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# ภาคผนวก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

# Federal Rules of Civil Procedure

(ประเทศสหรัฐอเมริกา)

## Rule 59. New Trials; Amendment of Judgments

### (a) Grounds.

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

### (b) Time for Motion.

Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

### (c) Time for Serving Affidavits.

When a motion for new trial is based upon affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

### (d) On Initiative of Court.

No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

### (e) Motion to Alter or Amend a Judgment.

Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

## Rule 60. Relief from Judgment or Order

### (a) Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and

thereafter while the appeal is pending may be so corrected with leave of the appellate court.

### (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

## Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

# Civil Procedure Rules

(ประเทศอังกฤษ)

## Permission

52.3 (1) An appellant or respondent requires permission to appeal –

(a) where the appeal is from a decision of a judge in a county court or the High Court, except where the appeal is against –

(i) a committal order;

(ii) a refusal to grant habeas corpus; or

(iii) a secure accommodation order made under section 25 of the Children Act 1989([1]); or

(b) as provided by the relevant practice direction.

(Other enactments may provide that permission is required for particular appeals)

(2) An application for permission to appeal may be made –

(a) to the lower court at the hearing at which the decision to be appealed was made; or

(b) to the appeal court in an appeal notice.

(Rule 52.4 sets out the time limits for filing an appellant's notice at the appeal court. Rule 52.5 sets out the time limits for filing a respondent's notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 52.4(1) and 52.5(3))

(Rule 52.13(1) provides that permission is required from the Court of Appeal for all appeals to that court from a decision of a county court or the High Court which was itself made on appeal)

(3) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.

(4) Where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be filed within 7 days after service of the notice that permission has been refused.

(6) Permission to appeal will only be given where –

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

(a) the court considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(7) An order giving permission may –

(a) limit the issues to be heard; and

(b) be made subject to conditions.

(Rule 3.1(3) also provides that the court may make an order subject to conditions)

(Rule 25.15 provides for the court to order security for costs of an appeal)

## Stay (GL)

52.7 Unless –

(a) the appeal court or the lower court orders otherwise; or

(b) the appeal is from the Immigration Appeal Tribunal,

an appeal shall not operate as a stay of any order or decision of the lower court.

## Judicial review appeals

52.15 (1) Where permission to apply for judicial review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal.

(2) An application in accordance with paragraph (1) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for judicial review.

(3) On an application under paragraph (1), the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review.

(4) Where the Court of Appeal gives permission to apply for judicial review in accordance with paragraph (3), the case will proceed in the High Court unless the Court of Appeal orders otherwise.

III Provisions about reopening appeals

## Reopening of final appeals

52.17 (1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless –

(a) it is necessary to do so in order to avoid real injustice;

(b) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(c) there is no alternative effective remedy.

(2) In paragraphs (1), (3), (4) and (6), "appeal" includes an application for permission to appeal.

(3) This rule does not apply to appeals to a county court.

(4) Permission is needed to make an application under this rule to reopen a final determination of an appeal even in cases where under rule 52.3(1) permission was not needed for the original appeal.

(5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.

(6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.

(7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.

(8) The procedure for making an application for permission is set out in the practice direction.

I JUDICIAL REVIEW

## Scope and interpretation

54.1 (1) This Section of this Part contains rules about judicial review.

(2) In this Section –

(a) a 'claim for judicial review' means a claim to review the lawfulness of –

(i) an enactment; or

(ii) a decision, action or failure to act in relation to the exercise of a public function.

(b) revoked

(c) revoked

(d) revoked

(e) 'the judicial review procedure' means the Part 8 procedure as modified by this Section;

(f) 'interested party' means any person (other than the claimant and defendant) who is directly affected by the claim; and

(g) 'court' means the High Court, unless otherwise stated.

(Rule 8.1(6)(b) provides that a rule or practice direction may, in relation to a specified type of proceedings, disapply or modify any of the rules set out in Part 8 as they apply to those proceedings)

## When this Section must be used

54.2 The judicial review procedure must be used in a claim for judicial review where the claimant is seeking –

(a) a mandatory order;

(b) a prohibiting order;

(c) a quashing order; or

(d) an injunction under section 30 of the Supreme Court Act 1981([1]) (restraining a person from acting in any office in which he is not entitled to act).

