HARMONIZATION OF LAWS AND COMMERCIAL PROCEDURAL DEVELOPMENTS IN TIME OF ECONOMIC CRISIS

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SUMMARY: *General*. I. *Concepts of Procedural Law*. II. *The Standard Legal Procedural*. III. *Concepts of Action, Pretension and Demand*. IV. *The Commercial Processes in the Mexican Legislation*.

General

On the occasion of the sixteenth: meeting of the International Academy of law and protection to the consumer to be held in the distinguished faculty of law of the Universidad Nacional Autónoma de México, in which there is skilful coordination of the Dr. in law and emeritus teacher Elvia Arcelia Quintana Adriano, how difficult is to expose on short pages the harmonization of laws and its procedural developments in the commercial area in the historical moment in which we live, stressing the need of orality and immediacy in the business processes, which will start with a concept of procedural law, namely:

I. Concepts of Procedural Law

The Procedural Law Must be located as a science and as positive law, and this may be formulating a concept of mercantile law, such as starting-point of the present investigation.

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The Procedural law is conceived like a science, due to the fact that it is conformed by a set of truths in a unified systematized form, of which it derives that in the ambience of the Procedural law, this one arises like a set of truths and juridical doctrines, which study of object, it is the jurisdictional function.

The procedural law is closely linked to the positive law, or the set of legal rules concerning the jurisdictional process. Highlighting the essential notes of the legal and procedural standards, among others, the following:

They Perform public order, by virtue in which they regulate a function of the State and because they take that as a final purpose the administration of justice to achieve social peace.

They are of impositive character, without allowing its non-observance permitting agreement between the parts, but only in cases authorized by them.

They are adjective in determining the form of procedural acts, however, in some occasions we found assumptions that belong to the substantive law and to the subjective law.

They are autonomous, by virtue that the rights and obligations that from them arise, are not subordinated to the exercise of the action to suit in the procedural act.

In a collateral way we have to study the so-called fundamental concepts applicable to the Procedural Law, for which, I appeal to the thinking of Mr. Eduardo Pallares, who stated:

> Both the rules of positive procedural law, such as the doctrines and the jurisprudence that are interpretated and applied lay in the following fundamental concepts:
>
> 1. Legal Relationship. All relationship existing between human beings with legal importance.
> 2. Interest. The relationship that exists between a person and something that can satisfy their needs.
> 3. Subjective Law. Faculty that the law grants to a person to demand the other one what he should do or stop doing something.
> 4. Power. Legal possibility, granted by the norm to a person to command others to perform or refrain from doing something. (Subjective Law jurisdictional authorities) can be seen a domain on the other´s will.
> 5. Litigation. Conflict of interest with legal implications, which is manifested by the claim of one of the parties concerned and the resistance of the other.
> 6. Obligation. Link of rights that compels the will of the persons to do or not do anything. The link is imposed by the law for the sake of the holder ó incumbent in the fulfillment of the obligation.
> 7. Substantive Law and Adjective Law. The first one determines the rights and obligations of the persons. While the adjective conforms the juridical acts and the judicial procedures.

8. Objective Law. Linking it to the set of juridical norms properly ordered (it is understood by juridical norm the rule of conduct and mandate, imposed by legitimate authority, in order to obtain the social peace inside the justice).

9. Mandate. Identifying himself as the act by which the power is exercised (jurisdictional authority) or to impose their will to the others.

10. Faculty. Possibility to work in the field of freedom, (contrary to the term of obligation, meaning that men acts as he wants when it comes to the faculty, and duty when it comes to obligation).

11. Subjection. Is the state in which there is a person with respect to another that exercises power over it and by virtue of which you must obey the law.

