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0. PREAMBLE

1. Belgium publishes its case law, however it does so in a very inconsistent manner. There is no single forum where all judgments can be found nor are all decisions published. When decisions are published, they are not always published in the same manner. Each court or tribunal seems to have a different way of providing their decisions to the national authority in charge of publication (responsible for the juridat.be database). Some courts provide a full copy of their judgment while others only provide the reasoning and facts of the judgment without the Operative Part. .

2. As such, finding case law in the official database can be troublesome. The Highest Belgian Court (the Court of Cassation) runs its own website and caselaw of the lower courts and tribunals is often inaccessible in public websites. Utilizing commercial databases is therefore required. The most popular databases in Belgium are Jura, Jurisquare and Stradalex. Belgian legislation can also be found in these databases. Additionally, a free portal to consult legislation is the *Belgisch Staatsblad*.[1]

1. PART 1: GENERAL INQUIRIES REGARDING ENFORCEMENT TITLES

A. QUESTION 1.1: BRIEFLY PRESENT HOW AN "ENFORCEMENT TITLE" IS DEFINED IN YOUR NATIONAL LEGAL ORDER

3. An enforcement title ("*uitvoerbare titel"*) can be defined as an instrument that may be used to take enforcement measures against a party that fails to comply with its obligations.[2] A specific formulation is required within this instrument for it to be enforceable. This is referred to as the form of enforcement ("*formulier van tenuitvoerlegging*").[3] The exact formula required is set out in a royal decree from 1971[4] regarding the establishment of the form of enforcement.[5]

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[1] www.ejustice.just.fgov.be/cgi/summary.pl.

[2] European Judicial enforcement, 'The prerequisites for execution', <www.europe-eje.eu/en/fiche-thematique/note-1-prerequisites-implementation-compulsory-execution-measure-0> visited at 23 February 2020.

[3] R. De Valkeneer, Précis du notariat (Bruylant 2002) p. 58.

[4] As updated in 2013: Koninklijk besluit tot vaststelling van het formulier van tenuitvoerlegging van de arresten, vonnissen, beschikkingen, rechterlijke bevelen of akten die dadelijke tenuitvoerlegging medebrengen [Royal Decree establishing the form of enforcement of judgments, verdicts, orders, court orders or deeds contributing to immediate enforcement].

[5] Koninklijk besluit van 9 augustus 1993 tot wijziging van het koninklijk besluit van 27 mei 1971 tot vaststelling van het formulier van tenuitvoerlegging van de arresten, vonnissen, beschikkingen, rechterlijke bevelen of akten die dadelijke tenuitvoerlegging medebrengen [*Royal Decree of 9 August 1993 amending the Royal Decree of 27*

4. Several Articles in the Judicial Code refer to the necessity of an enforcement title.[6] Article 1389 Judicial Code is the general statutory reference regarding the enforcement title. Nonetheless it does not specifically refer to the term enforcement title. It simply states that there is a need for a form of implementation for a judgement or act ("*akte*") to be enforceable.

5. Several instruments are viewed as an enforcement title in Belgian law. The different enforceable titles are (i) court decisions[7], (ii) consent orders[8], (iii) arbitral awards, (iv) notarial acts and (v) administrative documents which are enforceable by law.[9] An example of an administrative document which is enforceable would be a title from the tax authority, more specifically a tax assessment register.[10]

B. QUESTION 1.2: HOW ARE "CIVIL AND COMMERCIAL" MATTERS DEFINED IN YOUR NATIONAL LEGAL ORDER?

6. There is no statutory definition of civil and commercial matters. Belgian law no longer makes the distinction between commercial and civil matters since the changes made to the Commercial Code in 2018.[11]

7. Even though this distinction is technically no longer made, certain provisions still refer to the concept of civil and commercial matters. For instance, Article 133 Judicial Code stipulates the division of labour in the Belgian Supreme Court of Cassation between the different chambers. The first chamber has jurisdiction on commercial and civil matters.

May 1971 establishing the form of enforcement of judgments, verdicts, orders, court orders or deeds contributing to immediate enforcement].

[6] For example: Article 1494 Judicial Code refers to the need of an enforceable title regarding an attachment in execution.

[7] P. Taelman, Het gezag van het rechterlijk gewijsde: een begrippenstudie [The authority of res judicata; a study of concepts] (Wolters Kluwer 2001) p. 333.

[8] Article 1046 Judicial Code

[9] European Judicial enforcement, 'The prerequisites for execution', <www.europe-eje.eu/en/fiche-thematique/note-1-prerequisites-implementation-compulsory-execution-measure-0> visited at 23 February 2020.

[10] Cass. 17 juni 1929, *Pas.* 1929, I, 246.

[11] X., 'Beknopt overzicht hervorming ondernemingsrecht, in werking getreden op 1 november 2018' 19 Orde Expres (2018), www.ordeexpress.be/artikel/176/2495/beknopt-overzicht-hervorming-ondernemingsrecht-in-werking-getreden-op-1-novembe.

C. QUESTION 1.3: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

8. The following instances in Belgium qualify as a court or tribunal under the Brussel 1A Regulation: Court of Cassation, Court of Assizes, Court of Appeal, Labour Court, Court of First Instance, Labour Tribunal, Business Court, Justice of the Peace Court and the Police Court.[12]

D. QUESTION 1.4: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

9. There are three categories of domestic decisions in Belgian law as categorised by the legislator.

    i. Firstly, a judgement ("*vonnis/jugement*": a decision rendered by a court in first instance),

    ii. secondly a ruling ("*arrest/arrêt*": a decision rendered by a higher court, for example the Court of Cassation or the Court of Appeal) and

    iii. lastly an order ("*beschikking/ordre, référé*": these mostly refer to judgements in summary proceedings ("*in kortgeding*", "*zoals in kortgeding*", "en référé-provision") or to measures concerning the administration of a trial).[13]

10. Additionally, a distinction is made between a final decision ("*eindvonnis*"/"*jugement"*), a decision before adjudicating ("*vonnis alvorens recht te doen*"/*jugement avant de dire droit*"), a provisional decision ("*jugement provisoire"/provisioneel vonnis*")[14] and measures concerning the administration of trial (*"mesures procedurelles*"/ "*maatregelen van inwendige aard*").[15] Further distinction is also made between final judgments ("*jugement définitif/eindvonnis*") and interim[16] judgments ("*jugement interlocutoire/ tussenvonnis*").[17]

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[12] European Justice, 'Ordinary courts – Belgium' <e-justice.europa.eu/content ordinary courts-18-be-maximizeMS-en.do?member=1>, visited at 1 March 2020.

[13] J. Laenens et al., Handboek gerechtelijk recht [Manual procedural law] (Intersentia 2019) p. 151.

[14] Laenens, supra n. 13, p. 151.

[15] Article 19 and 1046 Judicial Code

[16] Interim judgments as understoond under question 3.1.5. however P. Taelman and C. Van Severen, Civil Procedure in Belgium (Wolters Kluwers 2018) p. 99, qualifies "*tussenvonnissen*" as interlocutory judgments.

[17] P. Taelman and C. Van Severen, Civil Procedure in Belgium (Wolters Kluwers 2018) p. 99.

11. Aside from these possible decisions in civil procedure, decisions with a civil character may also be rendered in criminal proceedings, most notably a decision on damages.

E. QUESTION 1.5: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

12. The available domestic decisions in Belgium all fall within the scope of judgment, as set out in recent case law of the CJEU.[18] Procedures before the institutional courts, such as the court of first instance or the judge of attachments/seizures are therefore judgements. The same reasoning applies for the authentic instruments.[19] Belgian law does not provide for a procedure before Notaries, such as was the case in Croatia in the Pula Parking case.

F. QUESTION 1.6: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

13. No preliminary rulings (published to date) have been requested by Belgian courts relating to the notion of judgment.

G. QUESTION 1.7: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

14. According to Article 806 Judicial Code the judge rendering a default judgment 'shall uphold the claims or defences of the appearing party except in so far as those claims or defences are contrary to public policy, including the rules of law which the court may apply of its own motion under the law'. Consequently, the judge deciding in a judgment by default shall grant the claims or defences of the appearing party.

15. However, the Court of Cassation stipulated that granting a manifestly unfounded claim was contrary to public order.[20] Consequently, the court can still assess ex officio against

[18] ECJ 9 March 2017, Case C–551/15, Pula Parking d.o.o. v Sven Klaus Tederahn, ECLI:EU:C:2017:193; ECJ 21 May 1980, Case C-125/79, Bernard Denilauler v SNC Couchet Frères, ECR I-1553 and ECJ 13 July 1995, Case C- 474/93, Hengst Import BV v Anna Maria Campese, ECR I-2113.

[19] ECJ 17 June 1999, Case C-260/97, Unibank A/S v Flemming G. Christensen, ECR I-3715.

[20] Cass. 13 December 2016, AR P.16.0421.N, *JLMB* 2017, afl. 6, 257.

the provisions on excessive interest and damage clauses.[21] Moreover, a judge deciding in a judgment by default needs to assess whether it has territorial jurisdiction.[22]

2. PART 2: GENERAL ASPECTS REGARDING THE STRUCTURE OF JUDGEMENTS

A. QUESTION 2.1: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

16. Subject to a sanction of nullity, Belgian judgements must comply with certain formalities which are enumerated in Article 780 Judicial Code. Article 780 Judicial Code refers to judgments, however it is also applicable to other types of decisions.[23] The term judgment needs to be read as a pars pro toto.[24]

17. The first part of Article 780 specifies that the judgement needs to contain the grounds of the case as well as an Operative Part. Additionally, Article 780 provides a list of certain specific statements that need to be included:

    i. Article 780, 1°:

        a) the indication of the judge or court that delivered the judgment,

        b) the names of the judges that decided the case, of the name of the state prosecutor providing advice and the name of the registrar present at the time of delivery of the judgement;

    ii. Article 780, 2°:

        a) the surname, name and place of residence the parties provided when appearing in court and depositing a Statement of Case and where applicable, their national registry or company number.

    iii. Article 780, 3°:

[21] J. Nowak, 'HvJ: rechter moet regels over onrechtmatige bedingen ambtshalve toepassen in verstekprocedure', 371 Juristenkrant (2018) p. 2 at p. 2.

[22] T. De Jaeger, 'Ambtshalve controle territoriale bevoegdheid bij verstek', 379 NJW (2018) p. 268 at p. 269.

[23] Laenens, supra n. 13, p. 513.

[24] B. Van den Bergh, 'De noodzaak van een beschikkend gedeelte in een vonnis of arrest', 39 RW (2012-13) p. 1536 at p. 1537.

a) the object of the civil claim and the response to the Statements of Claim of the parties.

iv. Article 780, 4°:

a) the indication of the advice of the state prosecutor.

v. Article 780, 5°:

a) the indication of the date of the judgement

18. The second part of Article 780 Judicial Code clarifies that a judgement must also contain the names of the counsel, if counsel was consulted. Additionally, the judgment must also be signed by the judges who ruled on the issue.[25]

19. Additionally, each judgement also needs to contain a reference pertaining to the use of the language in the procedure. Belgium has three official languages and the proceedings can in principle be initiated in any of them. The language in which the proceedings have been initiated determines the language in which the judgment needs to be written. Each judgement must explicitly state that the provisions of the law of 15 June 1935 regarding the use of language in judicial proceedings have been complied with to guarantee that the rules regarding the use of language in judicial proceedings have been adhered to.

B. QUESTION 2.2: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

20. Whilst Belgian law stipulates certain formalities that need to be considered it does not as such provide for a certain structure for the judgment. Nonetheless, most Belgian judgments follow a similar structure as provided for by tradition. A Belgian judgment typically has five main sections.

i. Firstly, the preamble or the introductory part in which the identity of the parties and their respective counsel is stated. The preamble also clarifies the capacity of each party. Additionally, the docket number and the judicial body is also stated in the preamble.

ii. Secondly, an overview of the facts is provided.

[25] Article 782 Judicial Code and Laenens, supra n. 13, p. 515.

iii. Thirdly, the claims of the parties are stated.

iv. Fourthly, the reasoning of the judge is set out.

v. Lastly, the Operative Part of the judgment is presented.[26]

C. QUESTION 2.3: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

21. Even though a structure for judgements is derived from tradition and certain formalities are provided by law, there is no standardisation of judgements in Belgium. As such the judgments in Belgium are inadequately standardised. Seeing as there are no general standards each court uses a different form. Additionally, the court and tribunal do not have a standardized font, font size or any other formatting of the judgments.

D. QUESTION 2.4: WHICH BODIES CONFORM TO THE DEFINITION OF "COURTS AND TRIBUNALS" AS PROVIDED FOR BY THE B IA UNDER YOUR DOMESTIC LEGAL SYSTEM?

22. There is no uniformity in the lay-out of judgements. Each court and tribunal and each judge use their own styles. Some courts do not utilize any form of separation, while some provide outlines and headings and some use margin numbers. Some courts may utilize keywords or other forms of classification. The result however differs from court to court.[27]

E. QUESTION 2.5: IF COURTS, OTHER THAN COURTS OF FIRST INSTANCE, MAY ISSUE ENFORCEABLE JUDGMENTS, HOW DOES THE STRUCTURE OF SUCH JUDGMENTS DIFFER FROM JUDGMENTS ISSUED BY THE COURTS OF FIRST INSTANCE?

23. Most courts and tribunals in Belgium tend to follow the rules of structure as prescribed by tradition. Aside from the courts of first instance, the appeal courts in Belgium can issue enforceable judgements. The court of first instance can also render judgement as a court of appeals against judgments from the Justice of the Peace Court.[28]

24. In principle, the same structure as in first instance judgments applies. However, the judgements of the appeal courts replace the facts section with a reference to the facts as

[26] R. Van Ransbeeck, 'Standaardisatie van vonnissen en arresten: opportuniteiten en valkuilen bij de digitalisering van justitie', 66 Orde van de dag (2014) p. 49 at p. 50.

[27] Van Ransbeeck 2014, supra n. 26, p. 50.

[28] Article 601bis Judicial Code

set out in the first judgment. The appeal court either agrees with the facts stated in first instance or adapts them.[29] In the Operative Part the appeal court judgement references the first instance judgment. It either amends the first instance judgment or it agrees with the decision of the court of first instance.[30]

F. QUESTION 2.6: HOW DOES THE ASSERTION OF A COUNTERCLAIM AFFECT THE STRUCTURE OF THE JUDGMENT?

25. In general, a counterclaim[31] can be entertained in the same proceedings as the principal claim. However, the possibility for a counterclaim to be entertained in the same proceedings is tied to the competence of the court. In subsidiary order, the object of the counterclaim can be considered as well.[32] In principle the court that is competent to rule on the principal claim is also competent to rule on the counterclaim.[33] Should the court not be competent to rule on the counterclaim then the counterclaim can still be entertained by a different court.

26. Additionally, Article 810 Judicial Code provides the option of a separate hearing for the counterclaim in case the counterclaim could excessively delay the proceedings concerning the main claim. It is possible for a counterclaim to be introduced for the first time in front of the court of appeals

    i. if the counterclaim is based on a fact or act stated in the summons,

    ii. if it constitutes a defence to the principal claim or

    iii. if it is intended as a means for compensation.[34]

27. If a judgment refers to a counterclaim, the claim is simply slotted into the reasoning of the court, in the statement of the claims as well as in the reasoning part.[35] The structure of the judgment is not necessarily affected by the introduction of a counterclaim.

[29] E.g. Antwerpen 21 January 2019, *NJW* 2019, nr. 403, 442-445.

[30] E.g. Antwerpen 11 February 2019, AR 2018/AR/1275, *RDJP* 2019, 226-227; Antwerpen 12 June 2019, AR 2017/FA/429, *RJDP* 2019, 145-146; Antwerpen 25 June 2019, *NJW* 2019, nr. 413, 904-909 and Antwerpen 12 September 2019, *NJW* 2019, nr. 413, 910-913.

[31] Article 14 Judicial Code

[32] Laenens, supra n. 13, p. 321.

[33] J. de Mot and P. Thion, 'Effect van de tegenvordering op het procesverloop', 97 NJW (2004) p. 434 at p. 440.

[34] Cass. 5 December 2014, AR C.14.0061.N, *Arr.Cass.* 2014, afl. 12, 2819.

[35] E.g. Rb. Mechelen 4 February 2014, AR 12/1411/A, www.juridat.be. and Antwerpen 5 November 2014, AR 2014/AR/1866, www.juridat.be.

However, courts and tribunals follow their own rules since there are no guidelines on this issue.

G. QUESTION 2.7: DOES THE JUDGMENT INCLUDE A SPECIFICATION OF THE TIME-PERIOD WITHIN WHICH THE OBLIGATION IN THE OPERATIVE PART IS TO BE (VOLUNTARILY) FULFILLED BY THE DEFENDANT? CONVERSELY, DOES THE JUDGMENT CONTAIN A SPECIFICATION OF THE TIME-PERIOD WITHIN WHICH THE JUDGMENT IS NOT TO BE ENFORCED? DOES THE JUDGMENT CONTAIN A SPECIFICATION OF THE TIME-PERIOD AFTER WHICH THE JUDGMENT IS NO LONGER ENFORCEABLE?

28. Traditionally a judgment in Belgium was not provisionally enforceable. However, this is no longer the case. The Potpourri V law of 2017 (officially, the Law on the Modernisation of Certain Provisions of Civil Law and Civil Procedure Law) introduced this fundamental change.[36] According to the current reading of Article 1386 Judicial Code, a judgement is ipso jure enforceable in most cases. The enforcement itself needs to be undertaken via the enforcement officer.

29. There is no rule in Belgian law providing a specification of a time period for a voluntary fulfilment of the judgment by a party. As such the judgments do not state a time period for voluntary fulfilment nor do they state a period of non-enforcement.[37] Moreover the judgement makes no notion of the time period after which it is no longer enforceable. However, the general rules on limitation periods apply meaning that the judgement will no longer be enforceable after a period of ten years.[38]

30. However, before enforcement is possible, the enforceable title needs to be notified to the opposing party. In the case of a judgment by default ordering a party to pay, a

[36] P. Damman, 'Le jugement', in X., Droit judiciaire. Commentaire pratique, IV.3 – 1 - IV.3 – 34 (Wolters Kluwer 2019) p. 38 at p. 83.

[37] E.g. Rb. Antwerpen 26 February 2015, AR AN79.97.311-13, www.juridat.be.; Rb. Mechelen 04 March 2014, AR 13/67/A, www.juridat.be.; Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.; Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.; Rb. Mechelen 03 December 2013, AR 10/1749/A, www.juridat.be.; Rb. Mechelen 20 September 2013, AR 13/163/A, www.juridat.be.; Rb. Mechelen 18 September 2013, AR 13/991/A, www.juridat.be.; Rb. Nijvel 02 May 2011, AR 10/917/A, www.juridat.be.; Rb. Brussel 21 January 2014, AR 2013/6338/A, www.juridat.be. and Rb. Brussel 29 September 2014, AR 12/14295/A, www.juridat.be.

[38] Laenens, supra n. 13, p. 156.

waiting period of one month is granted after the notification before enforcement is possible.[39]

H. QUESTION 2.8: WHAT PERSONAL INFORMATION MUST BE SPECIFIED IN THE JUDGMENT FOR THE PURPOSES OF IDENTIFYING THE PARTIES TO THE DISPUTE?

31. Judgments need to contain the following information for the parties: the surname, name and place of residence and where applicable, their national registry or company number as provided for by Article 780, 2° Judicial Code.[40]

I. QUESTION 2.9: HOW DO COURTS INDICATE THE AMOUNT IN DISPUTE?

32. The part of the judgment where the claims of the parties are set out, states the amount of the claim as requested by the parties. If the amount in dispute has been amended, this is also stated in the section describing the claims of the parties.[41]

J. QUESTION 2.10: HOW DO COURTS INDICATE THE UNDERLYING LEGAL RELATIONSHIP (LEGAL ASSESSMENT OF THE DISPUTE), IF THIS CIRCUMSTANCE BEARS FURTHER RELEVANCE, E.G. IN ENFORCEMENT PROCEEDINGS.

33. The Belgian legislator recognizes that the underlying legal assessment of a dispute can have far reaching implications for the individuals involved in such dispute.[42] As such, there are simplified legal proceedings, specifically for the assessment of any uncertainty over the scope of the attachable part of a claim.[43] The execution court can consequently examine the matter anew.

34. Belgian jurisprudence that specifically analyses the legal assessment of a dispute is however limited. Even though specific rules exist to determine the scope of the attachable part of a claim[44], execution courts do have some leeway in defining the underlying legal relationship. It is for example possible for a court to indicate that the necessary income of a person, which cannot be seized, does not necessarily derive from monthly pay.

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[39] Article 1495 Judicial Code and Laenens, supra n. 13, p. 875.
[40] E.g. Rb. Mechelen 20 September 2013, AR 13/163/A, www.juridat.be.
[41] E.g. Rb. Mechelen 11 December 2013, AR 13/163/A, www.juridat.be.
[42] E.g. GwH 31 May 2011, nr. 91/2011, *A.GrwH* 2011, afl. 3, 1671.
[43] Article 1408, §3 and Article 1409*ter*, §3 Judicial Code
[44] Article 1408-1412 Judicial Code

35. In general terms, courts define the underlying legal relationship broadly and do not limit the interpretation of necessary income to monthly pay (typically obtained by a labour agreement). Courts may, for instance, state that rent may be regarded as necessary income, in case of absence of monthly pay.[45] The rent is qualified as necessary income. As such, courts have disregarded limitations regarding the term "necessary income" and broadened it so that income via rent (tenancy law) would not be attachable.

K. QUESTION 2.11: CAN THE CLAIMANT SEEK INTERIM DECLARATORY RELIEF AND WHAT EFFECTS (IF ANY) ARE ATTRIBUTED TO THE DECISION ON THIS CLAIM? HOW IS THE DECISION SPECIFIED IN THE JUDGMENT?

