

**BOOK VI - APPEAL, EXTRAORDINARY REVIEW, THIRD-PARTY
OPPOSITION AND REVISION**

TITLE I - APPEAL

Chapter 1. - Judgments Subject to Appeal

Art. 360. - Principle.

- (1) A final judgment may be subject to a first appeal in accordance with the provisions of this Code.
- (2) There shall be no right of second appeal except in accordance with the provisions of this Code.

Art. 361. - Appellate Jurisdiction.

- (1) A first appeal may be made as of right from the decision of
 - (a) a Community court to the Regional court in whose territorial jurisdiction such Community court lies;
 - (b) a Regional court to the High Court; or
 - (c) the High Court to the Supreme Court.
- (2) If the appellate court confirms the judgment of the lower court the decision shall be final as to the appellant except as provided in Article 362(1).
- (3) Where the first appellate court reverses the judgment of the lower court the respondent on the first appeal may appeal further to the court of the next level and the decision of the second appellate court shall be final as to both parties except as provided in Article 362(1).
- (4) In case of disagreement among the judges hearing an appeal, the decision of the majority of the judges shall be the decision of the court. A judge or the judges who disagree with the majority opinion may write dissenting opinions expressing their views.
- (5) Where an appeal lies from a judgment or order, but a remedy under this Code is available in the court which gave such judgment or made such order, no appeal may be lodged unless such remedy has been exhausted.

Art. 362. - Special Appellate Jurisdiction of the Supreme Court.

(1) In addition to the appellate jurisdiction set out in Article 361, the Supreme Court may grant leave to hear an appeal from final judgment by any party to a case in which an issue concerning the constitutionality of any law is raised, or in which an interpretation of a significant constitutional or legal principle is required for making a decision in the case.

(2) Where the Supreme Court hears an appeal, it may consider all of the issues in the case.

(3) An appeal under this Article shall be subject to the requirements and limitations set out in this Title.

Art. 363. - Interlocutory Appeals.

(1) Unless otherwise expressly provided by this Code or any other law, no appeal shall lie from any decision or order of any court on interlocutory matters, such as preliminary objections, the admissibility or inadmissibility of oral or documentary evidence or permission to sue as an indigent, but any such decision or order may be raised as a ground of appeal when an appeal is made against the final judgment.

(2) Notwithstanding sub-Article (1), an order or judgment under this Code directing the arrest or detention of any person, or the transfer of property from the hands of one party into the hands of the other, shall be immediately appealable.

Art. 364. - Grounds of Appeal.

(1) A first appeal may be filed on the ground that:

- (a) the court made an error in any decision taken during the course of trial; or
- (b) the final judgment cannot reasonably be supported by the evidence.

(2) A second appeal may be filed only on the ground that the first court of appeal made an error.

Chapter 2. - Form and Time of Appeal

Art. 365. - Notice of Appeal and Memorandum of Appeal.

(1) Notice of appeal shall be filed in writing by the appellant or his pleader within fifteen (15) days of the judgment to the registry of the court that gave the judgment under appeal. On receipt of a notice of appeal, the registrar shall cause the judgment appealed to be copied and served upon the appellant or his pleader. Such copy shall be dated and the date on which it is handed to the appellant or his counsel shall be certified by the registrar.

(2) The memorandum of appeal shall be filed within sixty days of receipt of the copy of the decision appealed.

(3) Every memorandum of appeal shall be lodged by filing in the registry of the Appellate Court, upon payment of the prescribed court fee.

Art. 366. - Contents of Memorandum of Appeal

(1) The memorandum of appeal shall contain:

(a) the name and place of the court in which the appeal is filed;

(b) the name and addresses of the appellant and the respondent;

(c) the name of the court which gave the judgment appealed from, the date of such judgment and the number of the suit in which it was rendered;

(d) the address within the jurisdiction of the court for service on the appellant;

(e) the grounds of appeal; and

(f) the nature of the relief sought.

(2) Attached to the memorandum of appeal there shall be a certified copy of the full record of the proceedings in which the judgment appealed from was delivered and of such judgment.

