- **Pleadings** - **Definition**
- As deduced from **Art. 80(1)** **all formally written statements** filed to a court of law by parties to a suit which **includes**:-
  - ***Statement of* claim,**
  - ***Statement of Defense,***
  - **Counter claim,**
  - ***Memorandum of* appeal,**
  - ***Application*, or petition, ….**

➢ ***Any document* originating proceedings or filed in reply thereto** that set **in motion** proceedings in a court of law…

Purposes of Pleadings

- **A**. **Provide** the defendant with **notice** of the suit and **enable him** to prepare his **defenses** accordingly
- **B**. Provide a **summary** of the **claims** and defenses of parties **to a court**, which **enables a court** to frame the appropriate and relevant issues that need **decision**.
  - See Art. **348**

General Pleading Rules: Requirements

- **Requirements** that pleadings should fulfill that relate to:-
  - **Preparation**,
  - **Format**, and
  - **Content**.
- These requirements can be **divided into**:-
  - **Technical** and
  - **Legal** ones

Technical requirements

- Relate mainly to the **preparation** and **format** of pleadings and **include the following**:-
- **1st Typewritten** as per **Art. 80(2)**
- **2nd** In accordance with the **form** prescribed by the CPC in the **Schedule**
- **3rd** Made as **Concise** as possible and
- **4th** Contain a **statement of material facts**
- **5th** shall be **verified**. As per Art. 92(1)
- **6th Signed** by the party or person authorized to verify the pleading as per Art. 93.
- **7th Annexes** must **accompany** as provided under Articles **223** and **234**

Effects of Non-Compliance of Pleading on technical Requirements

Measures taken by the **register** if any **technical** requirements is **not complied** with

- **Reject** a statement of claim as provided under
  - See **Art. 229**
- Registrar shall provide **reasons for which he rejected** pleadings.
- A party **unsatisfied** by such reasons can **apply to the court** (**judge?**) to review the decision of the registrar ???...
  - See Art. **232**

Legal Requirements

- The **legal requirements checked by the judge** on the types of pleadings.
- This **includes**
  - **Cause** of **action** and
  - **Jurisdictional** issues

Major Types of Pleadings

- 1. Statement of Claim
- 2. Statement of Defense

Statement of Claim: Defn

- It is a pleading submitted to a court by **plaintiff**.
- It is also known as a **complaint**.

Statement of Claim: **Requirements** and **Contents**

- In **addition** to the **technical** requirements we discussed earlier, a statement of claim shall **contain** items listed under **Art. 222 CPrCode that includes**:-
  - **A**. **Name** *and* ***place*** *of* ***court***
  - ***B***. ***Title*** *of the* **action**
  - **C**. ***Name***, *and* **address** *(for service)* ***plaintiff*** *and* ***defendant***
  - **D**. If *plaintiff or defendant is a person* **under disability**, *a* **statement to this effect**;

- **Statement of Claim: Requirements cont…**
- **E**. *if the is suing in* ***representative capacity****, a statement to* **this effect**,
- **F**. **Facts** *of* ***cause of action****, indicating* **when** *and* **where** *it* **arose**,
- **G**. **Facts** *showing that the court has* **jurisdiction**,
- **H**. *Facts showing the defendant is* **liable** *to be called upon to* **answer** *the claim*
- **I**. *Where appropriate,* **value** *of the* ***action***

The Four (4) parts of the statement of claim

- We can **divide** **parts of statement of claim** into **four including:-**
  - **1st** The **caption**.
  - **2nd** The **statement disclosing a cause of action**
  - **3rd** The **jurisdiction**
  - **4th** **Relief**

2. Statement of Defense: Art. 80(2) and 223.

- **Content** of statement of defense is stipulated under **Art. 234** as follows:-
  - A. ***Name*** *and* **place** *of the* **court**
  - **B**. **Number** *of the* **suit**
  - C. **Facts**, *(if any,) showing that the claim is* **inadmissible** *on grounds of* **capacity** *or* **jurisdiction**, *or* **limitation -…**
  - **D. Concise material facts** *on which the defendant* ***relies***
  - ***E.*** **Specific denial** *of fact stated in the statement of claim as* ***evasive denia***l does **not amount** to a defense under **Art. 235**
  - ***F***. **Counter-claim** *(if any,) Art.* ***224*** *apply by* ***analogy***

The two parts of statement of defense

- 1st **Caption**
- 2nd The statement showing **points of defense**.

- *Statement of claim,* **not denied specifically** *or by* **implication**, *shall be* **taken to be admitted except** *as against a person under* **disability**

Effects of Failure to Plead

- **Failure to plead** means that the **plaintiff omits facts** (**not included in the pleading**):-
  - The **plaintiff is not entitled to raise it at a trial stage** and produce evidence to prove it.
- So, if the **plaintiff raises a new issue at a trial**, the **defendant is entitled to object to it**.
  - Failure to plead **produces effect if the defendant object it**.
- However, if the **defendant fails to object** to a **new issue raised** by the plaintiff **at a trial**, it means that he **consents to the trial of that issue**.

