serves as a tool designed to orient the reader for the review. And, it is said that this part has four basic areas of concerns which includes: history of the case, prior decision(s), identification of parties role, and jurisprudential character of the proceedings (the type of law: - tort family, contract, criminal, agency, etc).

2. General statement of issues: - a brief paragraph preceding the recitation of the facts of the case provides a general statement of the issues and is helpful to the reader. This may include the controlling issues to be discussed and perhaps even the holding of a case. The reader can then have a summary of what the opinion contains.

3. Facts: - this refers to the narrative statement of those facts which are necessary to an understanding of the appeal. The facts should be stated in a manner that indicates that they have been considered fairly and impartially without bias. Facts material to the disposition of a specific assignment of error should be reserved for a discussion of that error. Irrelevant facts should be eliminated. Only controlling facts merit inclusion.

4. Errors: - any error, claim or objection raised by either party, or which has been properly preserved and presented for review is included in this segment. Each such error must be

discussed in the following steps:- Issues(s), standard of review, law and reasoning, and mini conclusion.

The discussion of the errors specified constitutes the major part of any opinion. It is the point upon which the appeal is decided. It dictates the final result of the controversy. Therefore, it should be structured and organized carefully. It need not follow the appellant's presentation. It may be necessary to change the order errors to facilitate a logical development of the opinion. Each error must be considered and dealt with. Each error specified will normally raise one or more issues. In dealing with such issues logical sequence of issues may be followed depending on the importance of the issues(s) raised.

It is sometimes confused with the scope of review which limits the area that may be questioned upon a review of the case. As such the standard of review is the legal scale used by the reviewing court to weigh a particular type of claimed error. It is used as a guide, rule, or measure. Its function is to provide a method of weighing the gravity of error. It may be found in statutes, determined from constitutional interpretations, or established case law.

In disposing of each case raised, the opinion of the writer will have to rely upon the law as established by statute or case citations and show how that law is applicable to the particular case. Only applicable and supportive laws will be discussed. There must be a definite conclusion with regard to each issue, and the use of those conclusions should result in the final disposition of the case and consistent with the final conclusion/ disposition as the opinion must remain consistent.

5. Disposition: - this section is the concluding paragraph. It states what action is being taken in the appeal. It should articulate the scope and precise effect upon the prior decision, (Is the decision being affirmed, reversed, remanded, modified or dismissed?)

a) Affirmed: - when the trial court has issued a written decision which adequately covers the area presented for review and the reviewing court will affirm the decision.

b) Reversed: - whenever there is a reversal of the trial court's decision, a written opinion that explains the reason for the reversal must be furnished. The explanation will basically aid the parties and the trial court as to why the trial court decision is reversed.

c) Remanded: - if the case is remanded to the trial court it is necessary to give the trial court instructions to guide the further handling of the case.

d) Modified: - the prior court's judgment may be affirmed only in part when a portion of the judgment is correct. This is modification of the judgment, since the entire judgment is not being affirmed.

e) Dismissed: - when it is discovered that the appeal was either prematurely submitted or not properly perfected, a dismissal is necessary.

5.4.3 NATURE AND PURPOSE OF DECISIONS OF CASSATION BENCH DIVISION

Even though, it is not the aim of this section to deal, in greater depth, with the overall nature of cassation divisions in a given court at this level, a brief account of discussion as regards the purpose of cassation benches and the nature of appeals (applications) to be entertained by same with a view to ease the endeavor of the reader to understand the forthcoming part of the material.

To begin with the word “cassation” comes from the French verb “cassare” having the meaning of “quashing the force and validity of a judgment”. From this, it can be inferred that decisions of cassation benches in a court are originally endowed with the power to quash any judgment given by any court thereby leaving the decisions of the latter impossible from being executed.

Apart from the etymological back ground of cassation decisions there are some unique features that are exhibited almost by all cassation divisions/courts across the world. Among many, the fact that cassation benches/courts are courts of last resort and that they only entertain applications for an alleged commission of basic error of law are the most crucial ones. This is to mean that, parties in litigation have the last option to present and get heard their grievances over the decision of a court of any level only by and through the cassation division of a court with in the legal system/court system. And it is only on question of law, more preferably on basic error of law, that cassation benches/courts can entertain the application of parties.

However, it should be reckoned, at this juncture as to the exact meaning of “basic error of law”. The phrase basic error of law, unfortunately, does not have a single agreed meaning among many scholars nor there is no a clear definition provided by legal documents. As such, the term is used to have varying meanings and definitions in different countries. But it should also be

clear to the reader that there are some varying and competing meanings attached to the phrase “basic error of law”.

Basically, it can be seen that the phrase “basic error of law”, refers to an error committed in the decision of a lower court which substantially affect the decision reached at by the court. To list some of the meanings/definitions attached to the phrase basic error of law:-

- Erroneous interpretation of a statute or of an executive decree having statutory force.
- Lack of jurisdiction over the person or the subject matter.
- Usurpation by the court of authority belonging to the executive or legislative departments of government.
- Breach of form to which the law has attached the penalty of nullity.
- A conflict of two judgments in last instances between the same parties and involving the same subject matter.
- Non-observance of form amounting by statute to nullity.
- Nullity of the judgment itself because of the contravention of certain rules in relation to its pronouncement.
- Violation or false application of law in the judgment.
- Failure of the judgment to conform to the proper scope of the case, in pronouncing upon something not demanded.
- Awarding more than what has been demanded.
- Omitting to pass judgment upon some distinctively specified demand.
- Presence of contradictory provisions in the judgment.
- Clearly violates the letter or the spirit of a given law.
- Contains misinterpretation of a given provision which is not based on a legal provision.

In order for the cassation court entertain a case the decision not only should contain a basic error of law but the decision must also be final in the sense that the party is left with no chance of appeal, save in case of interlocutory judgments which are not judgments *per se* but have the effect of a final decision of a court.

In addition to the above, it should be mentioned here that cassation benches are not courts in the strict sense of the term “Court” but a more extension of supreme courts in a country. They have the prime purpose of ensuring the existence of uniform, consistent and correct interpretation and application of laws working in a given legal system. This, in turn has, among other things, the purpose of creating harmony between the various judicial bodies, especially courts, with respect to their function of decision making.

Therefore, it should be noticed that cassation courts are mandated to deal only with question of law thereby precluding factual or evidentiary disputes that might arise between parties to a dispute. As such, they are bestowed with the power to check whether the decisions of lower courts are made in accordance with the letter and spirit of the law.

Structurally cassation decisions are, more or less, similar to that of appellate decisions except the fact that the former focus only on legal defects committed in the decision while handling the case. As such the rules that need to be observed while writing judgments of cassation courts are similar to that of the rules to be followed in writing judgment of appellate courts.

As such, among others, it is important to recall the need to incorporate for example:- a brief summary of the story of the case before hand, the proceedings conducted in lower courts, the decision reached by the court which first entertained the case along with its reasoning, the application submitted to the cassation division including the grounds for bringing the case to the cassation court. That is the areas in the decision of lower court(s) where there is an alleged basic error of law, judgment of the cassation court embodying analysis of the relevant area of law and the application of the pertinent legal provision to resolve the case. And the decree, which among other should include mention as to the affirmation, modification, remand or reversal of lower court judgment and the manner as to how its judgment should be executed.