(3) The appellant shall state whether he bases his appeal entirely on the record of the original hearing and shall, where appropriate, attach to the memorandum of appeal an application for permission to call additional evidence, stating:

(a) the nature of such evidence;

(b) the names and addresses of the witnesses to be called, if any;

(c) the reasons why such evidence was not produced in the court which gave

the judgment appealed from, and why it should be produced in the appellate court.

(4) The appellant and the respondent shall respectively provide sufficient copies of the memorandum of appeal for service on each of the other parties.

Art. 367. - Grounds for Appeal.

(1) The memorandum of appeal shall state concisely the grounds of appeal, under enumerated headings, and shall conclude with a statement of the remedy sought.

(2) The appellant or respondent shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal.

(3) The appellate court may decide the case on a ground not raised by a party, but before doing so must give the party negatively affected an adequate opportunity to contest the case on that ground.

Art. 368. - New Facts and Arguments.

(1) Except as allowed by Article 367, no party may argue any fact that was not in evidence in the court which gave the judgment appealed from, except where such evidence was not available at the time of the previous proceedings. A party must seek leave of the appellate court to adduce such evidence.

(2) An appellate court may allow amendment of a memorandum of appeal or cross appeal to raise additional arguments or consider additional evidence. In so doing it may order the payment of additional costs, require the service of additional copies, or impose such other conditions it may think fit.

Art. 369. - Rejection or Amendment of Memorandum.

(1) Where the memorandum of appeal is not drawn up as required by this Chapter, the Court may:

(a) reject the memorandum;

(b) return the memorandum to the party submitting it, for amendment within a time to be fixed by the court; or

(c) may have the memorandum amended then and there.

(2) Where the court rejects any memorandum, it shall record the reasons for such rejection and a note of the rejection shall be entered in the Register of Appeals.

(3) Where a memorandum of appeal is amended, the court shall make a record of the amendment.

Art. 370. - Multiple Plaintiffs or Defendants.

Where there are multiple plaintiffs or defendants in a suit, and the judgment appealed from proceeds on any ground common to more than one plaintiff or defendant, any one of the plaintiffs or defendants may appeal from the whole judgment, and thereupon the Appellate Court may reverse or vary the judgment in favor of any of the plaintiffs or defendants, as the case may require.

Art. 371. - Register of Appeals.

Every Appellate Court shall keep a book called the Register of Appeals wherein the particulars of all appeals shall be entered and numbered in order of reception or, as far as cross appeals are concerned, with the same number as the appeal.

Art. 372. - Appeal Filed Out of Time.

(1) The registrar shall refuse to accept a memorandum of appeal filed after the expiry of the time required, and shall inform the party that he may within ten days file an application for leave to appeal out of time.

(2) The registrar shall also refuse to accept the memorandum where the memorandum of appeal is filed out of time and is accompanied by an application for leave to appeal out of time. In such case he shall inform the appellant that the application must be filed separately.

(3) A note of a refusal under this article shall be entered in the Register of Appeals together with the date of such refusal.

Art. 373. - Application for Leave to Appeal Out of Time.

(1) An application for leave to appeal out of time shall be in writing, and shall show good cause why the party did not appeal within the time set out in this Chapter.

(2) The application shall be accompanied by such evidence as may be

necessary to enable the court to decide whether the party was prevented for good cause from appealing in due time.

(3) Prior to deciding on the application, the court shall hear both parties and may make with regard to evidence such orders as it thinks fit.

Art. 374. - Decision on Application.

(1) On being satisfied that the failure to appeal was for good cause, the court shall record an order granting the application, and the party shall file his memorandum of appeal within ten days of such order.

(2) There shall not be good cause within the meaning of the preceding sub-Article where the failure to appeal in time is due to the fault or negligence of the appellant's pleader.

(3) A note of any application under this article and of the decision thereon shall be entered in the Register of Appeals.

Art. 375. - No Appeal.

No appeal shall lie from a decision dismissing or granting an application under the preceding Article.