## When this Section may be used

54.3 (1) The judicial review procedure may be used in a claim for judicial review where the claimant is seeking –

(a) a declaration; or

(b) an injunction [GL].

(Section 31(2) of the Supreme Court Act 1981 sets out the circumstances in which the court may grant a declaration or injunction in a claim for judicial review)

(Where the claimant is seeking a declaration or injunction in addition to one of the remedies listed in rule 54.2, the judicial review procedure must be used)

(2) A claim for judicial review may include a claim for damages,

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

restitution or the recovery of a sum due but may not seek such a remedy alone.

(Section 31(4) of the Supreme Court Act sets out the circumstances in which the court may award damages, restitution or the recovery of a sum due on a claim for judicial review)

## Permission required

54.4 The court's permission to proceed is required in a claim for judicial review whether started under this Section or transferred to the Administrative Court.

## Time limit for filing claim form

54.5 (1) The claim form must be filed –

(a) promptly; and

(b) in any event not later than 3 months after the grounds to make the claim first arose.

(2) The time limit in this rule may not be extended by agreement between the parties.

(3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

# CODE OF CIVIL PROCEDURE

(ประเทศฝรั่งเศส)

## SUB-TITLE III THE EXTRAORDINARY MEANS OF REVIEW

### Article 579

Reviews by way of extraordinary means and the time-limit given for exercising the same shall not operate a stay of execution save where the law provides otherwise.

### Article 580

Extraordinary means of review shall be available only in the cases specified by law.

### Article 581

In cases of a dilatory or abusive review, its originator may be subjected to a civil fine of F 100 to F 10 000 without prejudice to any claim for damages which might be brought before the court seized of the review.

## CHAPTER I THE THIRD-PARTY APPLICATION TO SET ASIDE

### Article 582

A third-party application to set aside shall aim at retracting or varying a judgment in favour of the third-party who impugns it.

It shall bring back into issue, with regard to its originator, the points which admitted of a decision which the latter shall challenge so that a new ruling may be given on the facts and on the law.

### Article 583

*(Decree No. 81-500 of 12 May 1981, sec.26, Official Journal of 14 May 1981 amendment JORF of 21 May 1981)*

Shall be admissible to bring a third-party application to set aside any person who shows an interest, provided that he was neither a party nor represented in the judgment which he impugns.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

The creditors and other assigns of a party may, notwithstanding the above, lodge a third-party application to set aside a judgment delivered on a fraudulous exercise in relation to their rights or where they raise grounds which are proper to them.

In non-contentious matters, a third-party application to set aside shall be available only to third parties who have not been notified; it may be likewise against judgments delivered as of last resort even where the decision has been notified to them.

Article 584

Where liability is indivisible with regard to several parties concerned by the impugned judgment, the third-party application to set aside shall be admissible only where all the parties are called in the proceedings.

Article 585

All judgments may be subjected to a third-party application to set aside save where the law provides otherwise.

Article 586

(*Decree No. 81-500 of 12 May 1981, sec.27, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

The third-party application to set aside shall be available as a main issue for thirty years as from the judgment save where the law shall provide otherwise.

It may be brought without any bar in time against a judgment given in the course of proceedings relating to another case by the person against whom enforcement is sought.

In contentious matters, notwithstanding the above, it shall only be admissible, on behalf of a third party in relation to whom the judgment has been notified, within two months to be reckoned from the notification provided that the same indicates clearly the time-limit available to him as well as to the methods whereby a review may be instituted. It shall be likewise in non-contentious matters where a decision of last resort has been notified.

Article 587

A third-party application to set aside instituted as the main issue shall be brought before the court from which the impugned judgment emanated.

The decision may be delivered by the same judges.

Where the third-party application to set aside is directed against a judgment delivered in a non-contentious matter, it shall be brought, managed and determined in accordance with the rules pertaining to contentious procedure.

Article 588

A third-party application to set aside which is incidental to a dispute of which a court is seized shall be ruled upon by the latter where it is a superior court to the one which has delivered the judgment or, where, it being a court of a same level, no rule pertaining to public policy preventing the same. The third-party application to set aside shall hence be brought in the same manner as provided for in relation to incidental claims.

Otherwise, an incidental third-party application to set aside shall be brought, by way of a main claim, before the court which has delivered the decision.