To throw some light on the nature of cassation benches and cassation decisions in Ethiopia the following can be said. Generally speaking, cassation benches are one division of bench within the federal Supreme Court and within the respective regional supreme courts found in the country. Besides, it is important to notice that cassation benches, both at the federal and state levels, have constitutional foundations for their existence. (Article 80 of the FDRE Constitution)

Cassation benches in Ethiopia comprise five judges having the sole purpose of ensuring that the laws in the country are being implemented/applied by courts found at different levels in the legal system. However, it should also be mentioned at this juncture that before any case is decided by a panel of five judges, the case need to be screened through the panel of three judges (with in the supreme court) to ascertain whether the case is truly ripped for cassation bench. The reason to determine whether a particular case has incorporated basic error of law in the decision of lower court(s) by a panel of three judges seems to reduce the possible workload on the cassation bench.

Decisions to be given by cassation benches like all other benches having more than one judge could be either unanimously or with dissenting opinion after prolonged deliberations on the matter. As such, where there cannot be an agreement between and among the collegial judges presiding over the cassation bench, the judgment is likely to be rendered by majority vote as a result of which the decision with the minority vote, next to the decision of the majority vote, shall be placed on the judgment of the cassation bench. But when the judges come to a single stand/opinion as to the disposition of the case before them, there will only be a single decision in the judgment of the cassation bench.

Even if it is true that judgments to be written by cassation benches are effected by a single judge, especially when decision is reached unanimously, there is always a need for other collegial judges in the cassation bench to make sure that the judgment written by one of their member is done in strict compliance to their agreements and in line with the general principles/rules that should be observed while writing judgment.

With respect to the structure that should be followed while writing judgments of cassation, even though it is not provided for in the legal documents presently working in the country, it can be said that there has been a kind of developed format which is more similar to that of the structure of appellate court judgments, of course, with a considerable deviations to the latter.

Judgments being written by cassation benches in Ethiopia exhibit the following formats among others:

- File number of the cassation judgment
- Date on which the judgments is rendered.
- Names of the five judges
- Name of the parties and their attorney, if there is any.
- The judgment-which, among others, incorporates
 - A sentence with a view to introducing the over all nature of the case in a manner that the case directly relate to some area of law.
 - A brief story of the case.
 - The relief sought and the decision of the court which first entertained the case along with its reasoning.
 - Decision of the appellate court with its reasoning
 - Grounds of appeal stipulated by the applicant in relation to basic error of law.
 - The reaction/response of the bench with panel of three judges with in the cassation division as to the reason why the case needs to be reviewed by the cassation bench. (This includes the area of law which should be investigated by the panel of five judges in connection to the factual background provided in the case, i.e. the legal issue that needs scrutiny by the cassation bench (panel of five)).
 - A detailed analysis of the relevant area of law and mention of the pertinent provision of the law and the manner of interpreting same.
 - Critique on the decision and reasoning of lower courts separately or collectively.
 - Decision of the court of cassation.
- Decree, which usually includes:-
 - Mention as to the affirmation, modification reversal or remand of the lower court's decision separately or collectively
 - Mention as to costs and expenses
 - Mention as to the closure of the file and order as to the return of the file to the archives
 - Mention as to which court should take the responsibility of executing the decision of the cassation bench.
 - Mention as to the dismissal of any temporary order given by the cassation court.

However, it should be emphasized at this level that as the bench of cassation is basically in charge of dealing with the so called basic error of law, lion share of the discussion with in the written judgment of the cassation court shall be dominated by the analysis of legal provisions pertinent to the case submitted to the court. As such, the decision reached at by lower courts will be evaluated on the basis of the meaning and manner of interpretation the cassation bench believed to be correct and proper.

In line with the above point, the cassation court shall reveal in clear manner the basic error committed by the lower courts with a view to correcting same by criticizing the erroneous decision and way of interpretation of a given provision of the law. Subsequently, the cassation court will dispose the case on the basis of what it believed to be the correct and proper way of resolving the case before hand thereby providing its clear decision and reasoning.

In relation to the nature and purpose of cassation courts, a few words need to be thrown at this level by way of conclusion all in the Ethiopian context. Cassation courts, especially at the Federal level, can render judgments having incorporated an interpretation of a law which shall be binding upon every courts in the country regardless of the level they are found by virtue of proclamation no. 454/97, a proclamation to reamend the Federal courts proclamation. As such, an interpretation of a given provision of any working law in Ethiopia up on which a judgment is rendered by the Federal cassation court shall be considered as a precedent which requires observance by all federal and regional courts at different levels, thus deviation from same will constitute violation of the law of the country.

Besides this, it is important to note that the Federal Supreme Court cassation division is assuming presently the authority to entertain cases which are decided by the cassation benches of regional supreme courts, i.e. cassation over cassation, even though it is controversial as to the power of the cassation bench of the Federal Supreme Court to review the decision of the cassation benches of regional Supreme Courts according to the FDRE Constitution.

5.5 FEATURES OF GOOD AND BAD JUDGMENTS AND JUDGMENT WRITING

In the previous part attempt has been made to deal with some important steps and rules that should be observed while discharging the judge's role of judgment writing with a view to producing a comprehensive and clear judgments which can be executed effectively with the least possible cost and inconvenience both on the part of parties to the dispute and the body responsible for the execution of the written judgment.

Generally speaking, a judgment can be termed as good or bad seen in light of the outcome of the decision of the court which brings on the parties involved in the dispute. This is to mean that judgments can be categorized as good or bad judgment on the basis of the solution it brings to the litigants by and through the application of the appropriate legal provision to the case before hand.

This, of course, has something to do with the dispensing of justice by courts in connection to the cases brought before them seeking for resolution. In other words, the parameter to be used so as to divide judgments as good or bad will hugely be linked with is the manner of disposition of the case by the court which directly related to the result of the decision reached at by the court in an attempt to determining the respective rights and duties of the parties in the dispute. As such, judgments can be categorized as good where decisions are reached solely on the basis of the pertinent laws (legal provisions) working in the country by the time the decision/judgment is rendered by the court, and in times where there is no appropriate legal provision so as to dispose the case before hand, judgments rendered on the basis of equity and fairness i.e. by taking in to account the decision to be made by the so called the reasonable-person standard. On the contrary, judgments given by courts with out having taken in to consideration the existing and relevant laws in the country and with out applying the pertinent legal provision to the case there by affecting the legal rights and interests of the parties involved in the case are categorized as bad judgments/decisions.

Hence, it is possible to categorize all judgments rendered by courts as good or bad in light of the outcome to be brought as a consequence of putting the decision in to effect by way of execution in favor or against the parties to the dispute.

On the other hand, decisions/judgments reduced in to written form can also be categorized in to good or bad based on some common standards (steps and rules) that need to be followed while writing judgments. However, the reader should take note the fact that the process of categorizing written judgments as good or bad is made basically by checking written judgments against the observance of certain principles or rules while writing the judgments and the existence of some other defects in the judgments written. This has the possibility of hampering an easy understanding of the decision of the court on the part of the parties to the dispute in particular and judgment audiences in general, as well as the execution of the decision/judgment.

For the purpose of convenience the writer has opted to provide the reader with some of the characteristics features of good and bad written judgments, altogether in the following section.