36. Belgian law provides the possibility of seeking interim declaratory relief.[46] According to Article 18 Judicial Code, a 'claim may be admissible if it has been brought, even to obtain a declaration of entitlement, in order to prevent the infringement of a seriously threatened right'. Such a claim may even be instituted with a view to obtaining a declaratory judgment.[47] A declaratory judgment entails a judgment by which the judge declares the right without pronouncing a conviction or a judgment by which the judge declares the existence or non-existence of a right.[48]

37. Two conditions need to be met in order to grant such a claim. First and foremost, the claimant must provide evidence of a serious and grave threat that already causes a specific disruption.[49] Additionally, the declaration by the judge must have a concrete and well-defined usefulness. The judgment must clarify the situation, put an end to the threat, and have the existence or non-existence of a right recognised.[50]

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[45] Article 1409*bis* Judicial Code and Brussel 21 September 2004, *JLMB* 2005, afl. 38, 1668.

[46] H. Boularbah et al., 'Enforcement of judgments 2019', <practiceguides.chambers.com/practice-guides/enforcement-of-judgments-2019/belgium.> visited 3 April 2020.

[47] Rb. Brussel 2 March 1972, *Pas*. 1972, III, 39 and P. Rouard, Traité élémentaire de droit judiciaire privé, Tome préliminaire. Introduction générale, I, Principes généraux de droit judiciaire privé (Bruylant 1979) p. 129-171.

[48] P. Rouard, supra n. 46, p. 129-171.

[49] P. Vanlersberghe, 'Art. 18 Ger.W', in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2020) p. 42 at p. 94 referencing the following case law: Brussel 6 December 1973, *Pas*. 1974, II, 56; Brussel 17 November 1988, *Pas*. 1989, II, 116; Kh. Brussel 18 November 1993, *R.P.S*. 1994, 174, noot I. Corbisier and Vred. Visé 6 April 1992, *T.Vred*. 1992, 182.

[50] Cass. 3 December 1984, *Arr. Cass*. 1984-85, 464, *Pas*. 1985, I, 414 en *RW* 1985-86, 1099 and Cass. 12 June 1919, *Pas*.1919, I, 156.

38. An example where a declaratory relief was accepted: the owner of a parcel of land may summon the farmer, to whom he has leased that parcel of land, before any dispute concerning the duration or the end of the land lease arises, in front of the Justice of the Peace to have that parcel of land acknowledged as building land.[51]

39. The judge may address the possibility of a declaratory relief in his Statement of Reasons and consequently not mention the declaratory relief in the Operative Part if the claim is deemed inadmissible and unfounded.[52] Nonetheless, the judge may address the declaratory relief in the Statement of Reasons as well as in the Operative Part even though the claim is found to be partially inadmissible and unfounded relating to certain parties.[53].

L. QUESTION 2.12: WHAT KINDS OF DECISIONS CAN A COURT ISSUE IN REGULAR LITIGATION PROCEEDINGS?

40. In principle a domestic judgment may be decided by default or in adversarial manner. It is also possible that a judgment is ordered ex parte, meaning that the defendant is not summoned to appear before the court. Furthermore, a court may

    i. issue a declaratory relief,

    ii. order a party to pay or

    iii. impose a specific performance.[54]

41. The justice of the peace may appoint a court expert if it falls within its material scope of application.[55] Incidental claims ("*demande incidentelle*/*tussengeschil*") relating to the main claim can be introduced during the proceedings. In these incidental claims the claim may be expanded or reduced. Additionally, a new claim may be introduced as well. Moreover, the original claim may be supplemented by additional and subsidiary claims.[56]

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[51] Vred. Andenne 17 April 1980, *J.L.* 247, noot G. De Leval. For more examples see: Vanlersberghe 2020, supra n. 48, p. 95.

[52] E.g. Voorz. Kh. Mechelen 23 September 2013, *Jaarboek Marktpraktijken* 2013, 791-805, 804.

[53] E.g. Rb. Brussel 8 June 2000, IRDI 2002, afl. 4, 313 -320, 320.

[54] H. Boularbah et al., 'Enforcement of judgments 2019', <practiceguides.chambers.com/practice-guides/enforcement-of-judgments-2019/belgium.> visited 3 April 2020.

[55] Article 591, 1° Judicial Code and Laenens, supra n. 13, p. 272.

[56] Laenens, supra n. 13, p. 318-319.

42. In an interlocutory judgment ("*jugement interlocutoire/vonnis alvorens recht te doen*") the court may order an investigative measure (for example: an expert examination, the hearing of witnesses or a judicial examination of the scene). It may also request clarifying actions from the parties (for example: the production of documents) or may reopen the debates.[57] Moreover, the court may order provisional measures, or it may award a provisional reimbursement.[58]

M. QUESTION 2.13: HOW ARE JUDGMENTS DRAFTED WHEN (IF) THEY CONTAIN A "DECISION" ON ISSUES OTHER THAN THE MERITS OF THE CASE?

43. In principle, the drafting of the claims does not differ very much. If for example a joinder of proceedings is requested, the judgment will specify that this is one of the claims by a party. Consequently, the court will either allow or deny the joinder of proceedings.[59]

44. Additionally, the court may utilize a subsection per case in the Operative Part, stating its decision in each separate case. If this is the case the court may state the docket/roll number of the case and will under that subsection specify the claims for that specific case.[60] The Operative Part may then read as follows: "*voegt de zaken 2000/AR/2268 en 2001/AR/1283 samen (joins the cases … and …)*". Thereafter, the court will state: "*In de zaak 2000/AR/2268 (in case …)"* and will proceed to render its decision on the dispute arising from that case. Afterwards, it will continue the Operative Part with: "*In de zaak 2001/AR/1283 (in case…)*" and will once again proceed to state its decisions relating to that case.

A.1. QUESTION 2.13.1: HOW DOES THIS EFFECT THE OPERATIVE PART AND/OR THE REASONING?

45. In the event of a joinder of proceedings, the court may address this in a separate section in the Statement of Reasoning.[61] The Operative Part will state that the joinder of proceedings has been allowed and consequently the court will decide in a single

[57] Laenens, supra n. 13, p. 508.

[58] Laenens, supra n. 13, p .508.

[59] E.g. Antwerpen 17 May 2018, *NJW* 2019, afl. 411, 803.

[60] Gent 30 March 2004, RABG 2005, afl. 11, 1032.

[61] E.g. Rb. Dendermonde (12e k.) 30 June 2004, *T.Verz.* 2005, afl. 1, 175; Kh. Dendermonde (2e k.) 20 FebruaryFebruary 2014, *TGR-TWVR* 2014, afl. 5, 380 and Voorz. Kh. Bergen and Charleroi (afd. Bergen) 24 April 2015, AR A/14/1059, *JT* 2016, afl. 6642, 225.

judgment.[62] The same applies for a modification of the claim. This will be addressed by the court in the Statement of Reasoning, possibly under a separate sub-section and in the Operative Part.[63]

A.2. QUESTION 2.13.2: WHICH DECISIONS (2.12) CAN BE INCORPORATED INTO THE JUDGMENT?

46. See question 2.12. and 2.13.2

A.3. QUESTION 2.13.3: CAN PROVISIONAL AND PROTECTIVE MEASURES FORM PART OF A JUDGMENT OR CAN THEY ONLY BE ISSUED SEPARATELY?

47. Generally, any judge may grant provisional measures. Provisional measures may be ordered in interlocutory proceedings or in the main proceedings in the case.[64]

48. Provisional measures may be issued in a separate judgment in front of the *kortgeding* judge. The judgment a quo states that provisional measures have been granted by the *kortgeding* judge.[65] However, provisional measures concerning divorce may be brought before the family court in the same document instituting proceedings for a divorce.[66]

3. PART 3: SPECIAL ASPECTS REGARDING THE OPERATIVE PART

A. QUESTION 3.1: WHAT DOES THE OPERATIVE PART COMMUNICATE?

49. According to Article 780, 1 Judicial Code, each judgment must contain an Operative Part. However, there is no statutory definition of the concept of an Operative Part.[67]

A.1. QUESTION 3.1.1: MUST THE OPERATIVE PART CONTAIN A THREAT OF ENFORCEMENT?

50. The Operative Part does not need to contain a threat of enforcement. Therefore, judgments do not have to contain such a threat. However, since there are no specific

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[62] Rb. Antwerpen (11e k. B) 26 June 2003, *T.App*. 2003, afl. 4, 19 and Rb. Antwerpen (fisc.) (2e k.) 15 January 2003, AR 01-4239-A AR 01-4464-A, *RABG* 2004, afl. 9, 552 (this is a fiscal procedure, however the drafting of the judgment is mutatis mutandis the same).

[63] Arbrb. Antwerpen (2e k.) 9 February 2010, AR 08/7335/A, *Soc.Kron*. 2018, afl. 1, 28 and Voorz. Kh. Antwerpen 4 February 2014, AR A/13/02938, *RDI* 2014, afl. 3, 598.

[64] European Judicial Network, 'Interim and precautionary measures – Belgium', https://ejustice.europa.eu/content_interim_and_precautionary_measures-78-be-en.do?init=true&member=1 visited 3 March 2020.

[65] E.g. Rb. Gent (9e k.) 9 January 2009, *T.Vred*. 2010, afl. 5-6, 207 and Rb. Antwerpen 26 March 1991, *TBBR* 1992 (verkort), 79.

[66] Article 1254, §1, subsection 6 Judicial Code

[67] Van den Bergh 2012-13, supra n. 24, p. 1537.

rules regarding the structure and content of the Operative Part it would be possible for a judgment to include a threat of enforcement. Most judgments however order a party to pay a certain amount of money. For examples see question 3.4.

A.2. QUESTION 3.1.2: MUST THE OPERATIVE PART INCLUDE DECLARATORY RELIEF IF THE CLAIMANT SOUGHT PAYMENT (E.G. IF THE DEBTOR'S OBLIGATION TO PERFORM IS FOUND TO BE DUE AND THE CLAIMANT REQUESTED PERFORMANCE)?

51. Whenever the court decides on the matter of payment of a certain amount of money, it declares in the Operative Part if the claim is valid and admissible before proceeding to order the losing party to pay.[68]

A.3. QUESTION 3.1.3: IS THE SPECIFICATION OF THE DEBTOR'S OBLIGATION FINALIZED BY THE COURT OR IS IT LEFT TO LATER PROCEDURES/AUTHORITIES?

52. The obligation of the debtor is specified in the judgment itself. This obligation is a final and conclusive one and there is no need for further proceedings.

53. Generally, the amount of the debt owed to the other party is specified in the Operative Part. It is possible that the exact amount of the claim is not yet determined and needs to be further examined by a court-appointed expert. However, this is done in an interim judgment, meaning that the final decision rests with the court.

A.4. QUESTION 3.1.4: HOW IS THE OPERATIVE PART DRAFTED IN A THE CASE OF A PROHIBITORY INJUNCTION (GERMAN: "UNTERLASSUNGSKLAGE")?

54. If a prohibitory injunction is present in a judgment, then the Operative Part of the judgement states all the regular elements and, furthermore, the specification that a party is enjoined from conducting certain actions. Moreover, the court orders the party to refrain from future infringements. In a prohibitory injunction, the court may utilize for example phrases such as:

    i. order to cease and desist ("*veroordelen tot het staken en gestaakt houden*"),[69]

    ii. orders the cessation of ("*beveelt de staking van*") and prohibits the defendant from offering for sale, placing on the market … ("*verbiedt verweredende partij*

[68] E.g. Rb. Turnhout 15 SSeptember 2008, AR 07/870/A, www.juridat.be.; Rb. Turnhout 07 April 2008, AR 06/1606/A, www.juridat.be.; Rb. Turnhout 04 February 2008, AR 06/1062/A, www.juridat.be.; Rb Turnhout 15 September 2008, AR 07/97/A, www.juridat.be. and Rb. Turnhout 21 January 2008, AR 03/54/A, www.juridat.be.
[69] Kh Antwerp 9 May 2014, AR A/14/3632, www.juridat.be.; Kh Antwerp 4 November 2014, AR A/14/1067, www.juridat.be.; Brussels 29 May 2012, *Jaarboek Marktpraktijken* 2012, 1011 and Antwerp 27 March 2018, *IRDI* 2018, afl. 1, 23.

op welke wijze dan ook rechtstreeks of onrechtstreeks, nog verder producten te koop aan te bieden, in de handel te brengen of daartoe in voorrad te hebben")[70]

iii. the court prohibits ("*legt een verbod op")*[71]

iv. orders the immediate discontinuation and cessation of ("*beveelt de onmiddelijke stopzetting en staking van*").[72]

55. There seems to be a pattern in how the Operative Part of a prohibitory injunction is drafted. However, one may find variations by the same court and even in the same judgment.[73]

A.5. QUESTION 3.1.5: IF APPLICABLE, HOW IS THE OPERATIVE PART DRAFTED IN AN INTERIM JUDGMENT?

56. Interim judgements are a frequent occurrence in Belgium. Many of those interim judgments are mixed judgments. This means that the judgment contains a final decision as well as a preliminary ruling.[74] Different drafting options are used depending on the content of the judgment. Before addressing the preliminary ruling, the court states that it judges in a preliminary matter, using the term: "*avant-dire droit*" or "*alvorens recht te doen*".[75]

57. If a preliminary question to the European Court of Justice has been requested, the Operative Part states the question at hand. In the meantime, the case is then referred to the special roll/docket ("*Bijzondere rol*").[76] If the interim judgment contains an appointment of a court expert to further determine the scope of the damages, the court specifies the task of said expert. Additionally, the court fixes a hearing date to verify the proper conduct of the expertise. In such a case the court also specifies that it reserves the right to rule on the remainder of the issues, including the costs.[77] If a following

[70] Voorz. Kh Brussels 9 November 2012, *Jaarboek Marktpraktijken* 2012, 863.

[71] Voorz. Kh Brussels 26 April 2013, *Jaarboek Marktpraktijken* 2013, 1172.

[72] Antwerp 27 March 2018, *IRDI* 2018, afl. 1, 23.

[73] Antwerp 27 March 2018, *IRDI* 2018, afl. 1, 23.

[74] C. Van Severen, 'hoger beroep tegen een eindbeslissing in een tussenvonnis', 309 NJW (2014) p. 759 at p.759.

[75] E.g. Rb. Ghent 21 February 2012, *T.Not*. 2015, afl. 6, 410, noot Devos, S.

[76] E.g. Kh Antwerp 18 November 2015, AR A/15/3831 www.juridat.be. Different examples of a referral to the special roll/docket: Kh. Ghent 17 June 1997, *RW* 1997-98, 680; Rb. Bruges 18 March 2013, *LRB* 2013, afl. 2, 65 and Rb. Leuven 2 September 1988, *TBBR* 1989, 418.

[77] E.g. Rb. Brussels 12 November 2015, AR 2011/3731/A, www.juridat.be.; Rb. Brussels 2 January 2016, AR 12/14305/A, www.juridat.be. and Rb. Brussel 16 February 2016, AR 12/12306/A, www.juridat.be.

judgment refers to the interim judgement it specifies that it has taken into account the interim judgement and that it continues to rule on these issues.[78]

A.6. QUESTION 3.1.6: IF APPLICABLE, HOW IS THE OPERATIVE PART DRAFTED IN AN INTERLOCUTORY JUDGMENT?

58. An interlocutory judgment in Belgian law is referred to as a judgment in *kortgeding*. Three conditions need to be fulfilled before an interlocutory proceeding can be initiated. Firstly, urgency is required. Secondly, the proceedings before the *kortgeding* judge may not be binding towards the judge on the merits. This means that the judgment is without prejudice to the case itself ("*uitspraak bij voorraad")*'[79].[80] Lastly, the measures must be urgent and provisional.[81]

59. These conditions can also be found in the Operative Part. The Operative Part in judgments from the *kortgeding* judge includes phrases such as:

    i. Imposes, by means of urgent and provisional measures, pending judgment on the merits ("*Legt, bij wege van dringende en voorlopige maatregel en in afwachting van een uitspraak ten gronde*").[82]

A.7. QUESTION 3.1.7: HOW IS THE OPERATIVE PART DRAFTED IN THE CASE OF ALTERNATIVE OBLIGATIONS, I.E. WHERE THE DEBTOR MAY DECIDE AMONG SEVERAL MODES OF FULFILLING A CLAIM?

60. No case law allowing alternative obligations has been found.

A.8. QUESTION 3.1.8: HOW IS THE OPERATIVE PART DRAFTED WHEN A CLAIM IS WHOLLY OR PARTIALLY REJECTED (ON FORMAL/PROCEDURAL GROUNDS)?

61. If the claim is dismissed on substantive grounds, the Operative Part states that the claims are admissible but unfounded ("*ontvankelijk doch ongegrond*").[83] It is possible that the claims are merely partially dismissed. In such a case, the Operative Part will make a distinction between these claims.[84] A possible phrasing would be: 'the case is

[78] Rb. Gent 10 January 2014, *P&B* 2014, afl. 3, 121.
[79] Article 584 Judical Code
[80] Article 1039 Judicial Code
[81] Laenens, supra n. 13, p. 290-296.
[82] E.g. Brussel 26 oktober 2010, *Jaarboek Marktpraktijken* 2010, 815 and Gent 30 April 2009, *TMR* 2009, afl. 6, 790.
[83] E.g. Rb. Mechelen 30 April 2014, AR 13/926/A, www.juridat.be.
[84] E.g. Rb. Mechelen 18 September 2013, AR 13/991/A, www.juridat.be.

admissible and valid in the following matters, but unfounded for the remaining matters'.[85] The judgment would continue to list the claims that are admissible and valid.[86] The reasons for the dismissal of the claim are not provided in the Operative Part but must be found in the statement of reasons.

A.9. QUESTION 3.1.9: HOW IS THE OPERATIVE PART DRAFTED WHEN A CLAIM IS WHOLLY OR PARTIALLY REJECTED (ON FORMAL/PROCEDURAL GROUNDS)?

62. If the claim is rejected on formal or procedural grounds, the Operative Part states that the claims are inadmissible.[87] If multiple claims are entertained in a judgment, the Operative Part addresses each claim separately, as such it is possible for certain claims to be declared inadmissible whilst others are considered admissible and either valid or unfounded.[88]

A.10. QUESTION 3.1.10: HOW IS THE OPERATIVE PART DRAFTED IF THE DEBTOR INVOKES SET-OFF? PROVIDE AN EXAMPLE.

63. Whenever a judgement states that a set-off is applicable, the Operative Part of the judgment contains only a simple reference to it. The Operative Part could merely state that there is a need to set-off the claims because of a previous judgment without specifying the amount of the set-off or the exact claims that are invoked for a set-off.[89] However, the Operative Part may be more specific stating the amount owed after set-off, but will not typically which claims are being set-off and what claim is being extinguished by the set-off.[90] Nonetheless, the Operative Part may, in a more general phrasing, contain the exact claims proposed for a set-off and their respective values.[91]

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[85] "*De hoofdvordering is ontvankelijk en gegrond in de hierna bepaalde mate, maar ongegrond voor het overige*", "*is ontvankelijk en gegrond in de hierna bepaalde mate, maar ongegrond voor het overige*" or "*recevables mais non fondés"* are some of the phrases used.

[86] E.g. Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.; Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be. and Rb. Brussel 03 December 2015, AR 12/12094/A, www.juridat.be.

[87] Voorz. Kh. Brussel 20 November 2017, *Jaarboek Marktpraktijken* 2017, 501.

[88] Voorz. Rb. Brussel 10 oktober 2018, *Tijdschrift voor Milieurrecht* 2018, afl. 6, 723 and Rb. Tongeren 6 February 2009, *T.Not*. 2012, afl. 9, 479.

[89] Kh. Marche-en-Famenne 8 January 2007, *TBBR* 2008, afl. 9, 518.

[90] Kh. Charleroi 16 February 1993, *J.L.M.B.* 1995, 147 en Kh. Brussel 8 August 1990, *R.D.C.* 1991, 659.

[91] Arbrb. Brussel (kort ged.) 8 May 2003, *Soc. Kron.*, 2004, 10, 565 and Kh. Hasselt 30 April 1998, *TBH* 1998, 680.

Moreover, in cases where set-off is denied by the court the Operative Part may state which claims cannot be invoked for set-off.[92]

B. QUESTION 3.2: ARE THERE SPECIFICATIONS PERTAINING TO THE STRUCTURE AND SUBSTANCE OF THE OPERATIVE PART OF THE JUDGMENT IN YOUR NATIONAL LEGAL SYSTEM – SET OUT BY LAW OR COURT RULES OR DEVELOPED IN COURT PRACTICE? IF SO, PLEASE PROVIDE AN ENGLISH TRANSLATION OF THE RELEVANT PROVISIONS.

64. There are no legal specifications relating to the drafting of the Operative Part. The Operative Part simply needs to answer all the claims invoked by the parties.

65. Generally, the Operative Part is located at the end of the judgment. Additionally, the Operative Part is often preceded by the phrase: for these reasons ("*Om deze redenen"/"par ces motifs*").[93] Nevertheless, this phrasing is not required by law.[94] Even when courts utilize this formula, they may phrase it slightly different, for example: "*pour ces motifs*".[95] However, "*par ces motifs*" is the most common one.[96]

66. Furthermore, the Operative Part may be contained in the statement of reasons of the judgment.[97] The position and form of the Operative Part of the judgment, which constitutes the decision of the court on the dispute[98], are not mandated by the Law. It is nevertheless necessary that the Operative Part, even if it is between the statement of reasons of the judgment, should be of the same rank as the grounds on which it is based.[99]

67. There is one exception to the absence of formal requirements for the Operative Part: according to Article 781 Judicial Code, judgments concerning the status of persons must indicate the full identity of the person and precisely determine the changes made to his/her legal status.

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[92] Kh. Tongeren 30 April 1984, *Limb.Rechtsl.* 1984, 174.

[93] Van den Bergh 2012-13, supra n. 24, p. 1537.