Remedy for failure to plead

- The remedy is **to request an amendment of pleading**.
- In the **absence** of **permission** to **amend**, the **plaintiff is not allowed** to raise **new issues at a trial**
- But, the **court can frames issues by its own motion** Art. 252.???

Amendment of Pleadings

- Amendment is allowed to **rectify defects** in pleadings
- It is made when it is **necessary** to **determining the real issues in dispute** between the parties.
  - See **Art. 91 and 252** CPC.
- The amendment is **ordered** by the **motion of a court** or by the **application of a party**.

Amendment to be ordered by the Motion of Court

- It is limited to **exceptional cases** where the **error** in pleading is **likely to affect the substantive rights of a party**.

Pre-Trial Proceedings

- **1. Issuance of Summons**
- **Summons**, refers to a **formal mechanism** by which a **defendant is notified** of a suit made against him and **called upon to appear on a fixed time** and **date** before a designated court **to answer a complaint/allegation** made by the plaintiff against him.

Purposes of summon

- To **informs** the defendant that a suit is made against him.
- **Provides** the defendant with an **opportunity to be heard** and **present his version of a suit**.

Form and Content of summons

- To **provide** the defendant with **sufficient information** about a suit made against him, **summons shall contain**:-
  - **Name** of **plaintiff** and what he is **claiming** ,
  - **Name** of **defendant** and his **address**,
  - The **time**, **date**, and **court** before which the defendant is supposed to appear,
  - **What** the defendant **should bring with himself**
  - **Disclose** to the defendant that a **case will be considered even if he fails to appear** or **fails** to bring his statement of defense

2. Modes of Service

- There are **different modes** of service of summons to the defendant, which is **said to be reasonable under a given circumstance**.
- These **includes**:-
  - **1st Personal** service... Art. **95(3**)
  - **2nd** Service that is **similar to personal service** or (**considered** to be personal service) **Art. 96**
  - **3rd** **Constructive** mode of service..**Art.99-101**

1. Personal service… Art. 95(3)

- **Personal mode of service is the best mode of service**
- The summons is **actually handed over to the defendant himself**.
  - See Art. **105**(1).
- Other modes of service are **not applicable unless** personal service is **impossible**.

2. Service that is similar to personal service or (considered to be personal service) Art. 96

- In this mode, **summons is not actually** served on the defendant in person.
- Rather, **Somebody else receives** it but the **law treats it as if service is made on defendant in person**.
- **Examples** of this mode:-
  - Defendant's **agent** who is **authorized** to accept service,
  - Defendant's **pleader** / **advocate**

3. Constructive mode of service

Art. 99-101

- This mode includes the following types
- 1. When the **defendant does not reside** within the **local limits of a court's jurisdiction** but has an **agent who carries business** on his behalf, service can be made on the agent even if **not authorized to receive summons**
- 2. Served on an **agent in charge of immovable** property for the suit **relates** to that **immovable**

4. Substituted mode of service Art.103 &105

- This mode of service is the **least effective** and is the **final** mode of service
- It is used when **all other modes of service cannot be applicable** and then **court orders** substituted mode of service.
- This mode of service **includes**:-
  - Service by **affixing** a copy of summons in **public areas**,
  - Publication in **newspaper**, etc….

Negligence in serving summons

- Summons service must be **reasonable**, and **enable the defendant** to receive **information** about the suit filed against him.
- CPC places on the plaintiff who acts **negligently** in serving summon on defendant **serious consequence** under **Art. 70(d)** which **includes**:-
  - The court may **adjourn the hearing** or
  - **Order** that the **suit be struck out** as against any defendant **not**

Effects of refusal to sign acknowledgment

- The person served has **to sign an acknowledgment** that he received the summons
  - See Art. 102 (1 & (2)
- **What if** a person served **refuses to sign** an acknowledgment????
- **Effects of refusal to sign acknowledgment:-**
  - The court orders a **fresh summons** or
  - **Substituted** service or
  - **Consider** that the person is **properly** served and **proceeds with the case**.
    - See Art. **103** and **105**(2).

Effect of Non-appearance of party

- Depending on who has failed to appear, **four things can happen**: -

1. The **suit** may be **struck out**; (Art. 69(2) or 70(d))
2. The suit may be **dismissed**; (Art. 73, 69(2) (2) 70(d) or 73)
3. The court may proceed **ex-parte**; (Art. 70(a))
4. The court may issue a **default Proceeding**; (Art. 233).

If **Both parties** fail to appear….