FEATURES OF GOOD AND BAD WRITTREN JUDGMENTS

The main features and attributes of good and bad judgments, among others, can be expressed in terms of the following standards:-

1. **Clarity:** - judgments need to be written in clear and precise manner so that one who reads them can easily understand. In order for a judgment to be taken as a good one, it ought to be written in a clear and precise language. As such, as far as possible technical/professional terms should be avoided or substituted by other simple and clear equivalent terms in meaning the message is likely to be clear, In other words, good judgments are expected to avoid the usage of jargons and long sentences. In line with this, it avoids sarcasm, proverbs, colloquialism or slang (informal) language as it may affect the court decorum.
2. **Comprehensiveness:** - if written judgments are to convey the fullest message in connection to the case, to the judgment audience, they should be comprehensive in the sense that they included all necessary things/parts in relations to the over all nature of the case, the court proceeding conducted, the decision of the court along with its reasoning and the decree as to how the judgment should be executed.
3. **Relevancy and Irrelevancy of Facts; Evidence and Law :-** all good judgments should not include all material facts, evidences and related laws in the written form

for the sake of comprehensiveness or should not leave out necessary facts and evidences from mentioning them for the sake of conciseness and preciseness. But, should employ the standard of relevancy to these and identify and incorporate in the written judgment only those relevant to the determination of the case/dispute before hand. Hence, good written judgments usually manage to avoid citing irrelevant law to the case or explaining writing irrelevant facts and evidences.

4. **Logical progression coherence:** - good written judgments can also be characterized by the coherence and consistency of ideas it provides to the readers. If the written judgment is presented in a manner which lacks some kind of flow impeding the reader from grasping the correct story of the case, then it can not be categorized as good written judgment.
5. **Organizational structure:** - judgments when reduced in to writing should be structurally organized in a manner that they could be easily understood on the part of the judgment audience. Good judgments usually begin with introducing the overall court proceedings and then it comes to an end by providing the decision of the court and its reasoning. Thus, written judgments which failed to present the judgment audience with the appropriate structural organization of the overall disposition of the case can not be categorized as good written judgment.
6. **Citing documents evidences and laws:**-if documents which have evidentiary value needed to be embodied in the written judgment, the document should be accurately cited including the date it was written, the person(s) or authority who wrote it and the number, if any, and the type of the document. If there arises a need also to incorporate any written work, the rules pertaining to citation should be used in the written judgment. As such, it is only when judgments accurately make reference to the materials or documents or laws that the written judgment can be categorized as good one (in case of making reference to laws too, this written judgment should clearly cite the specific legal provision used along with the family of law the provision is found).
7. **Missing Issue framing:** - if judgments fail to incorporate the issue in the written form it amounts to rendering decision without the existence of any dispute between the parties to the case when in fact there is, no court case without a dispute or issue.

Hence, good written judgments usually embody the issue in clear manner and decide upon same at the end of the court proceeding.

8. **Writing names of parties, witnesses & their titles:** - It is also found to be important for a written judgments to write the names of parties litigating, the witnesses along with their titles properly and uniformly so that the decision to be give on the bases of same could be relied on or to avoid confusion/ vagueness as to these names refer to. Good written judgments normally cite the names of parties and witnesses clearly and uniformly in the body of judgment by using formal and objective language.
9. **Judgment on the basis of evidence/authority:-** good written judgments incorporate the decision of a court which is given only on the basis of a material evidence as presented by the parties and in accordance with the letter and spirit of the law, thereby avoiding the use of personal knowledge of the judge(s).
10. **Hypothetical cases:-** using hypothetical cases while writing judgments are characteristic features of bad written judgments. Hence it is advisable not to use hypothetical examples or discussions in writing judgments as it may open doubts in interpretation, usually judges use hypothetical cases or examples for the purpose of explanation.
11. **Balance:** - good written judgments are expected to be objective and not subjective. It should not reflect internal display of sentiments and emotions of the writing judge. The judge neither rewards virtues nor chastises vice. Hence, the judge should administer even-handed justice being impartial whether the parties may be private vs. government, rich vs. poor literate vs., illiterate, official vs., ordinary person etc. A judge gives judgment using only facts, evidences and the law.
12. **Laconic Judgments:** - these are judgments written in a short manner to the effect that the judgments lack important facts so as to understand the case. Such kind of judgments may need to refer other materials to have a clear picture of the case. It may lack also clarity to all judgment audiences including to the parties as well as to the appellate courts .Good judgments usually avoid such kind of problems while writing the judgments
13. **Lopsidedness:** - Good judgments are always those which manifest that equivalent attention and place to both or all party's argument in discussing their points in

decision making and judgment writing is given by the court/judge(s). Normally, the judge is not expected to unnecessarily emphasize or deemphasize either of the parties' facts, evidences and arguments. However, this should not be construed to mean that the court may not finally favor the argument of one of the parties in disposing the case or determining the outcome of the case.

14. **Language to be sober and temperate:** - It is important also to use sober and temperate words while writing judgments so that the written judgment can be categorized as a good one. The language used in writing judgments should not be hard that emphasized or deemphasized or should not be discriminating, defamatory or that could affect feeling of the parties involved in the case in particular and the larger public in general.
15. **Judgment is not substitute of the file:-** in principle written judgments should be short and provided in clear manner. A judgment is not expected normally to incorporate every proceedings conducted inside the court room. Rather, it should be short, precise presenting summary of the file, written in the judge's own words. As such, good written judgments are usually short but comprehensive in the sense that it has the capacity to convey the reader the whole matter embodied in the case.
16. **Acronyms or abbreviations:** - a good written judgment usually never uses abbreviations. Judgment when reduced to writing, it becomes a public as well as a historical document that will serve the future generation besides being a mere document which brings an amicable solution to the parties in the dispute. Abbreviations normally create ambiguity, hence the writing judge should avoid the usage of abbreviations, however, if there is a need to use abbreviations, the proper and full meaning of the abbreviation used must be provided in the written judgment.
17. **Remarks to be based on evidences:** - good written judgment usually manifest the fact that the court has taken cognizance of some important remarks to be used in the proceedings of a case as well as in the judicial writing in connection to evidences. For example in criminal cases the judge should give concern to what is called the principle of "presumption of innocence unless proved guilty". Thus, the judge should avoid the usage of words that reflect the guiltiness of the accused/suspect before

rendition of judgment/. The same is true in civil cases with respect to words imposing liability on parties before decision is reached at by the court to that effect.

18. **Excitability**:-beyond and above all things written judgments can be categorized as good or bad in relation to the problem they could pose by the time of execution. Good judgments are those having a conclusion provided in clear and concise terms leaving a fertile ground for an easy execution.

On the part of the reader, however, it should be noted that the parameters listed above, which are used to differentiate good written judgments from bad written judgments are not exhaustive. Other standards which may be helpful in making the distinction could exist though they are not included in the above list.

Chapter SIX

Judgment Writing and Related Constitutional Rights

The act of judgment writing is constitutional which emanate from the direct power given to courts under article 78 to interpret laws or to respect and protect the human and democratic rights of the country and international documents. Therefore, the act of making and writing judgment need to keep its constitutional limit or it must protect the guaranty given to those human and democratic rights of citizens in different legal instruments. It is pretty clear that human and democratic rights are so fundamental for the development and peaceful co-existence of one state so all governmental organs have a duty to respect, protect and fulfill duties in this respect. That is why these instruments internationally and domestically accepted those rights. In addition, almost all constitutional of different states have given a wider place for these basic rights. To raise the basic distinction between human and democratic rights, human rights are inborn rights that everyone is entitled by the mere fact of birth or being a human while democratic rights are the results of politics, human as social development of one state. So they are known as the results of democracy.