Chapter 3. - Stay of Proceedings and of Execution

Art. 376. - Stay by Lower Court.

During the period before the expiration of the time allowed for filing an appeal, the court which issued an appealable judgment or order, on application of a party and upon finding sufficient cause, may order a stay of execution of such judgment or order.

Art. 377. - Stay by Appellate Court.

(1) The appellate court, for good cause shown, may order that further proceedings in the case being appealed, or the execution of any judgment or order made in the case, be stayed pending further order of the court.

(2) Absent an order for a stay under sub-Article (1), the filing of an appeal under this Code shall not operate as a stay of any judgments, orders, or proceedings.

Art. 378. - Stay by President of Court.

Nothing in this Chapter shall prevent the President of the courts referred to respectively from granting a stay of execution for a period not exceeding fifteen days, provided that, when the appeal is not heard or an additional order for stay is not made by the court before the expiration of the stay ordered, the execution officer shall execute the judgment or order after the expiration of the stay.

Art. 379. - Conditions for Ordering Stay.

(1) No order for stay of execution shall be made under the provisions of this Chapter unless the court or President making it finds that:

(a) substantial loss may result to the party applying for stay of execution unless the order is made;

(b) the application has been made without unreasonable delay; and

(c) money has been deposited, security given or a surety produced by the applicant for the due performance of such judgment or order as may ultimately be binding upon him.

(2) An application for a stay shall be decided after the parties have been heard, except that the court may, on an application supported by affidavit, make an ex parte order for stay of execution pending such hearing.

Art. 380. - Security for Order for Execution.

(1) If judgment has already been executed, the appellate court, for good cause shown, may order the party in whose favor the judgment was executed to provide a security to ensure full restitution should the judgment be reversed by the appellate court.

(1) As an alternative to granting a stay of execution, the appellate court, for good cause shown, may order the party in whose favor the judgment was executed to provide a security to ensure full restitution should the judgment be reversed by the appellate court.

Chapter 4. - Hearing of Appeal

Art. 381. - Summary Dismissal of Appeal.

Where the appellant states in his memorandum of appeal that he bases his appeal entirely on the record of the original hearing and does not apply for permission

to call additional evidence, the appellate court may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly on that day, dismiss such appeal after hearing the appellant and examining the record of the previous proceedings, without calling on the respondent to appear, if it thinks fit and agrees with the judgment appealed from.

Art. 382. - Setting Hearing Date and Right of Reply.

(1) Unless the Appellate Court dismisses the appeal summarily, it shall cause the memorandum of appeal to be served on the respondent, fix a day for hearing the appeal and summon the respondent to appear and answer on such day, informing him that the appeal will be heard even if he does not appear on such day.

(2) Such day shall be fixed with reference to the current business of the court, the place of residence of the respondent, and the time necessary for the service of the memorandum of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Art. 383. Cross Appeal

(1). The respondent may, on the payment of the prescribed court fee, take any cross appeal to the decree or order which he could have taken by way of appeal notwithstanding that he did not appeal from any part of the decree or order.

(2). A cross appeal shall be in the form of a memorandum of appeal and shall be filed in the Appellate Court within one month from the date of service on him or his pleader of the summons issued under Art. 382 (1).

(3) If the respondent submits a memorandum of cross appeal within the time prescribed, the court shall:

(a) cause a copy of the memorandum of cross appeal to be served forthwith, and at the expense of the respondent, on any party who may be affected by the cross appeal or on the party's pleader, unless the respondent files with the cross appeal a written acknowledgement from such party of having already received a copy; and

(b) fix a new day of hearing the appeal and cross appeal.

(4) At any time before the day of the hearing the respondent may submit a written reply to the appeal and, in case of a cross appeal, the appellant may submit a written reply to the cross appeal.

Art. 384. - Hearing Procedure.