[94] Laenens, supra n. 13, p. 514

[95] E.g. Brussel 13 May 2016, *DAOR* 2016, afl. 119, 37 and Vred. Waver 12 November 2008, *T.Vred.* 2011, afl. 3-4, 193.

[96] E.g. Brussel 12 February 2009, *Not. Fisc. M.* 2010, afl. 2, 45 and Gent 26 oktober 2012, *Jaarboek Marktpraktijken* 2012, 286.

[97] Cass. 20 oktober 1999, *Arr.Cass.* 1999, nr. 553.

[98] Cass. 4 oktober 2005, *Arr.Cass.* 2005, afl. 10, 1807 and Cass. 18 December 1986, *Arr.Cass.* 1986, 240.

[99] Cass. 11 May 2012, *Arr.Cass.* 2012, afl. 5, 1243.

68. The Operative Part also states the division of the costs[100] of the proceedings if the parties have provided the court with their legal costs.[101] Moreover, the date of the decision is specified at the end of the Operative Part. In addition, the Operative Part also states that the judgment has been decided in a public session.[102]

C. QUESTION 3.3: DOES THE OPERATIVE PART CONTAIN ELEMENTS FROM OR REFERENCES TO THE REASONING OF THE JUDGMENT (GROUNDS FOR THE DECISION/LEGAL ASSESSMENT)?

69. In general, the Operative Part makes no reference to the reasoning of the judgment nor does it contain elements from the reasoning itself. However, the amount of the claim is repeated in the Operative Part.[103]

70. When a judgment contains a prohibitory injunction, the Operative Part may repeat some of the reasoning. The actions that need to be halted are stated in the Operative Part and the motivation, which was set out in the reasoning part of the judgment, is simply repeated in a more concise manner in the Operative Part.[104]

D. QUESTION 3.4: ELABORATE ON THE WORDING USED IN YOUR NATIONAL LEGAL SYSTEM, MANDATING THE DEBTOR TO PERFORM.

71. The Operative Part mandating the debtor to perform tends to be of a condemning nature. The term "*condamne à payer*"[105] is often used in the judgments drafted in French. The judgments in Dutch use a similar wording, namely "*veroordeelt […] om te betalen*".[106]

[100] E.g. Rb. Mechelen 04 February 2014, AR 12/1411/A, www.juridat.be. and Rb. Mechelen 04 March 2014, AR 13/67/A, www.juridat.be.

[101] E.g. In the following case the parties did not provide their legal expenses: Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.

[102] Eg. Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be. and Rb. Mechelen 04 March 2014, AR 13/67/A, www.juridat.be.

[103] E.g. Rb. Nijvel 6 January 2012, *Rec.gén.enr.not*. 2012, afl. 3,135.

[104] E.g. Kh. Antwerpen 7 July 1994, *DCCR* 1994-95, 77.

[105] E.g. Kh Brussel 29 February 2016, *Rev. dr. santé* 2015-16, afl. 5, 370.

[106] E.g. Kh. Tongeren 30 April 1984, *Limb.Rechtsl*. 1984, 174.

72. When deciding on the issue of admissibility and validity of a claim, the Operative Part is of a declaratory nature. Often the term "*déclare*" is used in French .[107] In Dutch, the corresponding phrase uses "*verklaren*".[108]

73. In certain judgements, like a prohibitory injunction, the court simply states that a certain action is unlawful and it proceeds to prohibit ("*legt een verbod op*") the party from committing those actions.[109]

74. Nonetheless, for a judgment to be enforced a condemnation is required.[110]

E. QUESTION 3.5: IF APPLICABLE, EXPLAIN HOW THE OPERATIVE PART IS DRAFTED IN CASES OF RECIPROCAL RELATIONSHIPS WHERE THE CLAIMANT'S (COUNTER-)PERFORMANCE IS PRESCRIBED AS A CONDITION FOR THE DEBTOR'S PERFORMANCE? HOW SPECIFICALLY IS THIS CONDITION SET OUT?

75. No case law relating to this issue was found.

F. QUESTION 3.6: HOW ARE THE INTEREST RATES SPECIFIED AND PHRASED IN A JUDGMENT ORDERING PAYMENT?

76. The interest rates themselves are not provided in the Operative Part. The Operative Part merely states which interest rates are applicable. More specifically, the Operative Part may provide that the statutory interest rate applies and/or that the judicial interest rate applies. If different rates are applicable, the Operative Part states the starting date of said interest.[111]

77. A typical way op phrasing, if multiplate rates need to be considered, would be: "*te vermeerderen met de vergoedende interesten aan de wettelijke interestvoet te rekenen vanaf 5 maart 2009, en met de gerechtelijke interesten aan de wettelijke interestvoet vanaf 25 maart 2009, tot de datum van de volledige betaling*." (statutory interest rate from [date], and judicial interest rate from [date] until the full payment.

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[107] E.g. Kh. Brussel 24 November 1997, *JDSC* 2000, 284.

[108] E.g. Arbrb. Brussel (kort ged.) 8 May 2003, *Soc. Kron.* 2004, 10, 565 and Kh. Tongeren 30 April 1984, *Limb.Rechtsl.* 1984, 174.

[109] E.g. Voorz. Kh Brussel 13 April 2011, *Jaarboek Marktpraktijken* 2011, 337.

[110] S. Brijs, 'Over de uitvoering van een impliciet dispositief van een rechterlijke beslissing', P&B (2001) p. 80 at p. 81.

[111] Rb. Gent 15 April 2011, AR 09/3041/A, www.juridat.be.

78. If a singular rate is applicable, the Operative Part could read as follows:

    i. "*te vermeerderen met de gerechtelijke intresten aan de wettelijke rentevoet vanaf de datum van dagvaarding"*[112] or "*vermeerdeerd met de gerechtelijke interesten vanaf [datum] tot datum van algehele betaling*".[113]

79. Another frequent phrasing refers to the law setting out the statutory interest rates. Such a reference could read as follows: "*te vermeerderen met de gerechtelijke verwijlinteresten aan de interestvoet bepaald in artikel 5 van de Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties, vanaf datum van dagvaarding, zijnde 31 juli 2012 tot op datum van volledige betaling*".[114]

80. More concise manners of reference may be used as well. The Operative Part could simply state that the amount owed needs to be multiplied with the applicable interest ("*vermeerderd met de op deze bedragen verworven intresten*")[115] Procedural law does not prescribe a particular formula. As such there are numerous ways of phrasing and referencing the applicable interest rates in the Operative Part. For the calculation of the interests, it is merely necessary for the amount to be quantifiable.[116]

G. QUESTION 3.7: PLEASE DEMONSTRATE HOW THE OPERATIVE PART DIFFERS WHEN CLAIMS TO IMPOSE DIFFERENT OBLIGATIONS ON THE DEBTOR ARE JOINED (E.G. PERFORMANCE, PROHIBITORY INJUNCTION ETC.) OR WHEN THE ACTION IS OF A DIFFERENT RELIEF SOUGHT (E.G. ACTION FOR PERFORMANCE, ACTION FOR DECLARATORY RELIEF, ACTION REQUESTING MODIFICATION OR CANCELLATION OF A LEGAL RELATIONSHIP).

81. The Operative Part is drafted in the same manner if different claims are presented before the judge. Thus, the Operative Part will simply list the decisions made by the court. An example in which a declaration as well as an order to pay was stated in the Operative Part:

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[112] Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.

[113] Antwerpen 5 September 2011, *NJW* 2012, afl. 258, 176.

[114] Rb. Gent 15 April 2011, AR 09/3041/A, www.juridat.be.; Kh Antwerpen 4 July 2016, AR A/15/07362, www.juridat.be. and Kh Antwerpen 15 January 2014, AR A/14/7557, www.juridat.be.

[115] Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.

[116] S. Brijs 2001, supra n. 109, p. 81.

i. *'Verklaren de huurovereenkomst tussen partijen bestaande betreffende het huurgoed gelegen te 2260 Westerlo, (...), verbroken in het voordeel van eisende partijen op hoofdeis enten laste van verwerende partij op hoofdeis vanaf één mei negentienhonderd achtennegentig'.*

ii. *Veroordelen verwerende partij op hoofdeis om aan eisende partijen op hoofdeis te betalen ten titel van opzeggings-vergoeding, de som van ACHTTIENDUIZEND BELGISCHE FRANK (18.000 BEF)'.*[117]

82. The following examples are extracts from the Operative Part in cases where a party is ordered to perform:

i. '*Condamnons, en conséquence, les premier et deuxième défendeurs solidairement, l'un à défaut de l'autre, à la reprise forcée immédiate des 200 actions de la NV J., propriété du demandeur, en application de l'Article 642 du Code des sociétés'*. And '*Condamnons les premier et deuxième défendeurs solidairement, l'un à défaut de l'autre, au paiement au demandeur, pour la reprise des actions, d'une indemnité provisionnelle de125 EUR par action, soit 25.000 EUR, augmentée des intérêts de retard à compter à partir du 28 mai 2004 et jusqu'au 27 juillet 2005 et, après cette date, des intérêts judiciaires*'.[118]

ii. '*veroordeelt de verweerster om zondermeer haar medewerking te verlenen bij het verlijden, door een notaris naar keuze van de eiseres (gebeurlijk met tussenkomst van een notaris naar keuze van de verweerster), van de authentieke/notariële akte tot verkoop, door de eiseres als verkoper aan de verweerster als koper, van het bedoelde onroerend goed te (...) tegen de prijs van 1.050.000,00 euro'*.[119]

iii. '*Veroordeelt tweede verweerder om aan aanlegger qq een bedrag te betalen van 5.460,67euro, meer de moratoire interesten aan de wettelijke rentevoet van 18 april 2000 tot 4 februari 2002, meer de gerechtelijke interesten aan de*

[117] Vred. Westerloo 8 oktober 1999, *Huur* 2002, afl. 1, 67.
[118] Voorz. Kh. Tongeren 4 oktober 2005, *RABG* 2009, afl. 2, 126.
[119] Rb. Gent 10 January 2012, *RW* 2013-14, afl. 35, 1387.

wettelijke rentevoet vanaf de dag der betekening van de inleidende dagvaarding tot de dag der volledige betaling'.[120]

83. The following examples belong to declaratory judgments:

i. '*Zeggen voor recht dat het gebruik maken van persoonsgegevens die op betaalopdrachten werden vermeld en die verweerster van haar klanten betrekt, met het oog op het voeren van publiciteit en klantenwerving voor het afsluiten en centraliseren van hun verzekeringspolissen bij of via verweerster, een met de eerlijke handelsgebruiken strijdige daad is volgens art. 93 W.H.P'*.[121]

ii. '*Zegt dat het gratis aanbieden van zes maanden omniumverzekering bij aankoop van een voertuig Citroën een verboden gezamenlijk aanbod uitmaakt in de zin van artikel 72, §1 WMPC*'.[122]

iii. '*Verklaart het derdenverzet ontvankelijk en gegrond als volgt*".[123]

iv. '*Dit pour droit que l'Article 14, § 2 c) de l'arrêté royal du 10 octobre 1979, en ce qu'il limite le pouvoir de contrôle et d'appréciation des arbitres n'est pas conforme à l'Article 502 du CIR/92, et ne peut être appliqué en l'espèce*.[124]

84. The following examples relate to cases of a prohibitory injunction:

i. '*Leggen verweerster verbod op nog langer haar klanten bij middel van mailings, publiciteit of op welke wijze ook te benaderen, voor liet afsluiten van verzekeringspolissen bij haarzelf of via haarzelf, met gebruikmaking van de op de overschrijvingsformulieren voorkomende gegevens, en dit op straffe van een dwangsom ad. TIENDUIZEND,-fr. per vastgestelde inbreuk vanaf de betekening van het vonnis*'.[125]

ii. '*De rechtbank legt Citroën Benelux verbod op om bij aankoop van een voertuig gratis zes maanden omniumverzekering aan te bieden*'.[126]

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[120] Kh. Hasselt 26 November 2002, *NJW* 2003, afl. 31, 567.
[121] Kh. Antwerpen 7 July 1994, *DCCR* 1994-95, 77.
[122] Voorz. Kh. Brussel 13 April 2011, *DCCR* 2012, afl. 94, 150.
[123] Voorz. Rb. Brussel 22 oktober 2009, *NJW* 2010, afl. 218, 204.
[124] Rb. Brussel 21 September 2007, *JDF* 2011, afl. 1-2, 317,
[125] Kh. Antwerpen 7 July 1994, *DCCR* 1994-95, 77.
[126] Voorz. Kh. Brussel 13 April 2011, *DCCR* 2012, afl. 94, 150.

85. The following examples relate to cases where a delivery of a movable was ordered:

i. '*Beveelt de teruggave van trailer nummer CSB 20567 van het merk Groenewegen binnen de drie maanden na betekening van het tussen te komen arrest op de maatschappelijke zetel van geïntimeerde onder verbeurte van een dwangsom van 10.000 BEF per dag vertraging en beperkt tot een maximum van 720.144 BEF'*.[127]

H. QUESTION 3.8: MAY THE OPERATIVE PART REFER TO AN ATTACHMENT/INDEX (FOR EXAMPLE, A LIST OF "TESTED CLAIMS" IN INSOLVENCY PROCEEDINGS)?

86. The Operative Part of judgments in insolvency proceedings do not typically include an index of tested claims.[128]

87. The seizure court may in the Operative Part refer to a list of assets attached by the enforcement officer.[129] In the same manner, the court may state that a certain amount was consigned by the enforcement officer at the Deposit and Consignment Office, with a reference to the file.[130]

I. QUESTION 3.9: WHAT ARE THE LEGAL RAMIFICATIONS, IF THE OPERATIVE PART IS INCOMPLETE, UNDETERMINED, INCOMPREHENSIBLE OR INCONSISTENT?

(i) Issues with the statement of reasons

88. Article 149 of the Belgian Constitution specifies that each judgment needs to be motivated. The Court of Cassation has specified that this is a formal requirement.[131] Consequently, a judgment is still motivated even if it is based on incorrect or inappropriate motives. Likewise, an illogical Statement of Reasons or an error in the designation of the applicable legal provisions do not constitute a breach of the

[127] Gent 6 February 2001, *Huur* 2001, 94.

[128] Kh Kortrijk 26 December 2007, AR 2388/06, www.juridat.be.; Kh Antwerpen 05 November 2015, AR A/17/8579 en A/15/9864, www.juridat.be.; Kh Verviers 13 November 2008, www.juridat.be.; Kh Kortrijk 06 December 2006, AR 2301/05, www.juridat.be.; Kh Kortrijk 23 May 2007, AR 3594/06, www.juridat.be.; Kh Kortrijk 06 June 2007, AR 3780/06, www.juridat.be.; Kh Kortrijk 10 May 2007, AR 813/84, www.juridat.be.; Kh Kortrijk 31 January 2007, AR 1808/06, www.juridat.be.; Kh Kortrijk 14 November 2007, AR 1380/07, www.juridat.be.; Kh Kortrijk 10 oktober 2007, AR 2353/05, www.juridat.be. and Kh Kortrijk 11 June 2008, AR 1148/07, www.juridat.be.

[129] Beslagr. Gent 27 April 2010, *NJW* 2012, nr. 254, 27.

[130] E.g. Rb. Mechelen 10 January 2014, A.R. 13/1393/A, www.juridat.be.

[131] Cass. 17 oktober 2001, *Arr. Cass.* 2001, nr. 551 and Cass. 6 oktober 2004, *Arr. Cass.* 2004, nr. 458.

obligation to motivate a judgment. A judgment will fail to be adequately motivated if the Court of Cassation is not able to conduct a legality test on said judgment.[132] The need to provide a motivation for a judgment does not concern the Operative Part.

(ii) Issues with the Operative Part

89. If the Operative Part is incomplete, incomprehensible or inconsistent, recourse to Article 793 to 801*bis* Judicial Code is needed. Three possible solutions are specified. The judgment may be explained[133], amended[134] or supplemented.[135]

a) The explanation of a decision ("*uitlegging*")

90. If the decision (the Operative Part of the judgment is viewed as the decision taken by the court, see supra) is either unclear or ambiguous,[136] the court may explain its decision. An explanation is only possible in those two scenarios.[137] Therefore, inconsistencies in a decision cannot be explained. For example, if an inconsistency arises between the Operative Part and the statement of reasons, recourse to an explanation is not possible.[138] It is crucial, however, that the explanation does not expand the rights of the parties. The court may under no circumstances modify the rights confirmed in the decision.[139] The following courts have jurisdiction to render such an explanatory decision:

i. the court that gave the unclear or ambiguous decision[140],

ii. the court to which the unclear or ambiguous decision is referred[141] or

iii. the seizure court (judge of attachments).[142]

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[132] G. De Maeseneire, 'Motivering rechterlijke beslissingen' 158 NJW (2007) p. 194 at p. 194-197.

[133] Article 793 Judicial Code

[134] Article 794 Judicial Code

[135] Article 794/1 Judicial Code

[136] Cass. 4 March 2014, *Pas.* 2014, 572; Cass. 27 February 1992, *Arr.Cass.* 1991-92, 615; Cass. 10 May 1977, *Arr.Cass.* 1977, 925; Cass. 24 April 1970, *Arr.Cass.* 1970; Antwerpen 22 June 2009, *P&B* 2009, 226; Arbh. Bergen 10 January 1992, *JTT* 1992, 151; Arbh. Luik 16 oktober 1976, *JL* 1976-77, 122; Arbh. Antwerpen 19 May 1978, *RW* 1978-79, 1368; Brussel 5 April 1967, *Pas.* 1967, II, 256; Rb. Mechelen 28 June 1988, *Pas.* 1989, III, 23; Kh. Brussel 7 January 1980, *JT* 1980, 537 and KG Rb. Luik 28 February 1975, *JL* 1974-75, 299.

[137] Cass. 10 May 1977, *Arr.Cass.* 1977, 925 and Antwerpen 22 June 2009, *P&B* 2009, 226.

[138] Cass. 16 May 1989, *Arr.Cass.* 1988-89, 1080.

[139] Cass. 4 March 2014, *Pas.* 2014, 572 and Cass. 25 May 2009, *Arr.Cass.* 2009, 1384.

[140] Article 793, section 1 and Article 795 Judicial Code

[141] Article 795 in fine Judicial Code

[142] Article 793, section 2 Judicial Code

91. The judge of attachments has jurisdiction to explain judgments of the judge on the merits when he/she handles such judgments in the context of compulsory enforcement, or protective measures that anticipate this.[143]

92. When a claim to explain a decision is lodged, the enforcement of the original judgment is not suspended.[144] Consequently, the bringing by the debtor of an action for interpretation does not constitute a legal impediment which prevents the creditor from obtaining the execution of his debtor's obligation.[145]

b) The amendment of a decision ("*verbetering*")

93. An amendment of the decision is possible when a miscalculation, a slip of the pen or a material omission has occurred.[146] These issues must be the result of an error of the judge, not of the parties themselves.[147] The errors must be of such a nature that it is obvious for any neutral reader what the judge really wanted to express.[148] Errors originating from the writ of summons, the statement of case or the evidence provided by the parties are not subject to an amendment.[149]

94. Examples leading to a possible amendment based on a slip of the pen included the following material errors:

    i. 3.500.00 fr instead of 3.500.000 fr[150],

    ii. 350 BEF instead of 450 BEF[151],

    iii. 3 September 1979 instead of 30 September 1979.[152]

95. Also leading to an amendment, based on the grounds of miscalculation:

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[143] C. Van Severen, 'Art. 793-801bis Ger.W. (Inleiding) – Art. 794/1 Ger. W' in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2020) p. 111 at p. 59.

[144] Van Severen 2020, supra n. 142, p. 60.

[145] Van Severen 2020, supra n. 142, p. 61.

[146] Article 794 Judicial Code and Brussel 9 March 2000, *RPS* 2000, 182; Arbh. Brussel 21 June 1989, *Pas*. 1990, II, 47 and Vred. Bessines 23 April 1980, *T.Vred*. 1981, 161.

[147] Laenens, supra n. 13, p. 151.

[148] Pol. Leuven 23 January 2001, *TBBR* 2001, 319.

[149] Arbh. Bergen 4 April 2011, *Soc.Kron*. 2012, 464 and Luik 13 oktober 1999, *JLMB* 2001, 484.

[150] Pol. Leuven 23 January 2001, *TBBR* 2001, 319.

[151] Cass. 19 March 1973, *Arr.Cass.* 1973, 711.

[152] Arbh. Luik 5 March 1984, *JL* 1984, 462.

i. calculation for damages leading up to 328 000 BEF, calculated as 320 (hours) times 1000 (BEF)[153],

ii. the calculation for damages based a monthly sum for a period of 27 months valued at 170.000 BEF instead of 270.000 BEF.[154]

96. Lastly, examples resulting in amendment based on a material omission:

i. when a court has issued an expert study but has neglected to appoint a court expert.[155]

97. Just as for a claim for an explanation of the decision, a claim for an amendment of a decision does not prevent execution.[156]

c) The supplementation of a decision ("*aanvulling*")

98. The supplementation of a decision entails that the judge has, in drafting the original Operative Part, forgotten or has failed to express a decision on a point of a claim.[157] Important to note is that the possibility for a supplementation can only arise when a decision has been rendered *infra petita*. A supplementation is not possible if a decision has been adjudged *ultra petita*. Therefore, if a judgment has been rendered ultra petita, the parties need to utilize the available means of recourse against judgments, for example by lodging an appeal.[158]

99. An interesting question arises on the applicability of the supplementation of a decision. Is it mandatory to request a supplementation or is possible to invoke other means of recourse against a judgment? The prevailing view is that invoking Article 794/1 Judicial Code is not mandatory. Consequently, other means of recourse against decisions failing to address a point of a claim may still be invoked.[159]

100. Another interesting question relates to the formula which is often used at the end of the Operative Part declaring that all other claims are dismissed ("*wijzen al het*

[153] Pol. Leuven 23 January 2001, *TBBR* 2001, 319.
[154] Antwerpen 3 November 1993, AR 3128-93 (onuitg.).
[155] Cass. 13 December 2004, *Arr.Cass.* 2004, 2020.
[156] Van Severen 2020, *supra* n. 142, p. 101.
[157] Van Severen 2020, *supra* n. 142, p. 112.
[158] Van Severen 2020, *supra* n. 142, p. 112.