Article 589

The court before which the impugned judgment is produced may, depending on the circumstances, pass or defer its judgment.

Article 590

The judge seized on a third-party application to set aside on the main issue or incidentally may stay the execution of the impugned judgment.

Article 591

The decision which finds in favour of a third-party application to set aside shall retract or vary the impugned judgment only on the points prejudicial to the third-party making the application. The original judgment shall maintain its effects in relation to the other parties even on the points set aside.

Notwithstanding the above, the authority of res judicata in relation to third-party application to set aside shall operate with regard to all the parties called to the proceedings in application of Article 584.

Article 592

The judgment delivered on third-party application to set aside shall be subject to the same reviews as the decisions of the court which has delivered it.

## CHAPTER II THE APPLICATION FOR RECONSIDERATION

### Article 593

An application to reconsider shall aim at retracting a judgment which has become res judicata so that a new ruling may be given on the facts and on the law.

### Article 594

The reconsideration may be requested only by the persons who were parties to or represented in relation to the judgment.

### Article 595

An application to reconsider shall be available only on the following grounds:

1. Where it has come to light, subsequent to judgment, that the decision has been obtained by fraud on behalf of the party in whose favour it was delivered;

2. Where, since the judgment, decisive exhibits which have been withheld by the act of another party have been discovered;

3. Where it has been adjudicated on exhibits which, since the judgment, have been acknowledged or judicially declared to be false;

4. Where it has been adjudicated on statements, testimonies or oaths which, since the judgment, have been judicially declared false.

In all these cases, the application shall be admissible only where its originator has not been able, without any fault on his behalf, to raise, before that the judgments carry the authority of res judicata, the ground on which he relies.

### Article 596

The time-limit for an application to reconsider shall be two months.

It shall run as from the date on which the party has knowledge of the grounds for the reconsideration upon which he relies.

### Article 597

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

All the parties to an impugned judgment shall have to be called to the proceedings for the reconsideration by the originator of the application on pain of inadmissibility.

Article 598

An application to reconsider shall be lodged by way of citation.

Notwithstanding the above, where it is directed against a judgment given in the course of other proceedings between the same parties before the court which delivered the judgment, the reconsideration may be requested in the manner provided for the presentation of the grounds of defence.

Article 599

Where a party has lodged or declares that he intends to lodge a petition for reconsideration against a judgment given in proceedings pending before a court other than the one which has delivered the same, the court seized of the matter in which it was given may, depending on the circumstances, shall pass or defer its judgment until the application to reconsider has been determined by the competent court.

Article 600

An application to reconsider shall be intimated to the ministère public.

Article 601

Where the judge declares the application admissible, he shall determine in pronouncing the same judgment the substantive issues save where there is need for a further management.

Article 602

Where the reconsideration is justified only against one point of the judgment, such point alone shall be revised save where the other one are related to it.

Article 603

A party shall not be admissible to apply for a reconsideration of a judgment which he has already impugned by this very same procedure save where it is on grounds which came to light subsequently.

The judgment which shall rule upon an application to reconsider may only be impugned by this very procedure itself.

## CHAPTER III THE PETITION IN CASSATION

Article 604

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

A petition in cassation shall tend to ask the *Cour de cassation* to quash a judgment owing to an error on a point of law.

### SECTION I THE AVAILABILITY OF PETITION IN CASSATION

Article 605

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The petition in cassation shall be available only against judgments delivered as of last resort.

Article 606

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments of last resort which shall determine in their holdings a part of the main issue in dispute and shall give directions or shall grant a provisional order may be impugned by way of a petition in cassation in the same manner as judgments determining the totality of the main issues as of last resort.

ศูนย์วิทยทรัพยากร จุฬาลงกรณ์มหาวิทยาลัย

Article 607

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

May likewise be impugned by a petition in cassation judgments of last resort which, ruling on a plea as to the procedure, a plea seeking a peremptory declaration of inadmissibility or any other incidental plea, disposed thereby of the proceedings.

Article 608

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments of last resort other than the above may not be impugned by way of a petition in cassation independently of the relevant judgments determining the substantive issues, save where it is provided by law.

Article 609

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Any party who has an interest shall be admissible to file a petition in cassation even where the holding which is unfavourable to him does not benefit his opponent.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Article 610

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

In non-contentious matters, the petition shall be admissible even in the absence of an opponent.