Therefore the point of our discussion i.e. on judgment writing has a great effect with these human and democratic development of one state wit regard to Ethiopia chapter three of the constitution article 14-44 is devoted to these human and democratic rights. In addition article 9(4) clearly provides that all international human and democratic rights that the state has signed and ratified are integral parts of the laws of the state. By this, we can understand how much recognition and value is given to this basic rights. Article 10 of the same constitution also adds that these basic human and democratic rights are inviolable and inalienable that results in article 13 that all the legislative, executive and judiciary branches of the government are duty bound to respect, protect and fulfill these rights and privileges. Now based on article 13 of the constitution the judiciary branch of the government basically stands for courts who are assigned with the role of interpretation of the laws of the country except the constitution. And among other jobs of courts, the most notable one is rendering decision which is followed with writing of the

judgment. Hence, this act need to satisfy or keep and protect these basic human and democratic rights of citizens. In doing so, there are various human and democratic rights that are considered with together with the basic principles of the constitution and let us see each o them one by one.

6.1 Judgment Writing and Human Rights

As it has been tried to discuss above the FDRE constitution accepts all the basic human right instruments via article 9(4) and all human rights principles are incorporated in its chapter III. Among these rights, in a court room after a trial is held and after the hearing is over the expected step in the judgment to be pronounced and written. We have seen how much relevant step is this judgment. It is the end and the final blessing of the overall litigation and hearing stage of the trail between the parties. The following are the most related human rights that are directly and indirectly affected by judgment making and writing.

Rights of arrested person:

The judgment finally given considers the right of the arrested not to testify against him/her self without his interest. This is shown by article19 (5) of the constitution that any evidence acquired by confession will not be admitted by the court. The person's right to appear with in 48 hours and the rights to be arrested only with arrest warrant otherwise the persons right to be released is recognized. This right is reflected in the judgment to be made and written and shall include all these rights. If the judgment can not include all these elements of human rights, the over all democracy is in question. Therefore, note only rights and duties of the parties are included but these rights must be considered in the judgment made.

The other human right which is at stake while making and writing judgment is the rights of accused persons. These right is not only given to be respected in the process but also considered in the judgment made finally. In this respect the right of having open trial, right of being informed with sufficient details about the charge and reason of their

presence, moreover, the right to be presumed innocent is the major ones. It is to mean that the only moment that can establish the guiltiness of the person is the judgment making stage. But up until this stage the person is considered innocent constitutionally. Therefore, it is the judgment that needs to be made and written down. So that the audiences of the trial and the parties and clearly be familiar with the real status of the person up on the saying of the court. Here we can see how much relevant is this judgment making and writing. The other point is the judgment made and written is the reflection of how much access is given to the parties in the proceeding and in the process of proving their rights and duties. The parties are allowed to look for any possible evidences and they can examine witnesses of any kind, if so, it is going to be admitted and shown in the judgment made. That is to mean that the court will pass it judgment and put it in to writing after the hearing of parties' confrontation and evidences presented. That is, the overall judgment base, it self on the evidences following the constitutionally guaranteed rights of the parties to present and proof their facts through any available evidences. The rights to be presented by legal counsel is also accepted implicitly in the judgment made since the judgment fully accepts the rights of litigation representing on behalf of others. This is not to affect the justice right of people that the court accepts the right of parties to be represented by legal representative and it is made by the acceptance of their litigation and evidence on the judgment made.

In addition, judgment making and writing admits the constitutional human rights of accused persons appeal right. It is because that the judgment made is final and binding but it clearly puts and shall accept the right of appeal of the parties keeping all legal requirements. Fulfilling the court where to go and when to go the judgment made in advance forwards for the parties' choice that if they are dissatisfied with the judgment made they can ask the review of judgment. Therefore, all the time, when the judgment is made it must clearly accept the appeal right of parties and it must make the environment conducive for doing so. That is the judgment is written and properly recorded. And the copy will be served for the parties on time irrespective of their level of satisfaction in the outcome of judgment. to the rights of persons held in custody. And convicted prisoners, as article 21 of the FDRE constitution accepts the rights of such persons. First, the

judgment shall forward the prisoners to the proper administration and it must inform the executive officers about the prisoners right to be communicated properly by legally authorized persons in the same provision. Shortly, judgment writing is the best and the most notable instrument to guarantee and manifest the constitutional rights of arrested, accused and prisoner persons.

In addition to this, other constitutional rights that may directly or indirectly be affected and taken in to consideration while making and writing judgment are non-retroactive application of laws by avoiding previous looking of laws in the application of laws. Prohibition of double jeopardy may also be raised while giving judgment. To sum up, it is not to mean that these are the only constitutional rights that need to be kept valid while making and writing judgment. Rather all human right shall be respected since the task of the judgment is interpreting and applying the laws properly as they are and for what they are intended to be. But more closely these rights mentioned above have closer link with the written judgment. (Students you can see or find out other rights in these regard)

6.2 Judgment Writing and Democratic Rights:

Similarly all documents rights need to be reflected in the judgment making and writing because they have direct or indirect relation. More than anything else, judgment means the determination of ones right and duty, on which the contest or question may be about the democratic right. Therefore, the judgment making and writing organ shall carefully establish these rights. It is clear that our FDRE constitution chapter three together with human rights instruments give wide coverage for democratic rights. More especially the following democratic rights need to be considered while making and writing judgment. These are:

Freedom of expression: with in the legal limits parties are free to express their opinion and feeling on the case and the judgment should not deny this rights rather the court must take any relevant facts and evidences out of this freedom enjoyed by parties. Moreover, the right to have access to justice need to be respected by the making and writing judgment. This is because making and writing of judgment to the parties' case at

hand is the result of party's right to have access to justice. Because of this right parties can take their case to the competent organ and can litigate by producing relevant evidences to prove their rights and finally they can obtain decision which is enforceable at law. In short, judgment finally made at trial shows how parties right to be heard and to be given justice is recognized and implement practically so that all the time when judgment is made and written to the parties we must remember about peoples justice right.

6.3 Judgment Writing and Constitutional Principles

Generally- our constitution which is adopted in 1995 has basic principles which guarantee the basic rights and duties of citizens in a way that it can maintain the democracy and development of the country. These constitutional principles include

- sovereign authority of the people
- rule of law
- separation of powers and checks and balance
- human and democratic rights
- majority rule and minority rights
- free, fair and periodic election
- parliamentary system

These constitutional principles will directly or indirectly be affected by the act of making and writing judgment which will set up the boundary of people's right and duty. More significantly, we will see the relation of writing judgment with rule of law principle which includes the principle of due process of law and justice right. It have said that, judgment is a statement given by a court of the grounds of decree or order. This, judgment need to be given in proper way and it must guarantee constitutional rights and duties. To start with, the principle of rule of law that requires laws are administered fairly, rationally, predictably, consistently, impartially and timely.

Favor a decree has been passed or an order capable of execution has been made and which shall include the transferee of a decree is called "decree-holder".

Judgment:- Shall mean the statement given by a court of the grounds of a decree or order. Any person against whom a decree has been passed or an order capable of execution has been made is called judgment debtor.