[159] Van Severen 2020, *supra* n. 142, p. 122.

overage af"[160]*, "al het overage wordt afgewezen*" or "*alle strijdige en meer omvattende conclusies worden verworpen*").[161]

101. The supplementation of a decision may be done by the court that was responsible for the omission in the first place. Additionally, the appellate court also has jurisdiction to rule on the appeal which is based on the failure of the first court to rule on a point of the claim.[162] The invocation of the claim for supplementation does not stay the enforcement of the first judgment.[163] Just as is the case for an explanation or an amendment of a decision, a claim to supplement a decision does not prevent or suspend the enforcement of the original judgment.[164]

J. QUESTION 3.10: MAY THE OPERATIVE PART DEVIATE FROM THE APPLICATION AS SET OUT BY THE CLAIMANT? IF SO, TO WHAT EXTENT? IN OTHER WORDS, HOW MUCH DISCRETION DOES THE COURT ENJOY WHEN FORMULATING THE OPERATIVE PART?

102. There are few rules in Belgian law concerning the structure of the judgments. However, one of those rules states that the Operative Part needs to answer all the claims that have been presented, in a correct manner, by the parties. In principle, a judge cannot rule on matters that have not been presented before him, nor may he amend the claims presented by the parties.[165] Only in matters that would violate public policy, may a judge rule *ultra petita*. It is possible for the judge to grant a party less than what it has requested or to partially grant a claim.[166]

[160] Laenens, supra n. 13, p. 520.

[161] Van Severen 2020, supra n. 142, p. 119.

[162] Van Severen 2020, supra n. 142, p. 130.

[163] Van Severen 2020, supra n. 142, p. 130.

[164] Van Severen 2020, supra n. 142, p. 131.

[165] Article 1138, 2° Judicial Code

[166] B. Allemeersch, Taakverdeling in het burgerlijk proces [Division of tasks in civil proceedings] (Intersentia, 2007) p. 262-264 and F. Auvray and K. Ronsijn, 'Het verlies van een kans en het beschikkingsbeginsel', 587 RW (2017-18) p. 587 at p. 589.

4. PART 4: SPECIAL ASPECTS REGARDING THE REASONING

K. QUESTION 4.1: IF APPLICABLE, HOW DOES THE LAW OR COURT RULES OR LEGAL PRACTICE GOVERN THE STRUCTURE AND CONTENT OF THE REASONING OF THE JUDGMENT?

103. Belgian law does not provide a certain structure of the reasoning that needs to be adhered to. The court must answer all the correctly presented claims of the parties. Article 744 Judicial Code provides a pattern that needs to be adhered to by the counsel when drafting their respective statements of the case. If the structure provided by Article 744 Judicial Code is not followed by the counsel, then the court does not need to answer to the points of law presented in a different manner.[167]

A.1. QUESTION 4.1.1: IS THERE A SPECIFIC ORDER TO BE FOLLOWED WHEN DRAFTING THE REASONING?

104. The reasoning is often separated from the facts of the case. Nonetheless, the key factual elements for the claim are often included in the reasoning of the court as well. This means that the reasoning part is not abstractly formulated as the factual elements included in the reasoning and the legal grounds are intertwined. For example, the reasoning part of a judgment can state that party A has lended a certain amount of money to party B. The next paragraph can then continue with an explanation that the burden of evidence falls upon the claimant.[168]

A.2. QUESTION 4.1.2: HOW LENGTHY/DETAILED IS THE REASONING?

105. The reasoning part of the judgments tends to be the most elaborate one. The length of the reasoning parts strongly depends on the number of claims presented by the parties. Therefore, it is not possible to distil an average length of the reasoning part. The reasoning itself tends to quite detailed and often utilizes substructures to provide better legibility. This substructure is often comprised of the different claims set forward by the parties. The court proceeds to answer the question one by one.[169]

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[167] G. Closset-Marchal, 'Le procès civil après la loi du 19 octobre 2015', 2 TBBR (2016) p. 73 at p. 76.

[168] Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.

[169] Rb. Mechelen 4 February 2014, AR 12/1411/A, www.juridat.be. and Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.

A.3. QUESTION 4.1.3: DO YOU FIND THE REASONING TO BE TOO DETAILED?

106. In certain cases, the reasoning can be very technical and detailed. However, Belgium has had numerous initiatives to increase the legibility and the length of the reasoning provided by the courts. As such Belgium has taken a step in the right direction providing for a balance between the need for a proper motivation and the judicial backlog.[170]

A.4. QUESTION 4.1.4: ARE THE PARTIES' STATEMENTS (ADEQUATELY) SUMMARISED IN THE GROUNDS FOR DECISION?

107. The parties' statements are listed prior to the Statement of Reasons. However, they are oftentimes repeated in a concise manner in the Statement of Reasons as well, before the court provides its reasoning.

A.5. QUESTION 4.1.5: IS IT POSSIBLE TO DISTINGUISH BETWEEN THE PARTIES' STATEMENTS AND THE COURT'S ASSESSMENT (THE PROBLEM OF AN UNCLEAR DISTINCTION BETWEEN THE PARTIES' STATEMENTS AND THE COURT'S FINDINGS AND INTERPRETATION)?

108. Each substructure of the reasoning part of the judgments often starts with the parties' statements. The court uses certain indicative terms to indicate that the following statement is that of a certain party. Some of these examples are: "*De [party name] doet gelden dat*"[171], "*Eisers voeren aan*", "*Verweerders erkennen*"[172] or "*[party name] stelt*".[173] In general the court does not specify when it is making its own assessment.

L. QUESTION 4.2: IN THE REASONING, DO THE COURTS ADDRESS PROCEDURAL PREREQUISITES AND APPLICATIONS MADE AFTER THE FILING OF THE CLAIM?

109. In general, the court does not specify if it has jurisdiction nor does it state the party capacity or any other procedural prerequisites.

110. However, some judgments address these issues. If a judgment contains these elements, they are specified before the reasoning part under a different section. For example, some judgments refer to 'admissibility' before the reasoning part.[174] Other

[170] S. Mosselmans and B. Allemeersch, 'Positieve motivering', 1 RW (2011-2012) p. 85 at p. 87.
[171] Rb. Mechelen 10 January 2014, AR 13/1393/A, www.juridat.be.
[172] Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.
[173] Rb. Mechelen 04 February 2014, AR 12/1241/A, www.juridat.be.
[174] Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.

judgments include the procedural antecedents, such as the correct serving of the writ of summons or the proper conduct of the procedure.[175] These references are thus often included under the sub-title 'procedural steps', ‘procedure’ or ’beforehand’ (“*vooraf*”).[176]

111. Moreover, the capacity of the parties is stated in each judgment. The preamble of the judgment specifies the capacity of the parties as either claimant or defendant. If there are multiple claimants or defendants present in the judgment, they are listed as second defendant, third defendant etc. respectively.[177]

M. QUESTION 4.3: ARE INDEPENDENT PROCEDURAL RULINGS PROPERLY RE-ADDRESSED IN THE JUDGMENT?

112. If a judgment is preceded by independent procedural rulings, the judgment refers to these rulings. This is often done in the preamble of the judgment and after the parties to the proceedings have been identified. The statement of these procedural rulings is frequently preceded by the phrase: the court observes (“*de rechtbank neemt in acht*”).[178] However, the phrasing may differ from court to court.

N. QUESTION 4.4: WHAT LEGAL EFFECTS (IF ANY) ARE ATTRIBUTABLE TO THE REASONING, E.G. IS THE REASONING ENCOMPASSED WITHIN THE EFFECTS OF THE FINALITY OF THE JUDGMENT?

113. In principle, the reasoning of the judgment can hold the same weight as the Operative Part. If an order is set out in the Statement of Reasons, that order is consequently enforceable.[179] For example, an order to pay interest, which is set out in the Statement of Reasons and is excluded from the Operative Part, can be used for enforcement.[180]

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[175] Kh Antwerpen 4 July 2016, A/15/7362, www.juridat.be.

[176] Kh Antwerpen 4 July 2016, A/15/7362, www.juridat.be.; Rb. Gent 15 April 2011, AR 09/3041/A, www.juridat.be. and Rb. Mechelen 04 March 2014, AR 13/67/A, www.juridat.be.

[177] Rb. Mechelen 04 February 2014, AR 12/14711/A, www.juridat.be.

[178] E.g. Rb. Mechelen 11 December 2013, AR 07/1286/A, www.juridat.be.

[179] S. Brijs et al, ‘[Beslag en executie] Algemeen’, 1 TPR (2015) p. 408 at p. 408.

[180] Beslagr. Gent 25 January 2011, *RW* 2011-12, afl. 7, 37.

5. PART 5: EFFECTS OF JUDGMENTS – THE OBJECTIVE DIMENSION OF RES JUDICATA

A. QUESTION 5.1: A FINAL JUDGMENT WILL, IN MOST MEMBER STATES, OBTAIN RES JUDICATA EFFECT. WITH REGARD TO THIS POINT, PLEASE ANSWER THE FOLLOWING QUESTIONS:

114. The Articles relating to res judicata have been amended multiple times, most recently in 2019.[181] As such there are some opposing views in doctrine relating to the figure of res judicata.

A.1. QUESTION 5.1.1: WHAT ARE THE EFFECTS ASSOCIATED WITH RES JUDICATA IN YOUR NATIONAL LEGAL ORDER?

115. The issue of res judicata is governed in Article 23 to 28 Judicial Code. There are two visions regarding res judicata, the traditional view and the modern view.[182] In the traditional view, if a judgement has res judicata, a legal presumption arises that the decision of the judge is the truth.[183] The effect of this legal presumption is that whatever has been decided by the judge cannot be judged upon again.[184] In the modern view, res judicata is viewed as an effect of a judgment.[185]

116. The modern view specifies that res judicata has two consequences, a positive one and a negative one.[186] The positive effect of res judicata entails the possibility for a party to rely on the previous judgment in order to have its rights respected. Additionally, the court may no longer make a new judgment on the points of dispute previously settled.[187] The negative effect of res judicata entails that a claim that has been rejected cannot be brought before a court again. This is known as a plea of res judicata.[188]

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[181] Wet van 21 december 2018 houdende diverse bepalingen betreffende justitie [Law of 21 December 2018 containing various provisions relating to justice], in force: 10 January 2019.

[182] P. Vanlersberghe, 'Gezag van gewijsde in burgerlijke zaken' in P. Lecocq en C. Engels (eds.), Rechtskroniek voor de vrede-en politierechters (die Keure 2010) p. 331 at p. 331.

[183] Cass. 9 June 2009, *Arr.Cass.* 2009, 1591; B. Allemeersch et al, Tussen gelijk hebben en gelijk krijgen [Between being right and getting justice] (Acco 2018) p. 24-28.

[184] P. Dauw, Burgerlijk Procesrecht (vierde editie) [Civil procedural law] (Intersentia 2018) p. 570.

[185] Vanlersberghe 2010, supra n. 181, p. 331.

[186] G. De Leval, Eléments de procédure civile (Larcier 2005) p. 251-252.

[187] Vanlersberghe 2010, supra n. 181, p. 331.

[188] Vanlersberghe 2010, supra n. 181, p. 332.

117. In short, Article 25 Judicial Code provides that the effect of res judicata is that it prohibits another invocation of the claim.

A.2. QUESTION 5.1.2: WHAT DECISIONS IN YOUR MEMBER STATE HAVE THE CAPACITY TO BECOME RES JUDICATA?

118. Res judicata can only be vested in a judicial act.[189] All final decision within a judgment ("*eindbeslissing*") can become res judicata. The different type of judgment is not relevant in determining whether a judgment has res judicata. A ruling, a judgment or an order[190] can all possess res judicata if those judgments entail a final decision within them. The decision must solve a disagreement. A disagreement is defined as a point on which the parties had a dispute and on which they had a debate.[191]

119. It is the nature of the judicial decision which is relevant. Article 24 Judicial Code specifies that all final decisions in a judgment become res judicata. This refers to a decision as defined in Article 19 Judicial Code, more specifically a judgment in which a judge has exhausted his jurisdiction over a certain point of dispute.[192] Article 19 Judicial Code wrongly refers to a final judgment ("*eindvonnis*") instead of a final decision within a judgment ("*eindbeslissing*").[193]

120. Therefore, certain types of judgments do not become res judicata. A preliminary decision ("*vonnis alvorens recht te doen*") is an example of a judgment which does not become res judicata as it does not hold a final decision. If this preliminary decision is part of a mixed agreement it can be res judicata.[194]

121. However, judgments relating to the admissibility of a claim are final decisions and therefore res judicata.[195] Judgments *zoals in kortgeding* can also hold res judicata

[189] J. Vancompernolle and G. Closset-Marchal, 'Examen de jurisprudence -Droit judiciaire privé (1985-1996)', RCJB (1997) p. 495 at p. 530 and M. Castermans, Gerechtelijk privaatrecht [Procedural private law] (Story Publishers 2009) p. 67.

[190] See question 1.4

[191] Cass. 14 June 2018, *P&B* 2018, afl. 5–6, 200.

[192] Vanlersberghe 2010, supra n. 181, p. 343.

[193] P. Taelman en K. Broeckx, 'Rechtsmiddelen na Potpourri I' in B. Allemeersch en P. Taelman (eds.), De hervorming van de burgerlijke rechtspleging door Potpourri I (die Keure, 2016) p. 103 at p. 125-127.

[194] Cass. 10 September 1981, *Arr.Cass.* 1981-82, 46 and Cass. 23 March 1990, *Arr. Cass.* 1989-90, 963.

[195] Cass. 7 November 1994, *Arr.Cass.* 1994, 931.

as the judge makes a final decision within this judgment.[196] Additionally, *kortgeding* judgments hold res judicata as well.[197]

A.3. QUESTION 5.1.3: AT WHAT MOMENT DOES A JUDGMENT BECOME RES JUDICATA?

122. Res judicata is achieved when a number or requirements are met. In the first place, the object of the claims must be the same. Secondly, the claim must have the same cause. Lastly, the claim must be invoked between the same parties in the same capacity.[198]

123. Whether the same cause exists between the claims is matter for debate. In 2015, an amendment to Article 23 Judicial Code has been introduced, adding that a different legal basis is irrelevant for res judicata to have effect. Therefore, res judicata prevents the repetition of a claim even if it is based on a different legal basis. The claim can only be repeated if the factual circumstances underlying the action are different.[199]

124. Article 24 Judicial Code stipulates that a final decision in a judgment has res judicata from the moment of the decision. However, this is a conditional res judicata.[200] The res judicata will exist if the final decision in the judgment has not been reversed due to means of recourse against judgments.[201]

A.3.1. Question 5.1.3.1: How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

125. In principle the moment of the final decision in a judgment becoming res judicata is not affected. The final decision will hold res judicata up until the point of reversal of the judgment. This means that the first judgment still holds res judicata during the proceedings before the court of appeal. When the second final decision in appeal is adjudged, the first final decision loses its res judicata power.[202]

A.3.2. Question 5.1.3.2: How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or

[196] Vanlersberghe 2010, supra n. 181, p. 343.
[197] Cass. 6 February 1930, *Pas*. 1930, I, 87.
[198] L. Brewaeys, 'Het beoordelen van het geschil overeenkomstig de toepasselijke rechtsregels', 6 VAV (2017) p. 46 at p. 46.
[199] Closset-Marchal 2015, supra n. 166, p. 74.
[200] Taelman 2016, supra n. 192, p. 353.
[201] Vanlersberghe 2010, supra n. 181, p. 345.
[202] Vanlersberghe 2010, supra n. 181, p. 345.

"extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

126. An appeal before the Court of Cassation in Belgium does not stay the effect of res judicata either. During the proceedings before the Court of Cassation the final decision in a judgment from the court of appeals holds its res judicata.[203] If the final decision in a judgment of the court of appeals is overruled by the Court of Cassation, it loses its res judicata. Consequently, in this situation the final decision in the first judgment regains its res judicata.[204] Another special remedy that may be invoked is that of the revocation of res judicata ("*herziening van gewijsde*"). This remedy does not stay the res judicata effect of a judgment, it merely entertains the removal of the res judicata from a judgment.

A.4. QUESTION 5.1.4: IS RES JUDICATA RESTRICTED TO THE OPERATIVE PART OF THE JUDGMENT IN YOUR LEGAL SYSTEM OR DOES IT EXTEND TO THE KEY ELEMENTS OF THE REASONING OR OTHER PARTS OF THE JUDGMENT?

127. The res judicata effect entails more than merely the decision of the court over a point of dispute. It also includes everything that, following the dispute that was brought before the court and about which the parties were able to argue albeit implicitly, constitutes the necessary basis for the court decision.[205]

128. The effect of res judicata is not merely restricted to the Operative Part of the judgment. Each final decision of the court holds a res judicata effect. It is irrelevant where in the judgment this final decision is stipulated, be it in the Operative Part or the Statement of Reasoning.[206] As such the Statement of Reasoning can possess res judicata.[207]

A.4.1. Question 5.1.4.1: Are courts bound by prior rulings on preliminary questions of law?

129. In principle every final decision in a judgment holds a res judicata effect. Consequently, a preliminary question, which is not qualified as a final decision, cannot

[203] Vanlersberghe 2010, supra n. 181, p. 346.

[204] Cass. 13 December 1988, *Pas.* 1988, I, 412; Cass. 14 February 1991, *Pas.* 1991, I, 569; Cass. 28 January 2002, *Pas.* 2002, 255; Cass. 3 May 2002, *Pas.* 2002, 1061 and Cass. 13 February 2006, *J.T.* 2006, 271.

[205] Laenens, supra n. 13, p. 152.

[206] Castermans 2009, supra n. 188, p. 115.

[207] Cass. 14 May 1982, *Arr.Cass.* 1981-82, 1140.

have a res judicata effect. An exception to this principle is a mixed judgment which contains preliminary questions as well as final decisions.

130. For example, a decision in which a measure concerning the administration of trial is ordered, or the situation of the parties is provisionally regulated, does not have a res judicata effect on the points concerning the grounds of the matter.[208] Such judgments will only have res judicata effect for example with regard to a new request for provisional measures which have previously been denied.[209]

131. However, *kortgeding* judgments have res judicata even if they do not decide on the grounds of the matter.[210] Res judicata applies to the Operative Part as well as to the statement of reasons.

A.4.2. Question 5.1.4.2: Does your legal order operate with the concept of "claim preclusion"?

132. For res judicata to exist, certain prerequisites need to be met. The claim needs to have, inter alia, the same object and the same cause. Article 23 Judicial Code stipulates that the cause of the suit must be the same. However, it also stipulates that the legal ground invoked does not make a difference in determining whether the cause is the same. The Belgian legislators have explicitly tried to combat the phenomenon of instituting the same suit based on a different legal basis.[211]

133. Consequently, a new claim cannot be invoked for the same cause based on a new legal ground. Take for example, a claimant filing a suit for damages incurred in a traffic accident, alleging that the defendant acted negligently. If the court dismisses the claim, the claimant cannot file a new suit for damages arising from the same traffic accident based on an intentional tort. If the first claim is brought before the criminal court, as to obtain a decision on damages in criminal procedure, and the second claim based on tort is brought before a civil court, there is no res judicata.

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[208] S. Sobrie, Art. 19 Ger.W , X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2020) p. 41 at p. 42 and Vanlersberghe 2010, supra n. 181, p. 343.

[209] Sobrie 2020, supra n. 207, p. 42.

[210] Vanlersberghe 2010, supra n. 181, p. 343.

[211] Wetsontwerp van 30 juni 2015 houdende wijziging van het burgerlijk procesrecht en houdende diverse bepalingen inzake justitie [Draft law of 30 June 2015 amending civil procedural law and various provisions on justice], *Parl. St.Kamer* 2014-15, nr. 54-1219/001, p. 4-5 .

134. The same issue arises if a claimant has already obtained a judgment ordering the defendant to pay for damages further to a suit based on personal injury resulting from a traffic incident. The claimant cannot consequently file another suit based on the same traffic accident for material damages. The claimant should have addressed both legal grounds in the same suit.

135. It is however not unthinkable that a party may claim damages based on Article 1382 Civil Code (tort) alleging a mistake t of the defendant. Consequently, the claimant will invoke facts to substantiate this claim. If the claim is denied, the claimant may try to start another suit based on Article 544 Civil Code (neighbourly nuisance). The facts invoked may differ. For example, to substantiate a claim on Article 1382 Civil Code, the claimant may invoke that the behaviour of the defendant was wrongful. On the grounds of Article 544 Civil Code, the claimant may simply invoke that the yards are adjacent. The facts supporting the claim will be different.[212] Nonetheless, for res judicata, all the facts (henceforth: plain facts "*naakte feiten*") and not only the facts supporting the claim (henceforth: legal facts "*juridische feiten*") need to be considered In the aforementioned example, a new claim on based on Article 544 Civil Code would not be possible due to res judicata.[213]

136. The claim preclusion effect of res judicata has undergone changes in 2019. The legislator amended Article 23 Judicial Code adding that: 'Res judicata does not extend to a claim which is based on the same cause of action but which the court could not take cognizance of in view of the legal basis on which it is based'.[214] The exact scope of this phrasing is not fully examined yet.

137. Nonetheless, the legislator added this phrase to allow the possibility to institute a claim based on the same cause in front of a different judge, if there was no possibility to bring the suit before the first judge. For example, a claim before the criminal court for damages can only be based on Articles 1382-1383 Civil Code (wrongful act) but

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[212] P. Taelman, 'Potpourri en de burgerlijke rechtspleging' in J. DE WINTER et al, De potpourri-wetten: een eerste evaluatie van de waaier aan quick wins, reparaties en grondslagen voor organisatorische vernieuwingen (Larcier 2017) p. 1 at p. 9.