Article 611

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

In contentious matters, the petition shall be admissible even where a judgment has been pronounced to the benefit of or against a person who was not a party to the proceedings.

Article 611-1

*(Inserted by Decree No. 99-131 of 26 February 1999, sec.4, Official Journal of 27 February 1999 in force on 1 March 1999)*

Further to cases where the notification of the decision which is amenable to a petition is incumbent upon the registry of the court which has delivered the same, the petition in cassation shall be admissible only where the decision which it impugns has first been signified.

Article 612

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The time-limit for a petition in cassation shall be two months save where provisions to the contrary shall apply.

Article 613

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The time-limit shall run, with regard to a decision in default, as from the day where an application to set aside shall be no more admissible.

Article 614

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The admissibility of an incidental petition, even a provoked petition instituted by other than a respondent who is caused to join issue in due time, shall follow the rules governing cross-appeals subject to provisions of Article 1010.

Article 615

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

In case of indivisibility with regard to several parties, the petition of one of them shall not be devoid of any effect in relation to the others even where the latter have not been joined to the proceedings in cassation.

Under the same circumstances, the petition filed against one shall only be admissible where all have been called to the proceedings.

Article 616

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

Where the judgment may be rectified by virtue of Articles 463 and 464, the petition in cassation shall be available, in the manner provided under these present Articles, only against a judgment ruling on the rectification.

Article 617

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The contradiction in judgments may be relied upon where the peremptory plea founded on the res judicata has in vain been argued before the trial judges.

In this case, the petition in cassation shall be directed against the subsequent judgment in date; where the contradiction has been recorded, it shall be resolved to the benefit of the first.

Article 618

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

Inconsistencies in a judgment may, further, as an exception to Article 605, be relied upon where two decisions, albeit not of last resort, are incompatible with each

other and shall result in any of them being amenable to an ordinary review; the petition in cassation shall hence be admissible, even where one of the decision has already been impugned by way of a previous petition in cassation which was dismissed.

In the latter event, the petition may be filed even after the expiration of the time-limit provided under Article 612. It shall have to relate to the two decisions concerned; where an inconsistency has been established, the *Cour de cassation* shall quash one of the decisions or, where the same appears necessary, both of them.

Article 618-1

(*Inserted by Decree No.81-500 of 12 May 1981, sec.28, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The *procureur général* attached to the *Cour de cassation* may, on a referral of a judgment to the latter in view to clarifying of the law, invite the ministère public attached to the ad quo court which delivered judgment to notify such to the parties in relation to the same. The notification shall be effected by the clerk of the ad quo court by recorded letter with the advice of delivery slip sought.

## SECTION II THE SIGNIFICANCE OF A PETITION IN CASSATION

Article 619

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

New grounds shall not be admissible before the *Cour de cassation*.

Notwithstanding the above, new grounds may be raised for the first time where they are, but subject to any contrary provision on that issue:

1° grounds strictly based in law;

2° grounds arising out of the impugned decision.

Article 620

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The *Cour de cassation* may dismiss the petition by substituting a ground strictly based in law to an erroneous ground; it may affect the same in relation to an erroneous but which is superfluous.

It may, save where provision to the contrary shall apply, quash the impugned decision in raising *ex proprio motu* a point of law by way of a strict interpretation.

Article 621

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No.86-585 of 14 March 1986, sec.3, Official Journal of 19 March 1986*)

Where the petition in cassation is dismissed, the party who brought it shall be divested of his locus standi to bring afresh a new petition against the same judgment, save as referred to Article 618.

It shall be likewise where the *Cour de cassation* shall dispose of the matter as not admitting a cassation and thereby refusing to take cognisance of the same, or shall declare the petition inadmissible or shall pronounce the operation of a foreclosure in relation to the petition.

The respondent who has not filed an incidental petition or a provoked one wherein he is caused to join issue against the impugned judgment within the time-limit granted under Article 1010 shall not be admissible to institute the review on the main issue in relation to the impugned judgment.

Article 622

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments delivered by the *Cour de cassation* shall not be amenable to an application to set aside.

Article 623

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The cassation may relate to the whole or part of a quashed judgment. It shall be in part where it affects only certain heads which are severable from the others.