12. Freedom (Jurisdictional Body). The state against the subjection and also to the obligation.

13. Free Power and Linked Power. I understand under the concept of Free Power when the holder can exercise it or not according to his will, independently that remains like a powered and obligatory link. In the sense of the use of him in the form and terms that the law determines.[1]

Of the previous reflections it is clear that, the procedural law has the character of a linked science, with a Positive law, and fundamental concepts that allows to define in the following way:

It is a right of technical - juridical content, in which it is established a jurisdictional function, a procedure that must be fulfilled by the persons whom it is directed, as well as to the institutions that must fulfill it.

In such a virtue, a concept of Procedural Commercial Law would remain integrated in the following way:

Right of technical - juridical content, in which a jurisdictional function is established, with the procedure that must be fulfilled, deciding controversies between merchants or between not business-minded persons, who practice or perform acts and operations that the law recognizes like Commercial.

II. The Procedural Juridical Norm

1. *Concept of Procedural Juridical Norm*

Previous to the study of the interpretation and integration of the Procedural Juridical Norm, it is necessary to understand the concepts of Juridical Norm, and to the effect, following the lineaments of Mr. Rafael Preciado Hernández it is indicated:

[1] Pallares, Eduardo, *Apuntes de derecho procesal civil*, 2a. ed., México, Editoral Botas, 1964, pp. 16-21.

> Norm in a generic sense is the obligatory rule, or the rule that prescribes a duty. Any norm is, consequently a rule for next genre, and the prescription of a duty for its specific difference.[2]

Within the world of the law, it is considered that the juridical norm is the expression of the Law itself. As a consequence juridical norms prescribe what the members of a society or community should do for the common good through a rightful social order.

For Mr. Rafael Preciado Hernández means "establishing that this is a fully human order".[3]

The previous ideas allow establishing that the procedural juridical norm is, that juridical norm that establishes a coordination of the human actions directed to the achievement of justice and the common good, by conduit of a jurisdictional organ previously established.

2. *Interpretation of the Procedural Juridical Norm*

In any juridical norm it is not perfection with which it is written, or the clarity of its concepts which automatically creates its positive application; the casuistry in which it may fall, the rapidity with which it has been processed or drafted a norm and its validity in a historic moment, impose the necessity of being interpretated, purifying the materiality of their provisions with the spirit that integrates with the system or to which it belongs.

To the effect Mr. Joaquín Escriche indicates as interpretation of the Law the following:

> The convenient clarification of the text and spirit of the law to know the true meaning that the legislature intended to give in other way the straightest and most fruitfulness understanding of the law according to the letter and the reason.[4]

In the same way Ludwing Enneccerus, in his Civil Rights Treaty defines the interpretation of the juridical norm in the following terms:

> …Clarify its sense and precisely that sense which is decisive for the law, and therefore also for judicial resolution. Such clarification is also conceivable to

[2] Preciado Hernández, Rafael, *Lecciones de filosofía del derecho*, México, UNAM, 1984, pp. 73 y 74.

[3] *Ibidem*, pp. 98 y 99.

[4] Escriche, Joaquín, *Diccionario razonado de legislación y jurisprudencia con suplemento*, España, 1873.

> the Constitudinary Law, deducing its true sense of acts of use, the testimonies and the usus fori recognized continuous v. But the main object of the interpretation form it the laws.[5]

Out of the previous thoughts it is shown that, interpretation applies: to unravel the content of an expression, in consequence, the expression would inplied the specification of a thing to give to understand, from that perspective, the role of interpreting will usher in the analysis of the elements that integrate the expression.

Mr. Eduardo García Máynez quoting Edmundo Husserl indicates, as an element of an expression the following:

> a. The Expression in its physical aspect (the sensitive sign, the sound joint in the spoken language, the signs written on the paper etcetera.).
>
> b. The Significance. What the expression means in the sense of it all. I consider that it is the language that exists between the expression and the meaningful object.
>
> c. The object (several expressions can have the same significance but different objects".[6]

The items above, are not always related or interconnected between them, Putting our interest for the purposes of this research the second element, relative to the significance of the interpreted object, for say the norm that the text expresses in a case previously interpretated.

I believe that the interpretation of the law aims to find out its meaning, in its subjective and objective and progressive content.