[213] Wetsontwerp van 30 juni 2015 houdende wijziging van het burgerlijk procesrecht en houdende diverse bepalingen inzake justitie, Parl. St. Kamer 2014-15, nr. 54-1219/001, p. 5.

[214] In Dutch: "*Het gezag van het rechterlijk gewijsde strekt zich evenwel niet uit tot de vordering die berust op dezelfde oorzaak maar waarvan de rechter geen kennis kon nemen gelet op de rechtsgrond waarop ze steunt*".

not on liability regardless of fault (or for that matter on other special forms of liability). The injured party must still be able to claim for damages on other grounds if the criminal court has acquitted and rejected the claim. This was however not possible and resulted in a situation where the injured party could not start proceedings based on Article *29bis* WAM[215] against the car insurer that intervened in the proceedings before the criminal court. In such a scenario, the claims would have the same cause (the traffic accident) and object (reimbursement for damages arising out of the traffic accident).[216] Hence, to allow this claim, the law had to be changed in order to insert the aforementioned sentence in Article 23 Judicial Code.

138. This change impacts on the facts that need to be considered in determining whether the cause is the same. More specifically, this reopens the debate whether plain facts or legal facts should be used in determining cause for res judicata. This change seemingly brings back the view that only legal facts should be considered to determine whether claims have the same cause, to establish res judicata.[217]

A.4.3. Question 5.1.4.3: Are courts bound by the determination of facts in earlier judgements?

139. Due to the recent changes in Belgian law concerning res judicata, courts are bound by the determination of facts in previous final decisions in a judgment. The totality of facts brought by the parties in support of their claim has res judicata effect.[218] See further the ongoing discussion as reported under question 5.1.4.3

140. [219]

[215] This is a statute concerning the mandatory insurance for car owners.

[216] G. Jocque, 'Artikel 23 Ger.W.: het gezag van gewijsde gewijzigd', 28 RW (2018-19) p. 1082 at p. 1082.

[217] D. Scheers en P. Thiriar, 'Gezag van gewijsde en rechtsgrond, terug naar af?', 28 RW (2018-19) p. 1083 at p. 1083.

[218] Closset-Marchal 2015, supra n. 166, p. 75 and E. Dirix en K. Broeckx, Beslag in APR [Attachment in APR] (Wolters Kluwer 2010) p. 174.

[219] Scheers, supra n. 216, p. 1083 and G. Jocque, supra n. 215, p. 1082.

B. QUESTION 5.2: IF PART OF A CIVIL CLAIM IS BEING CLAIMED IN CIVIL PROCEEDINGS, HOW DOES THIS AFFECT THE REMAINDER OF THE CLAIM, TAKING INTO ACCOUNT RES JUDICATA EFFECTS?

141. In principle, the applicant should present all claims in one action.[220] However, it is in theory possible to separately file two or more parts of the claim and, in that case, the outcome of the first action has no impact on the possibility of filing the other part of the claim.

C. QUESTION 5.3: IN THE CASE OF A NEGATIVE DECLARATORY ACTION, WHAT IS THE EFFECT OF A FINDING THAT THE MATTER IS RES JUDICATA?

142. In Belgium, in order to receive an enforceable title, a judgment must be of a condemnatory nature. This is not the case for purely declaratory and constitutive judgments.[221] In addition no case law relating to a negative declaratory action for non-payment has been found. Negative declaratory actions are possible for example to obtain a judgment concerning the alleged infringement of an intellectual right. These declarations however are not enforceable and are often accompanied by a request for an *astreinte/dwangsom* (penalty sum).

D. QUESTION 5.4: IF A COURT ISSUES AN INTERIM JUDGMENT CONCERNING THE WELL-FOUNDEDNESS OF A CLAIM, DOES THIS JUDGMENT HAVE ANY EFFECTS OUTSIDE OF THE PENDING DISPUTE?

143. If the court has decided in an interim judgment that the claim is admissible and well-founded, and proceeds to order an investigative measure before giving further judgment, this is a final interim judgment concerning the admissibility of the claim, which has the authority of res judicata and cannot therefore be reversed.[222]

E. QUESTION 5.5: SUPPOSE THE FOLLOWING HYPOTHETICAL. IF, IN MEMBER STATE Y, A SELLER (S) AS CLAIMANT IS SUING THE BUYER (B) AS DEFENDANT FOR PAYMENT OF THE PURCHASE PRICE, B WILL NOT BE ABLE TO SUE S IN MEMBER STATE Z FOR

[220] Closset-Marchal 2015, supra n. 166, p. 75.

[221] Laenens, supra n. 13, p. 871.

[222] Cass. 10 September 1981, *Arr.Cass.* 1981-82, 46 and Vanlersberghe 2010, supra n. 181, p. 339.

LIABILITY ON A WARRANTY AT THE SAME TIME DUE TO LIS PENDENS RULES UNDER B IA.

A.5. QUESTION 5.5.1: IS IT POSSIBLE FOR B TO SUE S IN MEMBER STATE Z AFTER THE CASE IN MEMBER STATE Y HAS BEEN DECIDED WITH RES JUDICATA EFFECT? WHAT IS THE POSITION REGARDING THIS QUESTION IN YOUR MEMBER STATE?

144. In *De Wolf v. Cox* case,[223] a case decided under the Brussels Convention, the ECJ held that, once a judgment which is enforceable under the Convention has been obtained in one Contracting State, the party who has obtained the judgment in his favour is prevented from bringing a new action elsewhere. In your hypothesis, however, it is the respondent who sues elsewhere but the rationale remains, as we see it, the same. If a foreign judgment holds res judicata effects in its country of origin, it holds res judicata authority in Belgium (Belgian law does not have the concept known under English law as *issue estoppel* but it will grant such effects to a foreign judgment which is recognised under Article 36 B IA).

A.6. QUESTION 5.5.2: IF IT IS POSSIBLE FOR B TO SUE S IN MEMBER STATE Z (IN THE ABOVE SITUATION), WILL THE COURT IN STATE Z BE BOUND BY THE REASONING IN THE JUDGMENT FROM THE COURT IN MEMBER STATE Y? WHAT IS THE POSITION ON THAT QUESTION IN YOUR NATIONAL LEGAL ORDER:

145. We are unaware of relevant case law in Belgium in line with the *Gothaer Allegemeine Versicherung v. Samskip* case.[224] However, we would state that it is possible to sue B in State Z but State Z should be bound by the res judicata effects of the foreign judgment, which logically includes the reasoning in the foreign judgment.

A.6.1. Question 5.5.2.1: If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

146. Not applicable (see *supra* 5.1.4)

A.6.2. Question 5.5.2.2: If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

147. In our opinion, this question receives a uniform answer under EU Private International Law further to the *Gothaer* case: the Member State addressed is bound by an obligation to recognize as binding the reasons for the judgment.

[223] Case 42/76 [1976] ECR 1759.

[224] Case C-456/11 EU:C:2012:719.

A.6.3. Question 5.5.2.3: If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

148. In our opinion, the foreign judgment cannot create greater preclusive effects than it has in the Member State where it was given.

A.7. QUESTION 5.5.3: HOW DO YOU HANDLE THE LIMITATION PERIOD PROBLEM IN THE SCENARIO DESCRIBED ABOVE? THE LIS PENDENS CASE LAW OF THE CJEU PREVENTS THE FILING OF A WARRANTY LIABILITY CLAIM IN STATE Z AS LONG AS A PAYMENT CLAIM IS PENDING IN STATE Y. HOW CAN THE BUYER PREVENT THE LIMITATION PERIOD FROM RUNNING IN STATE Z (YOUR HOME STATE) WITHOUT MAKING THE WARRANTY CASE PENDING?

149. The limitation period will be interrupted by the buyer if he writes an official letter requesting the payment based on the warranty.

6. PART 6: EFFECTS OF JUDGEMENTS - RES JUDICATA AND ENFORCEABILITY

A. QUESTION 6.1: WHAT IS THE RELATION OF RES JUDICATA TO ENFORCEABILITY, I.E. CAN A JUDGMENT BE ENFORCED BEFORE IT IS RES JUDICATA?

150. The question of res judicata ("*gezag van gewijsde*") must be distinguished from a final and conclusive judgment ("*kracht van gewijsde*"). Whenever a judgment is final and conclusive a possibility of enforceability arises. Article 28 Judicial Code defines when a judgment is conclusive and final: "*any decision is conclusive and final once it is no longer subject to opposition against a judgment by default or appeal save as otherwise provided by law and without prejudice to the effects of extraordinary appeals*". There are different views when a judgment is final and conclusive. However, the Court of Cassation seems to follow the view that a judgment is final and conclusive when no ordinary remedies are available even though a possibility to rely upon extraordinary remedies still remains.[225]

151. In principle a judgment is provisionally enforceable in Belgium. Two categories of exceptions apply to this apply. Firstly, the exceptions to provisional enforcement as

[225] Cass. 29 May 2015, *Arr.Cass.* 2015, 1436; Cass. 24 June 2013, *Arr. Cass.* 2013, 1597; Cass. 1 March 1974, *Arr.Cass.* 1974, 724 and Cass. 27 January 1978, *Arr.Cass.* 1978, 640.

provided by Article 1399 Judicial Code. Secondly the decision of the court to withhold provisional enforceability from a judgment.[226]

A.1. QUESTION 6.1.1: IS PROVISIONAL ENFORCEABILITY SUSPENDED (BY OPERATION OF LAW OR AT THE DISCRETION OF THE COURT) IF AN APPEAL IS LODGED?

152. Generally, all judgments are provisionally enforceable. The lodging of an appeal does not stay the possibility of an enforcement. The Belgian legislator has opted for this system because the use of an appeal was often misused to unduly postpone the enforceability of a judgment in order to delay a payment.[227]

A.2. QUESTION 6.1.2: WHO BEARS THE RISK IF THE PROVISIONALLY ENFORCEABLE JUDGEMENT IS REVERSED OR MODIFIED?

153. A party bears the responsibility for the damages arising out of this enforceability if that party decides to enforce a judgment rendered in first instance and the first judgment is subsequently overruled.[228] In principle, the party is liable for the sum that was already enforced multiplied by the applicable interest. Additionally, if the enforcement has led to additional damages, those can also be recovered from the creditor.[229] The risk is based on faultless liability ("*objectieve aansprakelijkheid*"), hence the possibility to recover the additional damages as well as the possibility of restitution.[230]

154. The same is applicable for extraordinary remedies. For example, if a judgment from a court of appeals is overruled by the Court of Cassation, the party that started the enforcement proceedings will have to reimburse the amount received from this judgment multiplied with the applicable interest starting from the date of cassation. In case of extraordinary remedies, the party that enforced the judgment does not need to reimburse the other party for damages arising out of this enforcement.[231] This differs

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[226] E. Dirix, 'Art. 1397-1402 Ger.W.', in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwers 2019) p. 121 at p. 127.

[227] E. Vantomme, 'Vonnis bekomen van de rechter, gerechtsdeurwaarder aan zet?', <legalnews.be/gerechtelijk-recht/vonnis-bekomen-van-de-rechter-gerechtsdeurwaarder-aan-zet-crivits-persyn/.>, visited 16 April 2020.

[228] E. Vantomme, 'Vonnis bekomen van de rechter, gerechtsdeurwaarder aan zet?', <legalnews.be/gerechtelijk-recht/vonnis-bekomen-van-de-rechter-gerechtsdeurwaarder-aan-zet-crivits-persyn/.>, visited 16 April 2020.

[229] Article 1398 Judicial Code

[230] Dirix 2019, supra n. 225, p. 136.

[231] Cass. 23 February 2015, *Arr.Cass.* 2015, afl. 2, 526.

from an enforcement of a judgment which is still open to ordinary remedies, as in this case the damages may be recovered on the party enforcing the judgment.[232]

155. Moreover, even if the judgment was reformed due to a statutory amendment, the party who enforces a provisionally enforceable judgment holds the risk of paying damages.[233]

A.2.1. Question 6.1.2.1: Must the judgment creditor provide security before the judgment can be enforced?

156. In principle the creditor does not need to provide a security before commencing the enforcement of a judgment.[234] Nonetheless, the judge may order the executing party to provide a security before proceeding with provisional enforcement. However, this is an exception to the rule.[235]

157. Notwithstanding the absence of a requirement to provide security, the losing party may request a cantonment.[236] Consequently, when the winning party wishes to enforce the judgment and legal remedies are still available, the opposing may raise the objection that it wishes to canton. This means that the sum owed due to the judgment will be placed in a blocked account during the appeal procedure. Cantonment can be done in an amicable way or via judicial way. When the cantonment is done via judicial way, the amount owed will be deposited on the account of the Deposit and Consignment Office ("*Deposito- en consignatiekas*"). If the cantonment is voluntarily agreed upon, the amount owed may be placed in a shared account in the name of the counsels of the respective parties.[237]

A.2.2. Question 6.1.2.2: Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

158. See question 6.1.2.

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[232] Cass. 27 January 1982, *RW* 1983-84, 1491.

[233] Cass. 3 May 2018, *RABG* 2018, afl. 18, 1683.

[234] Article 1397 Judicial Code

[235] E. Vantomme, 'Vonnis bekomen van de rechter, gerechtsdeurwaarder aan zet?', <legalnews.be/gerechtelijk-recht/vonnis-bekomen-van-de-rechter-gerechtsdeurwaarder-aan-zet-crivits-persyn/.>, visited 16 April 2020.

[236] As set out in Article 1403 Judicial Code and further

[237] E. Vantomme, 'Vonnis bekomen van de rechter, gerechtsdeurwaarder aan zet?', <legalnews.be/gerechtelijk-recht/vonnis-bekomen-van-de-rechter-gerechtsdeurwaarder-aan-zet-crivits-persyn/.>, visited 16 April 2020.

A.2.3. Question 6.1.2.3: Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

159. If the debtor has voluntarily carried out the obligations set out in the judgment, the creditor does not need to reimburse the debtor for the damages arising from this situation based on a liability regardless of fault..[238]

160. However, there are different legal grounds which still lead to the restitution. A quasi-contractual claim is possible in case of bad faith on account of the executor. The executor is still obliged to reimburse the opposing party should the court decide that no fault on account of the executor is present. This reimbursement is based on the doctrine of undue payment.[239] Consequently, the executor only needs to pay interest as from the date that he is summoned to repay.[240]

161. When an astreinte is imposed in a judgment, there is an assumption that the payment was not of a voluntary nature.[241] The determination of a voluntary payment is based on a factual analysis.[242]

A.2.4. Question 6.1.2.4: Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

162. A default judgment is not provisionally enforceable.[243] As such enforcement of the judgment is not possible.

A.2.5. Question 6.1.2.5: What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

163. The reimbursement only covers the direct damages in the view of the doctrine.[244]

B. QUESTION 6.2: DOES YOUR LEGAL ORDER PRESCRIBE A SUSPENSIVE PERIOD WITHIN WHICH THE JUDGEMENT CREDITOR CANNOT INITIATE THE ENFORCEMENT PROCEEDINGS? FOR EXAMPLE, MUST THE JUDGEMENT CREDITOR FIRST DEMAND

[238] Dirix 2019, supra n. 225, p. 137.
[239] Article 1378 Civil Code
[240] Dirix 2019, supra n. 225, p.137
[241] E. Dirix, 'Overzicht van Rechtspraak. Beslag', TPR (2007) p. 2067.
[242] Dirix 2019, supra n. 225, p. 137.
[243] Article 1397 Judicial Code
[244] Dirix 2019, supra n. 225, p. 141.

PAYMENT FROM THE DEBTOR BEFORE HE CAN MOVE TO ENFORCEMENT (EXECUTION OF THE JUDGEMENT)?

164. If a judgment is provisionally enforceable, it can be enforced as soon as it has been notified to the other party. Consequently, the period during which an appeal may be lodged does not prohibit an enforcement.[245]

C. QUESTION 6.3: DOES THE JUDGMENT INCORPORATE ELEMENTS AKIN TO THE FRENCH "COMMAND AND ORDER TO THE ENFORCEMENT OFFICER" (*MANDONS ET ORDONNONS A TOUS HUISSIERS DE JUSTICE À CE REQUIS DE METTRE LE PRESENT JUGEMENT À EXECUTION*) AND WHAT ARE ITS EFFECT?

165. No such clause can be found in Belgian judgments.

D. QUESTION 6.4: HOW WOULD YOUR LEGAL ORDER DEAL WITH FOREIGN ENFORCEMENT TITLES, WHICH INVOLVE PROPERTY RIGHTS OR CONCEPTS OF PROPERTY LAW UNKNOWN IN YOUR SYSTEM?

166. When Belgian law does not possess a similar legal figure as is available in the foreign legal system, courts will try to equate that foreign concept to a Belgian legal figure that most resembles it.[246]

7. PART 7: EFFECTS OF JUDGMENTS – PERSONAL BOUNDARIES OF RES JUDICATA

A. QUESTION 7.1: HOW ARE CO-LITIGANTS AND THIRD PERSONS (INDIVIDUALS WHO ARE NOT DIRECT PARTIES OF THE PROCEEDINGS) AFFECTED BY THE JUDGMENT (E.G. ALIENATION OF A PROPERTY OR A RIGHT, WHICH IS THE SUBJECT OF AN ONGOING LITIGATION; INDISPENSABLE PARTIES)?

167. The judicial Code does not define a party in a proceeding (henceforth: litigant), nor a third party. Broadly speaking, a litigant can be understood as: the person who initiates or becomes involved in a proceeding.[247] The capacity of the party is irrelevant. Therefore, the claimants, the defendants and the intervening parties are bound by the res judicata effect. All other persons are viewed as third parties.[248] Additionally, legal

[245] Dirix 2019, supra n. 225, p. 16.

[246] T. Kruger and J. Verhellen, Internationaal privaatrecht. De essentie [Private international law. The essentials] (die Keure 2019) p. 171.

[247] J. Van Doninck, 'Het gezag van het rechterlijk gewijsde' in X., Praktijkboek gerechtelijk recht (Vanden broele 2005) p. 41 at p. 46 and Taelman 2001, supra n. 7, p. 244.

[248] Taelman 2001, supra n. 7, p. 239-247.

representatives ("*formele procespartij*") are not bound by res judicata in subsequent proceedings in which they act as a litigant.[249]

168. In the Belgian legal order res, judicata holds a relative effect.[250] Therefore the judgment only binds the litigating parties.[251] Furthermore, a judgment holds (refutable) evidential value.[252] This means that it can be used as evidence in different proceedings against a third party. However, the third party can institute third-party proceedings to dispute the evidentiary value of this judgment.[253] The original judgment does not bind the court even if the third party does not initiate third party proceedings.[254]

169. In addition, a judgment concerning the status of the person also has authority of res judicata vis-à-vis third parties on account of the indivisibility of that status.[255]

B. QUESTION 7.2: DO CERTAIN JUDGMENTS PRODUCE IN REM (*ERGA OMNES*) BINDING EFFECTS?

170. In principle a judgment only has res judicata inter partes. Nonetheless, a judgement that has res judicata effects is opposable to third parties.[256] Third parties are obliged to recognise the existence of the decision and the effects it produces between the parties.[257] Additionally, declaratory judgements do not need to be enforced. Consequently, they instantly produce effects in the legal order.[258]

171. In certain cases, as provided by statute, the effects of res judicata are extended to third parties. In these cases, the authority of res judicata is extended to certain persons.[259] For example, a case where the insurer has de facto taken the lead in proceedings relating to a liability insurance. Normally, a judgment only has res judicata

[249] Vanlersberghe 2010, supra n. 181, p. 340; P Taelman 2001, supra n. 7, p. 286 and S. Sobrie, Procederen qualitate qua: procesvertegenwoordiging naar Belgisch recht (Intersentia 2016) p. 292.
[250] Taelman 2018, supra n. 17, p. 101.
[251] Cass. 20 June 1996, *Arr.Cass.* 1996, 619.
[252] Cass. 28 April 1989, *Arr.Cass.* 1988-89, 1013. and Cass. 12 May 2016, *RW* 2016-17 (summary), afl. 16, 620.
[253] Vanlersberghe 2010, supra n. 181, p. 332.
[254] Cass. 21 January 2011, *Arr.Cass.* 2011, afl. 1, 270 and Cass. 12 May 2016, *RW* 2016-17, afl. 16, 620.
[255] Van den Bergh 2012-13, supra n. 24, p. 1537.
[256] Taelman 2001, supra n. 7, p. 257.
[257] Vanlersberghe 2010, supra n. 181, p. 332.
[258] Laenens, supra n. 13, p. 151.
[259] Sobrie 2016, supra n. 250, p. 292-293.

against the insurer if he was a party in the proceeding.[260] However, if the insurer is not a party in the proceeding, but has taken a de facto lead therein, that judgment has res judicata authority against the insurer.[261] See, for another example, question 7.3.

C. QUESTION 7.3: HOW ARE (SINGULAR AND UNIVERSAL) SUCCESSORS OF PARTIES AFFECTED BY THE JUDGMENT?

(i) General

172. The res judicata effect of a judgment also applies to successors.[262] A distinction needs to be made between successors by universal title and successors by particular title.[263]

(ii) Successors by universal title

173. The following successors are viewed as successors by universal title: the heir ("*efgenaam*"), the universal legatee ("*algemene legataris*"), legatee under general title ("*legataris onder algemene titel*") and the beneficiary of appointment of heir ("*begunstigde van contractuele erfstelling*").[264]

174. The legal grounds of res judicata having effect on successors by universal title can be found in Article 1122, section 1, 1° and Article 1122, section 2, 1° Judicial Code. These Articles stipulate that successors by universal title may not institute third party proceedings against an adverse judgment to which they were not a party. However, they still may use other means of appeal against judgments.[265] The substantive legal basis lies in the fact that the successor acquires the rights and obligations of his predecessor, as determined by judicial decisions.[266] Nevertheless, the prior judgment will have no res judicata effect if successors rely on their own respective rights.[267] For example, a

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[260] Article 153, §1, section 1 Insurance Law ("*Wet van 4 April 2014 betreffende de verzekeringen*")

[261] Article 153, §1, section 2 Insurance Law and B. Weyts en T. Vansweevelt, Handboek Verzekeringsrecht [] Manual Insurance Law] (Intersentia 2016) p. 785-86.

