

PART II: Chapter One
Pre -Trial Proceedings

- ☐ Ensures the appearance of the parties,
- ☐ Reads the statement of defense,
- ☐ Examines both parties to determine their respective positions,
- ☐ Rules on any preliminary objections, and
- ☐ Frames the issues for trial.

1.1 Non -Appearance of parties

- ❖ The term *appear* is one of those ordinary words that has a legal meaning different from its everyday meaning.
 - **appear means** to submit formally to the jurisdiction of the court.
 - A coming into court as party to a suit.
- Appearance by agent or pleader
- Appearance in person
- Several plaintiffs or defendants-Art -66 (1)&(2)
- Partnership-partners
- Bodies corporate-director or others
- ***What will happen where a party does not appear before the court at the required time(the first hearing)?***

- **Effects of Non-appearance:**
 - Is the day fixed for **hearing of the suit** different from the day fixed for submission of **statement of defense?** See Art 70 vs. 233
 - A. Both parties(when the suit is called on for hearing)□the suit will be struck out, or in case of appeal, that the appeal be dismissed. (Art. 69(2))
 - B. non-appearance of the defendant:
- Ex-parte proceeding***(Articles 70(a)) and ***Default proceeding*** (Art. 233)

Cassation bench: File No **15835-** clearly differentiate the date for submitting statement of defence and the date of hearing

- Art 70-date for submitting statement of defense □ **ex-parte proceeding**
- Art 233-the date of hearing of the suit □ **default proceeding**
- Incase he was not duly served, the court will order **Second summon** to be served on the defendant.
- Incase he was served on him in short time that he may not be able to appear, the court will **adjourn** the hearing.

Cont'd.

C. Non- appearance of Plaintiff: Federal cassation court file 14184, rules the date fixed for submission of statement of defense and the date that is fixed for hearing are different. **Struck out Vs. dismissal**

- Multiple parties—art 75

Effects of Non-appearance

□ The suit may be **struck out**; (Art. 69(2) or 70(d)):

- The plaintiff may as of right bring a fresh action on the payment of full court fees. or
- **sufficient cause** for his/her non-appearance □ the original suit may continue and the plaintiff is relieved from payment of court fee.

CONT'D

- The suit may be **dismissed**; (Art. 73, 69(2) (2) 70(d) or 73):
- he/she will be precluded from bringing a fresh suit in respect of the same cause of action.
- **Good cause** for his non-appearance **within one month from the dismissal**, the court may, after giving notice of application to the opposite party, order setting aside the dismissal upon such terms and costs as it thinks fit.

Cont'd

□ The court may proceed *ex-parte*; (Art. 70(a)):

- The court will proceed to adjudicate the suit in the absence of the non-appearing party.
- The non-appearing party will not have the right to participate in the process of litigation.
- Whereas, if a third party defendant does not appear, the court enters a default decree.
- within one month from the day he became aware of such action, apply to have it set aside. Article 78 Civil

Cont'd

- The court may issue a **default Proceeding**; (Art. 233).
- The non-appearing party, i.e; the defendant, should not be refused to be a party to the litigation.
- He will be precluded to exercise the procedural rights that should be exercised on the date of his non-appearance. For example, he cannot exercise his right to submit his written statement of defence.

- **Sufficient Vs. Good cause**

- If the court is satisfied that the non- appearing party was prevented due to **sufficient reason**, it may order to set aside the order and the case will continue to proceed.

➤ **Sufficient cause(Art 78)** for non appearance is where it is **shown to have no knowledge of the suit.**

❖ **There is no material difference between “Sufficient cause” and “good cause “ .**

- ✓ Requirement of “**good cause** “ is complied with on a lesser degree of proof than that of “ **sufficient cause**”.

Examination of the parties

- Why examination? □
- To help the court clarify and develop the issues for trial.
- Conducted by the court only, unlike that of witness examination.
- □to determine what admissions and denials are made by the defendant which assists the court in framing the issues.
- If a party admits in the pleadings or on the oral examination, the other party may apply to the court for such judgment or order.

Article 242 of the Cv.Pr.C

□ An objection not going to the merits of the case- Art 244(2) and Art 245 of Civ Pr. Code.

- Art 244(2) illustrative or exhaustive list? see for example: Art-39(2), Art-216 (3) and Art-220
- Deemed waived if not raised early(first hearing)-Art 244(3). **Exceptions:** issues the existence of which *prevents the court from giving a valid judgment*. E.g Material Jurisdiction.
- Effects: If sustained, the court may either **dismiss** or **struck out** the suit as the case may be.
- If it is overruled, the court will proceed on the suit.
- The court has to give a chance to the plaintiff to respond on the objection raised by defendant. Or order the production of evidence.

Framing of Issues

- Comes after ruling on preliminary objection, if any.
- **Issues:** material proposition of **fact** or of **law** affirmed by one party and denied by the other. Art 247(1)
- Ascertaining what material propositions of **fact or of law** the parties are a **variance** □ **framing and recording issues.**
- Where issues of law and fact arise in the same suit, the court may dispose first the issue of law. See Art 247(4)

□ **Sources:** □ Pleadings

□ Documents produced by parties

□ Examination of the parties

Adjudication without Trial

- The court may decide the case, in whole or in part, without holding a trial.
- **Agreement on Issue** (question of fact or law)-Art 252.
- **Parties not at Issue:** Art. 254
- **Disposition of issue at first hearing: Art 255-** if the court is satisfied that no further *argument or evidence is needed* and *no injustice will result from proceeding....*
- **Issues of law:** where issues framed are issues of law
- **Documentary evidences:** When the issues can be entirely resolved by documentary evidence.
- ❖ **Basic question:** whether all the evidence that both parties can produce on that issue is available at that time?

A. Compromise: *a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future. Art. 3307 CC*

- The phrase “*prevent a dispute arising in the future*” indicates res-judicata if raised on preliminary objection.
- “The parties may.....terminate a dispute with respect to which a suit has been instituted.” *Art 274(1) of Civ Pr C*
- Contents of the compromise—See *Art 276 of Civ Pr C*

B. Withdrawal:

- *With leave:* Institution of fresh suit on the same cause of action is allowed- see Art 278 of Cv pr c
- *Without leave-* Institution of fresh suit on the same cause of is precluded-see Art 279 of Cv pr