Order:- Shall mean the formal expression of any decisions of a court which is not a decree. The Ethiopia civil procedure code deals with judgments and decrees specially in arts 180-191, and the criminal procedure code arts 141, 149, 153, 159, 169, 177, 202, etc. Practically, when we examine Ethiopian courts used; and order and “beyen” are also used to communicate the same message or function. Students, here you are advised to refer your study the pretrial, trial and post trial procedure processes, including the types and their differences of judicial writings.

Reasons for judgments and rule of law:- The rule of law requires that laws are administered fairly, rationally, predictably, consistently and impartially. Collectively these values are fundamental to the administration of justice. In the FDRE constitution, Access to Justice is included in the fundamental rights and freedoms (art 37). Every one has the right to bring a justicable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial powers. Such decision or judgment may also be sought by any association representing the collective or individual interest of its members or any group or person who is a member of, or represents a group with similar interests. Rule of law and respect of individual and people’s fundamental freedoms and right are also included among the elements to initiate the promulgation of the FDRE constitution as well as regional constitutions, as clearly read from their preambles. And, the major constitutional institutions to implement these promises are the courts, through their judgments or orders and decrees. Courts in making their decisions to do justice are also required to comply with the elements of rule of law (which are fairness, rationality, predictability, consistency and impartiality).

Fairness:- Requires a reasonable and observable, indeed manifest, process of consideration of the rights and duties asserted.

- **Rationality-** requires a reasoned relationship between the right and duties of the participants and the ultimate outcome.
- **Predictability-** requires a process by which the outcome is, and it clearly seen to be, related to the original rights and duties.
- **Consistency-** requires that similar cases lead to similar rules.

- Impartiality- requires that the judicial decision-maker be indifferent to the ultimate outcome.

These objectives can be distorted in many and varied ways. They are distorted by incompetence or inefficiency on the part of judicial officers. They are also distorted by judicial misconduct of any character and, perhaps most significantly, by misconduct that takes the form of corruption.

Australian have a saying, 'It is fundamental importance that justice shouldn't only be done, but should manifestly and undoubtedly be seen to be done'. This is called the principle of open justice. It influences many areas of principle and procedure, including the obligation to give reasons. It is sometimes said that the most important person in a court room is the person who is going to lose. Reasons for decision are of greater significance to that person than the litigant who wins. It is the person who loses who will be anxious to know why he or she lost.

Public confidence in the administration of justice is also fundamental significance. Without such public confidence the basic functions performed by the judiciary will not be able to be performed effectively. Judicial decision will come to be ignored and the judiciary treated with disrespect, unless such public confidence is maintained at a high level. Citizens will lose faith in the administration of justice if the out come of their dispute is seen to depend on the accident of which judge happens to be allocated to decide their case. Consistency in decision is required so that the justice system is seen to be fair. The availability of full reasons helps to ensure that this occurs.

Rationality or reasons for judgment usually contain five component parts; first, an outline of the facts of the particular case either as found by the judge or, on appeal, summarized for the purpose of the appeal; secondly, a statement of the relevant legal principles, whether they may be a particular statute or a body of judicial made law from previous cases; thirdly, a statement of the issues to be determined. Fourthly, the application of the relevant legal principles to the facts as found leading to the relevant

In short, "justice delayed is justice denied" taking this in to account while making and writing judgment it shall try to avoid backlog and delay. But sometimes we face the problem that justice rushed is justice crushed but reasonably, we need fair true for the case to be seen properly to be given with judgment. Therefore it is good that speedy judgment is inevitable so that peoples can enjoy with their justice right with out defecting and passing basic steps

and rights. This is how the efficiency and effectiveness of over courts is measured. For this purpose, while the judgment is made and written, it passes through many consideration like how the litigation is held between the parties up on evidence presented etc and this is done with at most care but as soon as possible for the justice taking in to account the prestigious right of people that is justice right.

In doing so, since giving judgment and writing, it is the final task of courts it must end up exactly on the adjournment it is postponed for. There should be no lateness or absence of the judges which will create a lot of problems. As per article 180 after the hearing is over immediately or with the earliest possible appointment, judgment shall be made. The same idea is included article 141 and 149, unless otherwise it is difficult, the judgment must be given in speedy manner. Therefore, as it is provided in article 20 of the FDRE constitution that any accused persons in speedy way they need to be heard and given with judgment. In addition while giving and writing judgment, other principles like fairness, impartiality and equality must be secured. That is the parties must be heard equally without any fear or favor towards any of them by the judge. The judgment written shall only be the report of what is decided keeping in mind the dignity of the parties. To sum up, judgment writing need to keep peoples basic human and democratic rights through constitutional procedural principles like due process of law including fairness, equally and impartiality.

Chapter SEVEN

Judgment writing and Case Flow and Court Management

7.1 Judgment writing and case flow management

Case flow management defined!

Case flow management is a discipline with the handling of cases from their filling up to closure. It tries to avoid any problems that occur in the proceeding stage of courts. In other words, case flow management consider courts as a production company which receives inputs or raw material and produces outputs to customers after passing in the production or fabrication stage. Here in this definition, inputs include cases, lawyers and laws output stands for justice, speedy trial and fair and reasoned judgment. It covers the pre-trial, trial and post-trial stage of courts. The aim of case flow management is avoiding any problem that will be an obstacle to the smooth flow of cases like backlog, delay and injustice. It is called the heart of court management. It mainly focuses on the well treatment and production of cases so that the injustice need of the society can best be served. The rational that necessitates the existence of case flow management is unique that the number of courts and the number of cases coming to these courts are unbalanced. Therefore, we need other solutions which will increase the quality and speed of the existing courts and their workers(professionals) or which will limit the number of cases coming these courts so that the two can be balanced, that are of course minor reasons below these main objectives, like improving the quality and speed of our dispensation system. Taking this in to consideration case flow management tries to employs many solutions which will substantially be categorized in to 2 groups:

1. procedural solutions
2. institutional mechanisms

1. Procedural solutions are solutions which are also called litigation preclusion since they apply on the procedural steps of any court dealings. Therefore, it looks for different

procedural devices that will trap cases out of or which will kill issues with in the courts by using procedural rules. It includes procedural formalities like statement of claim and statement of defense to be as per formality, to appear I to the court of law on the time and to prepare the needed legal document or defense, the application of preliminary objection like res judicata which will avoid once treated and decided case will not be raised again on the same court between the same parties on that cause of action. Pendency the case which is ongoing with in another court can not be opened in another court substantially and simultaneously. Collateral estoppel, a case with the same cause of action which has two or more issues well united together will be surgically removed and dissected. As article 216(4) of Ethiopian code directly show the court way sometimes omit the case up on its own leave when it thinks necessary. Splitting of claim, which orders disputes not to split rather to consolidate their issues in one cause of action if it is possible it must be joined. Accelerated procedure on the other hand, for matters which do not require the presence of any evidence will be seen rapidly. Summary procedure also for cases that do not have opposite parties rather which will be the problem or issue of one party. Compromise and withdrawal as it is clearly recognized in the civil procedure code of Ethiopia parties are allowed to negotiate and withdraw their cases fulfilling all legal requirements. We should notice that it may sometimes need the permission of the court. ADR techniques are also used to handle cases outside of trial proceedings but which will be binding up on the parties' agreement or up on the acceptance of the law towards the agreement reached there. In short, all this procedural ways help to reduce the load of cases and delay problems by courts through reduction of number of suits from being opened or by filtering after they are opened.