[262] Castermans 2009, supra n. 188, p. 69.

[263] I. Pocket, Moeders mooiste zorgenkind: het gezag van het rechterlijk gewijsde, UGent, (2018-2019) p. 85 et seq.

[264] E. Dirix, Obligatoire verhoudingen tussen contractanten en derden [Obligatory relations between contracting parties and third parties] (Kluwer 1984) p. 25.

[265] Taelman 2001, supra n. 7, p. 273.

[266] Taelman 2001, supra n. 7, p. 274-275.

[267] Article 1122 Judicial Code

successor will be able to institute third-party proceedings if he claims that the prior judgment infringed his personal rights relating to his legal reserve.[268]

(iii) Successors by particular title

175. The following successor are viewed as successors by particular title: a buyer, a specific legatee ("*bijzondere legataris*") or a grantee ("*begiftigde*").[269]

176. The legal basis is Article 1122, section 1, 2° and Article 1122, section 2, 2° Judicial Code. These provisions set out the same reasoning as is the case for successors by universal title, but take into account the fact that the assignee acquires the property or the right in the assets of his predecessor, encumbered with what has been decided about this property or right in court rulings.[270]

8. PART 8: EFFECTS OF JUDGMENTS - TEMPORAL DIMENSIONS

D. QUESTION 8.1: CAN CHANGES TO STATUTE OR CASE-LAW AFFECT THE VALIDITY OF A JUDGMENT OR PRESENT GROUNDS FOR CHALLENGE?

177. Generally, changes to statute include the date of entry into force of said new statute. After this date the statute binds the legal subjects.[271] More specifically, the new statute stipulates a "*cesuur"*, that is, which facts need to take place after a given date for them to fall under the scope of the new statute. However, this is not always the case.[272] If the legislator has not specified a different date for the *cesuur*, the date of entry into force of the statute is utilized. However, it is possible for the *cesuur* to fall before the entry into force of the statute. Consequently, the statute would have a retroactive scope. This means that a certain statute would be applicable from its date of entry into force, for facts which have occurred before this date (since the *cesuur*).[273] Nonetheless, even if a retroactive *cesuur* is implemented in a statute, that statute is not applicable on closed proceedings.[274] An exception is possible if the statute explicitly states that it is applicable to closed proceedings. However, this is very exceptional.[275]

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[268] Taelman 2001, supra n. 7, p. 276.
[269] Dirix 1984, supra n. 265, p. 26.
[270] Taelman 2001, supra n. 7, p. 279-280.
[271] T. Vancoppernolle, Intertemporeel recht [Intertemporal law] (Intersentia 2019) p. 20.
[272] Vancoppernolle 2019, supra n. 272, p, 2.
[273] Vancoppernolle 2019, supra n. 272, p. 23.
[274] Vancoppernolle 2019, supra n. 272, p. 237.
[275] Vancoppernolle 2019, supra n. 272, p. 238.

178. In principle a judgment that is irrevocable (meaning no ordinary or extraordinary remedies are available) cannot be influenced by a change in statute[276] (and a fortiori not by a change in case law).

179. By contrast, interpretative laws can influence final and conclusive judgments.[277] Even the Court of Cassation must apply these interpretative laws when they are enacted after the court of appeals has rendered its judgment.[278]

180. Belgian law specifies that utilizing the new statute on pending proceedings would constitute a violation of judicial guarantees.[279] However, utilizing a new statute on a pending proceeding does not automatically constitute a violation.[280] If the legislator has pertinent reasons relating to public interest it may declare that a statute is applicable for pending proceedings.[281]

E. QUESTION 8.2: IF THE JUDGMENT REQUIRES THE DEBTOR TO PAY FUTURE (PERIODIC) INSTALMENTS (E.G. MAINTENANCE OR AN ANNUITY BY WAY OF DAMAGES), HOW CAN THE JUDGMENT BE CHALLENGED IN ORDER TO AMEND THE AMOUNT PAYABLE IN EACH INSTALMENT?

181. Maintenance claims are in principle contractually determined and consequently approved by court. If a judgment determines the amount owed in maintenance, this amount is determined rebus sic stantibus. Therefore, if certain new circumstances arise, the amount owed in maintenance can be amended,[282] according to Article 301, §7 Civil Code and Article 1288 Judicial Code. The family court will have to review the amount owed in maintenance, but it is only allowed to do so if new circumstances are present.[283] This means that a new procedure needs to be started before the court. However, since the amount owed in maintenance is contractually stipulated, most agreements tend to

[276] Vancoppernolle 2019, supra n. 272, p. 226.
[277] Vancoppernolle 2019, supra n. 272, p. 241.
[278] Vancoppernolle 2019, supra n. 272, p. 42.
[279] E.g. GwH 26 April 2018, nr. 51/2018, *A.GrwH* 2018, r.o. B.13.1.
[280] Vancoppernolle 2019, supra n. 272, p. 248.
[281] Vancoppernolle 2019, supra n. 272, p. 281.
[282] S. Brouwers, Alimentatie in APR [Maintenance in APR] (Wolters Kluwer 2009) nrs. 58-77.
[283] L. Dreser, 'Verdere objectivering van kinderalimentatie of hoe het niet enkel om rekenen gaat', 10 T.Fam (2017) p. 266.

include a clause prohibiting the review by the court of the amount of maintenance owed.[284]

F. QUESTION 8.3: CAN FACTS THAT OCCUR AFTER THE LAST SESSION OF THE MAIN HEARING AND ARE BENEFICIAL TO THE DEFENDANT (DEBTOR), BE INVOKED IN ENFORCEMENT PROCEEDINGS WITH A LEGAL REMEDY?

182. The seizure court ("*beslagrechter*") may consider new facts which have taken place after the creation of a title. These facts may be detrimental to the topicality ("*actualiteit*") of the title and the judge of attachments has the power to determine this.[285] However, the topicality of the enforceable title may not be jeopardised by the invocation of facts or circumstances which have been subject to the judgement of the court that delivered the judgment whose enforcement is sought.[286]

183. An example of a new fact invoked, leading to the loss of topicality in an enforcement proceeding goes as follows: a prohibitory injunction was declared against a party to stop its activities as a sand mine as it did not possess the proper operating license. The sand mining company consequently obtained a valid operating license. The court of appeals, just as the seizure court, decided that the astreinte was not forfeited (the sand mining company was not obliged to pay the astreinte).[287]

G. QUESTION 8.4: CAN SET-OFF OF A JUDICIAL CLAIM BE INVOKED BY THE DEBTOR IN ENFORCEMENT PROCEEDINGS, EVEN IF THE DEBTOR'S COUNTERCLAIM ALREADY EXISTED DURING THE ORIGINAL PROCEEDINGS?

184. Belgian law makes a distinction between three types of set-off. The judicial set-off, the statutory set-off and the conventional set-off.[288] A set-off can only be invoked if certain conditions are met.

185. The judicial set-off is granted by the court on the defendant's counterclaim. However, this form of a set-off only comes into play when, in a dispute, the defendant

[284] F. Buyssens, 'Regelingsakte en familierechtelijke overeenkomsten bij echtscheiding door onderlinge toestemming' in F. Buyssens et al, Notariële actualiteit 2013 (die Keure 2013) p. 117 at p. 192.
[285] Dirix 2010, supra n. 218, p. 43-44.
[286] Cass. 17 September 2010, *Pas.* 2010, afl. 9, 806.
[287] Brijs 2015, supra n. 178, p. 303.
[288] Weyts 2016, supra n. 262, p. 864.

has a counterclaim which does not fall under the scope of a statutory set-off.[289] Consequently, the defendant makes a counterclaim on this basis and asks the court to rule on the compensation.[290] This objection of a judicial set-off can be invoked before the court in the main proceeding, but it may be invoked before the seizure court as well.[291]

186. However, the debtor can no longer rely on compensation if enforcement takes place on the basis of a court decision,.[292] If there was a possibility for a set-off, the debtor should have raised the objection of legal compensation in court or, in the event of a counterclaim, claimed the judicial compensation.[293]

187. There are different doctrinal views regarding the possibility of invoking set-off afresh before the seizure courts. On the one hand, some consider that a party which has not invoked set-off in the main proceeding, implicitly waives its right for set-off. Consequently, the set-off can only be invoked against a final and conclusive judgment if the set-off originates after this decision.[294] On the other hand, others are of the view that not invoking set-off in the main proceedings cannot be viewed as an implicit waive of the right of set-off.[295] A more nuanced view would be that the waiver of the right to set-off needs to be determined in concreto, which means that there could be no doubt that the non-invocation of the set-off implies the waiver thereof. [296]

[289] E. Dirix, 'Gerechtelijke compensatie en beslag in eigen hand', in X., Liber Amicorum E. Krings (Story-Scientia 1991) p. 105-113, rn. 3.
[290] Dirix 1991, supra n. 292, p. 105-113, rn. 9.
[291] G. Leval, Traité des saisies, (Faculté de droit de Liège 1988) p. 440.
[292] Dirix 1991, supra n. 292, p. 105-113, rn. 9.
[293] Dirix 1991, supra n. 292, p. 105-113, rn. 9.
[294] R. Dekkers et al, Handboek burgerlijk recht, III [Manual Civil Law, III] (Intersentia 2007) p. 356.
[295] Dirix 2010, supra n. 218, p. 366.
[296] R. Houben, Schuldvergelijking [Compensation] (Intersentia 2010) p. 436.

9. PART 9: LIS PENDENS AND RELATED ACTIONS IN ANOTHER MEMBER STATE AND IRRECONCILABILITY AS A GROUND FOR REFUSAL OF RECOGNITION AND ENFORCEMENT

H. QUESTION 9.1: THE B IA REGULATION USES THE CONCEPT OF A "CAUSE OF ACTION" FOR THE PURPOSES OF DETERMINING LIS PENDENS.

A.1. QUESTION 9.1.1: HOW DOES YOUR NATIONAL LEGAL ORDER DETERMINE LIS PENDENS?

188. Lis pendens shall exist whenever actions involving the same cause (of action) and object are brought between the same parties acting in the same capacity before different courts or tribunals, having jurisdiction to hear and determine them at first instance.[297] One of the courts that has been seized will have to refer the case to the other court. This referral may be done ex officio or at the request of a party.[298] If raised by the parties, the objection needs to be done before raising any points relating to the grounds of the case.[299]

A.2. QUESTION 9.1.2: HOW DOES THE B IA CONCEPT OF A "CAUSE OF ACTION" CORRESPOND TO ANY SIMILAR DOMESTIC CONCEPT IN YOUR NATIONAL LEGAL ORDER? DESCRIBE HOW YOUR NATIONAL LEGAL ORDER ESTABLISHES THE IDENTITY OF CLAIMS.

189. The concept of cause of action is also used in Belgian law. Belgian law makes a distinction between the cause ("*oorzaak*") of a claim and the object ("*voorwerp*") of a claim.

190. The object of a claim is what the party is actually claiming. For example, the party may claim the payment of a sum of money or the dissolution of contract. The object of a claim concerns the formulation of the claim of the plaintiff.[300]

191. The cause of a claim are the underlying factual grounds of the claim. The claim concerns the whole of the legal facts and legal acts that can support the object of a claim. The cause of a claim is not the legal basis upon which a claim is based.[301]

[297] Article 29 Judicial Code

[298] Article 565 Judicial Code

[299] Antwerpen 28 April 2016, *Limb.Rechtsl.* 2017, afl. 4, 243, noot Van Gompel, H.

[300] Laenens, supra n. 13, p. 93.

[301] Laenens, supra n. 13, p. 93.

A.3. QUESTION 9.1.3: DOES YOUR NATIONAL LEGAL ORDER ALLOW A NEGATIVE DECLARATORY ACTION? IF SO, HOW IS THIS ACTION TREATED IN RELATION TO CONTRADICTORY ACTIONS (E.G. FOR (PAYMENT OF) DAMAGES)?

192. Belgian law does allow negative declaratory actions, mostly in the field of intellectual rights. In these judgments, the court orders the cease and desist of a certain behaviour. Additionally, these judgments are often accompanied with the payment of a penalty sum (*an astreinte/dwangsom*).[302] However, Belgian law does not allow a negative declaratory action relating to a non-payment of damages.

A.4. QUESTION 9.1.4: HOW DO YOU DETERMINE THE IDENTITY OF PARTIES IN NATIONAL PROCEEDINGS AND HOW (IF AT ALL) DOES THE METHODOLOGY DIFFER FROM THAT OF THE B IA?

193. Belgian case law interprets the need of the parties to have the same identity in a strict manner. Therefore, lis pendens between national proceedings does not occur frequently.[303] For example, a claim lodged by a company and a claim lodged by the shareholders of that company does not lead to the applicability of lis pendens rule because the identity of the parties is not found to be the same.[304]

A.5. QUESTION 9.1.5: HOW SHOULD WE UNDERSTAND THE REQUIREMENT THAT JUDGMENTS NEED TO HAVE "THE SAME END IN VIEW" AS EXPRESSED BY THE CJEU?

194. The requirement of having the same end in view corresponds with the requirement in Belgian law of having the same object ("*voorwerp*").[305] See question 9.1.2.

A. QUESTION 9.2: DOES YOUR NATIONAL LEGAL ORDER OPERATE WITH THE NOTION OF "RELATED ACTIONS"? IF SO, WHAT ARE THE EFFECTS IT ASCRIBES TO THEM? PLEASE ACCOMPANY THE ANSWER WITH RELEVANT CASE LAW.

195. Belgian law utilizes the principle of related actions ("*samenhang*"). Actions may be treated as related actions under Article 30 Judicial Code, when they are so closely connected that it is desirable to hear and determine them together in order to avoid

[302] E.g. Rb. Brussel 12 December 2003, *IRDI* 2004, afl. 3, 284, noot.

[303] M. De Ruysscher, 'Art. 29 Ger.W.', in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwers 2019) p. 69 at p. 71.

[304] Cass. 21 oktober 1992, *Arr.Cass.* 1991-1992, 1218.

[305] A. Briggs, Civil Jurisdiction and Judgments (Informa Law Routledge 2015) p. 309.

solutions which may be incompatible when the cases are tried separately.[306] The assessment of the existence of a connection is a matter for the court.[307]

196. The conditions set out in Article 30 Civil Code must be cumulatively met in order for claims to be regarded as related actions.[308] Possible related actions will be assessed at the outset of the proceedings so that a possible change in the claims cannot lead to the claims no longer being regarded as related.[309]

197. The initiative for joinder must be taken by the parties and the court may not of its own motion decide that certain claims are to be regarded as related.[310] An exception to this rule is found in Article 859, section 2 Judicial Code whereby a joinder may be undertaken ex officio by the court if both cases are pending before the same court.

198. Whether a joinder of cases is qualified as a decision on jurisdiction gives rise to different doctrinal opinions. Some argue that decisions on related actions are decisions on jurisdiction pursuant to Article 1050, section 2 Judicial Code.[311] Hence, such a decision would not be subject to appeal. The prevailing view, however, contest the characterization of decisions on related actions as decisions on jurisdiction. The latter view is shared by a majority of doctrine[312] and Court of Cassation case law[313] seems to favour this view as well. The case law states that decisions on joinder of cases are not decisions on jurisdiction pursuant to Article 1050, section 2 Judicial Code.[314] Consequently, it is possible to immediately appeal such a decision.[315] We are of the view that the view supported by the Court of Cassation needs to be followed. . A decision by which the court rules on a request to merge the suit pending before it with a suit pending before another court does not constitute a decision on jurisdiction within

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306 Article 566 Judicial Code

307 P. Vanlersberghe, 'De draagwijdte van artikel 1050, tweede lid Ger.W.', RABG (2015/2016) p. 428 at p. 429.

308 S. Rutten and F. Dupon, '[Materiële bevoegdheid] Tussenvordering', 4 TPR (2014) p. 2105 at p. 2119.

309 Brussel 15 September 2011, *Rev.prat.soc.* 2011, 97.

310 Vred. Fontaine-L'Evêque 17 May 2004, *T.Vred* . 2005, 391.

311 Rutten 2014, supra n. 308, p. 2120 and Gent 19 January 2009, TGR-TWVR 2009, 166

312 B. Van den Bergh, 'Onterechte voeging wegens samenhang, voorbarig hoger beroep tegen een vonnis inzake onbevoegdheid en de omvang van de vernietiging van een cassatiearrest', 14 RW (2016/2017) p.539 at p.540 and P. Thiriar, 'Zelfs de samenhang kent zijn grenzen', 10 RW (2015/2016) p. 386 at p. 389.

313 Cass. 17 September 1981, Arr.Cass. 1981-82, 92 and Cass. 3 oktober 2014, Arr.Cass. 2014, afl. 10, 2073.

314 Cass. 3 October 2014, Arr.Cass. 2014, afl. 10, 2073.

315 P. Vanlersberghe, 'De draagwijdte van artikel 1050, tweede lid Ger.W.', RABG (2015/2016) p. 428 at p. 428 and 430.

the meaning of Article 1050, section 2 Judicial Code.[316] Additionally, the fact that two claims relating to two different contracts are regarded as related within the meaning of Article 30 Judicial Code does not mean that both contracts must also be regarded as connected contracts.[317]

199. Related actions can encourage prorogation of authority as well. Several claims can be brought in one and the same document by the parties according to Article 701 Judicial Code if those claims are related to each other. It is therefore possible that the court seized may have jurisdiction for only one of these claims. For example, if the primary claim falls under the jurisdiction of the court of first instance and the subsidiary claim falls within the jurisdiction of another court, the subsidiary claim shall nevertheless fall within the jurisdiction of the court of first instance in the case of related actions.[318]

B. QUESTION 9.3: HAS YOUR MEMBER STATE EXPERIENCED CROSS-BORDER CASES INVOLVING RELATED ACTIONS WITHIN THE MEANING OF THE B IA?

200. Some cases have been brought before Belgian courts concerning related actions. An example of a case where related actions where not accepted entailed the claim before the court of Bergen (Belgium) for a preliminary payment of invoices and before the court of Paris for the termination of an exclusive distribution agreement.[319] Other illustrations on the basis of Article 8 of B IA are cited in the footnote.[320] Beyond the scope of B IA related actions include, for instance, a claim relating to a divorce and a claim relating to the determination of parenthood.[321]

A.6. QUESTION 9.3.1: HOW HAVE YOUR COURTS DEFINED IRRECONCILABILITY FOR THE PURPOSE OF RELATED ACTIONS?

201. The assessment of one claim must have implications for the assessment of the second claim for related claims to be irreconcilable with each other. In other words, if

[316] P. Vanlersberghe, 'De draagwijdte van artikel 1050, tweede lid Ger.W.', RABG (2015/2016) p. 428 at p. 428 and 430 and Cass/ 3 oktober 2014, *Arr.Cass*. 2014, afl. 10, 2073.

[317] Kh. Dendermonde 3 February 2011, *TBBR* 2013, 208 met noot M. Dambre.

[318] Arrondrb. Mechelen 23 April 2008, *RW* 2008-09, 590.

[319] Voorz. Kh Bergen 13 May 2011, *JLMB* 2011, 1786.

[320] E.g. Antwerpen 17 May 2018, *NJW* 2019, afl. 411, 803; Luik 9 September 2010 and Antwerpen 5 December 2018 (https://www.ipr.be/nl/databank-rechtspraak?search_api_fulltext=samenhang).

[321] Rb. Antwerpen 8 May 2013, *Tijdschrift@ipr.be* 2016, afl. 2, 72

the assessment of one claim does not in fact have any implications for the assessment of the second claim, the actions are not deemed to be related.[322]

202. Many examples can be provided where the court has either decided that there is a risk of irreconcilability or that there is no risk. For example, no risk of irreconcilability arises from a claim relating to the right to personal contact with a child and a claim relating to the review of the amount of maintenance.[323] Claims for the continuation of different contracts with different defendants are not related either, even though they cover more or less the same subject. In this case the court found that there was no risk of irreconcilable judgments. Neither was a risk of irreconcilability accepted in a case where the claims were based on different applicable laws.[324]

203. On the other hand, irreconcilability was accepted in the following cases: a court expert is asked to present a technical opinion, in two separate suits, about the quality of certain carpentry work[325] Or the direct claims of several subcontracts, based on Article 1798 Judicial Code, against the builder-client.[326]

204. With regard to Article 6(1) B I Regulation, a court in Brussels held that, for decisions to be considered irreconcilable, it is not sufficient that there is a difference in the resolution of the dispute but, moreover, that difference must take place in the context of the same factual or legal situation.[327]

A.7. QUESTION 9.3.2: HOW HAVE YOUR COURTS EXERCISED THE DISCRETION TO STAY PROCEEDINGS?

205. There is no general way in which courts have exercised their discretion to stay proceedings.

[322] Gent 2 oktober 2000, *E.J.* 2001, 102; Kh. Bergen 15 oktober 2002, *DAOR* 2003, afl. 66, 75 and Pol. Brugge 9 November 2010, *TGR-TWVR* 2011, 189.
[323] Gent 2 oktober 2000, *E.J.* 2001, 102.
[324] Kh. Luik 24 November 2006, *JLMB* 2008, 926.
[325] Gent 29 May 2009, *P&B* 2009, 231.
[326] Luik 14 March 2000, *JLMB* 2000, 1169.
[327] Kh. Brussel 28 May 2013, *TBH* 2015, afl. 2, 209.