- (1) On the day fixed for hearing the appeal, the appellant shall first be heard in support of the appeal.
- (2) The court shall then, if it does not dismiss the appeal at once, hear the respondent in opposition to the appeal, and then the appellant shall be entitled to reply.
- (3) The court may require the respondent to submit a written reply to the memorandum of appeal and the appellant to submit a written counter-reply. If the respondent has already submitted a written reply before the hearing, the court may order or, upon request, allow, the appellant to submit a written counter-reply.
- (4) The reply and counter-reply shall be filed within such time as the court shall fix.
- (5) The provisions of this article apply to the cross appeal.

Art. 385. - Remand of Case by Appellate Court.

- (1) The Appellate Court may, if it thinks fit, order that a case be remanded and may further order what issue or issues shall be tried in the case so remanded.
- (2) Where a case is remanded under this article, the Appellate Court shall send a copy of its judgment and order to the lower court with directions to determine the suit under its original number in the register of civil suits.
- (3) The evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Art. 386. - Judgment on the Record.

Where the evidence in the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may reframe the issues, if necessary, and may finally determine the matter, even if the judgment of the court below was based wholly upon some ground other than that on which the Appellate Court bases its judgment.

Art. 387. - Remand to Court Below.

- (1) When it appears to the Appellate Court that in order to reach a just

determination of the merits of the case it is necessary to determine any issue or question of fact which had not previously been determined by the court below, the Appellate Court may refer the case to the lower court to determine such issues or facts, and may direct such court to take any additional evidence required.

(2) The lower court shall proceed to try such issues and questions and shall return the case to the Appellate Court together with a record of the evidence heard, its findings, and the reasoning in support of the findings, which shall then form part of the record in the suit.

Art. 388. - Objections to Findings of Lower Court.

(1) Either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding returned under Article 389 (2).

(2) After the expiration of the time fixed for presenting the objections the Appellate Court shall proceed to determine the appeal.

Art. 389. - Additional Evidence.

(1) The parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court unless the Court so orders.

(2) An Appellate Court, on its own motion or in response to a motion by a party, may issue an order allowing the presentation of additional evidence, including the testimony of witnesses, if it finds that:

(a) the lower court has refused to admit evidence which ought to have been admitted;

(b) a document must be produced or a witness examined to enable the Court to pronounce judgment; or

(c) for any other cause necessary to a just and fair disposition of the case.

(3) Any decision made under sub-Article (2) shall state the reasons upon which it is based.

Art. 390. - Mode of Taking Additional Evidence.

(1) When the Appellate Court orders the taking of additional evidence, it may take such evidence itself, or it may direct the lower court or any other

subordinate court to take such evidence and send it to the Appellate Court.

(2) An order for the taking of additional evidence shall specify the points to which the evidence is to be confined, and the record of the case shall reflect the points so specified.

Art. 391. - Pronouncement of Judgment.

The Appellate Court, after hearing the parties or their pleaders and considering any part of the record it deems appropriate, shall pronounce judgment.

Art. 392. - Powers of the Appellate Court.

(1) The judgment may confirm, vary or reverse the judgment or order from which the appeal is preferred.

(2) Where the parties to the appeal agree as to the form which the judgment in appeal shall take, or as to the order to be made in the appeal, the Appellate Court may pass a judgment or make an order accordingly.

Art. 393. - Application for Restitution.

(1) When the Appellate Court varies or reverses a judgment, in whole or in part, and returns the case to the lower court for further proceedings, a party may apply for, and the lower court shall order, restitution to the extent necessary to place the parties in the position which they would have occupied but for such judgment.

(2) For the purpose of sub-Article (1), the court may make such orders as are appropriate, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits.

(3) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-Article (1).

TITLE II - EXTRAORDINARY REVIEW

Art. 394. - Application.

(1) A party may apply to the Supreme Court for leave to review any interlocutory decision made by a court during the course of proceedings.

(2) An application for review may also be made under this Article to the Supreme Court in any case where all rights of appeal have been exhausted and no application for appeal out of time is permitted.

(3) Leave may be sought and granted on the sole grounds that the decision in issue reflects manifest error of principle or gross unfairness that cannot be remedied by final judgment or by appeal in the matter without causing further prejudice or unfairness to a party or the parties.