The other solutions are institutional solution. These are solutions that are inserted on the court as an independent institution. The solutions has nothing to do with the cases directly, rather these remedies are applied on the human resource, financial capacities and technologies that are used in courts. It is to mean that the court as a service production factory which is justice needs to have enough budget, enough and qualified lawyers both quantity and quality needs the usage or application of timely technologies like countries like color-code, touch screen, teleconference etc. it is because the usage of these facilities will improve the case handling manner and its durability moreover it is so speedy. In

short case flow management is curious about the basic headaches of our courts backlog and delay on the treatment of cases with in court system from its opening up to its closure. When we come to the basic relation between judgment writing and case flow management on the goal that judgment writing can contribute to the other, we get the following.

The first is on the objective of both disciplines that there is great intersection. The overall aim and objective of case flow management is to make judgment fair and just beyond making it speedy on the other hand judgment writing dictates that once the litigation is over the judgment will be given and written down. So it makes the communication of the decision to the parties easy and speedy. More than anything else the main goal is making fair and just decision and for this reason we have to evaluate the final blessing of the court and judgment writing makes the job easy by recording it down in to paper. The other is durability and safety for the judgment made in a courts of law on parties. It is made legally, fairly following the procedure and therefore it need to be kept valid away from any danger. For this protection rather than leaving the judgment orally, on the final product out of case flow in courts it is better to keep it in written way which will have very simple way of communication with the parties or any other interested party and to retain the rendition court saying for the execution court. Here, the judgment writing is helpful to give protection and safety for the final output of case flow management that is the judgment considering that it is the base of justice, rights and duties of the parties. The third area of relation or importance that can be served by judgment writing to the case flow management is that it makes the basic difference between ADR and JDR ways or even between binding and non-binding ways of ADR system. it is because except binding and court assisted procedures of alternative ways of dispute resolutions the decision need not to be in written format unless parties agree in contrary. But all the time JDR decisions are brought in to written form. So judgment writing holds true always in JDR systems. But, sometimes that in some binding ways of ADR like arbitration and court annexed mediation the procedures are seen as court judgment. So they need to write their final award or agreement points. Students you can find other relation between judgment writing and case flow management based on the

basic goals. Having this in mind we generally can categorize the basic relation of the two in four basic points.

1. In the enforcement of judgment case flow management in one way needs the judgment to be just, fair and speedy. Moreover, it needs its implementation. For this purpose, judgment writing serves a link between judgment debtor and judgment creditor. Moreover, it communicates the rendition and execution court. So it avoids any obstacles in the middle way. That is to say that both judgment writing and case flow management are means to the end that needs the judgment made by the rendition court to be enforced so both of them contributed their effort. Judgment writing by preserving and communicating the judgment reached where as case flow management by helping this final outcome to be really clean and equitable to both parties. Moreover, it needs to see the proper application of this judgment.
2. In avoiding backlog and delay it is clear that case flow management is all about the avoidance of backlog and delay employing all the procedural and institutional solutions. But finally whether, these have been achieved or not can be known when the decision is given. It is to mean by measuring the time gap we can not say that this decision is speedy because we are concerned about the justness of the decision. So the exact moment to evaluate or the parameter by which we can measure the non-appearance of backlog and delay is when the judgment is made and written.
3. As a ground of review of judgment. It is not a hard rule that parties are always satisfied with the judgment made but it is possible that they can have any saying on this final decision. So the laws of the country clearly admitted that parties have the right to lodge any compliant against the decision made through the procedure called review of judgment in the

rendition court up on satisfactory reason, appeal or cassession. But to do any of the above procedural rights we need documented or recorded judgment and hence the judgment written serves as a point of reference or source of review of judgment to be made.

4. In application and usage of evidence- there is another relation that with in case flow management we allow parties right with in procedural guidelines and whether it has been explored by the parties or not will be seen when the judgment is made and will be read when the judgment is written. It is to mean that parties or litigants substantive rights could be bared or killed by procedural guidelines when it can not be fulfilled properly. In this regard the judgment made and written well show how much parties were complying and enjoying with the procedural limitations to that effect.

7.2 Judgment Writing and Court Management

Court management is the discipline that deals with the leadership and management aspect of courts as independent and precious institution. We have seen how much relevant courts are to the society and to the justice system of one country. Therefore, with the aim of enabling those to achieve their mission and vision different systems are employed by court management. For this purpose it focuses on the management of human resource, financial resource of courts, on the community related aspects. Following this it tries to maintain the goal and objective of courts with in the legal system into reality. In short court management is very basic discipline so that courts can avoid their problem and become effective and efficient institutions building trust and confidence on the community. On the other hand, courts have a lot of assignments starting from keeping rights and duties of citizens, protecting the same up to furnishing and flourishing justice all over the country by being strong institution through out its structure and levels. But all these tasks will be cross referred when the final judgment is made, written and seen. It is because unless the decision is finally and formally made it is difficult to check whether the procedure was fair or not, whether the judgment is constitutional and legal or not. In short court management tasks and objectives can be measured whether they have shown advancement or not but at the

time when the judgment is made and written everything will become easy and possible. Therefore, the following four basic areas are the areas where the discipline court management and judgment writing will overlap each other being supportive one to the other.

1. In Relation to Mission, Purpose and Significance of Courts

The over all objective and mission of establishing courts is to stretch justice system all over the country. This mission is held in the purpose of courts which is building ethical and law-abided citizens, who can keep and protect his/her and others right. Therefore, court management deals with different issues and tasks of courts which can help for the satisfaction of these goals. In this regard, it has brought different significances in increasing the facility, efficacy, capacity of courts from time to time. All the tasks and assignments carried out by court management are meaningless if the judgment given and written is not formal and legal. Therefore, judgment writing is also the other and final focal area of court management. It is to mean that the final judgment made shall be as per the law of the state, following all the procedures and personal liberties of the parties. So, case flow management is the heart of court management. To sum up court management also cares much about judgment making because all the investment on the court as an institution or on the judges and other staffs as the stakeholders of the institution will be meaningless unless the final judgment is in line with its goal, mission and significance to be reached.

2. In Human Resource Management

It is the other area that court management deals with the aim of building better capacity of courts. It deals with the number, salary, and facility etc effects with in courts to be given to the workers of the courts. And the objective is one and clear, that the court to increase its efficiency in rendering justice which can not be seen in separation to the employees there. But these human resources of the court should understand the objective why all these things are considered in this court management. That is to say that the working stuff including administration and judicial stuff of the court must take into consideration that their basic struggle is with the problem of justice so that the courts can have a better outputs. And out of the major production outputs of courts speed, justice and equality are the major one. Still to evaluate whether these values have

been achieved or not we have to refer to the judgment made and written. Here, it becomes very clearer that the human resource of court is oriented in a way that they should try their best to made fair and just judgment and it can be manifested after the judgment has been made and written. Here, clearly it can be seen that court management cares about judgment writing since it is one of its basic tasks.

3. In Budget Allocation

Budget allocation means courts are seen as production factories or justice rendering institutions which needs their own budget to handle their activities. And the budget allocated to courts should be equitable with the tasks assigned and covered in each sections of the court which can help to the achievement of the goal and mission of the court. This is because justice that could be reached need not to be jumped by the mere fact that there is no enough budget. The other concern is that the budget allocated to courts will be distributed to different tasks and works of the court. For human resource, for technology facilities, for training and development and other expenses. Therefore, some portion of the budget need to be allotted to the tasks that are related to the tasks of making and writing judgment because it is the major task of courts. Here, court management is related to judgment and writing by sharing and controlling some portion of the budget.