To the subjective, objective and progressive contents, I give them the following connotations:

> a) *Subjective*. In accordance with the spirit and proper sense of the norm, which in this case the gives to the legislator.
>
> b) *Objective*. because it must be interpreted in relation to other laws, that constitute the legal system in a given State or Nation; and
>
> c) *Progressive*. By virtue of the fact that an old law must give up or leave the place to a new trend, in accordance with the historical moment in which we live.

[5] Enneccerus, Ludwing, *Tratado de derecho civil, Barcelona*, Boch, parte general, vol. 1, p. 202.

[6] García Máynez, Eduardo, *Introducción al estudio del derecho*, cita a Edmundo Husserl, 4a. ed., México, Porrúa, 1958. pp. 315 y 316.

There are different kinds of interpretation, we will continue the classification that stated don Eduardo Pallares:

a. By the method that is used to determine the meaning of the Law; There have been classified them in:

— Grammatical. The one that is founded in a main way on the sense of the letter of the law.
— Judaic. It is the grammatical carried away until it´s finally ends with an exaggerated respect of the text.
— Logic. Which is sometimes identified with the scientific, is the one that gives more importance to the concepts and doctrines contained in the law, than the grammatical sense.
— Systematic. interprets the various articles of the law, treating them as an integral part of a whole (of the law or the code that are a part of) and the same law as a constituent element of the right of a given country. This interpretation is performed by matching a few precepts with others, and seeking to discover the principle that gives them organic unity.
— Historical. Seeks to discover the meaning of the law, taking into account the historical precedents that determined its function (preparatory work of the legislators, the speeches of processing etcetera).
— Historical Progressive. Is based on a conception of the law diverse to the previous one, the meaning of the law is not immutable, and the interpreter must take account of these changes, to discover the meaning in the era in which the interpretation is performed, not the one he had when it was created.
— Scientific. Doctrine of the jurisprudents and the principles of the science of the law.
— Theological. It is carried out bearing in mind the social one followed by the legislator who has ictated the norms (it can be convined with the other species of interpretation or be a part of them).
— Abnormal. Takes place when the laws are defective, because they employ particular words or improper, contain antinomies or lead to absurd results (the antinomy understood as a contradiction between two precepts of a same law or between two or more laws of the same date, declared in force.

b. By the person or authority who originates

— Authentic is the one that makes the own legislator.
— Judicial. Which are carried out by the courts.
— Doctrinal. The one that the Jurists realize.

c. By the effects it produces in the application of the law.

— Extensive. When its effect is to expand the meaning of the law, that is, to apply it to cases not covered by it.
— The restrictive. Its application limited to cases provided for by law.

— Derogative. To Modify the sense of the Law.
— Analogical. Implying that when the same reason happens, the same disposition of the law must meet also, in my opinion it allows me to establish the particular thing one will be allowed to establish that the analogical ambience is not part of the interpretation and its real application is inside the integration of the procedural norm.
— Finally we have the simply declarative that state, without extending, nor restricting and less modifying'.[7]

3. *Integration of the Procedural Norm*

In the field of legal life happens that, in some cases the judge to resolve a specific case, founds that there is no applicable disposition, and as an in consequence he will need to use or go to other sources of the law as the custom, usage, the general principles of law, with which he was allegedly 'filling the gap' of the law.

In principle should be that there is no vacuum rinsing or loophole in the law as the law itself, but rather comes to emerge in the law, and as a consequence when the judge do not find precept to interpretate goes to some integratory activities given by the law, of which one must conclude, that when dispenses with the applicability of the norm, we are dealing with the integratory investigation of the law.

I will follow Mr. Eduardo García Máynez on having studied the integration methods:

a. *Analogy*. "Consists in applying to a case not provided the provision concerning a situation envisaged, when between this and that there are similarities and there is the same legal reason to resolve it in the same way, proving beyond doubt that such a procedure is outside the scope of the interpretative work, since there is only interpretation when there is a precept which this task can refer".[8]

As a consequence, the analogy as a method of integration of the Law, attributed to situations partially identical (one planned and another not foreseen by the law), the legal consequences that points out the rule applicable to the case.