Article 624

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The censure attached to a cassation judgment shall be limited to the consequence of a point which constitutes the foundation of the cassation except in case of indivisibility or necessary dependency.

Article 625

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

On the points which it affects, a cassation shall place the parties at the stage where they were before the judgment which is being quashed.

It shall carry, without any need for a new decision, the annulment of all decisions subsequent to the quashed judgment, decisions relating to the application or enforcement of the aforementioned quashed judgment or such other decisions which are linked to the same.

Article 626

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

As provided under Article L. 131-4 of the Code of the Judicial Organisation: "On cassation, the matter shall be remitted, save where provisions to the contrary shall apply, before a court of the same nature as the one from which emanated the judgment or appeal judgment which is being quashed or it shall be remanded before the same forum but consisting of different judges".

Article 627

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

As it is provided under Article L. 131-5 of the Code of the Judicial Organisation: "The *Cour de cassation* may quash without further referring the matter before a forum where the cassation does not imply that there is need to adjudicate on the main issue.

It may, further, in quashing without a remission, put an end to the dispute where the facts, as ascertained supremely by the fact-trier judge, allow it to apply the appropriate rule of law.

In the latter event, it shall consider the issue of taxable charges incidental to proceedings before a trial judge.

The judgment shall carry compelled enforcement.

Article 628

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 85-1330 of 17 December 1985, sec.2, Official Journal of 18 December 1985 in force on 1 January 1986*)

The unsuccessful petitioner in cassation may, on the review being considered to be abusive, be ordered to pay a civil fine of an amount which may not exceed F 20 000 and, within the same limits, a compensation to the respondent.

Article 629

(*Decree No. 85-1330 of 17 December 1985, sec.3, Official Journal of 18 December 1985 in force on 1 January 1986*)

Without prejudice to the application of provisions of Article 700, the *Cour de cassation* may leave the whole or a part of the taxable charges to be borne by a party other than the one who is unsuccessful.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Article 630

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The judgment shall carry the force of a compelled enforcement in relation to a payment of the fine, indemnity and the taxable charges.

Article 631

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Before the court to which the matter is referred back, the management shall be resumed at the stage of the procedure reached up to the point where it may not be affected by the provision of the cassation.

Article 632

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The parties may rely on new grounds in support of their claims.

Article 633

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The admissibility of new claims shall be subject to the rules which shall apply in relation to the ad quo court whose decision has been quashed.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Article 634

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The parties who do not set out new grounds or new claims shall be deemed to confine themselves to the points and claims which they have submitted to the ad quo court whose decision has been quashed. It shall be likewise for those who do not appear.

Article 635

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The intervention of a third party shall be subject to the same rules as those which apply before the ad quo court whose decision has been quashed.

Article 636

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The persons who, having been a party before the ad quo court whose decision has been quashed, and who were not so before the *Cour de cassation*, may be joined in the new proceedings or may voluntarily intervene therein, where the cassation shall interfere with their rights.

Article 637

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

Such persons may, in the same manner, take the initiative to seize the court to which the matter has been referred.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Article 638

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The matter shall be tried again in fact and in law by the court to which the matter has been referred except in relation to those issues not affected by the cassation.

Article 639

*(Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980)*

The court to which the matter has been referred to shall consider the issues of taxable charges outlaid before the ad quo trial courts as well as those incidental to the quashed decision.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

**ZivilprozeBordnung (ZPO)**

(ประเทศเยอรมนี)

ZPO § 578 Arten der Wiederaufnahme

(1) Die Wiederaufnahme eines durch rechtskräftiges Endurteil geschlossenen Verfahrens kann durch Nichtigkeitsklage und durch Restitutionsklage erfolgen.

(2) Werden beide Klagen von derselben Partei oder von verschiedenen Parteien erhoben, so ist die Verhandlung und Entscheidung über die Restitutionsklage bis zur rechtskräftigen Entscheidung über die Nichtigkeitsklage auszusetzen.

