- Execution is a **separate proceeding** that involve **three** important points, namely,
  - 1. **Jurisdiction** in execution,
  - 2. **Procedure** in execution, and
  - 3. **Attachment** and sale of property.
-

1. Jurisdiction in Execution

- Normally, the **court, which passed the decree**, has a **jurisdiction** to execute such decree.
- However, **in certain circumstances**, it may be **transferred** for execution to **another** court.

1.1 Transfer for Execution

- As per **Art. 372 Transfer for Execution** is **authorized where**:-
  - **1**. Judgment-debtor **resides**, carries on **business** or **personally** works for gain within the **local limits of the jurisdiction of another court**, to which the decree is sent for execution,
  - **2**. Judgment-debtor has **sufficient property** to satisfy the decree within the **local limits of the jurisdiction of the transferee court**, but **not within such limits of the transferring court**;
  - **3**. Decree directs the **sale or delivery of immovable** property **situated within the local limits of the jurisdiction of the transferee court**; or
  - **4**. The court which passed the decree **considers**, for **any other reason** to be recorded, that the decree should be executed by the transferee court.

Can the court to which the decree is transferred for execution refuse to execute ???

- No? Yes? Why?
- The transferee court can **only refuse** to execute the decree **if**:-
  - It concludes that the transferring court **lacked material jurisdiction** to render it or
  - The decree is **clearly illegal**.

2. Proceedings in Execution

- **1. Application for Execution 1st step**
  - See Art. **378** of Cv.Pr.C.
- **Limitation**
- Civil Procedure Code **does not specify a period** in which the **first** application to execute the decree must be filed.
- So, **the ordinary period of limitation for the enforcement of obligations, which is ten years, should be applicable**.
  - See **384** ?

3. Process of Execution

- See Art. 385 – 386 of the Cv.pr.C
- **summoning** of the defendant to show causes why the decree should **not** be executed **Oral** proceeding / **no written** respond/ **objection** to the execution/ the decree has been **satisfied**, or that the application is **barred** by **limitation** /

Detention of the Judgment-debtor

- The court order the **detention of the judgment-debtor** in **two situations**:-
  - **1**. If the court concludes that the judgment-debtor is in a **position** to satisfy the decree and **willfully fails** to do so. or
  - **2**. If, the **judgment-debtor** **refuse** to **comply to court order** **without good cause** to do so.
    - See Art. 389

Execution of decrees for the payment of money Art. 394

- Executed by the **attachment** and **sale** of the judgment-debtor's **property**.
- The property attached may be **movable** or **immovable.**
- **T**here is **no** requirement **first proceed against movable** property.
- The value of the property attached must be, as **nearly as may be, correspond** ant with the amount due under the decree

Execution of cross-decrees Art. 397

- **This is similar** to **counter claim**
- For this rules to apply, **the following conditions must be satisfied**:-
  - **1**. **Both** decree-holders must **make application to the same court**;
  - **2**. The decrees must be obtained in **separate suits**;
  - **3**. Both decrees must be for the **payment of definite sums of money**;
  - **4**. The **parties must be the same** and were involved in both suits in the **same capacities**; and
  - **5**. Both decrees are **capable of execution at the same time** by the court.

Execution of other decrees

- **Movable property**
- **By seizure / by attach**
- A decree for **recovery of specific movable property** is to be executed by the **seizure of the property** and the **delivery** to the decree-holder.
- This rule is applicable **only** to property **in the possession of the judgment-debtor.**
- If the property is in the **possession of someone** else, the decree is to be executed by **attach** that property, so that the person in **possession may have the opportunity to raise an objection** to the attachment.
  - See article **399**

Delivery of Immovable property

- **Remove** or **open** any lock or bolt or **break** open any door or do any other act **necessary** for putting the decree-holder in **possession**.
  - See article 402 of the Cv.Pr.C

Attachment and Sale

- It is only by **attachment and sale** that the court can **guarantee satisfaction** to the decree-holder.
- Attachment also be used to
  - Effect **delivery** of movable property put in the possession of the judgment-debtor
  - Obtain an undivided share in movable property for the decree-holder
  - Directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor
- For the most part, attachment and sale will involve the satisfaction of a decree for the **payment of money**

Things that needs answer to apply the attachment and sale

- **Identifying** the property,
- The **process** on how attachment of property is being performed,
- The process of **selling** the property attached
- Other **alternative** methods related to it,
- Any other **measure**, which the decree orders.

Methods of attachment

- Decree-holder while files his application for execution, he must **indicate** whether he wishes the decree to be executed by the **attachment and sale** of property.
- The application for attachment must be for the attachment of ***specific property***.
- There is **no minimum amount** of property that the judgment-debtor can **retain** but **exemptions** are made to certain type of property

Property exempted Art. 404

- *There are* property **exempted** from attachment so that the judgment-debtor will **not** be **deprived** of the **necessities of life**:-

- **1**. Necessary wearing-apparel, cooking vessels, bed and bedding of the judgment-debtor and his **family**;
- **2**. Tools, instruments or implements of any kind used by the judgment-debtor in his **profession**, art or trade;
- **3**. Where the judgment-debtor is an **agriculturalist**, such **cattle** and **seed-grain** as may, in the opinion of the court, be **necessary to enable him to earn his livelihood**;
- **4**. Such amount of **food** and **money** as may, in the opinion of the court, be **necessary to sustain** the judgment-debtor and his family for a period of **three months**;
- **5**. Pensions and alimonies;
- 6. **Two-thirds** of the judgment-debtor's **salary**, or where the salary does not exceed Eth.$ 2 per day, and the judgment-debtor has **no** other income, the entire salary;
- **7**. Any other property **declared by law to be exempt** from attachment or sale.