I think that when the analogy emerges a new norm is born, whose so- called expressed in abstract the characteristics of the case that was not planned, but between one and another only arose a partial identity.

[7] Pallares, Eduardo, *La interpretación de la ley procesal y la doctrina de la reconvención*, México, Editorial Botas, 1948, pp. 26-28.

[8] García Máynez, Eduardo, *op. cit.*, p. 356.

In this virtue, it should not be used the concept of analog implementation of a legal rule to a case not provided, but to the creation or analog formulation a new norm.

b. *General Principles of Law*. Continuing with the lineaments that sets Mr. Eduardo Garcia Maynez he states:

> "*It has been identified as the just and natural law stating that natural law is one that in the absence of a provision formally valid, the judge must formulate a principle with inherent validity, in order to resolve the specific issue subject to their knowledge.*
>
> *Therefore it is excluded from the legal possibility of the judge to rule in accordance with his personal views*".[9]

We must understand that the general principles of law will arise to resolve an unexpected issue, assigning the judge the quality of legislator, because it will fail the point in dispute as the legislator would have done so, to have been able to hear the case under its jurisdiction.

c. *Equity*. Quouting Aristóteles, Mr. Eduardo García Máynez establshes:

> "*The Equity has the function of a legal corrective. It is a remedy that the judge applies to remedy the defects arising from the generality of the law. Laws are in essence, general and abstract enunciates*".[10]

On this basis, it appears that the equity has its own autonomy, regardless of being part of the General Principles of Law, it really is the first principle or the supreme, because it serves as the base to the others.

4. *Foundation of the interpretation and integration of the legal Norm in the Mexican Law*

This point by itself would be grounds for a long study, any time that is related to the constitutional guarantees, and in particular with the fundamental principles in any legal proceedings, as would be the guarantee of a hearing and the principle of legality, limiting the study to see whether our Constitution regulates both the interpretation as to the integration.

In this order of ideas comes to transcribe the article 14 of the Constitution and the program will then brief comments to the effect.

Article 14. To no law shall be given retroactive effect to the detriment of any person.

9 *Idem*.

10 *Idem*.

> "…No one may be deprived of life, liberty, or of their property, possessions or rights, but through trial followed before the previously established courts, in which the formalities are completed essential of the procedure and in accordance with the laws issued prior to the fact.
>
> In the criminal trials is hereby prohibited to impose, by simple analogy and even by a majority of reason, any penalty that was not decreed by law exactly applicable to the offense in question.
>
> In the civil trials, the final sentence shall be in accordance with the letter, or the interpretation of the law and the lack of this will be based on the General principles of law..."

In the study of article 14 of the Constitution, it is clear that the solutions or resolutions to disputes arising between the parties, should be with basis of laws issued prior to the fact.

Similarly, it is appreciated, in the third paragraph of the precept in study, the law is the only source of the criminal law or that the criminal law lacks gaps. Hence, it is prohibited the implementation of penalty by simple analogy and even by a majority of reason.

The criminal law should be applied literally; but that does not mean it cannot be interpretated, because the legal legislation is an expression of the law and that only prohibits the integration in the criminal law, as it is by definition lacking gaps.

But I have to conclude by noting that, within the judicial discretion, it is given a certain margin of freedom to the judge, that within their own legal norm, apply the appropriate penalty, on the basis of special circumstances that may arise in any delincual act.

With regard to the fourth paragraph of article 14 of the Constitution, can be seen as a primary criteria the obligation to submit to the text of the law, and consequently that the judge has to resolve in accordance with the law, when it is expected the controversial legal situation.