ZPO § 579 Nichtigkeitsklage

(1) Die Nichtigkeitsklage findet statt:1. wenn das erkennende Gericht nicht vorschriftsmäßig besetzt war;2. wenn ein Richter bei der Entscheidung mitgewirkt hat, der von der Ausübung des Richteramts kraft Gesetzes ausgeschlossen war, sofern nicht dieses Hindernis mittels eines Ablehnungsgesuchs oder eines Rechtsmittels ohne Erfolg geltend gemacht ist;3. wenn bei der Entscheidung ein Richter mitgewirkt hat, obgleich er wegen Besorgnis der Befangenheit abgelehnt und das Ablehnungsgesuch für begründet erklärt war;4. wenn eine Partei in dem Verfahren nicht nach Vorschrift der Gesetze vertreten war, sofern sie nicht die Prozeßführung ausdrücklich oder stillschweigend genehmigt hat.

(2) In den Fällen der Nummern 1, 3 findet die Klage nicht statt, wenn die Nichtigkeit mittels eines Rechtsmittels geltend gemacht werden konnte.

(3) (weggefallen)

ZPO § 580 Restitutionsklage

Die Restitutionsklage findet statt:1. wenn der Gegner durch Beeidigung einer Aussage, auf die das Urteil gegründet ist, sich einer vorsätzlichen oder fahrlässigen Verletzung der Eidespflicht schuldig gemacht hat;2. wenn eine Urkunde, auf die das Urteil gegründet ist, fälschlich angefertigt oder verfälscht war;3. wenn bei einem Zeugnis oder Gutachten, auf welches das Urteil gegründet ist, der Zeuge oder Sachverständige sich einer strafbaren Verletzung der Wahrheitspflicht schuldig gemacht hat;4. wenn das Urteil von dem Vertreter der Partei oder von dem Gegner oder dessen Vertreter durch eine in Beziehung auf den Rechtsstreit verübte Straftat erwirkt ist;5. wenn ein Richter bei dem Urteil mitgewirkt hat, der sich in Beziehung auf den Rechtsstreit einer strafbaren Verletzung seiner Amtspflichten gegen die Partei schuldig

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

gemacht hat;6. wenn das Urteil eines ordentlichen Gerichts, eines früheren Sondergerichts oder eines Verwaltungsgerichts, auf welches das Urteil gegründet ist, durch ein anderes rechtskräftiges Urteil aufgehoben ist;7. wenn die Partei a) ein in derselben Sache erlassenes, früher rechtskräftig gewordenes Urteil oder b) eine andere Urkunde auffindet oder zu benutzen in den Stand gesetzt
wird, die eine ihr günstigere Entscheidung herbeigeführt haben würde.

ZPO § 581 Besondere Voraussetzungen der Restitutionsklage

(1) In den Fällen des vorhergehenden Paragraphen Nummern 1 bis 5 findet die Restitutionsklage nur statt, wenn wegen der Straftat eine rechtskräftige Verurteilung ergangen ist oder wenn die Einleitung oder Durchführung eines Strafverfahrens aus anderen Gründen als wegen Mangels an Beweis nicht erfolgen kann.

(2) Der Beweis der Tatsachen, welche die Restitutionsklage begründen, kann durch den Antrag auf Parteivernehmung nicht geführt werden.

ZPO § 582 Hilfsnatur der Restitutionsklage

Die Restitutionsklage ist nur zulässig, wenn die Partei ohne ihr Verschulden außerstande war, den Restitutionsgrund in dem früheren Verfahren, insbesondere durch Einspruch oder Berufung oder mittels Anschließung an eine Berufung, geltend zu machen.

ZPO § 583 Vorentscheidungen

Mit den Klagen können Anfechtungsgründe, durch die eine dem angefochtenen Urteil vorausgegangene Entscheidung derselben oder einer unteren Instanz betroffen wird, geltend gemacht werden, sofern das angefochtene Urteil auf dieser Entscheidung beruht.

ZPO § 584 Ausschließliche Zuständigkeit für Nichtigkeits- und Restitutionsklagen

(1) Für die Klagen ist ausschließlich zuständig: das Gericht, das im ersten Rechtszug erkannt hat; wenn das
angefochtene Urteil oder auch nur eines von mehreren angefochtenen Urteilen von dem Berufungsgericht erlassen wurde oder wenn ein in der Revisionsinstanz erlassenes Urteil auf Grund des § 580 Nr. 1 bis 3, 6, 7 angefochten wird, das Berufungsgericht; wenn ein in der

Revisionsinstanz erlassenes Urteil auf Grund der §§ 579, 580 Nr. 4, 5 angefochten wird, das Revisionsgericht.

