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

- Parties to a Civil Suit: General **Requirements**
- **1 . Capacity Art. 33(1)** - all parties participating in a civil suit should have capacity.
- **2. Vested Interest** for Party **Plaintiff Art. 33(2),**
- **3. Allegations** for Party **Defendant- Art. 33(3),**

## Representation in Civil Suits: Types and Requirements

- **In Civil Cases Representation** is a **rule** and **appearance in person is an exception** as **appearance in person** is **limited** to some cases where a court believes it is **necessary**.
- **Types of Representation**
  - **1**. **Legal** Representation- **Art. 34**
  - **2**. Representative **Class Suits** Art. **38**

**Types of Representation**

- **1. Legal** Representation- **Art. 34**
- **2.** Representative **Class Suits** Art. **38**
- **3. Agents and Pleaders Art. 57**
- **4. Family members** Art.58(a).
- 5. **Pleader/advocate** Art. 63

# Joinder of Parties

- **Favored/ Significance**
- **Makes parties to** pool their resources **together** and enables them to **share costs of pursuing a suit.**
- **Relieves burden of court** as court resolves cases **involving many persons by a single suit**
- **Avoids** the possibility of making **conflicting** decisions

# **Joinder of Parties** …

- **Disfavored**
- It **expands the scope of litigation** and **delay of proceedings**.
- **Results** in **embarrassment of the defendant and makes him not to be able to properly defend himself**.

## Rule of Joinder of Parties Art. 221

- **Strike a balance** between above **two conflicting interests**.
- If **joinder** results in a **delay of proceedings** or **embarrassment** of defendant, the court may **order separate suits**.
- **In all other cases**, joinder is, **allowed**.

## Forms of Joinder of Parties

- **1. Joinder of plaintiffs - two or more plaintiffs** bring action against a **single defendant.**
- **2. Joinder of defendants- a single plaintiff** brings action against two or more defendants.
- **3. Joinder of plaintiffs and joinder of defendants- two or more plaintiffs file a suit against two or more defendants .**

## Types of Joinder of Parties

- There are **two types** of joinder of parties.
- **1. Permissive.**
  - See Art. 35, and 36(1,2,3,4,5,6) CV.Pr C.
- **2…Obligatory**
- **See Art. 36(3) and (4)**
  - **Indispensable parties**

## Effect of Misjoinder and Non-Joinder of Parties

- **Permissive type of joinder** Art. **39** CPC-
- If a party is **not joined or is improperly joined**, the **appropriate measure is**:-
  - **not to dismiss** a case
  - but to **drop a party improperly joined**
  - demand **substitution**, and
  - **proceed with the parties**

## Mandatory joinder of parties / joinder of indispensable parties/

- Parties are **under obligation** to bring a joint **action** or **defense**.
  - See **Art. 36(3) and (4) which applies to** joinder **of defendants**.
- Civ Pr. Code **does not have** rule on **mandatory joinder of plaintiff** as it is a question of **substantive law** than procedural rules.

## Categories of persons on which Mandatory joinder applies

- **1**. Persons **required by substantive law** to exercise their **rights jointly** at a time.
- **Example**,
  - **Joint** owners,
  - Joint **creditors** or **debtors**,
  - **Husband** and **wife** over **common property**, etc.
- **2**. Persons **who can be affected by a decision** given **in** their **absence.**
- **Example,**
- Persons who are **entitled to oppose the judgment** under **Art. 358** (see it)

# Consequence of non- joinder of an indispensable party

- If the mandatory joinder is related to a **defendant**, the court shall **order the joinder of such defendant party**, by issuing summon on him thereby applying the rule under **Art. 39 & 40(2)**
- But, for the non-joinder of a party **plaintiff** there is **no clear provision** dealing with its **effect**.
- Article 40(2) says: "**No** person shall be added as plaintiff **without his consent**".
- If there is non-joinder of a party **plaintiff**, the court should **first secure his consent** before adding him

- **What will happen** if a **plaintiff** who is an **indispensable party does not consent to be a party to a suit?**
- **Two (2) options** available to a court
  - 1. To **proceed** with the case regardless of the absence of such party by **making him defendant**.
  - 2. To **dismiss** a case as parties are **not under obligation** to exercise their rights jointly, and if one does not join or refuses to be joined, the case shall be **dismissed**…??

# Joinder of Causes of Action: Art. 217

- Parties are allowed to join **even unrelated** claims **against the same defendant**
- **Joinder of Causes of Action** is **allowed** so long it does **not bring about**:-
  - **Delay** of proceeding or
  - **Embarrassment** to a defendant.
- **Eg**. a plaintiff could **join** cases over **contract** with **tort** and bring a **single action** against a defendant

# Exception to the rule under Article 217

- **Art. 218-** Claims for the **recovery of immovable property** may **not** be joined with **other** kinds of claims
- **Art. 219**- A claim by or **against** an **executor**, **administrator**, or **heir** in his **representative** capacity **cannot** be joined with a claim by or against **him** in his **personal capacity**.

## Interventions:

- **Intervention** is a mechanism by which a **party is brought into a pending case** to present a **claim** or **defense**
- It is **different from joinder** of **parties** that comes at the **beginning** of a suit, while **intervention** is a question that comes into **picture after a suit undergoes some steps**.
- **Intervention** application shall be filed **at any time before a decision is given**.

## Interventions Types

- There are **two types of intervention**.
- 1. Interventions **made by an application of a third party** Art. **41**
- 2. Intervention which is **obligation** Art. **42**

## **Interventions Conditions**

- To intervene, a party **must be interested** in suit between other parties.
- Intervention allowed to persons **likely to be affected by a decision given in their absence**.

## Third-Party Practice [Impleader]: Definition

- Third party practice/**Impleader**/ is a **mechanism** by which a **defendant brings into a suit a third party** on the ground that such third party **covers** or **shares** the whole or part of claim of plaintiff.
  - See Article **43**

# Third-Party Practice [Impleader]:

## Purposes

- To **settle** **claims** involving the **same** **cause** of action/ transaction **in a single suit**.
- **Avoiding** **separate suits** over the **same** cause of action/transaction.

## Third-Party Practice [Impleader]: Requirements

- **1**.Defendant shall demand a court for the third party practice in his statement of defense indicating that he is **entitled to contribution** or **indemnity** from such third party.
- **2**. The defendant should **mention the extent /amount/** of contribution or indemnity to be made or covered by such third party.
- If these requirements are **fulfilled**, the court issues **summon** on the **third party**

# Third-Party Practice [Impleader]: Consequences

- Once third party practice is ordered to be a party, he **proceeds like a defendant in a normal action**.
- He can make a **counter claim** or **set-off against** the original defendant (called **third party plaintiff**).
- If the third party **fails to appear** on the **date** he is supposed to appear, he is **deemed to have admitted the existence of contribution or indemnity** between him and the defendant.
  - See Art. **76**.

## **Time Limit** for Application for third party practice

- The defendant **should raise it as soon as he appears before** a court to make a defense
- The defendant should **file an application during the first hearing of a suit**.
- If he **fails to demand** the third party practice at **this time**, he is **precluded from doing so at a later stage** of the proceedings.

## Change of Parties

- In **civil suits**, there is a **possibility** others can **replace** the original parties upon **death** of one of them.
- This is **possible if the right to sue survive**s.
- **Whether or not** the right to sue survives depends on the provisions of **substantive law**
- **Unless** the subject of a suit is related to a **personal obligation** of the deceased person, a suit is said to have survived
  - See Article **48**