If the meaning of the law may generate doubt, the own article 14 of the constitution authorizes that emerges the figure of the legal interpretation, looking for the meaning of the law that are not necessarily identified with the will of the legislator, but preventing if the interpretative work reveals the judge mercantil the case submitted to it for its solution is not foreseen in the norm of law, has the obligation to fill the so-called 'lagoon', thus resulting in the course of integration.

The legal corrective value which is attributed to the figure of the interpretation is correct, since it is a remedy that the judge applies, in order to remedy defects arising from the generality of the law, but still inaccurate

that is suppletory of the norm, any time that the judge applies the equity once more becomes legislator, and in this sense his acts generating his own concept and applicable to the case in dispute.

In the field of Commercial Law it is set in article 1st. Of the Commercial Code that its provisions are applicable to commercial acts, which the absence of provisions, shall apply to the acts of trade the Federal Civil legislation.

In the commercial procedural ambience it is regulated in the articles 1054 and 1063 of the Commercial Code, with the quality of supplementary legislation, the Federal Code of Civil Procedures, with the provision that in case of nonexistence or shortcoming in the regulation, one will refer to the local Code of Civil Procedures.

III. Concepts of action, pretension and demand

It is important to make the distinction between action, pretension and demand, as they are usually used as synonyms, causing distortions in the application of the Juridical Norm.

1. *The action*

The action has multiple meanings within the legal literature, taking a remote origin, since it existed in Rome since primitive times.

In the Roman Law arise three periods: the case of the actions of the law, the formulary system and the so-called extraordinary procedure.

The actions of the law were identified in five, as follows:

- Action by Sacrament was considered the oldest, and served to enforce real and personal rights.
- The judicis postulatio that was intended, to obtain from the magistrate the promulgation of a judge.
- The conditio which was seen as, the proper procedure and special to exercise personal rights.
- The manus injectio in wich we look for the seizure or apprehension of the person of the debtor, to compel him to enforce a judgment, pay off a debt confessed, or to force him to appear before the judge.
- The pignoris capio corresponded to an enforcement procedure or way of compulsion.

In this first phase called of actions of the law, it is a procedure and not a right; with a series of acts, formulas and solemn pantomimes without which was not possible to obtain justice.

Such actions of the Law are valid since the origin of Rome until the promulgation of the Aebutia Law in years 577 or 583 BC.

Formulary system

Begins with the Aebutia Law and it reaches up to the year 294 BC. At the time of Dioclesiano.

Mr. Eduardo Pallares pointed out that the formulary procedure form had been as main characters the following:

> …The parties were not obliged, when presenting their pretensions, to use certain sacramental phrases, nor to perform pantomimes of any kind as in the previous system. They employed the vulgar language.
>
> As a general rule there is a distintion in this system between the two different periods: the first, before the magistrate, it was called 'in-jure', the second, before the judge or the jury, had the name of 'in-judicium'.
>
> In the first period it was formulated the litis. The actor expressed its demand and the convict his answer. The two parties asked the magistrate the appointment of a judge or a jury to decide the dispute.
>
> The 'in-jure' procedure was concluded with the most important part of it, which consisted in the magistrate giving the actor the formula (action).[11]

Extraordinary Procedure

In this phase the pretor did not send the parts before the judge so that he could decide the litigation, He, himself had to resolve.

Within this phase, it is given Celso´s definition: "reclaim what belongs to us".

We note the strong influence of Roman Law until our days, establishing the following concept of action: 'The right to pursue in trial as to what is due to us or what belongs to us'.

The previous allows appreciating:

- It is considered the action as the right of the actor against the defendant and not to a legal faculty to put in action the judicial body.
- Linked to the subjective right that is asserted in court, failing which, the action is declared inadmissible;
- Procedural actions that existed since that epoch in the substantive scope were disregarded which determined rights and obligations that arise from contracts and the quasi-contracts.

[11] Pallares, Eduardo, *Apuntes de derecho procesal civil*, *cit*. pp. 42-44.

The foregoing, allows to establish that "The Action" was conceived as private law.

There have appeared other legal institutions, such as "The Procedural Action", which we will study at this point.