(2) Sind die Klagen gegen einen Vollstreckungsbescheid gerichtet, so gehören sie ausschließlich vor das Gericht, das für eine Entscheidung im Streitverfahren zuständig gewesen wäre.

ZPO § 585 Allgemeine Verfahrensgrundsätze

Für die Erhebung der Klagen und das weitere Verfahren gelten die allgemeinen Vorschriften entsprechend, sofern nicht aus den Vorschriften dieses Gesetzes sich eine Abweichung ergibt.

ZPO § 586 Klagefrist

(1) Die Klagen sind vor Ablauf der Notfrist eines Monats zu erheben.

(2) Die Frist beginnt mit dem Tag, an dem die Partei von dem Anfechtungsgrund Kenntnis erhalten hat, jedoch nicht vor eingetretener Rechtskraft des Urteils. Nach Ablauf von fünf Jahren, von dem Tag der Rechtskraft des Urteils an gerechnet, sind die Klagen unstatthaft.

(3) Die Vorschriften des vorstehenden Absatzes sind auf die Nichtigkeitsklage wegen mangelnder Vertretung nicht anzuwenden; die Frist für die Erhebung der Klage läuft von dem Tag, an dem der Partei und bei mangelnder Prozeßfähigkeit ihrem gesetzlichen Vertreter das Urteil zugestellt ist.

ZPO § 587 Klageschrift

In der Klage muß die Bezeichnung des Urteils, gegen das die Nichtigkeits- oder Restitutionsklage gerichtet wird, und die Erklärung, welche dieser Klagen erhoben wird, enthalten sein.

ZPO § 588 Inhalt der Klageschrift

(1) Als vorbereitender Schriftsatz soll die Klage enthalten:1. die Bezeichnung des Anfechtungsgrundes;2. die Angabe der Beweismittel für die Tatsachen, die den Grund und die Einhaltung der Notfrist ergeben;3. die Erklärung, inwieweit die Beseitigung des angefochtenen Urteils und welche andere Entscheidung in der Hauptsache beantragt werde.

(2) Dem Schriftsatz, durch den eine Restitutionsklage erhoben wird, sind die Urkunden, auf die sie gestützt wird, in Urschrift oder in Abschrift beizufügen. Befinden sich die Urkunden nicht in den Händen des Klägers, so hat er zu erklären, welchen Antrag er wegen ihrer Herbeischaffung zu stellen beabsichtigt.

ZPO § 589 Zulässigkeitsprüfung

(1) Das Gericht hat von Amts wegen zu prüfen, ob die Klage an sich statthaft und ob sie in der gesetzlichen Form und Frist erhoben sei. Mangelt es an einem dieser Erfordernisse, so ist die Klage als unzulässig zu verwerfen.

(2) Die Tatsachen, die ergeben, daß die Klage vor Ablauf der Notfrist erhoben ist, sind glaubhaft zu machen.

ZPO § 590 Neue Verhandlung

(1) Die Hauptsache wird, insoweit sie von dem Anfechtungsgrunde betroffen ist, von neuem verhandelt.

(2) Das Gericht kann anordnen, daß die Verhandlung und Entscheidung über Grund und Zulässigkeit der Wiederaufnahme des Verfahrens vor der Verhandlung über die Hauptsache erfolge. In diesem Fall ist die Verhandlung über die Hauptsache als Fortsetzung der Verhandlung über Grund und Zulässigkeit der Wiederaufnahme des Verfahrens anzusehen.

(3) Das für die Klagen zuständige Revisionsgericht hat die Verhandlung über Grund und Zulässigkeit der Wiederaufnahme des Verfahrens zu erledigen, auch wenn diese Erledigung von der Feststellung und Würdigung bestrittener Tatsachen abhängig ist.

ZPO § 591 Rechtsmittel

Rechtsmittel sind insoweit zulässig, als sie gegen die Entscheidungen der mit den Klagen befaßten Gerichte überhaupt stattfinden.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

BOOK IV.