Art. 395. - Remedy.

If the Court grants leave in accordance with Article 394 it may also grant such remedy as it considers appropriate in the circumstances to ensure the orderly progress and disposition of proceedings.

TITLE III - THIRD-PARTY OPPOSITION

Art. 396. - Who May File Opposition.

Any person who should or could have been made a party to a suit and whose interests are affected by a judgment in the suit may, if he was not a party to such suit either in person or through a representative, file an opposition to such judgment within sixty days of the day the opposing party became aware of such judgment and before such judgment is executed.

Art. 397. - Form of Opposition.

(1) An opposition shall be in the form of a petition which shall, on the payment of the prescribed fee, be filed in the court which issued the judgment being opposed.

(2) The petition shall specify:

(a) the name and place of the court in which the petition is filed;

(b) the name and address of the petitioner;

(c) the names of the parties to the case in which the judgment opposed was given;

(d) the name of the court which gave the judgment opposed to, the date of such judgment and the number of the suit in which it was rendered;

(e) the grounds of opposition; and

(f) the nature of the relief sought.

(3) The petition shall be accompanied by an affidavit of the truth of the facts therein alleged.

(4) An application for stay of execution of the judgment opposed to may, where appropriate, be filed together with the petition. On good and sufficient grounds being shown, the court may order the execution to be stayed.

Art. 398. - Effect of Opposition.

(1) On the filing of a petition, the court shall fix a day for hearing the opposition and shall cause a copy of the petition to be served on all the persons who were parties to the case in which the judgment opposed to was rendered together with a summons to appear on such day.

(2) The proceedings upon the filing of the opposition shall be subject to the same provisions as the proceedings upon the original action and the court may on the completion of such proceedings confirm, vary or set aside the judgment opposed to, but only in as far as the interests of the opposing party are affected by this judgment.

TITLE IV - REVISION

Art. 399. - Grounds for Revision.

Notwithstanding the provisions of this Code concerning *res judicata*, any party considering himself aggrieved by a judgment or order from which an appeal lies, but from which no appeal has been taken, or by a judgment or order from which no appeal lies, may, on payment of the prescribed court fee, apply for a revision of judgment, where:

(a) subsequent to final judgment, he discovers new evidence or a material matter, such as forgery, perjury, bribery, fraud or deceit, which after the exercise of due diligence, was not within his knowledge at the time of the giving of the judgment; and

(b) had such matter been known at the time of the giving of the judgment, it would have materially affected the substance of the judgment or order.

Art. 400. - Time of Revision.

(1) An application for revision shall be filed within sixty days when the

ground for revision did arise and the applicant became aware of it, but before ten years after the judgment the revision of which is sought was rendered.

(2) The provisions concerning appeals out of time shall apply when a petition under this Article is made out of time.

Art. 401. - Competent Court.

(1) The application for revision shall be made to the appellate court that would have jurisdiction on appeal from the court below.

(2) Where the Supreme Court decided the case and either upheld the judgment of the lower court or reversed it and issued a final ruling, the application shall be made to the court whose judgment was reviewed by the Supreme Court.

Art. 402. - Form and Contents of the Application.

An application for revision shall contain the same particulars as a memorandum of appeal and shall be supported by an affidavit containing strict proof of the fulfillment of the conditions set forth for the formation of an appeal.

Art. 403. - Reopening of the Proceedings.

(1) On granting the application, after giving notice to the opposite party to enable him to appear and be heard in support of the judgment or order the revision of which is sought, the court shall make such order in regard to the re-hearing of the case as it deems appropriate.

(2) No appeal shall lie from any decision of the court granting or rejecting an application for revision.

Art. 404. - Stay of Proceedings.

The application for revision does not stay the execution of the judgment. However, the court which hears the application may, if good grounds are shown by the applicant, issue a stay of the execution of judgment, but only insofar as the proceedings are reopened.

Art. 405. - Revision of the Judgment.

If the court grants the pleaded ground for revision, it shall render a new judgment, revising the contested judgment.