Giuseppe Chiovenda understands the procedural action such as:

> The legal power of convert in unconditional the will of the law with respect to its performance or, in other words, the legal power to make the condition for the action of the will of the law.[12]

Ugo Rocco believes that the right of action can be understood as follows:

> *The right to seek the intervention of the State and the provision of jurisdictional activity, for the statement of certainty or the realization of the coercive interests (material or procedural) protected in the abstract by the standards of objective law*.[13]

Eduardo J. Couture points out that the procedural action arises under three different meanings:

> a) As a synonym of the Law. In the sense of the word when it says 'the actor lacks action', or it is asserted the "exceptio actione agit", which means that the actor does not have an effective right that the trial must safeguard.
>
> b) As a synonym of pretension. This is the more usual sense of the word, in doctrine and in legislation; it is found frequently in the legal texts of the nineteenth century that maintain their force, even in our days; Then we speaks of 'civil action and criminal action', of triumphant 'action and discarded action'. In these words the action is a pretension that you have a valid right and on behalf of which one promotes the respective demand. In a way, the meaning of the action, such as pretension, is projected toward the demand in a substantial sense and could be used interchangeably by saying 'demand founded or unfounded', demand (of guardianship) of a legal or personal right', etcetera. If, we say, the usual language of the forum and of the school in many countries.
>
> c) As a synonym of faculty to provoke the activity of the jurisdiction. It is said, then, of a legal power that has every individual, and on behalf of which it is possible to go before the judges in request for the defence on fundamental Constitutional rights or it´s pretension; the fact that this pretension is founded

[12] Chiovenda, Giuseppe, *Ensayos de derecho procesal civil*, trad. de Santiago Sentis Melendo, Buenos Aires, Ediciones Jurídicas Europa-América Bosch y Compañía, 1949, t. I, pp. 6 y 7.

[13] Rocco, Ugo, *Tratado de derecho procesal civil*, 2a. reimpresión inalterada, trad. de Santiago Sentis Melendo y Mariano Ayerra Redin, Buenos Aires, Editorial, Temis-Bogotá, Palma-Buenos Aires, 1983, t. I., p. 272.

> or unfounded does not affect the nature of the power to actionate; they can promote their actions in justice even those deemed mistakenly assisted of reason.[14]

Enrico Redenti brings the notions expressed by Eduardo Couture, in the following form:

> With the action (Procedural activity) it is proposed to the judge the action (pretension), and he will tell if there is an action (right).[15]

Out of the concepts exposed, when making a comparison with the Roman system they distinguish the following elements:

- The action as an institution of public law;
- It is incorrect identify the action with the right that seeks to have the actor while formulating his demand;
- It is an independent right, of the litigation rights that the parties are looking to enforce;
- It is irregular to think about the existence of several procedural actions any time that there is only a general and abstract (implementation of an autonomous right to the exercise a pretension that implies the jurisdictional activity);
- The passive subject of the action will never be the defendant but the judicial authority, without fail to note that on the defendant, may have the effects of the action;
- Finally, I consider the procedural action as an institution of public character that emerges from a constitutional sphere, in which, it is pointed out; that no person may do justice by themselves nor to exercise violence to claim their right, due to the fact that they have the power and duty to go to the courts, where justice will be administered by applying the judicial norm that corresponds to the general law and abstract that follows.

2. *The Pretension*

Mr. Carlos Ramírez Arcila quotes Francesco Carnelutti stating:

> *The pretension is a requirement of the subordination of one foreign interests to another own.*[16]

[14] Couture, Eduardo J., *Fundamentos de derecho procesal civil*, 2a. ed., Buenos Aires, Palma, 1951, pp. 9 y 10.

[15] Redenti, Enrico, *Derecho procesal civil*, Buenos Aires, Ejea, 1957, p. 52.

[16] Ramírez Arcila, Carlos, *Teoría de la acción*, Bogotá, Temis, 1969, p. 19.