10. PART 10: COURT SETTLEMENTS

A. QUESTION 10.1: WHAT ARE THE PREREQUISITES FOR THE CONCLUSION OF A COURT SETTLEMENT?

(i) General

206. There are many legal figures that can ultimately result in a Court Settlement. Some examples are provided below (in a non-exhaustive manner). An overview of the Court Settlements:

i. Amicable settlement ("*minnelijke schikking*"):

a) Pre-trial attempt of amicable settlement ("*voorafgaande poging tot minnelijke schikking*").

b) attempt of amicable settlement during proceedings ("*incidentele poging tot minnelijke schikking*").

c) referral to the chamber of amicable settlement ("*kamer van minneljke schikking*").[328]

ii. Consent judgment ("*akkoordvonnis*"):[329]

a) Via settlement (there is no adequate translation for the Belgian legal figure of "*dading"* henceforth it will be referred to as: [settlement ("*dading*")]).[330]

b) Via mediation ("*bemiddeling*").[331]

c) Via collaborative negotiations ("*collaboratieve onderhandelingen*").[332]

207. The rules relating to amicable settlement, mediation and collaborative negotiation have recently been amended in Belgian law.[333]

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[328] This is a special form of a settlement regarding family issues and is regulated by Article 1253ter/1 Judicial Code

[329] Article 1043 Judicial Code

[330] Article 2044 Judicial Code

[331] Article 1723/1 to 1737 Judicial Code

[332] Article 1738 to 1747 Judicial Code

[333] Act of July 30, 2013 on the introduction of a Family and Juvenile Court, Belgian Official Gazette, September 27, 2013, 68429 and Act of June 18, 2018 containing various provisions on civil law with a view to promoting alternative forms of dispute resolution, Belgian Official Gazette, July 2, 2018, 53455.

(ii) Amicable settlement

208. The rules relating to amicable settlements ("*minnelijke oplossing van geschillen*") are set out in Article 730/1 to 733 Judicial Code. According to Article 730/1 Judicial Code it is the task of the judge to promote a settlement. The amicable settlement can take on different forms[334]:

i. Firstly, the pre-trial attempt of amicable settlement ("*voorafgaande poging tot minnelijke schikking*").

ii. Secondly, the attempt of amicable settlement during proceedings ("*incidentele poging tot minnelijke schikking*").

iii. Thirdly, a referral to the chamber of amicable settlement ("*kamer van minneljke schikking*").[335]

209. Amicable settlement, in all its possible forms, must be done before a judge.[336] Moreover it is important to note that an amicable settlement is only possible for disputes that have been settled during the court-based amicable settlement attempt. Therefore, agreements that the parties have reached themselves cannot consequently be brought before a judge in an amicable settlement as there is no dispute.[337] Nevertheless, some courts tend to accept such agreements and make them enforceable.[338]

a) Prior attempt at an amicable settlement

210. Article 731, section 2 Judicial code specifies that three prerequisites need to be fulfilled to start a pre-trial attempt of amicable settlement.

i. Firstly, the attempt of amicable settlement needs to be undertaken prior to the start of proceedings.[339] Furthermore, there must be a dispute between the

[334] C. Daniels, 'Art. 730/1 Ger.W' in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2018) p. 23 at p. 25-27.

[335] Article 1253ter/1 and further Judicial Code.

[336] S. Raes, 'Hete hangijzers inzake de werking van de kamers voor minnelijke schikking', 8 T.Fam. (2018) p. 192 at p. 193.

[337] P. Moreau, L'homologation judiciaire des conventions. Essai de théorie générale (Larcier, 2008) p. 68.

[338] Raes 2018, supra n. 336, p. 199.

[339] P. Heurterre, 'De minnelijke schikking', TPR (1980) p.195 at p. 197-199.

parties. If there is no dispute, the parties cannot invoke this procedure to legalise their agreement.[340]

ii. Secondly, only disputes between parties capable of entering into a settlement ("*dading*") fall under the scope of a pre-trial attempt. Furthermore, only matters of dispute which are open to a settlement ("*dading*") may give rise to such a procedure.[341]

iii. Thirdly, the request needs to be addressed to the court which would have jurisdiction in case of proceedings.[342]

b) Attempt at an amicable settlement during proceedings

211. The amicable settlement during proceedings is subject to the same prerequisites as the pre-trial one but is reached during proceedings.[343]

c) Referral to the chamber of amicable settlement

212. The referral to the chamber of amicable settlement is a specialised form of an amicable settlement dealing with family cases. The procedure is mutatis mutandis the same as the general procedure.[344]

(iii) Consent judgments

a) Settlement ("*dading*")

213. A different form of a settlement ("*dading*") is defined in Article 2044 Civil Code. Established Court of Cassation case law states that this kind of a settlement implies an agreement between the parties, both of which make concessions, without one party recognising the merits of the other's claims.[345] To conclude a settlement ("*dading*") four prerequisites need to be met:

i. Firstly, an agreement between the parties.

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[340] F. Ligot, 'Le pouvoir de conciliation du juge, la médiation et l'autorité des accords', *Ann.dr.Louvain* (1996) p. 71 at p. 81.

[341] C. Daniels, 'Art. 731 Ger.W.', in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2018) p. 29 at p. 34.

[342] Rb. Antwerpen 19 June 2003, *NJW* 2003, afl. 44, 1045, noot K. Broeckx.

[343] Raes 2018, supra n. 336, p.199.

[344] E. Lancksweerdt, 'Alternatieve geschillenoplossing. Bevorderd door de rechter', 400 NJW (2019) p. 270 at p. 273.

[345] Cass.18 May 1995, *Arr. Cass.* 1994-95, 495.

ii. Secondly, it requires an existing or a future dispute.

iii. Thirdly, the parties must have the intention to terminate or prevent the dispute.

iv. Lastly, a settlement ("*dading*") requires mutual concessions.[346]

214. In principle, a mere settlement ("*dading*") is not enforceable.[347] However, a settlement ("*dading*") will be enforceable if it has been approved by a court ("*homologatie*"). This approval by the court leads to a consent judgment.[348]

b) Mediation

215. Mediation is currently defined in Article 1723/1 Judicial Code: 'Mediation is a confidential and structured process of voluntary consultation between conflicting parties with the participation of an independent, neutral and impartial third party which facilitates communication and attempts to persuade the parties to work out a solution themselves'.[349]

216. Parties will need to draft a protocol concerning the mediation before starting these negotiations. Article 1731 Judicial Code provides the necessary elements for a mediation protocol:

i. name and residence of the parties and their counsel,

ii. name capacity and address of the mediator, stating whether he is a licensed mediator,

iii. a reminder that mediation is done on a voluntary basis,

iv. a short overview of the dispute,

v. the statement that the mediation is done in confidentiality,

vi. the manner of payment of the mediator,

vii. the date and

[346] J. Lambers and L. Vermeiren, 'Dading in burgerlijke en handelszaken', in X., Bijvoorbeeld. Modellen voor het bedrijfsleven (Wolters Kluwer 2011) p. 30 at p. 30.

[347] D. Cuypers, 'Afstand van recht en dading in het Belgisch arbeidsrecht', 2 TSR (2019) p. 265 at p. 337.

[348] B. Tilleman et al, Dading in APR [Settlement in APR] (E.Story-Scientia 2000) p. 428-434.

[349] The Dutch text is as follows: '*De bemiddeling is een vertrouwelijk en gestructureerd proces van vrijwillig overleg tussen conflicterende partijen met de medewerking van een onafhankelijke, neutrale en onpartijdige derde die de communicatie vergemakkelijkt en poogt de partijen ertoe te brengen zelf een oplossing uit te werken.*'

viii. the signatures of the parties and the mediator.

217. According to Article 1736, subsection 3 Judicial Code an approval of a mediation agreement may only be done if said agreement is contrary to public policy or, in family matters, contrary to the benefit of the child.[350]

218. Mediation is viewed as an exception to the requirement of having a dispute during proceedings. Therefore, an agreement resulting from mediation may be approved by a judge.[351] It is however required that the mediation has taken place with the help of a licensed mediator ("*erkende bemiddelaar*") if the parties wish to obtain an approval by a judge.

c) Collaborative negotiations

219. Just as in the case of mediation recent changes to Belgian procedural law introduced a definition of collaborative negotiations in Article 1738 Judicial Code. A collaborative negotiation is defined as: 'a voluntary and confidential procedure of dispute resolution though negotiation, which involves conflicting parties and their respective lawyers, the latter acting within the framework of an exclusive and limited mandate of assistance and counselling in order to reach an amicable agreement'.[352]

220. Parties will need to draft a protocol concerning the collaborative negotiations before starting these negotiations. In this protocol parties bind themselves to:

i. produce all relevant documents and information that could prove beneficial in reaching an agreement,

ii. to participate in the negotiations in a loyal manner and

iii. to not initiate proceedings during the collaborative negotiations.[353]

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[350] Laenens, supra n. 13, p. 121.

[351] Raes 2018, supra n. 336, p. 199.

[352] The Dutch text is as follows: '*een vrijwillige en vertrouwelijke procedure van geschillenoplossing door onderhandeling, waarbij conflicterende partijen en hun respectieve advocaten betrokken zijn en laatstgenoemden optreden in het kader van een exclusief en beperkt mandaat van bijstand en adviesverlening teneinde een minnelijk akkoord te bewerkstelligen*'.

[353] T. Wijnant, 'Alternatieve geschillenoplossing in familiezaken na de wetten van 15 en 18 June 2018', 5 T.Fam. (2019) p. 112 at p. 121.

A.2. QUESTION 10.1.1: DESCRIBE THE NECESSARY ELEMENTS A COURT SETTLEMENT MUST CONTAIN.

(i) General

221. The necessary elements for a Court Settlement depend on the method that is utilized. In principle a general distinction can be made between Court Settlements via amicable settlement and via consent judgment.

(ii) Amicable settlement

222. An amicable settlement is concluded via report ("*proces verbaal*").[354] The Court of first instance of Antwerp has provided a model form to utilize in a request for an amicable settlement.[355] The court requires the following elements to be present in the request for an amicable settlement:

i. name, surname and address;

ii. the identity and address of all the opposing parties;

iii. an overview of the facts of the case:

iv. the outcome you wish to reach; the statement that you wish for the parties to appear in an amicable settlement;

v. the view of the opposing party, if this is known;

vi. the evidence which you possess and or an index thereof.[356]

223. Nonetheless, the report of amicable settlement itself is not subject to any formal requirements. Since it is an enforceable title however it needs to be represented in clear terms.[357]

(iii) Consent judgment

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[354] Article 733 Judicial Code and M. Dambre, Handboek bijzondere overeenkomsten [Manual specialised agreements] (die Keure 2020) p. 572.

[355] http://www.rechtbankeersteaanlegantwerpen.be/index.php/procedures-antwerpen/160-verzoening-minnelijke-schikking2

[356] http://www.rechtbankeersteaanlegantwerpen.be/index.php/procedures-antwerpen/160-verzoening-minnelijke-schikking2

[357] C. Daniels, 'Art. 733 Ger.W.' in X., Gerechtelijk recht. Artikelsgewijze commentaar met overzicht van rechtspraak en rechtsleer (Wolters Kluwer 2018) p. 45 at p. 47 and J. Laenens, 'De verzoeningstaak van de vrederechter' in M. Verrycken et al. (eds.), Taak en bevoegdheid van de vrederechter (Ced. Samsom 1979) p. 263 at p. 288.

224. The consent judgment needs to be all-encompassing. This means that the entire dispute needs to be settled.[358]

A.3. QUESTION 10.1.2: WHAT FORMAL REQUIREMENTS MUST BE SATISFIED (E.G. SIGNATURE OF THE PARTIES; SERVICE)?

225. In principle, a judge grants the consent judgment ("*akkoordvonnis*") the form of a judgment.[359] As such, all the requirements provided by Article 780 Judicial Code need to be complied with.[360] In short, the consent judgment needs to have a Statement of Reasons as well as an Operative Part. See question 2.1 for the exact requirements.

226. A distinction needs to be made between the formal aspects required in the agreement between the parties leading to a consent judgment and the consent judgment itself. There are no formal requirements for the agreement leading to the consent judgment.[361] For example, a settlement ("*dading*") must be drafted in a written form in view of its evidentiary value.[362] As previously stated, the consent judgment itself follows the rules prescribed by Article 780 Judicial Code.

A.4. QUESTION 10.1.3: HOW ARE THE PARTIES IDENTIFIED?

227. The parties need to be identified in the same manner as in a judgment. See question 2.1 and 10.1.2.

A.5. QUESTION 10.1.4: WHAT (SUBSTANTIVE) LEGAL RELATIONSHIPS CAN BE SETTLED IN A COURT SETTLEMENT?

228. In principle a consent judgment may encompass all matters suitable for settlement ("*dading*"). Matters that are suitable for settlement (*"dading*") include but are not limited to future goods or future disputes; a claim relating to damages arising from a wrongful act or a crime; a termination of an employment contract insofar as this settlement (*"dading*") is concluded after the termination,

i. Consequently, matters which are not suitable for a settlement are not suitable for a consent judgment either. Matter that are not suitable for a settlement

[358] B. Van Den Bergh, 'Het akkoordvonnis: «contractuele grondlaag met rechterlijke vernislaag»', 3 RW (2015-16) p. 504 at p. 507.

[359] Cass. 19 oktober 1989, *Arr.Cass.* 1989-90, 228.

[360] Van den Bergh 2015-16, supra n. 362, p. 508.

[361] Van den Bergh 2015-16, supra n. 362, p. 508.

[362] Article 2044 Civil Code and Lambers 2011, supra n. 350, p. 30.

("*dading*") include matters relating to public policy;[363] the state of a person ; matters relating to public goods ("*goederen van het openbaar domein*").[364]

229. Collaborative negations are possible in any dispute of a patrimonial nature, whether cross-border or not, and any non-monetary dispute that is subject to settlement ("*dading*"). In addition, family law disputes in which mediation can take place can also be the subject of collaborative negotiations.[365]

B. QUESTION 10.2: WHEN DOES A COURT SETTLEMENT BECOME ENFORCEABLE?

(i) Consent judgment

230. Article 1397 Judicial Code now provides for provisional enforceability of all judgments. A judgment is in principle a judicial act ("*rechtsprekende handeling*").[366] However, a consent judgment is not a judicial act. But it ends the proceedings ex officio and no appeal against the consent judgment is in principle possible. Consequently, the parties acquire an enforceable title.[367] As is the case for any judgment, the parties need to be notified before the enforcement may proceed.

(ii) Amicable settlement

231. A report of amicable settlement will be accompanied by an enforceability annex[368] and will therefore be enforceable from that moment on.[369] This report of amicable settlement is quite different from a consent judgment[370] and rather resembles a notarial act.[371]

232. Moreover, it is still possible to obtain a consent judgment from an amicable settlement, provided it is a court-based settlement.. A pre-trial amicable settlement is

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[363] Laenens, supra n. 13, p. 705.

[364] Dambre 2020, supra n. 358, p. 583.

[365] Wijnant 2019, supra n. 357, p. 122.

[366] Laenens, supra n. 13, p. 150.

[367] Laenens, supra n. 13, p. 118.

[368] Daniels 2018, supra n. 361, p. 47.

[369] Laenens, supra n. 13, p. 116 and p. 873; Beslagr. Gent 5 June 2012, *RW* 2014-15, afl. 6, 223 and Beslagr. Luik 7 March 1979, *Jur.Liège* 1979, nr. 34.

[370] Vred. Zelzate 5 March 2012, *TGR* 2013, 342; S. Rutten, 'Bemiddeling en verzoening in consumentengeschillen: willens nillens?' in S. Voet (ed.), CRD in België (die Keure, 2018) p. 49 and Daniels 2018, supra n. 361, p. 47.

[371] Arbh. Luik 27 April 2004, *JLMB* 2004, afl. 24, 1066; Rutten, supra n. 375, p. 49 and Daniels 2018, supra n. 361, p. 47.

undertaken before the start of the proceedings and may therefore not be authenticated via a consent judgment.[372] Nonetheless, even if an amicable settlement is authenticated via consent judgment, a report of amicable settlement may still be drawn up.[373] This bears certain consequences: the report of amicable settlement does not need to be notified to parties for it to be enforceable. Additionally, the enforcement may be temporarily suspended by the seizure court.

C. QUESTION 10.3: HOW ARE (SINGULAR AND UNIVERSAL) SUCCESSORS OF PARTIES AFFECTED BY THE JUDGMENT?

233. Under Belgian Law, successors are, after the rendering of the judgement, equated to the original party, unless they can rely on their own rights. Considering the conditions of Article 1122 Judicial Code, it is possible for successors to request a revocation of res judicata. For a broader discussion, see question 7.3.

D. QUESTION 10.4: IF APPLICABLE, DESCRIBE HOW THE LEGAL RELATIONSHIP, ONCE SETTLED, CAN BE AMENDED?

234. The possibility for an amendment ("*verbetering*") of a consent judgment remains open. See question 3.9 for further details relating to the amendment. Contrary to the consent judgment a report of amicable settlement cannot be explained or amended.[374]

E. QUESTION 10.5: IF APPLICABLE, DESCRIBE HOW (UNDER WHAT CIRCUMSTANCES) A COURT SETTLEMENT CAN NO LONGER BE CONSIDERED ENFORCEABLE?

235. A consent judgment stemming from a settlement ("*dading*") will be annulled in certain cases. For example, if a settlement ("*dading*") has been reached in a matter where a judgment was issued and one of the parties in the settlement ("*dading*") was not aware of this judgment. Such an instance was present in a case between a contractor, a subcontractor and an insurer. The insurer was not a party to the court proceedings. The settlement ("*dading*") was more favourable for the subcontractor whilst the judgment was more favourable for the insurer. In casu the court decided that the

[372] Daniels 2018, supra n. 361, p. 47.

[373] B. Allemeersch, 'Bemiddeling en verzoening in het burgerlijk proces', 409 TPR (2003) p. 435-438.

[374] Vred. Zelzate 5 March 2012, *TGR* 2013, 342.

settlement ("*dading*") was null because it predated the judgement and the insurer was not aware of said judgment.[375] A report of amicable settlement may be annulled as well, see question 10.6.

F. QUESTION 10.6: IF APPLICABLE, DESCRIBE HOW ERRORS IN A COURT SETTLEMENT CAN BE REMEDIED AND THE RECOURSES THAT ARE AVAILABLE AGAINST A NOTARIAL ACT, WHETHER INDEPENDENTLY OR DURING ENFORCEMENT PROCEEDINGS.

(i) Consent judgment

236. While appeal against a consent judgment is in principle not possible, the exceptional recourse to appeal is established in Article 1043 Judicial Code, if the consent judgment has been unlawfully established. Consent judgments need to faithfully reproduce the agreement that the parties have reached. Therefore, an appeal against the consent judgment is possible if doubts arise as to the correct portrayal of the agreement by the consent judgment.[376]

237. This means that the agreement leading to the consent judgment must be afflicted with a defect leading to a possible annulment.[377] The annulment of a consent judgment itself is not possible.[378] Nonetheless, the court of appeals adjudicating in this matter does not have the power to decide regarding the merits of the matter ("*ten gronde*"). It is simply functioning as an annulment court ("*vernietigingsrechter*").[379] Additionally, third party proceedings may be initiated against a consent judgment.[380]

(ii) Amicable settlement

238. A report of amicable settlement is not a judgment. Therefore, it is not possible to appeal the report of amicable settlement. Additionally, third-party proceedings are not possible either.[381] Another difference between a report of amicable settlement and

[375] H. Van Gompel, 'Artikel 2056, 1ste lid BW: de (mogelijke) nietigheid van een dading afgesloten na een in kracht van gewijsde gegane beslissing over dezelfde betwisting', 1 Limb. Rechtsl. (2010) p. 9 at p. 9-11.

[376] Van den Bergh 2015-16, supra n. 362, p. 505.

[377] E.g. Lack of a will when contracting, lack of consent, invalid cause or object in an agreement, inconsistency with public order etc.

[378] Cass. 23 oktober 2015, *Arr.Cass.* 2015, afl. 10, 2429 and Daniels 2018, supra n. 361, p. 48.

[379] Van den Bergh 2015-16, supra n. 362, p. 506.

[380] Daniels 2018, supra n. 361, p. 48.

[381] A. Fettweis, 'L'usage de la conciliation pour le règlement des différends' in J. LIMPENS (ed.), Rapports belges au Xe congrès international de droit comparé (Bruylant 1978) p. 173 at p. 179 and Daniels 2018, supra n. 361, p. 48.

a consent judgment relates to the possibility of annulment. For a consent judgment to be annulled, the underlying legal agreement needs to be null due to lack of will or other faults. By contrast, a report of amicable settlement itself may be annulled due to fraud ("*bedrog"*), error ("*dwaling*") or violence ("*geweld*").[382]

11. PART 11: ENFORCEABLE NOTARIAL ACTS

A. QUESTION 11.1: BRIEFLY DESCRIBE THE COMPETENCE THE NOTARY HOLDS IN CIVIL AND COMMERCIAL MATTERS IN YOUR MEMBER STATE.

239. A notary has the general and in principle exclusive competence to enforce all acts.[383] As a general rule, only the notary can give evidentiary value and enforceable force to agreements between the parties, to deeds of so-called wilful jurisdiction.[384]

240. The scope of the agreements that may be put in a notarial act is very broad. The following list (non-exhaustive) of matters may be drafted in a notarial act:

i. Marriage contracts and the amendment of the prenuptial agreement, the cohabitation contract, the divorce by mutual consent act ("*Echtsheiding onderlinge toestemming*"), the will, the liquidation of the estate, the act of succession, the proxy consent regarding adoption, the will of life as a retirement provision, the declaration of appointment of an administrator or a trustee, the sale of immovable property, the public sale of movable property (in certain cases), the act for a creation of a company, etc.[385]

B. QUESTION 11.2: IS (CAN) A NOTARIAL ACT BE CONSIDERED AN ENFORCEMENT TITLE IN YOUR RESPECTIVE MEMBER STATE/CANDIDATE COUNTRY? IF SO, BRIEFLY PRESENT, HOW THE CONCEPT OF A NOTARIAL ACT AS AN ENFORCEMENT TITLE IS DEFINED IN YOUR NATIONAL LEGAL ORDER.