Methods for the attachment of various kinds of property

- Depending on the **nature** of the property and the **person who has control** it, different **methods** are to be employed
- ***Movable** property **in the possession** of the **judgment-debtor**, (other than agricultural produce,)

➢ **Attachment is made by physical seizure of the property**; and keeping the in a safe place and be responsible for its custody.

- **Agricultural produce**,
  - Attachment is made by the **affixing of warrant** rather than by physical seizure.
    - See article 407 of the Cv.Pr.C
- Debt not secured by a negotiable instrument or is a debt owed to the judgment-debtor under another decree,
  - Attachment is made by a written order prohibiting the judgment-debtor from recovering the debt and his debtor from paying him until further order of the court.

Procedure to be followed after the property has been attached Art. 415

- Attachment is to be **withdrawn only under one of the following** circumstances:-
  - **1**. When the **amount** decreed with **costs** and all **charges** and **expenses** resulting from the attachment of the property have been **paid into court**; or
  - **2**. When **satisfaction** of the decree is otherwise **made** through the court or **certified** to the court; or
  - **3**. When decree which is the subject of the attachment is **set aside or reversed**.

Objections to attachment Art. 418

- Property may **not** be subject to attachment either because it is
- **Exempted** from attachment or
- because it is **not the property of the judgment-debtor**.

Sale of property

- The court order the sale of the property of such portion as may be **necessary to satisfy the amount of the decree**.
- There are **general** rules governing **all sales**,
- There are some procedures **especially applicable to the sale of movable property** and other procedures **especially applicable to the sale of immovable property**.

A. General rules governing all sales Art. 422

- All sales must be conducted by
  - An **officer** of the court or a person **appointed** for this purpose and
  - Made **by Public** auction.
- However, the court, after hearing the decree-holder, may authorize a sale by **private** contract at the request of or with the **consent of the judgment-debtor**.

Procedure in Sale by public auction

- **Read** article **423 - 430**

B. Procedures especially applicable to Sale of Movable Property

- Read articles **436-438** of the Cv.Pr.C

C. Procedures especially applicable to Sale of Movable Property

- In Sale of immovable property, there are different **rules** or procedures designed to achieve **the following purposes**.
- **1**. To enable the judgment-debtor to "**save**" the property if **at all possible**;
- **2**. To **protect the interests** of all persons having a claim to the property;
- **3**. To **protect** persons who would be **adversely affected** by a fraudulent o improper sale of the property;
- **4**. To **establish the ownership** of the property in the purchaser;
- **5**. To enable the purchaser to **gain possession** of the property without the necessity of a separate suit;
- 6. To **determine** all claims to possession of the property **expeditiously**.

Setting Aside the Sale Art.445

- The most significant difference between a sale of **immovable** property and a sale of **movable** property is that a **sale of immovable property can be set aside** by court for **the following reasons** :-
  - **1**. The **judgment-debtor has no saleable interest** in the property;
  - **2**. **Another person** has an **interest** in the property;
  - **3**. There is material **irregularity or fraud** in the conduct of the sale,

Confirmation, Delivery of Possession and Resistance

- **A. Confirmation**
- Where **no application to set aside** is made within **two months** from the date of the sale, the sale becomes **absolute**.
- By the same token, if an application to set aside is made and is **rejected**, the court shall make an order **confirming the sale** and thereupon the sale shall become absolute.
  - See articles **447(1-3)** of the Cv.Pr.C

B. Delivery of Possession

- If the property is in the **possession of the judgment debtor**, the court will order delivery by putting the purchaser or his appointee into possession, and if necessary, by removing any person who refuses to vacate the property. Or
- If the property is **in possession of other person entitled to possession**, delivery is effected by **affixing** a copy of the certificate in some conspicuous place on the property and proclaiming by **beat** of drum other **customary** mode, at some convenient place that the **interest of the judgment debtor has been transferred to the purchaser**.
  - Read articles **448** & **449** of the Cv.Pr.C

C. Putting into Possession

- If possession is **resisted** or obstructed, the decree holder for the possession of immovable property has to put an **application** to the court and the court shall **summon** the person against whom the application has been made to **appear** and **answer** the charge.
- If the court is satisfied that the resistance or obstruction was **with out good cause**, it can order **civil prison for a period not exceeding thirty days**.
- See articles 451 of the Cv.Pr.C
- See articles 450 of the Cv.Pr.C

- **CHAPTER FIVE**
  RES JUDICATA AND SPLITTING OF CLAIMS