4. In Training and Development

It has been said that one of the major emphasis given under court management is the training and development aspect of court stuffs so that the effectiveness of the court in giving justice will be better. Similarly, one of the goals of this training and development need to be concerned about how to make and write judgment. Since it is risky and very important task it needs care and skill developed from time to time through trainings. Here similarly court management and judgment writing share this area in common.

Chapter EIGHT

Information Technology and Judgment Writing

General

It has been raised previously that courts are one of the fundamental institutions needed for one country since it fabricated very sensitive kind of service that is justice. Therefore, courts need sufficient budget, effective and efficient judges and other things like technology facilities, with the aim of rendering more effective and speedy service. Moreover, the budget allocated to courts need to be distributed and utilized for the development of the human resource (stuffs) by employing new lawyers, by giving trainings and designing other programs , for the effective use of technological facilities which will enhance the courts service giving manner very highly.

8.1 Meaning of Information Technology:

The general rational of considering technology of courts is in relation to information technology facilities which takes the lead to be used in courts so as to contribute much in the service. Information technology is basically a technology that is related to information. It is the use of modern technology to aid the capture, processing, storage and retrieval and communication of information in the form of numerical data, text sound or image. In other words IT is a set of tools that helps us to work with information and perform tasks related to information processing. That means, it is a devise by which we can facilitate different tasks which are related to communication, documentation and processing. To sum up, information technology is simply a means not an end by itself which helps to achieve, the goals, vision and mission of courts or any other institutions using this system. When we look the need for IT, it becomes something that we can not avoid of using it. It is now becoming an agent of change in every action that we undertake. The area of information and communication is showing rapid and considerable advancement and this dynamism has its own impact on the developing countries like ours, as a matter of necessity not as a matter of option. Generally, the main rationales of using IT are:

- To manage and simplify our daily activities in our daily lives
- To process data or any information with in very short period of time

- To unlock creativity and to make peoples more effective with huge capacities and durability of this technology

8.2 Devices of Information Technology:

There are different devises that are included under information technology and most of them are relevant to the courts proper and efficient functioning. The devices are mainly related with storage, recording and retrieval of information. It includes the following basic devises.

- Personal computers/pc/- table computers which can store huge number of data.
- Laptops- very portable computers which can help to perform tasks to be done even out of office in extra-working times.
- Data base- this is a system or program that helps to store and use any information whenever it is needed with easy access.
- Sound recording- a facility that enables to record sound of something in a way that can be used for any purpose any time. It can be changed in writing or it can be transformed in to computer-readable sound and documentation easily.
- Image recording/video/- it is also the other facility that can be used to capture the gesture, facial expression of peoples whenever we are in need.
- Video conference- it is very developed kind of technology. It is device by which people can communicate and reach face to face with out much transportation through this facility. You can make meeting, debates or any other acts though you are located thousands of kilometers away from the other person or place. It reduces time, energy and transportation costs.
- Internet- a system that helps to capture any relevant information from the globe or to provide your relevant information to others through this application.

- Networking-it is a connection that will be stretched through your computers with others and then you can share relevant information or exchange it with out the need of going or operating other places.
- Closed circuit television- it is a special devise that helps to control peoples and actions going on other places through live program with the ability to attend that program with the possibility of direct participation, questioning and observation of the things going on.

Shortly these and other facilities are included under IT to assist and facilitate information handling and processing ways.

Information Technology in Courts:

For different institutions that have different tasks and goals to be achieved, the need IT is inevitable. There are also other potential reasons for the use of IT in courts. In the one hand courts are very vital institutions in the society and on the other hand, it is almost impossible to accomplish one task with out the aid of IT. Therefore, we can not resist the use of IT in courts. In short, there are external and internal reasons that necessitates the use and application of IT. Each of these are discussed here in under

1. Internal factors- are factors that are needed by courts internally to achieve their vision and mission. These rationales include three basic issues or they can be viewed from three perspectives:
 - Speedy trial
 - Convenience of the service given
 - Good recording system or data storage
2. External factors- factors which deserves the use of IT to contact with different external bodies and external engagements of courts. These includes:
 - Globalization and
 - Interdependence and co-operation

8.3 Information technology and judgment writing

In our previous discussion we have seen how much IT is relevant to any institution in general and to court of law in particular including what kind of technology facilities are useful to these bodies. To point our our discussion of the usage of IT devices and systems in relation to judgment it is relevant to remind that courts budget, technology and human resource have their own management and allocation to the court function which is grouped in to three basic parts. For instance, in the pre-trial stage there is a certain level of human resource and budget needed and the same is true for the trail stage. It is also taken in to consideration that the kind of technology and human resource is needed more than allocating the resources there. In the previous chapters we have seen that judgment writing is the step that appears immediately after making the judgment at trail stage. Therefore, judgment writing needs its own technology facilities but also it shares some of the devises with other court functioning's or steps especially which are found at the trial stage. Thus, the discussion of IT in relation to judgment writing can further be classified in to three basic parts. These are:

8.3.1 Applicable Technology While Writing The Judgment

We have sent that the act of writing the judgment is the final task of the court which must be made with care. To assist these court functions we need to use effectively and efficiently the following devices.

-Sound recording- with the same rational we have raised above it is relevant to use voice recording at the trial stage. The only difference is that, event the image, facial and body expressions of the judge, the parties and the audiences can be captured through this device.

- Laptops- the most relevant technology that need to be used by the judge or the secretary of the trial to catch up the judgment made orally. It helps to write the judgment with speed and in easy manner without any problem of handwriting or durability since it can be stored in different storage areas with huge capacities. Moreover, it is portable that it can help for writing the judgment at trial or in any other bench that the judge or the court moves for doing this job.

- Personal computers- the same purpose of writing and storing judgment is served by this personal computer. But it is used in default or absence of laptops for the act of judgment writing because of its problem of portability. Any ways it can help the judgment writing act to be done in a better speed and capacity with safe durability.

Database- this program which is also relevant for the judgment to be written which needs to be stored and used later on whenever it is used or to put in judgment recording so that it can be available for any party whenever it is needed by the parties or other organs.

8.3.2 Advantages of the Technology

There is nothing open for argument on the advantages of this technology except their high cost of implementation and interruptions that would occur because of electric interruption or due to virus scan. Though the advantages of this technology are multi-directional we can summarize them as follows:

- Speed- in the manner of writing the judgment the considerable time that is needed with the aid of this technology is much lower than the time that was needed without this technology. It is because of its easy access and operation system with different programs it makes available for this purpose.
- Storage capacity- beyond the different storage devices like CD-Rom, Hard disk, Floppy disk, Flash disk etc the system is reach with huge capacity of storing data. The stored data will also be available with easy access. Since it is not manual the litigants and their case will be personally attached with the judgment made for them. It is to mean that there is easy and simple way of identification for the judgment made with the file name.
- Durability- with due care for virus scan and up on proper saving, there is no problem on the stored judgment written to be spoiled or to disappear because technology has great durability which is for life time.

- Easy access- with the support of proper storage and data-base access the judgment can be found or communicated easily without any trouble. In short, the information technology used in judgment writing has these and other advantages.