241. Notarial acts are enforceable in Belgium according to Article 19 Notary Act. In principle they have the same enforceable force as judgments.[386] Problems may arise in

[382] Daniels 2018, supra n. 361, p. 48.

[383] Article 1 Notariswet [Notary Act]

[384] L. Weyts, Algemeen deel. De Notariswet [General part. The Notary Act] (Wolters Kluwer 2018) p. 83.

[385] Weyts 2018, supra n. 389, p 10.

[386] S. Roeland, 'De uitvoerbare kracht van notariele akten', 2 Notamus (2005), p. 41 et seq.; M. Biname, 'Clauses commentées. Inexecution de la clause de liberation des lieux: force executoire de l'acte notarie ou clause penale?', Rev.not.b. (2003), p. 515 et seq and Weyts 2018, supra n. 389, p. 236.

agreements wherein parties agreed to perform or to abstain from certain actions. There is no manu militaru enforcement possible of said agreements. Therefore, recourse to the rules relating to damages is required. It needs to be noted that it is not possible to impose a penalty order (astreinte) in a notarial act.[387]

242. There is a discussion as to the enforceability of agreements to give a good. The eviction from a home has been accepted as being directly enforceable.[388] However, it is uncertain whether this may be extended to all cases relating to agreements to give something.[389]

C. QUESTION 11.3: IS, ACCORDING TO YOUR DOMESTIC LEGAL ORDER, A NOTARIAL ACT AN ENFORCEMENT TITLE *PER SE* OR MUST IT CONTAIN ADDITIONAL CONDITIONS/CLAUSES TO BE CONSIDERED AS SUCH?

243. The notarial act must comply with all formal requirement to be enforceable.[390] Additionally, the notarial act must have the form of an enforceable title ("*grosse*").[391] As judgments, a notarial act must contain the enforcement form ("*formulier van tenuitvoerlegging*").[392] It is the task of the notary to check whether the necessary period ("*termijn*") has expired before granting enforceability to a notarial act.[393]

A.1. QUESTION 11.3.1: IF THERE IS A CERTAIN CLAUSE (THAT CONSTITUTES THE NOTARIAL DEED AN ENFORCEMENT TITLE) PLEASE SET OUT AN EXAMPLE OF SUCH A CLAUSE (CITE AN EXAMPLE CLAUSE). FURTHERMORE, EXPLAIN IF THERE A DIFFERENCE IN SAID CLAUSE IF THE DEED REFERS TO MONETARY OR NON-MONETARY CLAIMS?

244. The notarial act must contain an enforcement form ("*formulier van tenuitvoerlegging*").[394] This phrasing, which also applies to judgments, is the following (Article 25 Notarial Act):

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[387] A. Michielsen, 'De notariële akte en het exequatur', 4 Not.Fisc.M (2008) p. 109 at p. 110.

[388] Cass. 23 May 1991, *Arr. Cass.* 1990-91, 940.

[389] Michielsen, 2008, supra n. 392, p. 111.

[390] Michielsen, 2008, supra n. 392, p. 109.

[391] Article 25 Notary Act

[392] R. De Valkeneer, Précis du notariat (Bruylant 2002) p. 58.

[393] Michielsen, 2008, supra n. 392, p. 111.

[394] Most recent version: Koninklijk besluit tot vaststelling van het formulier van tenuitvoerlegging van de arresten, vonnissen, beschikkingen, rechterlijke bevelen of akten die dadelijke tenuitvoerlegging medebrengen 21 juli 2013, BS 2013 [Royal Decree establishing the form of enforcement of judgments, verdicts, orders, court orders or deeds contributing to immediate enforcement].

i. *"Nous, PHILIPPE, Roi des Belges,*

A tous, présents et à venir, faisons savoir :

Mandons et ordonnons à tous huissiers de justice, à ce requis de mettre le présent arrêt, jugement, ordonnance, mandat ou acte à exécution;

A Nos procureurs généraux et Nos procureurs du Roi près les tribunaux de première instance, d'y tenir la main, et à tous commandants et officiers de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis;

En foi de quoi le présent arrêt, jugement, ordonnance, mandat ou acte a été signé et scellé du sceau de la cour, du tribunal ou du notaire."

ii. *"Wij, FILIP, Koning der Belgen,*

Aan allen die nu zijn en hierna wezen zullen, doen te weten:

Lasten en bevelen dat alle daartoe gevorderde gerechtsdeurwaarders dit arrest, dit vonnis, deze beschikking, dit bevel of deze akte ten uitvoer zullen leggen;

Dat Onze procureurs-generaal en Onze procureurs des Konings bij de rechtbanken van eerste aanleg daaraan de hand zullen houden en dat alle bevelhebbers en officieren van de openbare macht daartoe de sterke hand zullen bieden wanneer dit wettelijk van hen gevorderd wordt;

Ten blijke waarvan dit arrest, dit vonnis, deze beschikking, dit bevel of deze akte is ondertekend en gezegeld met het zegel van het hof, de rechtbank of de notaris."

iii. *"Wir, FILIP., König der Belgier, tun allen Gegenwärtigen und Zukünftigen kund:*

Beauftragen und weisen alle darum ersuchten Gerichtsvollzieher an, vorligendes Urteil, Beschluss, Befehl oder Urkunde zu vollstrecken;

Unsere Generalprokuratoren und Prokuratoren des Königs bei den erstinstanzlichen Gerichten, die Durchführung der Vollstreckung zu überwachen sowie alle Befehlsaber und Beamte der öffentlichen Gewalt, Beistand dabei zu leisten, wenn sie gesetzmässig dazu ausgefordert werden;

Zur Beurkundung dessen wurden vorliegendes Urteil, Beschluss, Vollstreckungsbefehl oder Urkunde unterzeichnet und mit dem Siegel des Gerichts oder des Notars versehen."

A.2. QUESTION 11.3.2: IS THE DEBTOR'S CONSENT TO DIRECT ENFORCEABILITY CONSIDERED TO BE PART OF A NOTARIAL ACT?

245. Article 23 Notary Act specifies the parties that may receive an enforceable title ("*grosso*"). No mention is made of a required consent of the debtor.

A.3. QUESTION 11.3.3: IF THE PREVIOUS QUESTION IS ANSWERED IN THE POSITIVE, CAN SUCH CONSENT BE OF A GENERAL NATURE OR SPECIFIC AND CONCRETE TO THE DEBTOR'S OBLIGATIONS ARISING FROM THE NOTARIAL ACT?

246. See question 11.3.2.

D. QUESTION 11.4: HOW IS A NOTARIAL ACT STRUCTURED IN YOUR DOMESTIC LEGAL ORDER? WHAT ELEMENTS MUST IT CONTAIN?

(i) General

247. In general, a notarial act contains three main parts: the preamble, the corpus and a conclusion.[395]

(ii) Preamble

248. The preamble will contain de date of the notarial act, the identity of the notary and witnesses (if present) as well as the parties to the notarial act themselves. The preamble will be different depending if the notarial act is drafted as a report ("*proces verbaal*") of a general notarial act.[396]

a) Drafted as a general notarial act

249. "Heden ... [Date]

Verscheen

Voor mij [Name of notary], notaris te [Place of professional residence]

(in aanwezigheid van de volgende getuigen ...)

De heer ...

[395] Weyts 2018, supra n. 389, p. 182.

[396] Weyts 2018, supra n. 389, p. 183.

Die mij verklaren bet volgende te zijn overeengekomen"[397]

b) Drafted as a report

250. "Heden ... 2006

Te [Place] ...

Ten verzoeke van de heer .. .

(en in aanwezigheid van ...)

Zal er door mij [Name of notary], notaris te [Place of professional residence], worden overgegaan tot de boedelbeschrijving met het oog op de echtscheiding door onderlinge toestemming ... "[398]

(iii) Corpus

251. The corpus of the notarial act contains all the relevant clauses, possibly subdivided in the in Articles. This part may also contain all the declarations that are to be made. For example, the emergence of indivisibility ("*het ontstaan van onverdeeldheid*"), …[399]

(iv) Conclusion

252. The notarial act will be concluded with the phrases: "*waarvan akte*" (if it is a general notarial act) or "*waarvan proces verbaal*" (if it is drafted as a report) to authenticate the preceding statements.[400] Lastly, the notary will state: '*Verleden te ... (plaats) op voornoemde datum. Na lezing hebben de comparanten, (de getuigen) met mij notaris ondertekend*'.[401] [402]

(v) Formal requirements

253. The formal requirements are set out in Article 12 (identity of parties, name and date) and 14 (signature) Notary Act.[403] If those requirements are not met the notarial act may be considered null. At most, it may still have value as a private act

[397] Example provided in Weyts 2018, supra n. 389, p. 183.
[398] Example provided in Weyts 2018, supra n. 389, p. 183.
[399] Weyts 2018, supra n. 389, p. 183.
[400] Weyts 2018, supra n. 389, p. 183.
[401] Weyts 2018, supra n. 389, p. 184.
[402] Translation: 'Drawn up at … (place) on the aforementioned date. After reading, the appearers, (the witnesses) signed with me, the notary'.
[403] Infra question 11.5.

("*onderhandse akte*").[404] Additionally, all sums[405] and dates must be written in full to avoid tampering[406] and the notary must read the notarial act to the parties.[407] The notarial act does not need to always be read in full.[408]

E. QUESTION 11.5: WHAT PERSONAL INFORMATION MUST BE SPECIFIED IN THE NOTARIAL ACT FOR THE PURPOSES OF IDENTIFYING THE PARTIES?

(vi) General

254. Article 12 Notary Act specifies certain disclosures that need to be made. The personal information that needs to be specified can be divided in two groups. On the one hand, information that needs to be specified and, if omitted, will lead to a sanction (most often a fine). On the other hand, information that needs to be specified and, if omitted, will lead to a null notarial act.[409]

(vii) Omission of Information leading to a sanction

255. The name, surname and professional residence ("*standplaats*")[410] of the notary.[411] If multiple notaries are present, the aforementioned information must be provided for all of them.[412] An associated notary ("*geassocieerde notaris*") also states the name and the registered office of the company of which he is a member.

256. The name, all surnames, place and date of birth, the place of residence of the parties and their national identity number must be stated.[413] It is sufficient to state the first two surnames if the identity of the party is established via his national identity card.[414] If a proxy ("*volmachthouder*") is present, his/her name, surname and place of residence must be stated. The place and date of birth however may be omitted. Additionally, the name, surname, place of residence of witnesses will also need to be

[404] Article 114 Notary Act and Weyts 2018, supra n. 389, p 187.
[405] Sums refereing to: sums constituting a payment obligation.
[406] Article 12, subsection 3 Notary Act
[407] Article 12, subsection 4 Notary Act
[408] Weyts 2018, supra n. 389, p. 193.
[409] Weyts 2018, supra n. 389, p. 156.
[410] Article 45 Notary Act
[411] Article 12, subsection 1 Notary Act
[412] Weyts 2018, supra n. 389, p. 156.
[413] Article 12, subsection 1 Notary Act
[414] Wet 1 March 2007, BS 14 March 2007 and Weyts 2018, supra n. 389, p. 157.

stated in the notarial act.[415] The name, surname date and place of birth and the place of residence of the client as well as the proxy must also be stated.[416]

(viii) Omission of information leading to a null notarial act

257. The place of execution of the notarial act must be stated in the act as well. However, if it is not stated the act will not be authentic.[417] Additionally the date of the notarial act must be stated. Each party as well as the notary will need to sign the notarial act. It is possible that the parties sign at a different time if the notary signs last.[418] Moreover, the name, surname and place of residence of the formal witnesses and testifying witnesses must be stated in the notarial act.[419]

258. Certain types of acts have specific formalities that need to be considered. For example, all deeds in which a price (and charges) or an estimate constitute the basis for the levying of the registration duty (tax) must include the statement that Article 203 of the W.Reg.[420] has been read.[421]

F. QUESTION 11.6: MUST A NOTARIAL ACT, CONSIDERED TO BE AN ENFORCEMENT TITLE, CONTAIN A THREAT OF ENFORCEMENT?

259. Article 19 Notary Act states that the enforceability extends to all agreements in the act. No threat of enforcement is therefore required.

G. QUESTION 11.7: IF APPLICABLE, HOW LENGTHY AND IMPORTANT IS THE PART OF THE NOTARIAL ACT, WHICH CONTAINS WARNINGS AND EXPLANATIONS BY THE NOTARY?

260.

A.4. QUESTION 11.7.1: IS THE NOTARY OBLIGED TO EXPLICITLY WARN THE PARTIES ABOUT THE DIRECT ENFORCEABILITY OF THE ACT?

261. In principle the notary does not need to explicitly warn the parties that the notarial act may be directly enforceable.

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[415] Weyts 2018, supra n. 389, p. 157.
[416] Weyts 2018, supra n. 389, p. 157.
[417] Gent 8 oktober 2015, *T.Not*. 2015, 817.
[418] Weyts 2018, supra n. 389, p. 172.
[419] Article 12, subsection 2 Notary Act
[420] Wetboek registratierechten [Registration duties act]
[421] Weyts 2018, supra n. 389, p. 176.

A.5. QUESTION 11.7.2: IS THERE A NEED FOR PARTIES AND/OR THE NOTARY TO SIGN EACH PAGE OF A NOTARIAL ACT, TO BE CONSIDERED VALID?

262. According to Article 13 Notary Act, the pages of a notarial act must be numbered and signed or initialized. Nevertheless, the omission of the required signatures on each page will not affect the validity of the notarial act. It will merely result in a fine for the notary.

H. QUESTION 11.8: WHAT ARE THE CONSEQUENCES IF THE PARTIES FAIL TO MEET THE FORMAL REQUIREMENTS FOR A VALID NOTARIAL ACT?

263. See questions 11.4 and 11.5.

I. QUESTION 11.9: WHAT KIND OF (SUBSTANTIVE) OBLIGATIONS, ARISING OUT OF LEGAL RELATIONSHIPS AND CONTAINED IN A NOTARIAL ACT CAN BECOME DIRECTLY ENFORCEABLE, ACCORDING TO YOUR DOMESTIC LEGAL ORDER (E.G. MORTGAGE)? CONVERSELY, ARE THERE LEGALLY VALID OBLIGATIONS, WHICH CANNOT BECOME DIRECTLY ENFORCEABLE DUE TO RESTRICTIONS IN LEGISLATION OR DUE TO JUDICIAL DECISIONS?

264. A notarial act may cover a very broad spectrum of agreements (see question 11.1). In principle matters relating to family law, all types of contracts and other subject matters are allowed.[422]

265. Generally, a notary may not draft judicial or extrajudicial acts. These are reserved for judges and enforcement officers respectively.[423] For example, a notary will not be allowed to draft a report on findings ("*proces verbaal van vaststelling*") as this is the exclusive task of an enforcement officer.[424]

266. There are some matters which have been excluded from the drafting competence of the notary:

i. the adoption of a child (the notary will only record the consent)[425],

ii. the record of civil status[426],

[422] Weyts 2018, supra n. 389, p. 10.
[423] Weyts 2018, supra n. 389, p. 85.
[424] Article 516, subsection 2 Judicial Code and Weyts 2018, supra n. 389, p. 85.
[425] Article 390 Civil Code
[426] Article 40 Civil Code

iii. the emancipation ("*ontvoogding*") of a child[427],

iv. the renunciation of joint estate.[428]

J. QUESTION 11.10: IS IT POSSIBLE THAT CONDITIONAL CLAIMS, CONTAINED IN A NOTARY ACT ARE DIRECTLY ENFORCEABLE? IF SO, ARE THERE ANY SPECIAL CONDITIONS, WHICH HAVE TO BE MET IN NOTARIAL ACTS OR IN ENFORCEMENT PROCEDURE?

267. For a notarial act to be enforceable, an enforceable title ("*grosse*") is required. Such an enforceable title may only be given by a notary if the obligation must still be carried out.[429]

K. QUESTION 11.11: CAN OBLIGATIONS, CONTAINED IN A DIRECTLY ENFORCEABLE NOTARY DEED, BE CONTAINED IN ATTACHMENTS TO THE NOTARIAL ACT OR MUST THEY BE SET OUT SPECIFICALLY WITHIN THE TEXT OF THE ACT?

268. There are different types of attachments possible. Some are required by law while others are of a voluntary nature. A further distinction is made between the attachments of a material nature and attachments of an intellectual nature.[430]

269. Attachments of material nature do not contribute to the content of the notarial act. An example of such an attachment would be a judgment or power of attorney ("*volmacht*"). Attachments of an intellectual matter do contribute to the content of the notarial act. A classic example is that of a lending and general terms and conditions of sale. In principle, these attachments may only be enforceable if they have been read aloud to the parties by the notary and if they have been signed.[431]

270. Consequently, the notary states in the notarial act itself that:

i. An attachment has been attached to the notarial act

ii. That the attachment has been signed by the parties and the notary

[427] Article 477 Civil Code

[428] Weyts 2018, supra n. 389, p. 88.

[429] Weyts 2018, supra n. 389, p. 275.

[430] Weyts 2018, supra n. 389, p. 255.

[431] Weyts 2018, supra n. 389, p. 256.

iii. That the notary has informed the parties about the attachments or that those have been read.[432]

L. QUESTION 11.12: IS IT POSSIBLE FOR PARTIES TO CONCLUDE A CONTRACT WHEREIN THEY SET UP A LEGAL (CONTRACTUAL) RELATIONSHIP AND ONLY LATER BRING SAID CONTRACT TO THE NOTARY IN ORDER TO CONFIRM THE DIRECT ENFORCEABILITY OF OBLIGATIONS, ARISING OUT OF THE CONTRACT?

271. In principle, yes this is possible. The parties will proceed to make a draft of an act and will consequently present it to the notary to authenticate it. This is a common practice for deeds establishing a company.[433]

272. However, it is not possible to set up certain agreements without the help of a notary. This is the case for example for solemn contracts ("*plechtige contracten*").[434]

M. QUESTION 11.13: MUST THE NOTARIAL ACT INCLUDE THE SPECIFICATION OF THE TIME PERIOD IN WHICH THE OBLIGATION OF THE DEBTOR IS TO BE PERFORMED? IN CONJUNCTION, IS THERE THE POSSIBILITY THAT A NOTARIAL ACT IS DIRECTLY ENFORCEABLE EVEN IF THE TIME PERIOD HAS NOT YET EXPIRED? IF SO, UNDER WHAT CONDITIONS?

273. The Notary Act does not stipulate the necessity of including a time period for the debtor to perform his obligation. Parties may provide certain time periods in their notarial acts. A common clause in sales act includes a period of one month to vacate the premises after which payment of damages is due.[435]

N. QUESTION 11.14: DISREGARDING EU LEGISLATION, ARE THERE ANY SPECIAL RESTRICTIONS REGARDING RECOGNITION AND ENFORCEMENT UNDER THE PRIVATE INTERNATIONAL LAW OF YOUR MEMBER STATE, PERTAINING SPECIFICALLY TO FOREIGN NOTARIAL ACTS?

274. Article 27 WIPR (Private International Law Code) specifies the rules relating to the recognition and enforcement foreign authentic instruments. In principle, no procedure is required for the recognition of foreign authentic instruments. For a foreign authentic instrument to be enforceable, it needs to be declared enforceable by the court

[432] Weyts 2018, supra n. 389, p. 256.
[433] Weyts 2018, supra n. 389, p. 185.
[434] Weyts 2018, supra n. 389, p. 186.
[435] Weyts 2018, supra n. 389, p. 243.

of first instance. The authentic instrument must satisfy the conditions necessary for its authenticity under the law of the State in which it was drawn up.

O. QUESTION 11.15: IS IT POSSIBLE TO BRING GROUNDS OF OBJECTION IN ENFORCEMENT PROCEEDINGS, CONCERNING NOT ONLY ENFORCEMENT PROPER (EXECUTION), BUT OPPOSITION TO THE CLAIM ITSELF? IN OTHER WORDS, CAN THE DEBTOR RAISE GROUNDS AGAINST THE CLAIM CONTAINED IN THE NOTARY ACT IN ENFORCEMENT PROCEEDINGS?

275. There are certain measures that can be undertaken by the debtor. First, a debtor may ask for a postponement of a deadline.[436] This does not as such challenge the enforceability of the notarial act, it merely grants the debtor extra time to perform.[437] Second, a debtor may attack the notarial act as a valid instrument with a procedure for forgery of documents ("*valsheid van geschriften*").[438] Third, the debtor may claim that the object of the notarial act is not specific enough and subject to interpretation and therefore enforcement is not possible. Fourth, the debtor may put forward that the claim has been extinguished by settlement ("*dading*").[439] Lastly, the debtor may take recourse to the legal subject of abuse of power claiming that the enforcement of the notarial act would lead to such an abuse.[440]

P. QUESTION 11.16: IF YOUR DOMESTIC LEGAL ORDER DOES NOT OPERATE WITH ENFORCEABLE NOTARIAL ACTS, HOW WOULD YOU ENFORCE A FOREIGN ENFORCEABLE NOTARIAL ACT?

276. Belgium does utilize enforceable notarial acts.

Q. QUESTION 11.17: ARE THERE OTHER AUTHENTIC INSTRUMENTS UNDER YOUR DOMESTIC LEGAL ORDER, WHICH ARE CONSIDERED ENFORCEMENT TITLES?

277. See question 1.1.

[436] Article 1244 Civil Code and Article 1343, §3 Judicial Code

[437] Weyts 2018, supra n. 389, p. 260.

[438] Weyts 2018, supra n. 389, p. 260.

[439] Cass. 15 January 1999, *RW* 1999-2000, 148.

[440] E. Leroy, 'De la force executoire des actes notaries: principes, limites et perspectives' in X. Authenticiteit en informatica, (Kluwer 2000) p. 107 at p. 123.

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