Out of the exposed concept, It is simple to appreciate the existence of a legal act that identifies with the statement of will, by virtue of which it is claimed the title of an abstract right and material that is contained within the demand. Without involving that if it is not credited in the field of law and in the material law tue pretension may not exist of justice not be credited to the right material the claim does not exist, but only that dismisses the same and perhaps it may not have been credited.

Carlos Ramirez Arcila interprets the concept pretension in simple and logical manner, transcribing these reflections:

> Carnelutti teaches us that the pretension is an act, not a power; something that someone does, not that someone owns; a manifestation not a superiority of will. Not only the pretension is an act and, therefore, a manifestation of the will, but one of those acts that are called statements of will.
>
> Such act —adds Carnelutti— "not only is, but that not even implies the right (subjective); the pretension may be proposed by both who has as by who does not have the law claims necessarily the pretension, since there can be pretension without law; to the side of the unfounded claim we have, as a phenomenon, the inert law".[17]

The pretension can tend to the subordination of the foreign interest to of the one who makes her suit, and being able to be satisfied by extrajudicial or judiciall way; but departing from a consistent reality in which there are pretensions without law and law without pretension. The previous thought leads us to conclude that, the existence or nonexistence of the law that the actor tries to exercise normally, only turns out to be crystallized, at the moment when the judge emits a favorable judgment.

3. *The demand (Claim)*

At this point I will only address the Demand in the doctrinal field of procedural law, in the following way:

On having studied inside the Mexican Juridical Dictionary the concept, José Ovalle Favela demands indicates:

> It comes from the latin demandare, which had a different meaning to the present: 'trust',To 'make good insurance', 'forward'.
>
> The demand is the procedural act by which a person, that is constituted by himselve in actor or demandant, makes a claim by expressing the cause or

[17] *Idem*.

causes as he try to be based to the jurisdictional body, and with which initiates a process and requests a ruling in favor of his claim.[18]

Eduardo J. Couture defines:

The demand is an introductory Procedural Act by virtue of which the actor submits its claim to the judge, with the forms required by the law, calling for a favorable judgment to his interest. Document in which the actor communicates its pretension to the judge, with the forms required by the law, asking for a judgment in favor of his interest.[19]

Cipriano Gómez Lara understands the demand in the following way:

The first act of the exercise of the action, through which the pretensor goes before the courts pursuing that their pretension is satisfied.[20]

Rafael de Pina y Rafael de Pina Vara pont-out:

Demand. The verbal procedural act or ordinarily initial document of the process in which Is brought before a judge a matter (or several if not mutually exclusive) to resolve, prior to the established legal procedures, issuing the judgment that is appropriate, as alleged or proven.[21]

Indeed, the demand is a procedural act that indicates the beginning of an instance, trough which the actor submits his pretension before a competent judicial authority, seeking a judicial determination that is favorable to hisinterests.

IV. The Commercial Processes in the Mexican Legislation

Commercial proceedings are the ones which seek to ventilate and decide disputes arising from commercial acts.

The act of commerce should be understood as an event that produces juridical effects by means of display of the will, in which the parts normally delimit its effects and that they link with the production and in its case, with the exchange of goods and of services destined for the market in general.

[18] Ovalle Favela, José, Voz "Demanda", *Diccionario Jurídico Mexicano*, 4a. ed., México, Porrúa, Instituto de Investigaciones Jurídicas, 1991, p. 889.

[19] Gómez Lara, Cipriano, *Derecho procesal vivil*, México, Trillas, 1984, p. 32.

[20] *Idem*.

[21] De Pina, Rafael y Rafael de Pina Vara, *Diccionario de derecho*, 15a. ed., México, Editorial Porrúa, 1988, p. 212.

Commercial proceedings are classified into Ordinary, Summary, (Special) and Oral.

1. With the quality of ordinary commercial proceedings, it must be understood that procedural processing that instructed and vent in writing, supplying to the parties the widest opportunity to defend their rights and to produce the proof in them, in search of the truth of the facts, by issuing a vinculative judicial decision to the parties.

