

# *International Encyclopaedia of Laws*

## **Civil Procedure - Outline**

Table of contents  
List of abbreviations  
Preface

### **General Introduction**

- §1. General background (information on the political and legal system of the country)
- §2. Delimitation of the subject matter
  - I. Definition of the term 'civil procedure'
  - II. Distinction with other types of procedure (administrative, criminal)
  - III. Are there separate court systems and rules of procedure?
- §3. Sources of civil procedure law (including a brief historical perspective)
- §4. General features of the administration of justice in civil matters
  - I. Characteristics of the procedure: adversary and/or inquisitorial procedure, role of the judge and of the parties, oral and/or written procedure, ...
  - II. Fundamental guarantees (Constitution, human rights treaties, general principles of the law): establishment of courts by law, independence and impartiality, reasons, publicity, fair trial, reasonable time, appeal, etc.

### **Part I. Judicial Organization**

#### Chapter 1. The courts and their members

- §1. Courts
  - I. Structure of the court system
  - II. Administration of the court
    - I. Bench and 'ministère public' / public prosecutor (if any)
    - II. Appointment of judges (public prosecutors and of members of the 'ministère public')
- §2. Members of the judiciary
  - I. Incompatibilities
  - II. End of functions
  - III. Discipline

#### Chapter 2. The bar

- §1. Exercise of the legal profession
  - I. Conditions for admission
  - II. Rights and duties
  - IV. Discipline
- §2. (Public) institutions and (private) organizations

#### Chapter 3. The bailiffs

- §1. Exercise of the profession
- §2. (Public) institutions and (private) organizations

## **Part II. Jurisdiction**

### Chapter 1. Domestic jurisdiction

- §1. Subject matter jurisdiction
  - I. Factors to be taken into account (e.g., the value of the claim, other factors)
  - II. Main claims and ancillary claims
    - . Overview of the jurisdiction of the different courts
- §2. Venue (territorial jurisdiction)
  - I. Factors to be taken into account
  - II. Main claims and ancillary claims
    - I. Overview of the different rules
- §3. Resolution of jurisdiction conflicts  
(*Special procedures? Special courts? Effects of a ruling on the jurisdiction issue, etc.*)

### Chapter 2. International jurisdiction

- §1. Rules applicable in the absence of a treaty
- §2. International treaties

## **Part III. Actions and Claims**

### Chapter 1. Actions

- §1. Definition
- §2. Admissibility (e.g., standing...)
- §3. Vexatious litigation

### Chapter 2. Claims and defenses

- §1. Definition
- §2. Distinctions (main claims, ancillary claims; defense on the merits and procedural 'exceptions')

### Chapter 3. Sanctions on procedural irregularities

- §1. Formal requirements
- §2. Time limits

## **Part IV. Proceedings**

### Chapter 1. Pre-trial proceedings (if any)

### Chapter 2. Proceedings in first instance

- §1. Adversarial proceedings
  - I. Ordinary proceedings
    - A. Introduction of the claim
      - 1. Notice (service, including service abroad, etc.)
      - 2. Registration by the court
      - 3. Summary judgment (if any)
    - B. Progress of proceedings
      - 1. Introductory hearing (if any) / case management (e.g. determination of the trial date and the calendar for the exchange of trial briefs)

2. Preliminary measures (including production of documents,...)
3. Purely written procedure (if any)
4. Trial (including representation of parties, examination by the trial judge, adjournment, etc...)
5. Opinion by the 'ministère public' (if any)

#### C. Judgment

1. Deliberation
2. Different kinds of judgments
3. Formal aspects of the judgment
4. Notice and service
5. Res judicata
6. Interpretation and rectification of judgments
7. Penalty in case of non-compliance (if available)

#### II. Provisional proceedings

§2. Default proceedings

§3 Ex parte proceedings

#### Chapter 3. Review proceedings

§1. Appeal

§2. Cassation (if any)

§3. Extraordinary appeals

### **Part V. Incidents**

*For Example:*

*Interlocutory applications*

*Withdrawal and discontinuance of action*

*Challenge of judges*

### **Part VI. Legal Aid and Legal Costs**

Chapter 1. Legal aid

Chapter 2. Legal costs

### **Part VII. Evidence**

Chapter 1. Burden of proof

Chapter 2. Admissibility of evidence

Chapter 3. Administration of evidence

§1. Forced production of documents

§2. Deposition by witnesses

§3. Deposition by the parties themselves

§4. Expert evidence

§5. Affidavit

§6. Inspection by judge

## **Part VIII. Particular Proceedings**

## **Part IX. Conservatory attachment and Enforcement of Judgments**

### Chapter 1. Conservatory attachment

- §1. Proceedings
- §2. Judicial review

### Chapter 2. Enforcement of judgments

- §1. Enforcement of domestic judgments
  - I. Proceedings (*for example*: executory attachment)
  - II. Judicial review
- §2. Recognition and enforcement of foreign judgments
  - I. Rules applicable in the absence of a treaty
  - II. International treaties

## **Part X Out-of-court dispute resolution**

### Chapter 1. Arbitration

- §1. Arbitrability
- §2. Arbitration agreement and party autonomy
- §3. Composition of arbitral tribunal
- §4. Interim measures and preliminary awards
- §5. Conduct of arbitral proceedings
- §6. Arbitral award
- §7. Recourse against arbitral award
- §8. Recognition and enforcement of awards

### Chapter 2. Mediation

- §1. Legislation/definitions
- §2. Rights that can be subject to mediation
- §3. Mediation agreement
- §4. Persons/institutions that can act as mediator
- §5. Mediation procedure
- §6. Settlement agreement
- §7. Setting aside a settlement agreement
- §8. International mediation

Chapter 3. [other types of out-of-court dispute resolution, such as collaborative lawyering, if any]

Selected bibliography

Index