- **On the first date of the opening of a suit**
- **Both** the plaintiff and defendant are **expected** to appear
  - see Art. **69(1)**
- If **both parties (plaintiff and defendant) fail to appear**, the court shall:-
  - **Strike out a suit,** it is a **fresh suit** or
  - If it is **appeal**, the **appeal shall be dismissed**
    - See Art. **69(2)**

If the **defendant failed to appear** **Art.70**

- The court may:-
  - **Orders issuance of second summon** if summons was **not properly served** or
  - **Proceed to hear** the case in his **absence** /**Ex-parte hearing**/ **Default proceeding** /if summons has been **properly served**
  - **Adjourn the hearing** if

Ex-parte proceeding (Art. 70/a/)

Vs

Default proceeding (Art.233**)**

- See **Cassation** file no. **15835**.
- According to **Cassation Division** the **date for submitting statement of defense** and the **date of hearing** are **different** and so if defendant failed to appear on these different days there is **different consequences**.

Ex-parte proceeding (Art. **70/a/**)

- If the defendant failed to appear **on the date the suit is called on for hearing**, and if it is **proved that the defendant is duly served** with the summon,

➢ The order of the court will be **Ex-parte proceeding**.

- **effect** of it is???

➢ **No right to participate** in the process of litigation.

Default proceeding (Art.233)

- If the defendant failed to appear **on the date which is fixed for submission of statement of defense**, and if it is **proved that the defendant is duly served** with the summon,

➢ The court should order **Default proceeding** based on **Art. 233**

- **Effect** of it is???
- Defendant will be **precluded** to exercise the procedural **rights** that should be exercised **on the date of his non-appearance**
- **Eg.** He **cannot submit his written statement of defense.**

If the Defendant appears …but Plaintiff fails to appear

- If **plaintiff fails to appear** the court shall:-
  - **Makes a decision for plaintiff on the basis of admission** if the **defendant admits the claim** of plaintiff, or
  - **Dismiss a case** if the **defendant denies the claim** of plaintiff
- See Article 73

If third party defendant does not appear

- In case of non-appearance of **third party defend**ant(of Art.43), **the court decides that he has admitted the claim of defendant**.
- The **mere non-appearance** amounts to an **admission** of **the existence of contribution or indemnity.**
- This kind of judgment is known as **default judgment**

- What **if the defendant who failed to appear on the first day of hearing,.. appears on the next hearing of a suit?**
- **His fate is governed by the rule under Art. 72**

➢ If he **shows good cause**, he is **permitted to defend himself**.

➢ The court can **impose costs** on him for causing **delay** of proceedings.

What would be the fate of the

- **What if the defendant not show good cause** to a court for his **non-appearance**?
- The Civil Procedure Code does **not have an express rule on** this.
- The court has **two options**
  - **1. Prohibit him from participating** in a suit
  - This is implied from **Article 72**.
  - **2. Allow him** to defend himself **from where the proceedings begin on the next hearing of a suit**.
  - He is **not entitled to do what he could have done on the first** hearing of a suit.
  - Eg. He **cannot raise any objection** to a suit since objection is to be raised during the **first hearing** of a suit

The effect of striking out of a suit

- Suit is **struck out when**:-
  - **Both** parties **fail to appear** (Art. 69), and
  - The **plaintiff committed fault in serving summons** on the defendant (Article 70(d).
- **Effect of striking** as per **Art. 71** is:-
  - *Plaintiff may* **bring fresh suit on payment of full court fee (again)**.
  - *Where plaintiff* **satisfies the court that there was sufficient cause for his non-appearance**, *the court may make an* ***or*****der dispensing from payment of court fees**

Effect of Suit/Appeal dismissal

- A suit is **dismissed** when:-
- **Plaintiff fails to appear** but **defendant appears**;
- **Both** parties **fail** to show upon **appeal**; and
  - See Articles 69(2), 70(d), 73).
- **Effect of Suit/Appeal dismissal**
- Plaintiff is **prevented from bringing a fresh suit** on the same cause of action.
- The **dismissal leads to a loss of right** to bring action.
  - See Art. **74(1)**

Dismissal set aside

- If a plaintiff is **prohibited** to appear before a court **owing to good/sufficient cause**, he can **apply** to the court to get the **dismissal set aside**.
- The **application** for setting aside of the dismissal should have to be **within one month** from the **date an order** is made by a court to dismiss the case.

Setting aside of exparte decision or Default judgment Art. 78/1/

- The defendant can request the **setting aside of exparte decision or default judgment** within **one month**
- If he is **proved** to be prevented from appearing **because of good cause.**
- If the court set aside exparte decision or default judgment, it **consider** the **case as a new one**.
  - See Article **78(1)**

What is mean by ‘Good Cause’

- **No definition** in CPC
- So, it is determined by **case-by-case** consideration of **circumstances** and **interpreted narrowly**.

- End of p1
- P2 CH1 **CHAPTER ONE ~~PRE~~ -TRIAL PROCEEDINGS**