2. Summary Commercial Proceeding, arises from a document in which it is represented by certainty a liquid right, exigible, determinated or determinable of complete term: legitimizing its holder against the defaulter, to demand judicially the fulfillment of an obligation recorded in the title or document, by means of execution, that is to say, that after the demand has been admitted is ordained a payment request, if it is not obtained, seizure of property, in which case it will be left in deposit of the person who for such an effect indicates the one that exercises the pretension and done the previous thing, one proceeds to the emplacement of the debtor or defendant.

3. Oral Commercial Proceeding, attending on the prevailing social reality in our country, it is known that the juridical safety in the procedural procedure, allows every person to have the right to get the administration of justice from courts that are speedy to give it in the period and terms that fix the laws, allowing that to be emitted resolutions in a prompt, finished and impartial way.

To this effect it has been considered by the Mexican legislature, that through the Oral Commercial Proceeding, compliance will be given to the principles of orality, publicity, equality, immediacy, contradiction, continuity and concentration, and lays down the following procedural stages:

Formulation of demand in writing, attaching evidence in which the actor justifies his pretension.

The Oral Commercial exteriorización Proceeding limits the competence of the judge to businesses whose amount is less than $500,000.00 M.N., with the caveat that it will not proceed the oral trial in case of summary proceedings, special trials or trials in which the amount is undetermined.

Admitted the demand, the emplacement is ordained so that the defendant produces the answer to the same one, formulates exceptions, offers means of proof and in its case make reprimand, all this in writing.

Fixed the litis with the demand, reply, in it´s case, counterclaim and reply to the counterclaim, arises the preliminary hearing in which we seek the debugging procedure with respect to the procedural exceptions, giving

the date a great significance to the alternative means of solution and settlements within which highlights the mediation and conciliation.

If not mediation or conciliation are obtained, purified the legal proceedings with regard to the exceptions, It will be resolved as pertaining to the admission or disregard means of proof, noting day and time for the hearing of trial.

At the trial hearing the means of proof are received orally, complying with the principle of immediacy and getting trough the means of conviction, the parties claim wthat law indicates, citing for judgment, which shall be given within the following 10 days.

Finally, it is important to note that in such legal proceedings, the ordinary resourses do not procede as it coudl be the case of the revocation and appeal.

It is important to mention that it has sought a harmonization of the laws within the evolution of Commercial proceedings, in times of economic crisis, looking for safety and legal certainty.

In Mexico the legislator has considered that within the figure of the "Orality" there is a complience with the principles of Orality, Publicity, Equality, Immediacy, Continuity and Concentration.

It is noted within the evolution of Commercial Proceedings the existence of a Preliminary Hearing in which there is procedural debug and then it is handled the alternative means of dispute resolution such as mediation and conciliation.

It continues to be part of the above Preliminary Hearing looking for the autonomy of the will of the parties, by means of agreements on undisputed facts and evidentiary agreements.

The cited Preliminary Hearing is concluded when the judge quialifies the different means of proof, in terms of their admission.

It should not go unnoticed that within this modernity that is sought to date the procedural processing is registered by electronic means, however, is duly to the judge to apply the electronic medium or use traditional means, in terms of article 1390 bis 26 of the Code of Commerce, and at this moment he would reflect which will allow the greater fidelity and integrity in the information to the Judge in order to issue a resolution according to the truth, identifying the event with reality.

Within the evolution of the Procidural Commercial Law in time of economic crisis, it is positive to comply with the Legislature's concern of the implementation of a Prompt and Expeditious Justice.

In addition to the above, the enforcement in the Hearing of the Trial when receiveving the means of proof truly complies with the principle of

immediacy however, it will be with the pass of time that efficiency of the regulatory system can be determined and if it did achieved its purpose, which is to deliver Justice in Prompt and expedited manner, generating with it legal security fot the parties in dispute.

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