8.3.3 Requirements for the Technology

Whenever one technology is applied in a certain system there are some pre-conditions which will help for the proper use and implementation of that system so that we can exploit the advantages of that technology. Simply whenever information technology devices are used in a court of law especially for judgment writing there are some requirements that need to be made first. This includes-

- All the court workers and especially the judges need to have positive outlook towards the information technology facilities. It is because sometimes we face resistance and strong criticism against these information technology devices as they are applied to reduce the working stuffs of the institution. But on the other side, the application is to assist the workers in an easy and quick manner in accomplishing their task.
- Skill and training- the next fundamental question that need to be answered is that for the proper use and achievement of its objective, there need to be the presence of all the necessary skill and training up on the person operating the devise.
- In writing the judgment- it could be the secretary or the judge that can write through the use of the information and these persons should have the necessary expertise to process through the use of these information devises.
- The necessary budget to introduce the information technology. This actually is not the last element needed rather it is the first question to be answered because it is determinant to employ this technology with in the courts and to facilitate the working conditions and other elements.

- Eclectic power- this is very clear that the technology can not operate with out electric power except we made other substitutive power sources. So if there is no electric power the technology will be useless in addition interruptions on electric power need to be checked. On the current reality our country covers more that half of the country and a lot of courts have electric power and this is good aspect in this regard.

To sum up, there is a need for the use of information technology facilities to be used in courts and specifically for the act of judgment writing so these need to be realized and implemented to get multi-directional advantage out of it.

Chapter NINE

Judgment Writing and Enforcement of Judgment

Introduction- What's Enforcement of Judgment

Enforcement of judgment is basically the last assignment of courts or judiciary branch of the government. It's categorized under post-trial stage of court activity. By enforcement of judgment, we mean that the court after making and writing the judgment, it will execute and made the judgment real. Therefore, it's the practical application of the judgment passed by a rendition court the form of decree or written judgment. Once a judgment is given, then it need to be implemented on due time. In any judgment from the start up to the end there are two basic courts and two types of parties. We can notice two type of courts these are the court of rendition which passed the judgment and write the same and a court of execution, which is a court that is assigned with a task executing(enforcing) the judgment. Coming to the disputants always in respect to a concerned right always they are of two types. The first is judgment creditor who has got a certain value out the judgment and the other one is judgment debtor which stands for the party who is ordered to do or to give something to the judgment creditor because the court finds that to be fair and right.

Generally enforcement of judgment is a step in case flow management which could be said the last step located in post-trial stage and it is a complex in a case of civil cases. It's the adjudication or realization of the judgment passed and written by the concerned court to the party for whom it's declared against the judgment debtor, whom the court leaves a duty of performance. Coming to the types of execution basically it's different upon the nature of the case as civil or criminal matter because of the involvement of government starting from the opening of the case in case of criminal cases. The case and type of enforcement of judgment is wide and much complex in case of civil matters. That is clearly seen under the 1960 civil procedure code of Ethiopia following article 394-402. The type of judgment given in the rendition court will determine what the type of execution that will be followed by the execution court. On the other hand, the case may be domestic case which held between disputants of the same state/country using their own laws and in the court which have

jurisdiction according to the law of the country. But some times the case may have a foreign element that the place, material or parties involved may be from different countries or regions. This is known as international case or a case with a foreign element. And finally when a judgment is made and written, it's not easy as domestic case to be executed easily. The execution court has some legal points to check legally so that it can execute on its citizens. This requirement under Ethiopian law is given clearly under Article 458 of the civil procedure code for court judgments and under Article 461 for International Arbitral awards.

This requirement includes

- a) reciprocity
- b) Due establishment and recognition of the court that renders the judgment
- c) Due process of law – to hear and evaluate the parties fairly
- d) Finality and enforceability of the judgment
- e) Compliance with the morality and public order of the execution state

In short it's to mean that once a judgment is made written, we don't wish to its enforcement but there are prior considerations to be made.

9.1 Judgment- writing and enforcement of judgment

General

Under the pervious chapters we have seen that judgment writing is the written recorded form of a judgment upon and after hearing of the case of any kind. On the other hand enforcement of judgment is the next task of court which implement or change the judgment in to reality or practice as it s written or said in the judgment. So the basic underlining relation between judgment writing and enforcement of judgment is that both are found in the smooth case flow management or they are consecutive steps in the processing of cases with is a court of law. In other words judgment writing is input of the enforcement of judgment with in the process of rendering justice. Se can see the relation of judgment writing and enforcement of judgment on the following basic points:

9.1.1 In accelerating the speed of enforcement of judgment :

The overall aim of justice administration system is to provide effective and efficient justice with in very short time by avoiding any inconveniences. In other words the audience of backlog, delay and injustice are the major headaches of any courts and case flow management. Having this in mind, the presence and application of good judgment writing has direct relation with the enforcement of judgment in accelerating and providing justice. That is as the judgment is made clearly and properly, there is no confusion by the execution court that it can be executed easily so it do not take longer time. Where as if it was the opposite, for instance, if the judgment is not written or not properly recorded that the execution court rather than going to the enforcement of the judgment directly, it is required to scrutinize what the judgment is all about in the first place. So the non-existence of written judgment or any defect on the writing of the judgment will make the execution process delayed and inconvenient.

9.1.2 Easy and safer way of communication:

In relation to the first role, the existence of good written judgment creates easy and safer means of communication between the court of rendition and court of execution. Here, it should be denoted that with out effective communication between the two courts it is hardly possible to have effective enforcement of judgment. Therefore, for the justice that we care too much it is must that we have to stretch out good level of communication between the courts that take part in the making the judgment and judgment implementing court. And for this purpose, writing the judgment is a good solution.

9.1.3 Reaching the parties and bringing proper recognition of the judgment:

According to procedural laws of Ethiopia after the judgment is made and written, a copy of that judgment will be given to both parties (judgment creditor and judgment debtor). Here, this written judgment creates easy communication between the rendition court and the parties with their right and duty pronounced in the judgment beyond awering the court of execution what the judgment is all about. Here, it contains all the details of the judgment which is relevant for the

execution process showing what the parties can ask and has to do and also what the execution court shall do. Moreover, parties can use this written judgment as and evidence for any claim that they are interested to make based on the judgment. Here, this written judgment is serving in imposing the final and binding judgment up on the parties with out touching or affecting p-arties legal right. On the other hand, in the enforcement of any judgment the court of execution may need the support of other institutions as the case may be and in such occasions it is only through written judgment that these bodies can be called to contribute their effort in the proper execution of judgment. This is because these organs may not participate in the litigation process or they may not know what was going on there even though they were present in the trial they may not capture each and every details to the judgment. So it serves formal means of reaching these organs by informing what is required from them or showing what available right they got out of that specific judgment. Therefore, written judgment creates easy communication with the organs involved in the case and it can bring their recognition and response to the judgment made legally. The other role of judgment writing at this level in relation to the parties who were absent at the trial stage or in case of Ex-parte decision is that it can clearly show a what's the understanding and standing of the court about the case. Therefore, judgment writing creates every easy communication between the judgment made by the rendition court and any parties that have an interest on the case. To summarize, judgment writing has multi- dimensional roles which can be grouped in to two-To the speed of the performance of the court after the trial is closed

- to the communication that's needed and made between the judgment and all interested parties I this regard including the Disputes, concerned organs, other than the court and absent parties. Even it can be used to reach to the audiences of the trial (judgment) to contribute what they can for the enforcement of the judgment. Students, Judgment writing is so fundamental for the proper and speedy kind of enforcement of judgment that you can find more.