## RENEWAL OF PROCEDURE. *(Saishin.)*

(ประเทศญี่ปุ่น)

### Section 338.

(1) For any one of the following reasons, except where the party has in an appeal pleaded it or knowingly has not pleaded it, a final judgement which has become conclusive may be appealed against in the form of a motion for a new trial:-

1. If the Court which gave judgement was not so constituted as the law prescribed;
2. If a Judge who was precluded by law from participating in the decision participated therein;
3. If the legal representative or process-attorney or agent was not vested with the necessary power to do acts of procedure;
4. If a Judge who participated in the decision was guilty of an offence relating to his official duties in connection with the case tried before him;
5. If the party by a criminally punishable act of another person was led to make a confession or prevented from producing a means of attack or defense calculated to affect the decision;
6. If a document or any other object which was produced in evidence and on which the judgement was based was a forged or fraudulently altered matter;
7. If the judgement was based on a false statement of a witness, expert, or interpreter or a sworn party or legal representative;
8. If a civil or criminal judgement or any other judicial decision or an administrative decision on which the judgement was based has been altered by a subsequent judicial or administrative decision;
9. If no adjudication was made of a material fact which would have affected the judgement;

ศูนย์วิทยทรัพยากร จุฬาลงกรณ์มหาวิทยาลัย

10. If the judgement appealed against conflicts with a conclusive judgement previously pronounced.

(2)In the case of 4, 5, 6, or 7 of the preceding Sub-Section, a motion for a new trial may be made only when a judgement of conviction or a decision imposing a non-criminal fine has become conclusive in regard to the punishable act, or when a conclusive judgement of conviction or a decision imposing a non-criminal fine cannot be obtained for a reason other than the lack of evidence.

(3)If judgement on the subject-matter of the action was given by the Court of second resort, a motion for a new trial against the judgement given by the Court of first instance cannot be made.

**Article 339**

If any of the causes specified in the foregoing article exists in regard to a decision on which the judgment is based, that cause may be made the ground for renewal of procedure against the judgment even though independent means of attacking such decision are provided.

**Article 340**

Renewal of procedure is under the exclusive jurisdiction of the Court which has given the judgment attacked.

Actions for renewal of procedure against judgments given in the same case by Courts of different grades come under the jurisdiction of the superior Court together.

**Article 341**

The provisions relating to the procedure in each particular instance, in so far as these are not inconsistent with their nature, apply mutatis mutandis to the procedure in actions for renewal of procedure.

**Article342.**

An action for renewal of procedure must be brought after the judgment attacked has become irrevocable and within thirty 30 days from the day on which the party has obtained knowledge of the cause for renewal of procedure.

The term specified in the foregoing paragraph is peremptory.

No action for renewal of procedure may be brought if five (5) years have elapsed after the judgment becoming; irrevocable.

If a cause for renewal of the procedure arose after the judgment had become irrevocable, the term specified in the foregoing paragraph is calculated from the day on which the cause came into existence.

**Article343.**

The provisions of the foregoing article do not apply to actions for renewal of procedure based on a defect in authority of representation or on the fact specified in Art. 338 par.1, No.10.

**Article344.**

In the petition there must be entered: —

1. The parties and their legal representatives;
2. A designation of the judgment attacked and a statement that renewal of procedure is demanded against such judgement; The grounds for dissatisfaction.
3. The grounds for dissatisfaction

**Article 345**

Oral proceedings and decision in the suit may be made only within the limit of the dissatisfaction expressed.

The grounds for dissatisfaction may be altered.

**Article 346**

Where the judgment is found reasonable even though there is a ground for renewal of procedure, the Court must dismiss the action for renewal of procedure.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

**Article 347**

Where a rule or order that may be attacked by immediate complaint has become irrevocable, if there exists any of the causes specified in Art. 338 par. 1, an application for renewal of procedure may be made conformably with the provisions of Art. 338 to the foregoing article y concerning irrevocable judgments.

# ประวัติผู้เขียนวิทยานิพนธ์

- ชื่อ นายชูพล ประทุมทาน

- เกิดวันที่ 27 เมษายน 2522 จังหวัดกรุงเทพมหานคร

- วุฒิการศึกษา นิติศาสตรบัณฑิต มหาวิทยาลัยธรรมศาสตร์ ปี2541, เนติบัณฑิตไทย ปี2543

- นิติกร(ลูกจ้างชั่วคราว)ศาลอุทธรณ์ ปี2543-2544, นิติกร3 ศาลฎีกา ปี2544-2546

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย