

**Thesis for the Graduate's Degree in Certified Legal  
Translation**

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## **PART 1: INTRODUCTION TO THE THESIS**

This research work is a thesis in which we analyze a section from a legal document in Spanish and a section of a legal document in English. The analysis is performed from the grammatical, orthographic, and linguistic points of view in order to translate such sections. First, we carry out a general analysis of the whole texts, and then we perform an in-depth analysis of the sections that we have been asked to translate.

Particularly, the investigation for each document consists of six parts. Firstly, we point out how many pages and paragraphs the whole documents consist of. In addition, we comment on the type of legal documents we are studying and on the manner in which they are written, as well as on the judicial systems of the countries of origin, the subjects of the texts, and the laws and regulations cited by the drafters.

Second, we analyze the orthographic and grammatical errors contained in the sections we have been asked to translate. We consider that the orthography and grammar are essential to convey a message in an effective manner. In addition, we believe that, complying with the rules of orthography and grammar of a given language, we can communicate properly with the rest of the world; if we ignore those rules, we can be considered as professionals with no knowledge of the conventions of their own language, and we can risk conveying a meaning that is opposite to the one we desire to express. Furthermore, the rules mentioned contribute to the cohesion and coherence of texts (Real Academia Española, 2011,

pp. 278 and 281-282). As for the errors found in the texts, we identify them and explain why they are considered as such citing the Spanish and English rules of orthography and grammar. Once we explain the errors, we provide the correct versions of the fragments containing the mistakes.

Third, we study the collocations that appear in the sections of the documents being studied. We should point out that a collocation is a fixed combination of words which frequently appears in texts of a given language. In addition, these structures should be respected, because, if employed, they can contribute to the naturalness of a text (Sinclair, 1991). As for the collocations found in the texts, we identify them and provide possible translations for them. Then, we conduct a research to verify if our translations are correct or if we need to change them. We check the meaning of the collocations, their translations in a bilingual dictionary, and the meaning of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage.

Fourth, we analyze the terms and expressions that we consider important to translate the texts. We should point out that the terms and expressions we found in a document (as well as the format and style of the text) help us identify the type of text we are dealing with. As for the texts under analysis, the words found belong to the vast set of vocabulary considered legal jargon, which is used in different documents of legal nature in which laws are drafted, contracts are entered into, or even the rights and duties of the parties to a case are established (Hyatt, n.d.)<sup>1</sup>. The terms and expressions in question are identified, and then we provide possible

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<sup>1</sup> Retrieved from <https://www.law.du.edu/index.php/law-school-learning-aids/legal-language>

translations for them. Then, we conduct a research to verify if our translations are correct or if we need to change them. We check the meaning of the expressions, their translations in a bilingual dictionary, and the meaning of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage.

Finally, in the fifth section we pass the last comments on the analyses of the texts, and in the sixth section we attach the documents studied with their pertinent translations, which are effected according to the format guidelines set forth by the *Colegio de Traductores Públicos de la Ciudad de Buenos Aires* (CTPCBA [Certified Legal Translators' Association of the City of Buenos Aires, Argentinian Republic]) and the research we have conducted.

Before commencing our research, however, we have to understand the characteristics of legal texts. Legal texts are documents that are drafted with specific formats and employing legal jargon, i.e. terms and expressions that are used only by professionals who study law, such as “escrow,” “entitled to,” “redeemable,” “affidavit,” and “equitable distribution” (Tiersma, 2010<sup>2</sup>; Hornby, 2010, p. 831). Among the types of legal documents, we can find deeds, contracts, powers of attorney, wills, judicial decisions, trusts, leases, loans, complaints, promissory notes, bills of lading, and even consent-to-surgery forms. In addition, these texts contain foreign words, such as the Latin expressions “*pro se*,” “*sua sponte*,” and “*in dubio pro reo*,” and archaic expressions, such as “in witness whereof”; they are formed with long, complex sentences (it is not surprising to find

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<sup>2</sup> Retrieved from <http://www.languageandlaw.org/LEGALTEXT.HTM>

a paragraph that consists of only one sentence packed with commas); they are written using the passive voice to avoid mentioning the doer of the action; and they contain nominalizations, such as “to enter into contract” (Williams, 2004, pp. 112-115)<sup>3</sup>.

Regarding the legal English, there exist two movements relating to the way of writing legal texts, which are those of Legalese and Plain English. These legal-style currents set forth writing guidelines that differ enormously, because Legalese tends to favor the obscurity and complexity of legal language, while Plain English encourages clear, transparent legal drafting, which contributes to the comprehension of legal texts by laymen (Benson & Kessler, 1987). In the following paragraphs, we briefly explain the historical evolution of legal English until the kingdom of William II and the main features of Legalese and Plain English.

In the fifth century, the Celts and the Germanic tribes of the Angles, Saxons, and Jutes invaded Britain bringing with them their languages, which were influenced later in 597 by the Latin language with the Christianization, i.e. the conversion of the inhabitants to Christianity conducted by Saint Augustine, as commanded by Pope Saint Gregory. In 878, King Alfred the Great defeated the Danes at the Battle of Eddington. As he desired to promote learning in England, he proposed a series of translations from Latin into Old English. Among these translations, there was a document containing the duties and obligations of the clergy, which contributed to the usage of Old English expressions and terms in legal drafting. Later on, in the eleventh century, the Normans invaded England, and the Norman French, as the

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<sup>3</sup> Retrieved from [https://www.academia.edu/1620382/Legal\\_English\\_and\\_Plain\\_Language\\_an\\_introduction](https://www.academia.edu/1620382/Legal_English_and_Plain_Language_an_introduction)

language of the elite, replaced the Anglo-Saxon. King Edward the Confessor died in 1066, and his brother-in-law, Harold, was going to be crowned, yet William, Duke of Normandy, challenged Harold's right to the throne. Harold was killed in the Battle of Hastings in December 1066, and William the Conqueror was crowned King of England. Thus, the French language and culture were adopted, which shaped what we know today as Legalese. In addition, after William's death, his son William Rufus was proclaimed the new king, and the French language kept being used in the drafting of laws and legal documents (Šerbaumová, 2010)<sup>4</sup>.

Thus, legal drafting included English, Latin, and French, and that is the reason why nowadays in legal texts drafted using Legalese we find words adopted from French, such as "chose," "cabotage," and "bureau," and words adopted from Latin, such as "nolo contendere," "ex officio," and "prima facie." Moreover, legal texts written in Legalese include words of pompous tone, such as "vaticinate" and "perficient," which tend to obscure the message of the text. They are also charged with legal jargon, provisos, and doublets and triplets, such as "null and void" and "give, devise, and bequeath" (Garner, 2004, pp. 30, 141, 191, and 196). It should be also pointed out that texts drafted with this style also include long, complex sentences that are packed with commas due to the patterns of coordination and subordination present in them (William, 2004, p. 113).

On the other hand, the Plain English movement has its roots in the 1960s, in the United States of America, when different organizations in favor of the consumers' rights started a campaign to erase the defects of legal language and make it easier

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<sup>4</sup> Retrieved from <https://es.scribd.com/doc/316109888/Anglo-Saxons-and-English-Identity>

for non-experts to understand the legal texts they came across during their lives, such as insurance-policy contracts and tax forms. Soon the movement spread all over the world, the Plain English penetrated the legal culture, and contracts, judgments, and even laws started to be written including vocabulary of everyday English to communicate the intended messages in a clear and simple fashion. Thus, archaic, fancy, and foreign words were replaced by colloquial English words; expressions that were unnecessary were removed to avoid redundancy; the length of the sentences was reduced so as to favor brevity; the active voice started to be used to replace the passive-voice constructions; and nominalizations were avoided so as not to render the legal texts abstract (pp. 116-117 and 120-123). Nowadays, there exist different campaigns around the world that promote the proposals of the Plain English movement. For example, in the Plain Language Guidelines (drafted by the Federal Government of the United States), it is set forth that verbs should be employed in the present tense form, that the auxiliary “must” should be used instead of “shall,” that double negatives should be avoided, that the subject and the verb must be close to each other in a sentence, and that drafters should choose their words according to the target audience (Federal Plain Language Guidelines, 2011)<sup>5</sup>.

With reference to the Spanish legal texts, they are drafted in different specific formats according to the type of legal document, yet what they have in common is the fact that they are comprised of long sentences in which commas are overused or even misused. It is common to find commas separating subjects from verbs or,

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<sup>5</sup>Retrieved  
<http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>

from

on the opposite hand, to realize that there are no commas where they should have been written. In addition, gerunds are incorrectly used, because they often are employed to describe a noun, which is a gerundial function admitted only by English grammar (Quirk et al., 1985). Moreover, legal drafters overuse the passive voice, which should be omitted whenever possible and which also is characteristic of the English language. The texts are packed with legal jargon and even literary devices, such as metaphors and clichés, and archaisms and foreign words also appear in these documents. For example, the verb tense *pretérito imperfecto del subjuntivo* (imperfect past tense in the subjunctive mood) is used instead of the simple past tense, and there appear Latin words, such as “a priori” and “certiorari.” Furthermore, it is usual to find performative verbs, i.e. verbs that denote actions carried out by the speaker, such as “declarar” (to declare), “fallar” (to decide), and “otorgar” (to grant) (“Los textos jurídico-administrativos,” n.d.)<sup>6</sup>. The *Nuevo Manual de Estilo de la Procuración del Tesoro de la Nación*, which was written by López Olaciregui (2015) and issued by the Department of Treasury of the Argentinian Government, comprises style guidelines for legal drafting and encourages legal drafters to write with clarity, because cohesion and uniformity are essential to communicate the intended message with effectiveness. Thus, the present tense in the indicative mood is recommended, and Spanish words are preferred over Latin and other foreign words that have not been adopted by the Spanish language. Moreover, unnecessary words should be removed, and lengthy sentences should be split so as not to render the text monotonous. Furthermore,

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<sup>6</sup> Retrieved from <http://www.iescanpuig.com/ewccp/lib/exe/fetch.php?media=vvidal:textos-juridico-administrativos.pdf>

legal drafters should be aware that passive voice is discouraged and that they must avoid employing gerunds to describe nouns and to denote posteriority (pp. 12-13, 15, 20-21, and 332-333)<sup>7</sup>.

Having explained the main characteristics of English and Spanish legal texts, we will explore the world of the certified legal translators, who are the only professionals that are legally certified to translate legal texts that are to be presented before public entities and to provide interpretation and translation services at court. Nevertheless, such services are also offered to clients that need licensed and specialized translators to translate texts with responsibility and excellence (CTPCBA, n.d.)<sup>8</sup>. In Argentina, in order to initiate their sworn-translation careers, future translators must gain a Graduate's degree in legal translation that is usually completed in a period of four to five years. The students learn the rules of orthographic and grammatical rules of the "source" and "target language" (De Saussure, 2011), and they also study the judicial systems of the countries in which the languages in question are spoken ("Traductorado Público en Idioma Inglés," n.d.)<sup>9</sup>. We consider that, as said countries may have different judicial systems, the students must have a general notion of the laws of both countries, because, for example, the way in which the civil and criminal trials are conducted in one country may differ from that of another country, and future translators must be aware of such fact in order to find a solution for the lack of equivalents and to make a correct translation. In addition, certified legal translators in Argentina can act as

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<sup>7</sup> Retrieved from <https://www.ptn.gob.ar/images/files/Manual%20de%20estilo%20PTN%202015.pdf>

<sup>8</sup> Retrieved from <http://www.traductores.org.ar/el-traductor-publico>

<sup>9</sup> Retrieved from <https://www.uade.edu.ar/unidades-academicas/facultad-de-ciencias-juridicas-y-sociales/traductorado-publico-en-idioma-ingles>

interpreters by law, but they can also participate in interpretation courses that enable them to acquire more skills to make interpretations (*artículo 3, Ley n.º 20305* [section 3, Act no. 20305]<sup>10</sup>; CTPCBA, n.d.<sup>11</sup>). Although the future professional can enroll in a college course in legal translation, he can also opt to take a course at the post-secondary-education level in technical-scientific translation, at the completion of which the translator gains a diploma that enables him to translate texts about economics, politics, engineering, biology, medicine, among other fields (“Traductorado Literario y Técnico-científico de Inglés,” n.d.)<sup>12</sup>. Certified legal translators can translate texts of technical and scientific nature, but technical-scientific translators cannot make certified legal translations, i.e. translations that bear the professional seal and signature of the translator who has a license issued by the CTPCBA in the languages from which and into which he translates. In addition, certified legal translations are drafted according to the format guidelines set forth by the CTPCBA, and they are legalized by said entity. Furthermore, technical-scientific translators cannot work as court interpreters; in order to work in courtrooms providing interpretation and translation services, the professional must be a certified legal translator (CTPCBA, n.d.)<sup>13</sup>. Nevertheless, if the future translator is interested neither in legal translation nor in technical-scientific translation, he can always join a post-secondary-education course in

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<sup>10</sup> Retrieved from <http://www.traductores.org.ar/ley-20305>

<sup>11</sup> Retrieved from <http://www.traductores.org.ar/buscador?q=interpretacion>

<sup>12</sup> Retrieved from <http://www.ispbrown.edu.ar/portal/index.php/oferta-educativa/tecnicaturas/item/31-traductorado-literario-y-tecnico-cientifico-de-ingles>

<sup>13</sup> Retrieved from <http://www.traductores.org.ar/el-traductor-publico>

literary translation, at the completion of which he obtains a diploma that enables him to translate for publishing companies (Benseñor, 2012)<sup>14</sup>.

As for the country of Canada, some future professionals may enroll in a university course in translation or languages and specialize in law, while others may obtain a Graduate's degree in law and complete a Master's degree in translation ("Legal translator," n.d.)<sup>15</sup>. In addition, translators in Canada are represented by the Canadian Translators, Terminologists and Interpreters Council, which is a national entity that drafts professional standards to ensure high-quality communication across the country (Canadian Translators, Terminologists and Interpreters Council, n.d.)<sup>16</sup>. According to their skills, the professionals must take different exams prepared by different provincial bodies that are member associations of the Council. If the translators succeed in these examinations, they are awarded the titles of "certified translator," "certified terminologist," "certified interpreter," "certified conference interpreter," or "certified court interpreter" (Canadian Translators, Terminologists and Interpreters Council, n.d.)<sup>17</sup>.

In the United States, undergraduate and certificate programs in general or specialized translation are offered to practice the profession. A Master's degree in translation enables the student to acquire the necessary competence to translate technical and scientific texts, as well as the computer skills to employ Computer-Assisted Translation tools. On the other hand, a Master of Fine Arts prepares the future professional to work in the literary field. In addition, if translators wish to

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<sup>14</sup> Retrieved from [https://www.clarin.com/edicion-impresa-n/estudiar-traductor-argentina\\_0\\_ryZgEO1nDXg.html](https://www.clarin.com/edicion-impresa-n/estudiar-traductor-argentina_0_ryZgEO1nDXg.html)

<sup>15</sup> Retrieved from <http://educaloi.qc.ca/en/youth/legal-careers/legal-translator>

<sup>16</sup> Retrieved from <http://www.cttic.org/mission.asp>

<sup>17</sup> Retrieved from <http://www.cttic.org/certification.asp>

dedicate their careers to the legal, medical, or court translation, they must complete a certification program (Gearing, 2009)<sup>18</sup>. Whatever program translators choose and complete, they must become members of the American Translators Association, which is an entity that promotes the profession, represents translators and interpreters, and enables its members to show that “they meet certain standards of the translation profession” by means of challenging exams in which applicants must translate a text in the most faithful way and by which their problem-solving skills are evaluated (American Translators Association, n.d.)<sup>19, 20</sup>.

Regardless of the country in which the translator develops his career, his task is fascinating and challenging: transferring the meaning of texts from one language into another. Such task may seem simple, but, in fact, it is a complex process that requires the translator to apply his knowledge of grammar structures, idioms, set expressions, terms, genres, registers and literary devices of the source and target language and to make a “multilayered analysis” of those elements in order to make a functional translation (Robinson, 1997, p. 50). Furthermore, the professional must know the culture and socio-historical characteristics of the countries in which such languages are spoken to understand the context of the text to be translated. Due to the fact that languages evolve, the translation career entails a life-long learning process, and translators must take up-dating courses to be aware of the most recent linguistic changes (Parini, 2001, pp. 113 and 116). Moreover, translators must fulfill the goal of sounding natural in the target language, which is

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<sup>18</sup> Retrieved from <https://www.altalang.com/beyond-words/2009/09/04/translation-graduate-programs-an-overview/>

<sup>19</sup> Retrieved from [https://www.atanet.org/aboutus/about\\_ata.php](https://www.atanet.org/aboutus/about_ata.php)

<sup>20</sup> Retrieved from [https://www.atanet.org/certification/aboutexams\\_overview.php](https://www.atanet.org/certification/aboutexams_overview.php)

achieved not only by knowing the usage of the words and expressions of such language, but also by taking into account the style and function of the source language to transfer them into the target language according to parallel documents (Drallny, 2001, p. 385; Cuestas, Datko & Zamuner, 2001, p. 324). All these required skills, together with the translator's curiosity for culture and languages, will contribute to the "beauty of faithfulness" of the translation, which is the final product of the translator's own creation (Wolfson, 2001, pp. 260-261).

Having briefly explained the subject-matter of the thesis, outlined the characteristics of English and Spanish texts, and explored the profession of the translator, we can now commence the general analyses of the texts to be studied and the in-depth analyses of the sections to be translated. In the following pages, we first study the Spanish text; in the first place, we make an introduction to the document, and then we proceed to perform the analysis of the text.

## **PART 2: LOGBOOK OF THE SPANISH TEXT**

### ***SECTION 1: INTRODUCTION TO THE SPANISH TEXT***

The original text is a final judgment issued by the *Sala Segunda de la Cámara de Apelación en lo Laboral de Santa Fe* (Room no. 2 of the Appellate Court on labor matters of Santa Fe, Argentinian Republic) in 2014. Moreover, the text of this recent judgment is comprised of twelve pages and is divided into 42 paragraphs. The text consists of long sentences packed with commas and orthographic and grammatical mistakes, and we can identify inconsistency issues, such as the form

of writing dates and Latin expressions. Nevertheless, the drafter employs different linking expressions to organize the ideas of the text, such as “acto seguido” and “en consecuencia” (p. 1, l. 8; p. 2, l. 31)<sup>21</sup>. In addition, nominalizations like “el ejercicio de un derecho” are employed (p. 3, l. 17), which are typical of legal texts (“Textos jurídico-administrativos,” n.d.)<sup>22</sup>. We can also detect that the text is written with legal jargon; for example, the following terms and expressions are included: “caducidad de instancia” (p. 1, l. 15), “litis ya trabada” (p. 3, l. 4), “prescripción liberatoria” (p. 4, l. 5), and “*ratio decidendi*” (p. 5, l. 22). The register is formal and the text combines features of Plain English and Legalese, because it is not written so as to obscure the language, but it contains legal vocabulary and Latin expressions that would not be understood by non-experts in the matter. As the document is drafted by an Argentinian authority of the province of Santa Fe, we must understand, on the one hand, Argentina’s judicial system and, on the other hand, the judicial organization of Santa Fe.

Argentina’s judicial system is codified, which means that it has a civil-law system. Countries with civil-law systems draft different codes and statutes that govern all law fields, such as criminal, civil, and procedural law (“The Common Law and Civil Law Traditions,” n.d.)<sup>23</sup>. On the opposite hand, in countries with common-law systems, law derives from judicial decisions, such as in the United States and Canada (Garner, 2004, p. 293). The Argentinian Constitution sets forth that the form of government of Argentina is representative, republican, and federal (artículo

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<sup>21</sup> See the Spanish document in the sixth section of the logbook of the Spanish text.

<sup>22</sup> Retrieved from <http://www.iescanpuig.com/ewccp/lib/exe/fetch.php?media=vvidal:textos-juridico-administrativos.pdf>

<sup>23</sup> Retrieved from <https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html>

1, Constitución Argentina [section 1, Argentinian Constitution])<sup>24</sup>. It is representative because governmental authorities are elected by the citizens who consider themselves to be represented by such governors; it is republican because the election of the government is performed by suffrage; and it is federal because each one of the 23 Argentinian provinces conserves its autonomy and drafts its own provincial constitution. In addition, the democratic judicial system of Argentina recognizes three powers: the executive power, which is embodied by the President, who is Head of State and guarantees the compliance of the laws enacted by the legislative power; the legislative power, which is embodied by the *Congreso* (the Congress), which is divided into the *Cámara de Diputados* (the House of Representatives) and the *Cámara de Senadores* (the House of Senators of the Argentinian provinces and the Autonomous City of Buenos Aires), and which is in charge of enacting laws; and the judicial power, which is embodied by the *Suprema Corte de Justicia de la Nación* (the Argentinian Supreme Court) and the lower courts, which administer justice in the territory. In addition, the *Consejo de la Magistratura* (the Judgeship Council) is in charge of the administration of the judicial power and the election of judges of lower courts, and the *Ministerio Público* (the Public Ministry) is embodied by the *Procurador General* (the Attorney General of Argentina) and the *Defensor General de la Nación* (the General Defense Attorney of Argentina), who are in charge of promoting the defense of the rights of Argentinian inhabitants in court proceedings (“Los Tres Poderes,” n.d.)<sup>25</sup>. Furthermore, there are different *juzgados* (similar to courts of original jurisdiction)

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<sup>24</sup> Retrieved from <http://www.casarosada.gob.ar/images/stories/constitucion-nacional-argentina.pdf>

<sup>25</sup> Retrieved from <http://www.casarosada.gob.ar/nuestro-pais/organizacion?id=2722>

at the national and federal level with competence in different matters, which range from civil, commercial, and administrative matters to labor and criminal ones. In the middle of the court hierarchy, there are *cámaras de apelación* (appellate courts), which review district courts' decisions. Finally, the *Corte Suprema de Justicia de la Nación* lays at the top of the court ladder; it has original jurisdiction to resolve cases involving foreign ambassadors, ministers, or consuls and cases in which one of the parties is an Argentinian province and discretionary appellate jurisdiction to review cases that involve constitutional issues ("Guía judicial," n.d.<sup>26</sup>; section 117, Argentinian Constitution<sup>27</sup>).

As for the province of Santa Fe, it is a territory politically divided into 19 departments, which are subdivided into different municipalities. The executive power is embodied in the provincial governor, the legislative power is comprised of senators and representatives, and the judicial power is exercised by the provincial Supreme Court, the appellate courts, and the district courts. In addition, the judicial organization of the province consists of five *circunscripciones* (circumscriptions) divided into different *distritos judiciales* (judicial districts), and each judicial district counts with appellate and district courts with subject-matter jurisdiction. Furthermore, there are *Juzgados Comunitarios de las Pequeñas Causas*, which are small-claims courts ("Guía judicial," n.d.)<sup>28</sup>.

Having explained the features of the judicial system of Argentina and Santa Fe, we can comment on some aspects of the Argentinian appellate procedure. The

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<sup>26</sup> Retrieved from <http://www.pjn.gov.ar/>

<sup>27</sup> Retrieved from <http://www.casarosada.gob.ar/images/stories/constitucion-nacional-argentina.pdf>

<sup>28</sup> Retrieved from <http://www.justiciasantafe.gov.ar/js/index.php?go=i&id=4014>

subject-matter of the document is a final judgment issued by an appellate court. We should point out that a final judgment is “a court’s final determination of the rights and obligations of the parties in a case” (Garner, 2004, p. 858). Moreover, if a judgment is issued by an appellate court, we must understand that a previous final judgment pronounced by a lower court has been appealed. In other words, either party to a case that is not satisfied with the outcome of the case can apply for a motion to have the district judge’s final judgment reviewed by another court in the superior level, i.e. by an appellate court. Similarly, if the appellant or respondent is not satisfied with the judicial decision of the appellate court, she can resort to a supreme court, which is the court of last resort (pp. 378 and 380) and which only admits cases to be reviewed if they involve federal and constitutional issues (“Cómo se organiza el poder judicial,” n.d.)<sup>29</sup>.

With reference to the motion for appeal, we should remember that in Argentina it can be granted “libremente” or “en relación”; if it is granted “libremente,” new evidence and arguments are allowed to be presented in the superior court, and, if it is granted “en relación,” new evidence and arguments are not allowed to be presented in the superior court. As for the motion for appeal that is granted “libremente,” it is previously filed in the district court, and the appellate brief called “expresión de agravios” is filed before the superior court. On the other hand, the motion for appeal that is granted “en relación” is previously filed before the superior court, and the appellate brief called “memorial” is also filed before such court. We should add that all motions for appeal granted “en relación” are granted with

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<sup>29</sup> Retrieved from <http://www.cij.gov.ar/nota-117-C-mo-se-organiza-el-Poder-Judicial.html>

“efecto diferido,” which means that there are two appeals: the first appeal corresponds to a type of interlocutory decision, and the second one corresponds to the final decision of the case; the first appeal is referred to as “the deferred appeal,” and the second appeal is referred to as “the principal appeal” (Di Pierro, personal communication, February 25, 2017; section 243, Código Civil y Comercial de la Nación [section 243 of the Argentinian Civil and Commercial Code]<sup>30</sup>; Cotrina Vargas, n.d., p. 5<sup>31</sup>).

Regarding the Argentinian texts of judgments issued by appellate courts, they are divided into three sections. The first section is called “vistos”; in this section, the case sent by the lower court is identified and the objective of the meeting of the appellate judges is established. The second section is called “considerandos”; in this section, the background of the case on appeal is outlined, as well as the laws and codes cited to issue a judgment according to the answers to the questions set out by the court to resolve the case. Finally, the third part is called “parte dispositiva”; it consists in the judgment issued by the appellate court, and it is generally introduced by the following expression: “Por todo lo expuesto, la Cámara RESUELVE: (...)” (“According to the foregoing, the appellate court orders the following: (...)”) (“Estructura de la sentencia,” n.d., p. 2)<sup>32</sup>. We should point out that the superior court can confirm the judgment on appeal, send the case to the lower court for further action, overturn the decision on appeal, or modify the lower court’s decision (Garner, 2004, pp. 64, 1319, and 1344).

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<sup>30</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm>

<sup>31</sup> Retrieved from [https://www.academia.edu/8608747/La\\_apelaci%C3%B3n\\_diferida\\_en\\_el\\_proceso\\_civil](https://www.academia.edu/8608747/La_apelaci%C3%B3n_diferida_en_el_proceso_civil)

<sup>32</sup> Retrieved from [http://capacitacion.jusmisiones.gov.ar/files/material\\_curso/Taller%20de%20Estructura%20de%20la%20Sentencia.pdf](http://capacitacion.jusmisiones.gov.ar/files/material_curso/Taller%20de%20Estructura%20de%20la%20Sentencia.pdf)

Having briefly described the appellate procedure in Argentina and the sections of judgments issued by appellate courts in said country, we can analyze the judgment that is the subject-matter of the Spanish text. In the section “vistos,” there appear the name of the case and the objective of the meeting of the judges. The case is entitled “Mirabet, Hilda Graciela De Lía C/ESC. INCORP. N° 1179 M. A. PAUTASSO s/C.P.L.,” and the judges meet to resolve if the appeals filed by the appellant and respondent should be granted. In the section of “considerandos,” the judges describe the background of the case and cast their votes by which the questions set out to resolve the case are answered. As for the background of the case, we can identify the following facts: in the original jurisdiction, in 2008, the plaintiff institutes legal proceedings against the defendant (the plaintiff’s ex-employer) for debts that the latter incurred ten years before, in 1998, when he dismisses the plaintiff. As a consequence, the defendant moves for the dismissal of the case for considering the complaint to be statute-barred. The district judge, in his decision no. 106, denies the motion, and the defendant files a “recurso de anulación” (the grant of which entails the annulment of the lower court’s decision) and an appeal on the grounds of unconstitutionality issues. In addition, against the district judge’s decision no. 283 by which said judge sustains the complaint, the plaintiff files a “recurso de anulación” and an appeal for the default interest rate reduced and applied by the district judge, and the defendant files a “recurso de anulación” and an appeal. Once the background of the case is described and the judges cast their votes, the tribunal orders in the “parte dispositiva” that the “recursos de anulación” be denied and that the case be remanded to the district

court to clarify the judicial decision as regards the default interest rate modified by the district judge.

Regarding the foundation of the decision issued by the tribunal, we can identify different laws and codes cited throughout the text. The judges cite sections of laws, procedural codes, and acts that serve as the reasons to justify their votes. Thus, in order to understand why such laws and codes are cited, we must comment on the provisions of such pieces of legislation, which are explained in the following items:

- *Artículo 37* of the *Código Procesal Laboral* of Santa Fe (section 37 of the Procedural Labor Code of the province of Santa Fe)

This section is about the running of the statute of limitations to prosecute legal proceedings already initiated. Said time limit is one year, and, once that period of time expires, the judge must serve notice on the parties to appear before court within ten days to declare if they wish to prosecute the case. If the parties do not appear in court, the judge declares the expiration of the time period to prosecute the case.<sup>33</sup>

- *Artículo 3987* of the *Código Civil de la Nación* (section 3987 of the former Argentinian Civil Code)

This section is about the tolling of the statute of limitations on legal claims. The party wishing to bring suit tolls said statute when she files her complaint. However, the statute of limitations shall be considered as not having been interrupted if the plaintiff voluntarily dismisses her complaint; if the time period to prosecute legal

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<sup>33</sup> Retrieved from <http://www.santafelegal.com.ar/cods/cpl.html>

proceedings already initiated expires; or if the charges against the defendant are definitively dismissed.<sup>34</sup>

- *Ley no. 20744 (Argentinian Employment Contract Act no. 20744)*

This act governs the different aspects of employment contracts in Argentina: the elements for the drafting of the employment contract, the ways of entering into employment contracts, the parties to the employment contract and their rights and duties, the employer-employee relationship, the employment categories, the employee remuneration and means of payment, the holidays and leave policies, the public holidays and non-business days, the women's right to work, the prohibition of child and teenage labor, the working hours and rest periods, and the termination of the employment contract.<sup>35</sup>

- *The Principio Protectorio*

This principle is one of the pillars of Labor Law in Argentina. It safeguards the employees' rights, because there is an unequal bargaining power between the employer and the employee, i.e. the employee cannot choose the job he wants to have or the remuneration he wants to earn. In addition, this principle takes into account the protection of employees enshrined in section 14 *bis* of the Argentinian Constitution. Besides, this principle states the following: (1) that no law shall be amended against the well-being of employees; (2) that, in case of doubt, all laws and employment contracts shall be construed in the sense that is the most favorable one for the employee; and (3) that, when different rules or laws can be

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<sup>34</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/109481/texact.htm>

<sup>35</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25552/texact.htm>

applied in a single situation, the most favorable rule or law for the employee must be applied (Alfie, n.d., pp. 4-9)<sup>36</sup>.

- *Párrafo 2 of artículo 233 of the Código Procesal Civil y Comercial of Santa Fe* (paragraph 2 of section 233 of the Procedural Civil and Commercial Code of Santa Fe)

This paragraph sets forth that the court clerk shall notify the court that the time limit to prosecute the legal proceedings already initiated has expired, but the parties can also ask the court to declare the expiration of said time limit.<sup>37</sup>

- *Artículo 20 of the Constitución of Santa Fe* (section 20 of the Constitution of Santa Fe)

This section sets forth that the province shall protect employees' rights and establish courts that hear labor cases.<sup>38</sup>

- *Artículo 259 of the Régimen de Contrato de Trabajo* (section 259 of the Argentinian Employment Contract Act)

This section sets forth that the only time limit to prosecute legal proceedings already initiated is the one set forth in the Act.<sup>39</sup>

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Retrieved from [http://www.trabajo.gob.ar/downloads/formacionSindical/Reglas\\_basicas\\_que\\_rigen\\_las\\_relaciones\\_de\\_trabajo.pdf](http://www.trabajo.gob.ar/downloads/formacionSindical/Reglas_basicas_que_rigen_las_relaciones_de_trabajo.pdf)

<sup>37</sup> Retrieved from <http://santafelegal.com.ar/cods/cpcc2.html>

<sup>38</sup> Retrieved from <http://www.concejorosario.gov.ar/resources/legislacion/constitucionprovincial.pdf>

<sup>39</sup> Retrieved from <http://www.ley20744argentina.com.ar/>

- *Ley no. 2144* of Mendoza (Act no. 2144 of the province of Mendoza, Argentina) and the modification of *artículo 108* (section 108) of said act by *Ley no. 7678* (Act no. 7678)

The Act no. 2144 establishes the procedural rules for the prosecution of labor cases, and the modification of section 108 sets forth that the dismissal of the case by the plaintiff cannot be implied; it shall be expressly notified with legal representation to the court and ratified before the court.<sup>40</sup>

- *Ley no. 6204* of Tucumán<sup>41</sup> (Act no. 6204 [Procedural Labor Code] of the province of Tucumán, Argentina)

This code establishes the procedural rules for the prosecution of labor cases.<sup>42</sup>

- *Artículo 12* of the *Ley no. 11653* of Buenos Aires (section 12 of the Act no. 11653 of the province of Buenos Aires, Argentina)

Act no. 11653 sets forth the procedure to file suit before the labor courts of the province of Buenos Aires. Section 12 of such act establishes that the labor court shall take, *sua sponte*, the necessary measures to pursue a labor case. After a certain period of time, the court shall serve notice on the parties to appear before court to perform efficient procedural acts. If they do not appear before court, the

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<sup>40</sup> Retrieved from [http://www.colabogmza.com.ar/?page\\_id=602&mod=4&nro=2144](http://www.colabogmza.com.ar/?page_id=602&mod=4&nro=2144)

<sup>41</sup> It should be noted that, in the Spanish document, this code is referred to as the Procedural Labor Code of the Argentinian province of Tierra del Fuego, but that is not correct; it is the Procedural Labor Code of Tucumán.

<sup>42</sup> Retrieved from <http://rig.tucuman.gov.ar:8001/boletin/docs/Ley%20N%206204.pdf>

court may declare the expiration of the time limit to prosecute the legal proceedings already initiated.<sup>43</sup>

- *Artículo* 16 of the *Ley* no. 3540 of Corrientes (section 16 of the Act no. 3540 [Procedural Labor Code] of the province of Corrientes, Argentina)

This section of the Procedural Labor Code of Corrientes sets forth that the legal proceedings shall be initiated *sua sponte* by the court. If the parties do not prosecute the case within one year, the court shall serve notice on the parties to appear before court within eight days to declare if they wish to pursue the case.<sup>44</sup>

- *Artículo* 11 of *Ley* no. 639 of Formosa (section 11 of the Act no. 639 [Procedural Labor Code] of Formosa, Argentina)

This section sets forth that, once a complaint is filed, the case shall be prosecuted by the parties, the court hearing the case, or the Office of the Attorney General of Formosa. In addition, the court hearing the case shall declare the expiration of the statute of limitations to pursue the case if the parties do not express their interest in prosecuting said case.<sup>45</sup>

- *Artículo* 33 of *Ley* no. 2884 of Misiones (section 33 of the Act no. 2884 [Procedural Labor Code] of the province of Misiones, Argentina)

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<sup>43</sup> Retrieved from <http://www.gob.gba.gov.ar/legislacion/legislacion/l-11653.html>

<sup>44</sup> Retrieved from [http://www.saji.gob.ar/legislacion/ley-corrientes-3540-codigo\\_procedimiento-laboral.htm](http://www.saji.gob.ar/legislacion/ley-corrientes-3540-codigo_procedimiento-laboral.htm)

<sup>45</sup> Retrieved from <http://www.legislaturaformosa.gob.ar/?seccion=verley&nro=639>

This section establishes that, once the complaint is filed, the case shall be prosecuted by the parties or the court hearing the case, and the court clerk shall revise the case to make sure that it is being prosecuted.<sup>46</sup>

- *Artículo* 13 of *Ley* no. 1504 of Río Negro (section 13 of the Act no. 1504 [Procedural Labor Code] of the province of Río Negro, Argentina)

This section sets forth that, once the case is filed, the case shall be prosecuted by the parties, the court hearing the case, or the Office of the Attorney General of Río Negro. Moreover, the court shall take all necessary measures to prosecute the case and, if the legal proceedings are paralyzed, it shall serve notice on the parties to appear before court to declare if they wish to prosecute the case. If the parties do not appear in court, the court shall declare the expiration of the statute of limitations to pursue the case.<sup>47</sup>

- Modification of *artículo* 37 of the *Código Procesal Laboral* of Santa Fe (section 37 of the Procedural Labor Code of Santa Fe) by *Ley* no. 13039 (Act no. 13039)

The modification of the section in question consists in adding that the procedure by which the court serves notice on the parties to appear in court to declare their interest in prosecuting the case can be performed only once. If the court performs

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<sup>46</sup> Retrieved from [http://www.diputadosmisiones.gov.ar/digesto\\_juridico/documentos/145.pdf](http://www.diputadosmisiones.gov.ar/digesto_juridico/documentos/145.pdf)

<sup>47</sup> Retrieved from <http://abogadosviedma.org.ar/archivos/1504-procedimiento-laboral-rn.pdf>

such procedural act and the parties do not prosecute the case within one year, the expiration of the time limit to prosecute can be challenged by either party.<sup>48</sup>

- *Artículos 209, 57, 242, 244, and 210 of the Ley de Contrato de Trabajo of Argentina (sections 209, 57, 242, 244, and 210 of the Argentinian Employment Contract Act)*

Section 209 sets forth that the employee shall notify his employer of his illness or accident; otherwise, he loses the right to receive the remuneration corresponding to the period of time during which he is absent.

Section 57 establishes that the silence of the employer after he is served notice of a matter related to the compliance or the breach of the employment contract by an employee constitutes a presumption against the employer.

Section 242 sets forth that one of the parties to the employment contract may choose to terminate such contract before court if the breach thereof by the other party constitutes an *injuria* (a type of defamation in Argentina).

Section 244 provides that the employment abandonment shall constitute a breach of the employment contract by the employee only after the latter is in default and prior notice served on the employee by the employer to resume his duties.

Finally, section 210 establishes that the employee shall submit to the supervision of his employer.<sup>49</sup>

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<sup>48</sup> Retrieved from <https://www.santafe.gov.ar/boletinoficial/recursos/boletines/23-12-2009ley13039.htm>

<sup>49</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25552/texact.htm>

Having commented on the general aspects of the Spanish text, including the type of text, the judicial system of Argentina and Santa Fe, the subject-matter of the document, and the laws and codes cited in the text, we can now proceed to perform the analysis of the orthographic and grammatical mistakes, collocations, and terms and expressions present in the document. In the following section, the orthographic and grammatical mistakes are explained and corrected.

## ***SECTION 2: ORTHOGRAPHIC AND GRAMMATICAL ANALYSIS***

As explained before, in this section we identify the orthographic and grammatical mistakes present in the Spanish text. We point them out, explain why they are considered as such, and then we provide the correct versions of the fragments containing the mistakes. First, we explain five mistakes found throughout the whole document, and then we explain the errors found in the section of the text that we have to translate. We should warn the reader, however, that, in the correct versions of the fragments containing the errors, only the specific mistakes that are analyzed are corrected; thus, the reader must take into consideration that the other

mistakes that may be present in a correct version are explained in the rest of the items. In the following items, we list and explain the mistakes in question:

- “(...) mantener la instancia aún sin impulso procesal (...)” (p. 4, l. 1)

As in this case “aun” means “incluso” (an adverb that can be translated as “even”) and not “todavía” (an adverb that can be translated as “yet”), it should not be accented (García Negroni, 2016, p. 76). The mistake also appears in page 5, line 21. The correct version would be then “(...) mantener la instancia aun sin impulso procesal (...)”

- “(...) la cédula anoticiando el juicio (...)” (p. 4, l. 10)

Gerunds cannot be used to modify nouns as complements that specify their meanings; in this case, it is better to modify the noun by a restrictive relative clause (García Negroni, 2016, p. 395). The correct version would be then “(...) la cédula que anuncia el juicio (...)”

- “(...) (art. 12, ley 11.653) (...)” (p. 7, l. 10)

The numbers of laws are not written with periods (García Negroni, 2016, p. 101). This mistake is repeated in page 4, line 6 and in 7, line 19. In addition, the word “ley” should begin with a capital letter when followed by its corresponding number (“Artículo,” 2014)<sup>50</sup>. The mistake is repeated in page 4, line 6; page 6, line 24 and 25; and page 7, line 11, 15, and 19. The correct version would be then “(...) (art. 12, Ley 11653) (...)”

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<sup>50</sup> Retrieved from <http://www.fundeu.es/consulta/articulo-de-ley-2/>

- “(...) el efecto interruptivo (...) sólo cede en los supuestos expresamente previstos en dicha norma (...)” (p. 9, l. 7)

The word “solo” can function as an adjective (it would be translated as “alone”) or as an adverb (it would be translated as “only”). It used to be accented when it meant “only,” but according to the new Spanish orthographic rules, such word should never be accented (Real Academia Española, 2011, p. 269). The correct version would be then “(...) el efecto interruptivo (...) solo cede en los supuestos expresamente previstos en dicha norma (...)”

- “(...) si la empleadora entiende que la excusa es inválida cuenta con las atribuciones que le confiere el art. 210 (...)” (p. 10, l. 11)

There is a comma missing after the conditional construction “si la empleadora entiende que la excusa es inválida.” In conditional sentences, a comma should follow the clause containing the condition when such construction is placed before the main clause (Real Academia Española, 2011, p. 336). The correct version would be then “(...) si la empleadora entiende que la excusa es inválida, cuenta con las atribuciones que le confiere el art. 210 (...)”

- “(Expte. N° 68- Año 2013)” (p. 1; in the upper margin)

The abbreviation of the word “number” is wrong; it should be “n.º” (“Número, abreviatura,” 2006)<sup>51</sup>. The mistake is repeated in page 1, line 6, 14, 17, and 26; page 2, line 1 and 14; and page 9, line 5. In addition, the hyphen should not be

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<sup>51</sup> Retrieved from <http://www.fundeu.es/consulta/numero-abreviatura-145/>

used in this case, because it is not linking proper nouns, adjectives, or nouns (Real Academia Española, 2011, pp. 412, 413, and 416). Instead, a comma should be used, because it would be separating elements of a list (Real Academia Española, 2005, section 1.2.1.)<sup>52</sup>. This mistake also appears in page 1, line 7. Moreover, the word “Año” should not be capitalized, because it does not appear at the beginning of a sentence and because it is a common noun (García Negroni, 2016, p. 156) (the same mistake is made in page 1, line 7 with the word “Año” and the abbreviations “Expte.” and “Fo.”). Taking into account the mistakes that we have pointed out, the correct version would be “(Expte. n.º 68, año 2013).”

- “(...) a los 5 días de febrero del año dos mil catorce , (...)” (p. 1, l. 1)

Dates are written with numbers or with letters. We do not have to combine both ways of writing the date, except when we write the day and the year with numbers and we write the month with letters (“fechas: claves de escritura,” 2013)<sup>53</sup>. López Olaciregui (2015) proposes the following example to illustrate how dates may be written: “En la Ciudad de Buenos Aires, a los treinta días del mes de julio de dos mil catorce...” (p. 38). Therefore, the correct version would be “(...) a los cinco días del mes de febrero de dos mil catorce, (...).”

- “(...) del año dos mil catorce , (...)” (p. 1, l. 1)

We do not have to leave a space between the word that precedes the comma and the comma (García Negroni, 2016, p. 104). The correct version would be then “(...) del año dos mil catorce, (...).”

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<sup>52</sup> Retrieved from <http://lema.rae.es/dpd/srv/search?id=V1EqcYbX4D61AWBBrd>

<sup>53</sup> Retrieved from <http://www.fundeu.es/recomendacion/fechas/>

- “(...) se reúnen en Acuerdo Ordinario los Señores Jueces (...)” (p. 1, l. 1)

The expression “Acuerdo Ordinario” should not be capitalized, because it is neither a proper noun nor part of a title of a legal document (Real Academia Española, 2011, p. 491) and because it is written in lower case in the *Reglamento para la Justicia Nacional* of the *Corte Suprema de Justicia de la Nación* (1952) (National Justice Regulations issued by the Argentinian Supreme Court)<sup>54</sup>. In addition, the courtesy title “Señores” should not begin with a capital letter, because only the abbreviation of courtesy titles like “señor” and “doctor” should be written in the upper case (García Negroni, 2016, p. 176). The correct version would be then “(...) se reúnen en acuerdo ordinario los señores Jueces (...)”

- “(...) la sentencia dictada por el Señor Juez (...)” (p. 1, l. 4)

As previously mentioned, courtesy titles like “señor” and “doctor” do not begin with a capital letter; however, the abbreviations of courtesy titles are written in the upper case (García Negroni, 2016, p. 176). Moreover, titles like “juez,” “presidente,” and “rector” do not begin with a capital letter, but they may be written in the upper case if we want to address someone respectfully, above all, in solemn texts in Argentina (p. 177). The mistake of beginning a courtesy title with a capital letter is repeated in

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<sup>54</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167638/norma.htm>

page 11, line 26. The correct version would be then “(...) la sentencia dictada por el señor Juez (...).”

- “(...) C/ESC. INCORP. (...) s/C.P.L. (...)” (p. 1, l. 7)

When abbreviations are formed by letters separated by periods, there should be a space between each period and the letter following it. Thus, in the abbreviation “C.P.L.,” there should be a space after the first and the second period. This mistake is repeated in page 2, line 26; page 3, line 12, 16, and 23; page 4, line 15; and page 5, line 25. In addition, the abbreviations “s/” and “C/” are not part of the expressions following them, so there should be a space after them. Furthermore, “C/” should not be written in the upper case, because the way of writing abbreviations depends on the rules of upper or lower case applied to the words to which the abbreviations correspond; in this case, “C/” means “contra” (“against”), which is written in the lower case (Real Academia Española, 2011, pp. 575-576; “símbolos y abreviaturas, claves de redacción,” 2012<sup>55</sup>). The correct version would be then “(...) c/ ESC. INCORP. (...) s/ C. P. L. (...)” That being said, we understand that the fragment being studied is part of the name of a case record, so we are going to leave it as it is.

- “(...) (Expte. 68- Fo. 133- Año 2013) (...)” (p. 1, l. 7)

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<sup>55</sup> Retrieved from <http://www.fundeu.es/recomendacion/seis-claves-para-usar-las-siglas-y-las-abreviaturas-1189/>

The abbreviation of “foja” is “f.,” and the abbreviation of “fojas” is “fs.” The abbreviation “fs.” can also be used to make reference to one single “foja.” Moreover, a synonym of “foja” is “folio,” and its abbreviation is also “f.” (López Olaciregui, 2015, p. 49). The correct version would be then “(...) (Expte. 68- fs. 133- Año 2013) (...).”

- “(...) Acto seguido el Tribunal se plantea las siguientes cuestiones: (...)” (p. 1, l. 8)

All linking words and linking expressions are followed by a comma when they are placed at the beginning of a sentence. For this reason, a comma has to be written after “Acto seguido,” because it is a linking expression of order (Real Academia Española, 2011, p. 344). In addition, the word “tribunal” is a common noun, and that is the reason why it should be written in the lower case (p. 456). The correct version would be then “(...) Acto seguido, el tribunal se plantea las siguientes cuestiones: (...)”

- “(...) En caso contrario ¿se ajusta a derecho la sentencia impugnada? (...)” (p. 1, l. 10)

Linking expressions like “en caso contrario” are followed by a comma when they are placed before questions and at the beginning of a sentence (Real Academia Española, 2011, p. 391). The correct version would be then “(...) En caso contrario, ¿se ajusta a derecho la sentencia impugnada? (...)”

- “(...) A la primera cuestión el Dr. Coppoletta dice: (...)” (p. 1, l. 13)

A comma should be written after non-verbal complements that depend upon the constructions that follow them (Real Academia Española, 2011, p. 317). The same mistake appears in page 2, line 6, 9, and 12; page 6, line 4; and page 11, line 6 and 9. The correct version would be then “(...) A la primera cuestión, el Dr. Coppoletta dice: (...)”

- “(...) Contra la Resolución n° 106 de fecha 13 de Abril de 2009 por la cual el Sr. Juez A Quo rechaza el planteo de caducidad de instancia interpuesta por la demandada, se alza la vencida (...)” (p. 1, l. 14)

There should be a comma after “2009,” because the structure “por la cual el Sr. Juez A Quo rechaza el planteo de caducidad de instancia interpuesta por la demandada” is a relative clause introduced by the expression “la cual,” which functions as a relative pronoun; and relative clauses introduced by this relative pronoun should be separated from their antecedents by a comma (Real Academia Española, 2011, p. 332). In addition, months in Spanish are not written beginning with a capital letter (García Negroni, 2016, p. 175); the mistake is repeated in page 1, line 17; page 2, line 15, 16, 18, and 20; page 3, line 7 and 8; page 4, line 8 and 10; and page 6, line 1. We note also that the author also is inconsistent when he writes dates. For example, he writes “13 de Abril de 2009” in the fragment *ut supra*; “07/09/01” in page 2, line 19; and “01.11.05” in page 9, line 5. Dates may be indicated writing the day and the year with numbers and writing the month with letters; they can also be indicated writing them entirely with numbers, separating the numbers with slashes, periods or hyphens (“fechas: claves de escritura,”

2013)<sup>56</sup>. Authors must be consistent when writing (Farkas, 1985)<sup>57</sup>, and, for that reason, the author of the text being studied must choose one way of writing dates throughout the document. Another error that we can detect in the examples “07/09/01” and “01.11.05” given above is that the author adds a “0” before the numbers of the day and the month. A “0” should not be added to the days and the months that are below number 10. That error is repeated in page 9, line 13; page 10, line 22; and page 11, line 12. Finally, in dates that are written combining numbers and letters, years as from the year 2000 must be modified by the definite article “el” (“Fecha,” 2005)<sup>58</sup>. The same mistake appears in page 1, line 17; page 2, line 15, 16, 18, and 20; page 3, line 7 and 8; page 4, line 8 and 10; and page 6, line 1. Taking into consideration the errors analyzed, the correct version of the fragment would be “(...) Contra la Resolución n° 106 de fecha 13 de abril del 2009, por la cual el Sr. Juez A Quo rechaza el planteo de caducidad de instancia interpuesta por la demandada, se alza la vencida (...).”

- Pronoun shifts throughout the text

We can detect pronoun shifts in different parts of the text. For example, the author begins the text in third person (p. 1, ll. 1-13), and then he employs the first person to reproduce the sayings of a judge after a colon (p. 1, l. 14 to p. 2, l. 5), without enclosing such sayings with quotation marks. Then, he uses the third person to introduce what another judge says (p. 2, l. 6) and reproduces the words of the judge in third person after a colon (p. 2, ll. 7-8). Authors of texts should be

<sup>56</sup> Retrieved from <http://www.fundeu.es/recomendacion/fechas/>

<sup>57</sup> Retrieved from <http://faculty.washington.edu/farkas/dfpubs/Farkas-Concept%20of%20Consistency%20in%20Writing%20and%20Editing.pdf>

<sup>58</sup> Retrieved from <http://lema.rae.es/dpd/srv/search?id=7Yloy2M3SD6pcC3Zyx>

consistent; they must write all their texts either in third person or in first person (Farkas, 1985). If the author is going to write the text in third person, all the parts of the text in which the sayings of a person are being reproduced literally have to be enclosed with quotation marks (Real Academia Española, 2011, p. 380). On the other hand, if the author wants to express the sayings of a person by indirect speech, he cannot write a colon between the verb and the direct object (p. 360), although we understand that, according to our experience translating legal texts, authors write a colon between the verb and the direct object in this kind of texts. We then choose not to eliminate the colon between the verb and the direct object for reasons of usage (the error appears in page 1, line 13; page 2, line 6, 9, and 12; page 6, line 4; page 11, line 6, 9, and 18). As for the pronoun shifts, we understand that, in the decisions of appellate courts, the sayings of the judge that votes first appear in first person, and the sayings of the other judges appear in third person. Therefore, we are not going to correct the pronoun shifts.

- Verb tense shifts throughout the text

The drafter employs the present tense from page 1, line 1 to page 2, line 14, and then, as from page 2, line 15, he starts employing the past simple for some procedural acts as in the following example: “(...) La actora interpuso demanda (...)” (p. 2, l. 15). This is an error that should be corrected, because authors should be consistent when writing (Farkas, 1985). Thus, the drafter should choose either the present tense or the past tense to write the text in question; we choose to correct the text writing all the verbs in the present tense.

- “(...) el Sr. Juez A Quo rechaza el planteo de caducidad de instancia (...)”  
(p. 1, l. 14)

We note that the author of the text is inconsistent in the way of using the expression “*a quo*.” Sometimes, he uses this expression with capital letters as in the example and in the following parts of the text: page 1, line 18 and 19; page 2, line 17, 22, and 24; and page 3, line 1 and 17. Yet in page 10, line 3 and 15, he uses this expression without capital letters and in italics. Latin expressions like “*a quo*” should be written in italics and without capital letters (Real Academia Española, 2011, p. 612), although we understand that the author writes the expression with capital letters to address the judge of the lower court respectfully. The correct version would be then “(...) el Sr. Juez *a quo* rechaza el planteo de caducidad de instancia (...)”

- “(...) A su vez, contra la Resolución n° 283 de fecha 27 de Noviembre de 2012 por la cual el Sr. Juez A Quo admite la demanda se alzan ambas partes (...)” (p. 1, l. 17)

There should be a comma after “2012,” because the structure “por la cual el Sr. Juez A Quo admite la demanda” is a relative clause introduced by the expression “la cual,” which functions as a relative pronoun; and relative clauses introduced by this relative pronoun should be separated from their antecedents by a comma (Real Academia Española, 2011, p. 332). In addition, a comma should also be written after the structure “contra la Resolución n° 283 de fecha 27 de Noviembre de 2012 por la cual el Sr. Juez A Quo admite la demanda,” because a comma

should appear after non-verbal complements that depend upon the constructions that follow them and that appear at the beginning of a sentence (p. 317). The correct version would be then “(...) A su vez, contra la Resolución n° 283 de fecha 27 de Noviembre de 2012, por la cual el Sr. Juez A Quo admite la demanda, se alzan ambas partes (...).”

- “(...) se alzan ambas partes: la actora, por medio de los recursos de nulidad y apelación parcial indicando que el rubro recurrido es la tasa de interés reducida aplicada por el A Quo, que son concedidos; y la parte demandada a través de los recursos de nulidad y apelación total que interpone y son concedidos. (...)” (p. 1, l. 18)

The comma after “actora” should be removed, because the expression following such word until “parcial” is an adverbial complement of instrument, and a comma is not written before adverbial complements that appear after the verb they modify. Before the adverbial complement of instrument, there is a pause in the speech, but that does not mean that we have to write a comma to mark such pause (Real Academia Española, 2011, p. 316). If the author wants to mark the pause and to identify the parties, he can include the linking expressions of order “por un lado” and “por otro lado,” which are enclosed with commas (Fernández López, n.d.)<sup>59</sup>. Taking that into consideration, we choose to include those linkers in the correct version of the fragment being analyzed. In addition, the gerund “indicando” is correctly used, because it is functioning as an adverbial complement of manner

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<sup>59</sup> Retrieved from <http://hispanoteca.eu/Foro-preguntas/ARCHIVO-Foro/Conectores%20discursivos%20-%20Puntuaci%C3%B3n.htm>

(García Negroni, 2016, p. 392). Furthermore, in the expression “que interpone y son concedidos,” which refers to the “recursos de nulidad y apelación total,” there is no parallelism, because there is a relative pronoun “que” missing. In order to maintain the parallelism, which is the symmetric order of syntactic elements, we should write another relative pronoun after “y” (Real Academia Española, 2015)<sup>60</sup>. In addition, as non-restrictive relative clauses are separated from the antecedent by a comma, there should be a comma before “que interpone” (Real Academia Española, 2011, p. 310). Taking into account all the explanations of the errors present in the fragment of the text, the correct version would be “(...) se alzan ambas partes: la actora, por un lado, por medio de los recursos de nulidad y apelación parcial indicando que el rubro recurrido es la tasa de interés reducida aplicada por el A Quo, que son concedidos; y la parte demandada, por otro lado, a través de los recursos de nulidad y apelación total, que interpone y que son concedidos. (...)”

- “(...) Elevados los autos a esta instancia, la actora expresa sus agravios por memorial que se agrega al expediente, los que son contestados por la demandada quien a su vez expresa sus propios agravios por escrito agregado a los autos, los que a su vez son contestados por la actora. (...)”  
(p. 1, l. 21)

There is a comma missing before “quien,” which is a relative pronoun that is introducing a non-restrictive relative clause. As mentioned above, non-restrictive relative clauses are separated from the antecedent by a comma (Real Academia

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<sup>60</sup> Retrieved from <http://dle.rae.es/?id=Rr1apPx>

Española, 2011, p. 310). In addition, the author is using the passive voice in the expression “son contestados,” which should be avoided in Spanish (López Olaciregui, 2015, p. 20). Another error is the fact that the author does not modify the noun “escrito” with an indefinite article. “Escrito” refers to the “escrito de agravios” (“appellate brief”) (Ossorio, 2013, p. 375), and, as this word refers to a particular kind of brief and as the author is making reference to it for the first time in the text, the indefinite article must be included (García Negroni, 2016, p. 262). Furthermore, we will rewrite the sentence of the fragment, because we consider that it is too long; we will include periods and take into consideration the errors explained above. The correct version would be then the following: “Elevados los autos a esta instancia, la actora expresa sus agravios por memorial que se agrega al expediente. La demandada contesta los agravios de la actora y expresa sus propios agravios por un escrito que se agrega a los autos. La actora, a su vez, contesta los agravios de la demandada. (...)”

- “(...) Ambas partes interponen recursos de nulidad contra la Resolución n° 283; y la demandada interpone recurso de nulidad contra la Resolución n° 106, pero, en sus respectivos escritos en esta Instancia, ninguna queja expresan sobre el tema. (...)” (p. 1, l. 26)

Instead of using a semi-colon, the author should write a comma before “y la demandada,” because in this case the comma separates two clauses with different subjects (Real Academia Española, 2011, p. 324). The semi-colon only separates structures that are too long or that already include commas (p. 352). We note also that there is an inconsistency in the use of the word “instancia.” In page 1, line 21,

the author writes such word beginning with a capital letter, while in page 2, line 2, he writes it in the lower case. As the word “instancia” is a common noun, it should be written in the lower case (p. 456). Therefore, the correct version would be “(...) Ambas partes interponen recursos de nulidad contra la Resolución n° 283, y la demandada interpone recurso de nulidad contra la Resolución n° 106, pero, en sus respectivos escritos en esta instancia, ninguna queja expresan sobre el tema. (...).”

- “(...) no se advierten vicios que impusieran de oficio la anulación de ninguna de las sentencias. (...)” (p. 2, l. 2)

The verb “imponer” (“impose”) is wrongly conjugated in this fragment. It is conjugated in “pretérito imperfecto del subjuntivo” (Spanish imperfect past subjunctive), and such tense is used in Spanish to express simultaneity and posteriority in respect of past events. However, as in this case the time reference is the present, the correct tense would be “presente del subjuntivo” (Spanish present subjunctive), which is used in Spanish to express simultaneity and possibility in respect of present events (García Negroni, 2016, pp. 360-361). The correct version would be then “(...) no se advierten vicios que impongan de oficio la anulación de ninguna de las sentencias. (...)”

- “(...) A mi juicio pues, de acuerdo con las breves consideraciones expuestas, los planteos de nulidad han de rechazarse. (...)” (p. 2, l. 3)

The linking expression “pues” should be enclosed with commas, because it means “then” or “as a consequence,” and not “because” (if it means “because,” there

should be only one comma preceding “pues”) (Real Academia Española, 2011, p. 346). The correct version would be then “(...) A mi juicio, pues, de acuerdo con las breves consideraciones expuestas, los planteos de nulidad han de rechazarse. (...).”

- “(...) Que comparte los fundamentos vertidos por los preopinantes, y como ellos, vota por la negativa. (...)” (p. 2, l. 10)

There is a comma missing before “como ellos,” because peripheral ideas that are embedded in a sentence should be enclosed with commas (Real Academia Española, 2011, p. 306). In addition, the comma before “y” should be removed, because the conjunction is coordinating two elements of the same syntactical level, which are in this case two verbs (p. 324). The error explained is repeated in page 2, line 21. The correct version would be then “(...) Que comparte los fundamentos vertidos por los preopinantes y, como ellos, vota por la negativa. (...).”

- “(...) a las 8,45hs (...)” (p. 2, l. 15)

The way in which the hour of the fragment is written is wrong. Hours are written separating the hours from the minutes with a colon or with a period. Each element of the hour (the hours and the minutes) has to have two digits. Nevertheless, when the first digit of the hour is a zero, it can be omitted. In addition, the symbol following the hour is “h,” and, as it is a symbol, it cannot be pluralized, and it has to be separated from the expression preceding it (Real Academia Española, 2011, p. 691). The correct version would be then “(...) a las 8:45 h (...)”

- “(...) Y el decreto del 07/09/01 es notificado a la demandada (...)” (p. 2, l. 19)

The passive voice should be avoided in Spanish (López Olaciregui, 2015, p. 20); that is the reason why the expression “es notificado” has to be rewritten using an impersonal structure introduced by the Spanish pronoun “se” (Real Academia Española, 2011, p. 432). The correct version would be then “(...) Y el decreto se notifica a la demandada (...)”.

- “(...) La demandada opone la caducidad de instancia, y plantea la inconstitucionalidad del art. 37 (...)” (p. 2, l. 21)

When the coordinating conjunction “y” joins two elements of the same syntactical level together, a comma should not be written before such conjunction (Real Academia Española, 2011, p. 324). In the example, the two elements being connected are verbs. The correct version would be then “(...) La demandada opone la caducidad de instancia y plantea la inconstitucionalidad del art. 37 (...)”.

- “(...) El A Quo rechazó el planteo de caducidad y no trató la cuestión constitucional, decisión recurrida por vía de apelación.. (...)”

Writing two periods at the end of the sentence is an orthographic mistake. Only one period is placed at the end of a sentence (Real Academia Española, 2011, p. 293). This mistake is repeated in page 3, line 11 and 16 and in page 7, line 4. The correct version would be then “(...) El A Quo rechazó el planteo de caducidad y no trató la cuestión constitucional, decisión recurrida por vía de apelación. (...)”.

- “(...) la demandada sostiene la arbitraria interpretación del A Quo sobre el instituto de caducidad de instancia (...)” (p. 2, l. 24)

The verb “sostener” is a transitive verb that means “to defend an idea” or “hold an object,” and we consider that, in this case, “sostener” means “to defend an idea.” Thus, the verb should be followed by a clause, not a noun as in the fragment (“Sostener,” n.d.)<sup>61</sup>. In addition, the preposition that collocates with “interpretación” is “de,” not “sobre,” as we can see in the following example: “En el mundo del Derecho, como es sabido, es normal que existan interpretaciones diversas de las mismas normas” (“Interpretación,” n.d.)<sup>62</sup>. The correct version would be then “(...) la demandada sostiene que la interpretación del A Quo del instituto de caducidad de instancia es arbitraria (...).”

- “(...) inactividad procesal por mas de un año (...)” (p. 3, l. 2)

The word “mas” should be accented, because it is a quantifier, not an adversative conjunction equivalent to “but” (Real Academia Española, 2011, p. 239). The same mistake is repeated in the same page, in line 5. The correct version would be then “(...) inactividad procesal por más de un año (...).”

- “(...) la parte demandada que interviene en el proceso, ante la inactividad procesal por mas de un año opone la caducidad e intima a la parte actora (...)” (p. 3, l. 5)

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<sup>61</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/sostener>

<sup>62</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/interpretacion>

There is a comma missing between “año” and “opone.” The structure “ante la inactividad procesal por mas de un año” is an adverbial complement of cause and is embedded in the main clause. When adverbial complements are embedded in the main clause, they should be enclosed with commas (Real Academia Española, 2011, p. 316). The correct version would be then “(...) la parte demandada que interviene en el proceso, ante la inactividad procesal por mas de un año, opone la caducidad e intima a la parte actora (...).”

- “(...) en la demanda se hace expresa referencia que su objeto es a los simples fines interruptivos de la prescripción (...)” (p. 3, l. 10)

In this extract, we can detect a case of “queísmo.” This grammatical error consists in omitting the preposition “de” when a word requires it. In order to determine if a word requires the preposition, we can turn the expression into a question (“La esquina del idioma: queísmo y dequeísmo,” 2012)<sup>63</sup>. In this case, we will ask the following question: “¿De qué se hace expresa referencia?” Thus, we discover that the preposition “de” is needed. The correct version would be then “(...) en la demanda se hace expresa referencia de que su objeto es a los simples fines interruptivos de la prescripción (...).”

- “(...) Lo que aquí tenemos es el caso de la demanda a los simples fines de interrumpir la prescripción, aunque ello no surge explícito de la demanda (...) ha resultado evidente del comportamiento de la parte actora.. (...)” (p. 3, l. 8)

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<sup>63</sup> Retrieved from <http://www.fundeu.es/noticia/la-esquina-del-idioma-queismo-y-dequeismo-7021/>

The comma that appears in the extract should be replaced by a semi-colon, because the semi-colon separates two sentences that are closely related to each other (Real Academia Española, 2011, p. 351). In addition, there is a comma missing before “ha resultado evidente del comportamiento de la parte actora,” because “aunque ello no surge explícito de la demanda” is a concessive clause, and when the subordinate clause is placed before the main clause, it should be followed by a comma (p. 336). The correct version would be then “(...) Lo que aquí tenemos es el caso de la demanda a los simples fines de interrumpir la prescripción; aunque ello no surge explícito de la demanda (...), ha resultado evidente del comportamiento de la parte actora.. (...)”

After identifying the orthographic and grammatical mistakes of the text, we conclude that the Spanish document is badly written due to the vast number of errors found. In addition, the mistakes reveal the drafter's lack of knowledge of the orthographic and grammatical rules of his own language. Having analyzed the mistakes in question, we can now proceed to perform the analysis of the collocations present in the text.

### ***SECTION 3: COLLOCATIONS***

In this section, we identify the collocations present in the Spanish text. We first study five collocations found throughout the whole document, and then we explain the collocations found in the section of the text that we have to translate. As

explained in the introduction to the thesis, we identify the collocations and propose translations for them. Then, we conduct a research to verify if our translations are correct or if we need to change them. We check the meaning of the collocations, their translations in a bilingual dictionary, and the meaning of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage. We have to point out that, in this section, all the challenges faced when translating are explained. In the following items, we analyze the collocations in question:

- “(...) el A Quo (...) reduce a la mitad *los intereses moratorios devengados*. (...)” (p. 3, l. 18)

The collocation is “devengar intereses moratorios,” and we would translate it as “to accrue default interest.” Regarding the verb “devengar,” it means “percibir intereses” (Ossorio, 2013, p. 326), “hecho de adeudarse algo, aunque no haya transcurrido el plazo que haga exigible la deuda” (“Devengar,” n.d.)<sup>64</sup>. With reference to the expression “interés moratorio,” it is “[el que] se destina a recuperar el perjuicio resultante de la mora en el cumplimiento de una obligación” (Ossorio, 2013, p. 502). In addition, Cabanellas de las Cuevas (2010) proposes to translate “interés moratorio” as “default interest” (p. 432) and “devengar intereses” as “to accrue interest” (p. 276). Moreover, Garner (2004) defines “to accrue” as “to accumulate periodically” (p. 22), and “default interest” is “a sanction against non-payment of a sum of money” (“Default interest provision,” n.d.)<sup>65</sup>. As for our

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<sup>64</sup> Retrieved from <http://www.eco-finanzas.com/diccionario/D/DEVENGAR.htm>

<sup>65</sup> Retrieved from <http://uk.practicallaw.com/0-107-6065>

proposed translation, it appears in the following example, which is the title of an article: “Employers Liable for Default Interest for Late Payment Following Termination” (Bae, Kim & Lee, 2005)<sup>66</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “devengar intereses moratorios” can be translated as “to accrue default interest.”

- “(...) el Código Civil posibilita a todas las personas *liberarse de las deudas* por la prescripción liberatoria (...)” (p. 4, l. 4)

The collocation is “una persona es liberada de una deuda,” and we would translate it as “a person has his debts discharged.” Ossorio (2013) explains that “liberar” is “eximir de una obligación, deber o carga” (p. 547) and that “deuda” means “prestación debida” (p. 325). In addition, “deuda” means “obligación que alguien tiene de pagar, satisfacer o reintegrar a otra persona algo, por lo común dinero” (Real Academia Española, 2015)<sup>67</sup>. Moreover, Cabanellas de las Cuevas (2010) proposes to translate “liberar” as “to discharge (someone from an obligation)” (p. 475) and “deuda” as “debt” (p. 275). Garner (2004) states that “debt” means “liability on a claim; a specific sum of money due by agreement or otherwise” (p. 432) and that “discharge” is “any method by which a legal duty is extinguished; esp. the payment of a debt or satisfaction of some other obligation” (p. 495). We could use the expression “to discharge someone from an obligation,” which is proposed by Cabanellas de las Cuevas (2010), but the verb is used that way when we refer to a person who has been given official permission to leave a place, such

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<sup>66</sup> Retrieved from <http://www.internationallawoffice.com/Newsletters/Employment-Benefits/South-Korea/Bae-Kim-Lee/>

Employers-Liable-for-Default-Interest-for-Late-Payment-Following-Termination?redir=1

<sup>67</sup> Retrieved from <http://dle.rae.es/srv/fetch?id=DauWaFm>

as a hospital or his workplace (“Discharge,” n.d.)<sup>68</sup>. Thus, we cannot use the pattern “to discharge someone from something” to translate the collocation being studied; we can take advantage of the collocation “to discharge a debt” to translate the expression “una persona es liberada de una deuda” faithfully. According to our research, we consider that our proposed translation is correct. Therefore, the collocation “una persona es liberada de una deuda” can be translated as “a person has his debts discharged.”

- “(...) La ley 20.744 recepciona en forma especial para el Derecho del Trabajo este modo de *extinción de las obligaciones* (...)” (p. 4, l. 7)

The collocation is “una obligación se extingue,” and we would translate it as “an obligation is discharged.” Ossorio (2013) defines “obligación” as “deber jurídico normativamente establecido de realizar u omitir determinado acto, y a cuyo incumplimiento por parte del obligado es imputada, como consecuencia, una sanción coactiva (...)” (p. 629), and defines “extinción de una obligación” as “fin de la existencia jurídica de una obligación” (p. 396). Besides, Cabanellas de las Cuevas (2010) translates “obligación” as “obligation” (p. 556) and “extinción de una obligación” as “discharge of an obligation” (p. 339). As for the definition of “debt,” it is “a legal or moral duty to do or not do something” (Garner, 2004, p. 1104). In addition, “discharge” means “any method by which a legal duty is extinguished” (p. 495). The expression “to discharge an obligation” appears in the following example: “The primary focus of this chapter is on the methods used in altering existing contract terms and discharging existing contractual obligations in ways

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<sup>68</sup> Retrieved from [http://www.oxfordlearnersdictionaries.com/definition/english/discharge\\_1](http://www.oxfordlearnersdictionaries.com/definition/english/discharge_1)

other than those originally contemplated by the parties” (Ritchie, Sparber & Cofer, 2016)<sup>69</sup>. Having made our research, we consider that our proposed translation is correct. Therefore, the collocation “una obligación se extingue” can be translated as “an obligation is discharged.”

- “(...) la posibilidad de que *los derechos del trabajador caduquen* ha de entenderse excepcional (...)” (p. 7, l. 14)

The collocation is “un derecho caduca,” and we would translate it as “a right lapses.” As for the word “derecho,” it is defined as “facultades y obligaciones que derivan del estado de una persona, o de sus relaciones con respecto a otras” (“Derecho,” n.d.)<sup>70</sup>. Besides, the verb “caducar” means “acabarse, extinguirse, perder efecto o vigor, por cualquier motivo, alguna disposición legal, algún instrumento público o privado o algún acto judicial o extrajudicial” (Ossorio, 2013, p. 137). In addition, Cabanellas de las Cuevas (2010) translates “caducar” as “lapse, expire (e.g. a right, recourse, passport, document)” (p. 120) and “derecho” as “right” (p. 252). Garner (2004), besides, defines “to lapse” as “to pass away or revert to someone else because conditions have not been fulfilled or because a person entitled to possession has failed in some duty” (p. 896). In addition, “to expire” means “come to the end of the period of validity” (p. 619). We have to point out also that “to expire” does not collocate with “right;” it collocates with “document,

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<sup>69</sup>

Retrieved

from

<https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=10-183+Southeast+Transaction+Guide+183.syn&srctype=smi&srcid=29C5&key=cedc3bdf08299a597ac4023921a7df0e>

<sup>70</sup> Retrieved from <http://dle.rae.es/?id=CGv2o6x>

authorization, or agreement” (“Expire,” n.d.)<sup>71</sup>. Taking into account these definitions, we cannot translate “un derecho caduca” as “a right lapses.” We then should change our proposed translation. We choose to paraphrase the expression being studied and translate it as “a right is lost by lapse of time,” because we have to take into account that “caducar” is “perder su validez o efectividad (...), generalmente por el paso del tiempo fijado” (“Caducar,” n.d.)<sup>72</sup> and that the verb “to lose” collocates with “right” (McIntosh, 2009, p. 707).

- “(...) *la Constitución de la Provincia de Santa Fe dispone* que Santa Fe “Establece tribunales especializados para la decisión de los conflictos individuales de trabajo (...)” (p. 22, l. 7)

The collocation is “una ley dispone que (...),” and we would translate it as “a law provides that (...).” Ossorio (2013) states that a “ley” is “toda norma jurídica reguladora de los actos y las relaciones humanas, aplicable en determinado tiempo y lugar” (p. 542). Besides, Mazzucco (2009) proposes to translate “ley” as “law” (p. 478), which means “the set of rules or principles dealing with a specific area of a legal system” (Garner, 2004, p. 900). In addition, the verb “disponer” means “mandar, determinar, ordenar lo que debe hacerse u omitirse” (Ossorio, 2013, p. 336). Cabanellas de las Cuevas (2010) translates such verb as “to provide” (p. 282), which means “to state that something will or must happen” (Hornby, 2010, p. 1222). Furthermore, Galimberty Jarman and Russell (2008) translate the example “la ley dispone que (...)” that they include in the entry

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<sup>71</sup> Retrieved from <https://en.oxforddictionaries.com/definition/expire>

<sup>72</sup> Retrieved from <https://es.oxforddictionaries.com/definition/caducar>

“disponer” of the *Oxford Spanish Dictionary* as “the law provides that (...)” (p. 291). According to our research, our proposed translation is correct; therefore, the collocation “la ley dispone que (...)” can be translated as “the law provides that (...)”.

- “(...) se reúnen en Acuerdo Ordinario los Señores Jueces de la Sala Segunda de la Cámara de Apelación en lo Laboral (...)” (p. 1, l. 1)

The collocation is “los jueces se reúnen en acuerdo ordinario,” and we would translate it as “the appellate judges sit en banc in a general session.” First of all, we should take into consideration that, when in Argentina a case is brought to an appellate court for review, the three (or more) judges of the room that receives the record have to discuss in order to resolve the case, so they hold an assembly in which they have to vote before issuing an opinion. The assemblies can be general or special. The general assemblies refer to the daily activity of the court, and special assemblies are held, for example, when the court has to draft its rules of practice (Di Pierro, personal communication, February 25, 2017). Regarding the word “juez,” it means “todo miembro integrante del Poder Judicial, encargado de juzgar los asuntos sometidos a su jurisdicción” (Ossorio, 2013, p. 517). In addition, Cabanellas de las Cuevas (2010) translates “juez” as “judge” (p. 444), which is defined by Garner (2004) as “a public official appointed or elected to hear and decide legal matters in court” (p. 857). Furthermore, the verb “reunirse” is related to the fact that the appellate judges hold an assembly to hear a case en banc (Di Pierro, personal communication, February 25, 2017), and we consider that it can be translated as “to sit,” because Mazzucco (2009) translates “to sit” as “reunirse

(la Cámara)” (p. 293) and because Garner (2004) explains that “to sit” means “to hold court or perform official functions” and “to hold proceedings” (p. 1420). In respect of the expression “en banc,” it means “with all judges present and participating,” and the usage of this word is illustrated by the following example: “the court heard the case en banc” (Garner, 2004, p. 568). In addition, an “en banc sitting” is “a court session in which all the judges (or a quorum) participate” (p. 1421). Garner (2004), besides, defines a “session” as “a meeting (...) throughout which a court, legislature, or other deliberative assembly conducts business in a continuing sequence”; a “regular session” as “a session that takes place at fixed intervals or specified times”; and a “special session” as “a legislative session, usually called by the executive, that meets outside its regular term to consider a specified issue (...)” (p. 1403). The usage of the word “session” can be illustrated as follows: “(...) the clerk must attend sessions of the court” (“Appellate Courts,” n.d., Court Personnel section, para. 1)<sup>73</sup>. Notwithstanding the foregoing and according to our experience translating legal documents, the expressions “regular session” and “special session” are not largely used when drafters prepare legal documents relating to the opinions issued by the judges of an appellate court. We then choose to paraphrase the collocation being analyzed and translate it as “the judges sit en banc in an *acuerdo ordinario*.” Besides, we should add the following translator’s note to explain the idea of the “*acuerdo ordinario*”: “In Argentina, an *acuerdo ordinario* refers to the general assembly that the appellate judges hold to hear a case en banc.”

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<sup>73</sup> Retrieved from <https://www.azcourts.gov/guidetoazcourts/Appellate-Courts>

- “(...) se reúnen en Acuerdo Ordinario los Señores Jueces (...) para *resolver los recursos* de nulidad y apelación puestos por ambas partes (...)” (p. 1, l. 3)

The collocation is “resolver un recurso,” and we would translate it as “to rule on a motion.” Ossorio (2013) defines “resolver” as “decidir, tomar una medida o determinación” (p. 845). In addition, a “recurso” means “(...) cualquier medio o procedimiento; solicitud; petición por escrito” (p. 812). Besides, Cabanellas de las Cuevas (2010) translates “resolver” as “to decide” (p. 710). We consider that a synonym of “to decide” is “to rule,” which is defined by Garner (2004) as “to decide a legal point,” and he gives the following example to illustrate its usage: “the court rules on the issue of admission” (p. 1357). In addition, Cabanellas de las Cuevas (2010) translates “recurso” as “motion” (p. 682), which is defined as “a written or oral application requesting a court to make a specified ruling or order” (Garner, 2004, p. 1036). Furthermore, our proposed translation is illustrated by the following example: “The district court or BAP may rule on a motion for a procedural order” (Fed. R. Bankr. P. 8013 (b))<sup>74</sup>. According to our research, we consider that our proposed translation is faithful to the original expression. Therefore, “resolver un recurso” can be translated as “to rule on a motion.”

- “(...) se reúnen en Acuerdo Ordinario los Señores Jueces (...) para resolver los recursos de nulidad y apelación puestos por ambas partes, contra *la sentencia dictada* por el Señor Juez (...)” (p. 1, l. 4)

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<sup>74</sup> Retrieved from [https://www.law.cornell.edu/rules/frbp/rule\\_8013](https://www.law.cornell.edu/rules/frbp/rule_8013)

The collocation is “dictar sentencia,” and our proposed translation is “to issue a final judgment.” Ossorio (2013) explains that a “sentencia” is a “decisión judicial que en la instancia pone fin al pleito civil o causa criminal, resolviendo respectivamente los derechos de cada litigante y la condena o absolución del procesado” (p. 878) and that “dictar” is “pronunciar un fallo” (p. 329). Mazzucco (2009) proposes to translate “sentencia” as “sentence” and “judgment” (p. 549). Nevertheless, we must remind the reader that we can only translate “sentencia” as “sentence” only when working with a document that involves a criminal case, because, as Garner (2004) states, a “sentence” is “a judgment that a court formally pronounces after finding a criminal defendant guilty” (p. 1393). Taking into account our proposed translation, we should point out that a “final judgment” is “a court’s last action that settles the rights of the parties and disposes of all issues in controversy (...)” and that “to issue” is “to send out or distribute officially” (pp. 859 and 850). Besides, we could find the following example in which our proposed translation is used: “Section 636(c) allows magistrate judges to issue a final judgment outside the supervision of the district court only if the parties expressly consent to the magistrate judge's adjudicatory authority” (Clouse, 2012, p. 9). According to our research, the translation proposed above is faithful to the original expression. Therefore, “dictar sentencia” can be translated as “to issue a final judgment.”

- “(...) ¿*Procede el recurso de nulidad?* (...)” (p. 1, l. 9)

The collocation is “un recurso procede,” and our proposed translation is “the motion is admissible.” Regarding the verb “proceder,” it means “hacer algo

conforme a razón, derecho, mandato, práctica o conveniencia” (Real Academia Española, 2015)<sup>75</sup>. In addition, Ossorio (2013) defines it as “ser conforme a derecho” (p. 771). With reference to the word “recurso,” its meaning and translation are stated above. Moreover, Mazzuco (2009) proposes the expressions “to be admissible” and “to be in agreement with the law” as possible translations of “proceder” (p. 527). As for the word “admissible,” it means “capable of being legally admitted” (Garner, 2004, p. 50), but “admissible” is largely used with the word “evidence” –not with the word “motion”–, as in the following examples: “Even where evidence is admissible, it may be excluded in certain circumstances under the court’s common law powers (...)” (“Admissibility and exclusion of evidence—overview,” n.d.)<sup>76</sup>; “If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly” (Fed. R. Ev. 105)<sup>77</sup>. On the other hand, we consider that “to be in agreement with the law” is a suitable translation for the expression under study, because “proceder” makes reference to the legality of a motion (Ossorio, 2013, p. 771). As we use this expression on another collocation below, we are going to employ the synonym “to be lawful” (Burton, 2013)<sup>78</sup>. According to our research, the final translation of “un recurso procede” is “a motion is lawful.”

- “(...) ¿Se ajusta a derecho la sentencia impugnada? (...)” (p. 1, l.10)

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<sup>75</sup> Retrieved from <http://dle.rae.es/?id=UEixtXD|UEmsuaw>

<sup>76</sup> Retrieved from <https://www.lexisnexis.com/uk/lexispsl/corporatecrime/document/391421/591N-VY01-F188-N153-00000-00/Admissibility+and+exclusion+of+evidence%E2%80%9494overview>

<sup>77</sup> Retrieved from [https://www.law.cornell.edu/rules/fre/rule\\_105](https://www.law.cornell.edu/rules/fre/rule_105)

<sup>78</sup> Retrieved from <http://itunes.apple.com>

The collocation is “una sentencia se ajusta a derecho,” and our proposed translation is “a final judgment is in agreement with the law.” Ossorio (2013) states that “ajustarse a derecho” is “conciliar de acuerdo con una norma legal preexistente” (p. 75). The expression also appears in the definition of the adjective “legal,” which is “lo ajustado a la ley, y por ello lícito; lo permitido o lo exigible en el Derecho positivo” (p. 537). We also consider that “arreglado a Derecho” is a variant of this expression, and its usage is illustrated by the following example: “Si el procedimiento estuviese arreglado a Derecho y la nulidad proviniese de la forma o contenido de la resolución, el tribunal de apelación así lo declarará y dictará la que corresponda” (section 362, Código Procesal Civil y Comercial de Santa Fe)<sup>79</sup>. We would like the reader to take this synonym into consideration if he were to find this expression in a legal document. In addition, Cabanellas de las Cuevas (2010) proposes to translate “ajustado a derecho” as “lawful, legal” (p. 67), and Burton (2013) includes “in accordance with the law” in the set of expressions related to the word “legitimate,” in which we can also find the expressions “legal,” “allowed” and “lawful”<sup>80</sup>. The usage of the expression that we use for our translation is illustrated by the following example: “(...) federal oversight is exercised solely to ensure that the execution is in accordance with the law” (Organisation for Economic Co-operation and Development, 2010, p. 132)<sup>81</sup>. As for the definition and translation of “sentencia,” they are stated above. Having made our research, we can state that our final translation of “una sentencia se ajusta a derecho” is “a final judgment is in accordance with the law.”

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<sup>79</sup> Retrieved from <http://www.santafelegal.com.ar/cods/cpcc2.html>

<sup>80</sup> Retrieved from <http://itunes.apple.com>

<sup>81</sup> Retrieved from <http://www.oecd.org/gov/regulatory-policy/45049550.pdf>

- “(...) ¿Se ajusta a derecho *la sentencia impugnada?* (...)” (p. 1, l.10)

The collocation is “impugnar una sentencia,” and we would translate it as “to challenge a final judgment.” According to Ossorio (2013), the word “impugnación” means “objeción, refutación, contradicción,” and it refers to “actos y escritos de la parte contraria, cuando pueden ser objeto de discusión ante los tribunales” and to “las resoluciones judiciales que sean firmes y contra las cuales cabe algún recurso” (p. 473). In addition, a “recurso” is “(...) [un] medio que concede la ley procesal para la impugnación de las resoluciones judiciales, a efectos de subsanar los errores de fondo o los vicios de forma en que se haya incurrido al dictarlas” (p. 812). According to this definition, a party then can raise a motion against a final decision due to, for example, an error made at the time such judgment was rendered. In other words, the party appeals the final judgment. Garner (2004) explains that “to appeal” is “to seek review (from a lower court’s decision) by a higher court” (p. 106). In Argentina, the aggrieved party can raise a “recurso de apelación,” which is “[un recurso] que se interpone ante el juez superior para impugnar la resolución del inferior (...)” (Ossorio, 2013, p. 813). In addition, Cabanellas de las Cuevas (2010) proposes to translate “impugnar” as “to challenge” (p. 402), and Garner (2004) defines “to challenge” as “to formally object the legality or legal qualification of” and gives the following example: “the defendant challenged the person’s eligibility for jury service” (p. 245). Furthermore, Garner (2004) proposes the following example: “a challenge to the opposing party’s expert witness” (p. 244). McIntosh (2009), besides, gives the following example: “Harley sought to challenge the jurisdiction of the court” (p. 111). As we can see, “to

challenge” does not collocate with “a final judgment”. Moreover, the document being studied deals with decisions that are appealed by the moving parties, and, although the expression to be translated does not include the word “apelar” (“to appeal”), the word “impugnar” in this case refers to the appeal of a final decision. As for the definition and translation of “sentencia,” they are stated above. Having made our research, we are going to change our tentative translation. The collocation “impugnar una sentencia” can be translated, in the context of the document being studied, as “to appeal a final judgment.”

- “(...) ¿Qué *pronunciamiento* corresponde *dictar*? (...)” (p. 1, l. 11)

The collocation is “dictar un pronunciamiento,” and we would translate it as “to issue a final judgment.” Regarding the word “pronunciamiento,” it is defined as “cada una de las declaraciones, condenas o mandatos del juzgador” (Real Academia Española, 2015)<sup>82</sup>. Taking into account such definition, we can state then that a “pronunciamiento” can be not only a final judgment, but also any order issued by the judge, such as an interlocutory order; that is the reason why we cannot translate “pronunciamiento” as “final judgment” in any context. Cabanellas de las Cuevas (2010), in addition, proposes to translate “pronunciamiento” as “judicial order or judgment” (p. 653). However, when the judge of the document being studied asks “¿Qué pronunciamiento corresponde dictar?,” he is asking what is the final decision that he and the other judges of the panel must deliver after reviewing the case brought before them. As for the definition and translation of “dictar,” they are stated above. According to our research, our proposed translation

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<sup>82</sup> Retrieved from <http://dle.rae.es/?id=UMrxs1X>

is correct. The collocation “dictar un pronunciamiento” can be translated, in this context, as “to issue a final judgment.”

- “(...) se alza la vencida mediante *los recursos* de nulidad y apelación total *que interpone* y son concedidos con efecto diferido (...)” (p. 1, l. 15)

The collocation is “interponer un recurso,” and we would translate it as “to file a motion.”

As for the verb “interponer,” it means “formalizar por medio de un pedimento alguno de los recursos legales, como el de nulidad, de apelación, etc.” (Real Academia Española, 2015)<sup>83</sup>. Besides, Cabanellas de las Cuevas (2010) proposes to translate “interponer” as “to file a motion or appeal” (p. 434). Regarding the verb “to file,” it means “to deliver a legal document to the court clerk or record custodian for placement into the official record” (Garner, 2004, p. 660), and it collocates with the noun “motion,” as we can see in the following example: “A motion for reconsideration and accompanying brief shall be filed within 30 days of the date of the Commission's final decision (...)” (25 CFR 581.6 (b))<sup>84</sup>. With regard to the word “recurso,” its definition and translation are stated above. According to our research, our translation is faithful to the original expression. Therefore, the collocation “interponer un recurso” can be translated as “to file a motion.”

- “(...) se alza la vencida mediante *los recursos* de nulidad y apelación total *que interpone* y *son concedidos* con efecto diferido (...)” (p. 1, l. 15)

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<sup>83</sup> Retrieved from <http://dle.rae.es/?id=LwlgT0m>

<sup>84</sup> Retrieved from <https://www.law.cornell.edu/cfr/text/25/581.6>

The collocation is “conceder un recurso,” and we would translate it as “to grant a motion.” Ossorio (2013) states that “conceder” is “dar u otorgar alguna cosa o derecho (p. 196), and Galimberty Jarman and Russell (2008) propose to translate this verb as “to grant” (p. 191). In addition, “to grant” is “to agree to give somebody what they asked for, especially formal or legal permission to do something” (Hornby, 2010, p. 676), and the usage of this verb is illustrated by the following example: “Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition” (Fed. R. App. P. 27(b))<sup>85</sup>. As for the definition and translation of “recurso,” they are stated above. Having made our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, the collocation “conceder un recurso” can be translated as “to grant a motion.”

- “(...) el Sr. Juez A Quo *admite la demanda* (...)” (p. 1, l.18)

The collocation is “admitir la demanda,” and we would translate it as “to sustain a complaint.” As for the verb “admitir,” it means “aceptar, autorizar la tramitación de un recurso” (Ossorio, 2013, p. 63), and the noun “demanda” means “escrito que inicia el juicio y tiene por objeto determinar las pretensiones del actor mediante el relato de los hechos que dan lugar a la acción, invocación del derecho que la fundamenta y petición clara de lo que se reclama” (p. 286). We have to point out that “demanda” is used in civil cases, and it does not have to be confused with “querrela,” which is used in criminal cases (p. 286). Cabanellas de las Cuevas (2010) translates “demanda” as “complaint” (p. 247), and “complaint” is “the initial

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<sup>85</sup> Retrieved from [https://www.law.cornell.edu/rules/frap/rule\\_27](https://www.law.cornell.edu/rules/frap/rule_27)

pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief" (Garner, 2004, p. 303). According to our experience translating legal documents, we can affirm that a synonym of "admitir demanda" is "hacer lugar a la demanda," which is translated by Mazzucco (2009) as "to sustain the complaint" (p. 599). Garner (2004) states that "to sustain" is "to uphold or rule in favor of" (p. 1488), and the usage of the collocation being studied is illustrated by the following example: "Respondent discriminated against Complainant when it failed to provide him with a reasonable accommodation for his disability. The complaint is hereby sustained" (*James B. Corcoran v. Citizens Telecommunications Company of New York, INC.*, n.d.)<sup>86</sup>. According to our research, our proposed translation is faithful to the original expression. Therefore, the collocation "admitir la demanda" can be translated as "to sustain the complaint."

- "(...) *Elevados los autos a esta instancia*, la actora expresa sus agravios por memorial que se agrega al expediente (...)" (p. 1, l. 21)

The collocation is "elevar los autos al tribunal superior" ("a esta instancia" refers to the appellate jurisdiction), and we would translate it as "to send the case to the upper court." The verb "elevar" means "dirigir un escrito o una petición a una autoridad" (Real Academia Española, 2015)<sup>87</sup>. Moreover, the word "autos" means the group of documents that a case is comprised of, and it does not have to be confused with the word "auto," which means "(...) una resolución judicial que

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<sup>86</sup> Retrieved from [https://dhr.ny.gov/sites/default/files/pdf/Commissioners-Orders/corcoran\\_v\\_citizens\\_telecommunications\\_company\\_of\\_new\\_york\\_inc.pdf](https://dhr.ny.gov/sites/default/files/pdf/Commissioners-Orders/corcoran_v_citizens_telecommunications_company_of_new_york_inc.pdf)

<sup>87</sup> Retrieved from <http://dle.rae.es/?id=EXF3WnM>

resuelve cuestiones de fondo que se plantean antes de la sentencia” (Ossorio, 2013, p. 108). We have to point out that “elear los autos al tribunal superior” refers to the fact that the case should be sent to the upper court, so that the latter can review the case before render a decision (“Appeals,” n.d., Appellate Procedure section, para. 1)<sup>88</sup>. Mazzuco (2009), besides, translates “elear los autos al superior” as “to send the case to the Court of Appeals” (p. 427). Although we know that an appeal may be filed before a court of appeal, it can also be filed before a supreme court (Garner, 2004, p. 1481); therefore, we are going to use the expression “upper court,” which is an umbrella noun which can be used to refer to “[a] court to which a case is appealed” (p. 379). In addition, our proposed translation is used in the following example: “When an appeal is filed, the trial court sends the official case records to the Court of Appeals” (How a Case Moves Through the Court System, n.d., Court of Appeals Case Processing section, para. 1)<sup>89</sup>. Having made our research, we are going to leave our proposed translation as it is. Therefore, the collocation “elear los autos al tribunal superior” can be translated as “to send the case to the upper court.”

- “(...) Elevados los autos a esta instancia, la actora *expresa sus agravios* por memorial que se agrega al expediente (...)” (p. 1, l. 21)

The collocation is “expresar agravios,” and we would translate it as “to file an appellate brief.” Ossorio (2013) states that the “expresión de agravios” is related to the “escrito de apelación” (p. 394), which is a document in which the appellant sets

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<sup>88</sup> Retrieved from <https://www.justia.com/trials-litigation/appeals/>

<sup>89</sup> Retrieved from <http://www.azcourts.gov/guidetoazcourts/How-a-Case-Moves-Through-the-Court-System>

out “the grounds supporting the appellant’s objection to the trial court’s judgment” (Mazzucco, 2009, p. 358). Thus, we consider that such document serves as the foundation for the petition filed by the moving party. In addition, one of the possible translations proposed by Cabanellas de las Cuevas (2010) is “appellate brief” (p. 338), which is “a brief submitted to an appeals court; specif., a brief filed by a party to an appeal pending in a court exercising appellate jurisdiction” (Garner, 2004, p. 204). As for the verb “to file,” its definition is stated above. Moreover, it should be noted that Garner (2004) uses this verb with the word “brief” in its definition of “appellate brief” above. Having made our research, we can affirm that our translation is correct. Therefore, the collocation “expresar agravios” can be translated as “to file an appellate brief.”

- “(...) *Habiéndose decretado el pase de los autos a resolución*, quedan las presentes en estado de dictar sentencia. (...)” (p. 1, l. 24)

The collocation is “decretar el pase de los autos a resolución,” and we would translate it as “the case is at issue.” The collocation being studied refers to the fact that, after the appellant files her appellate brief and the appellee files her reply, the court of appeals must consent to the order in which it is commanded that the case be examined, so that the proceedings can be set for rendering judgment (section 268, Argentinian Procedural Civil and Commercial Code)<sup>90</sup>. With regard to the expression “to be at issue,” it appears in the following example, which helps us to expand its meaning:

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<sup>90</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#5>

When the records and the attorneys' written arguments (briefs) have been received by the [appellate] court, the case is said to be at issue and is assigned to a three-judge panel for consideration. All cases filed in the Court of Appeals must be accepted for review and decided by the court. ("How a Case Moves Through the Court System," n.d., Court of Appeals Case Processing section, para. 1)<sup>91</sup>

Nevertheless, the expression "the case is at issue" is only used in the State of Tennessee and in the State of Florida, United States of America (Certificate of Readiness for trial/contested divorce, n.d.<sup>92</sup>; *Bright House Networks, LLC, v. Pinellas County*, 2014<sup>93</sup>). Therefore, we choose not to translate the collocation being studied as "the case is at issue"; instead, we choose to paraphrase it and translate it as "the case is ready to be decided."

- "(...) no se advierten *vicios que impusieran de oficio* la anulación de ninguna de las sentencias. (...)" (p. 2, l. 2)

The collocation is "los vicios imponen de oficio (una cosa)," and we would translate it as "the defects impose (something) *sua sponte*." As for the verb "imponer," it means "poner una carga, una obligación u otra cosa" (Real Academia Española, 2015)<sup>94</sup>, and "de oficio" means "en Derecho Procesal, las actuaciones y

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<sup>91</sup> Retrieved from <http://www.azcourts.gov/guidetoazcourts/How-a-Case-Moves-Through-The-Court-System>

<sup>92</sup> Retrieved from <https://www.carltonfields.com/files/Uploads/Documents/construction-docs/bighthouse-v-pinellas-county.pdf>

<sup>93</sup> Retrieved from <http://www.formsworkflow.com/d72883.aspx>

<sup>94</sup> Retrieved from <http://dle.rae.es/?id=L5LrGP0>

diligencias, así como las facultades, que pueden realizar los jueces por su propia iniciativa; es decir, sin instancia de parte” (Ossorio, 2013, p. 258). Moreover, “vicio” means “defecto que anula o invalida un acto o contrato, sea de fondo o de forma” (p. 984). Mazzucco (2009), besides, proposes to translate “vicio” as “defect” (p. 590), and Cabanellas de las Cuevas (2010) translates “de oficio” as “*sua sponte*” (p. 232). Garner (2004), as Ossorio (2013), also states that there are substantive defects and defects of form (p. 450). Besides, “*sua sponte*” means “without prompting or suggestion; on its own motion,” and Garner (2004) gives the following example: “the court took notice *sua sponte* that it lacked jurisdiction over the case” (p. 1464). As we can see, the expression “*sua sponte*” does not collocate with things, but with people. Taking into account the total fragment in which the collocation appears, we should take into account that a final judgment can be annulled due to the appeal of a party or by an appellate court, which acts *sua sponte* as it takes notice of the defect the judgment contains (Gozaíni, 2012)<sup>95</sup>. Thus, a defect cannot “impose” something on someone. The idea is that the defect of the judgment makes it necessary for the judge to act on its own initiative and to vacate the judgment. We can use then the verb “to compel” that does collocate with things (Hornby, 2010, p. 303). Having made our research, we should change our proposed translation. In order to translate the collocation into English, we have to paraphrase the expression. Therefore, the collocation “los vicios imponen de oficio (una cosa)” can be translated as “the defects compel someone to do something *sua sponte*.”

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<sup>95</sup> Retrieved from <http://cporesolucionesjudiciales.blogspot.com.ar/2012/09/nulidad-de-la-sentencia-por-defectos-de.html>

- “(...) no se advierten vicios que impusieran de oficio *la anulación de ninguna de las sentencias*. (...)” (p. 2, l. 3)

The collocation is “anular una sentencia,” and we would translate it as “to vacate a final judgment.” With reference to the verb “anular,” it means “dejar sin efecto una norma, un acto o un contrato” (Real Academia Española, 2015)<sup>96</sup>, and “anulación” means “pérdida de su eficacia, por defectos de fondo o de forma, de un acto jurídico” (Ossorio, 2013, p. 89). In addition, Cabanellas de las Cuevas (2010) proposes to translate “anular” as “to vacate” (p. 79), which is defined by Garner (2004) as “to nullify or cancel, to make void, to invalidate” (p. 1584). Besides, Garner (2004) gives the following example to illustrate the usage of the verb in question: “the court vacated the judgment” (p. 1584). As for the translation and definition of “sentencia,” they are stated above. According to our research, our proposed translation is faithful to the original expression. Therefore, the collocation “anular una sentencia” can be translated as “to vacate a final judgment.”

- “(...) En consecuencia, *voto por la negativa*. (...)” (p. 2, l. 5)

The collocation is “votar por la negativa,” and we would translate it as “to vote negatively.” We have to point out that in Argentina, when a case is brought before an appellate court for review, the judges of the courtroom meet to discuss the case. In the document being studied, the judges set out questions that they have to answer in order to deliver a decision. Each judge casts his vote, which consists in

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<sup>96</sup> Retrieved from <http://dle.rae.es/?id=2zxgh9l|2zy73yw>

answering the questions positively or negatively, and the case is resolved according to the majority of votes, and there can be dissenting votes (Di Pierro, personal communication, February 25, 2017). In the fragment taken from the document, the judge says the following: "(...) voto por la negativa," and, in another similar document, there appears the following expression: "(...) vota negativamente a esta cuestión" (*Banco Hipotecario S.A. v. Borraccetti, Liliana E.*, 2010)<sup>97</sup>. In the United States, after the appellate judges make a decision, one of them is chosen to draft the document that contains such decision, and the judge who dissents can set out the grounds for running counter to the votes of the other judges ("How Does the Court of Appeal Decide My Case?", n.d.)<sup>98</sup>. As for the translation we have proposed, we have not found examples in which the expression "to vote negatively" is used. However, we found the following example of a decision rendered by an appellate court in which the judge who writes the opinion states the vote of the court: "The question therefore is whether the BAP is one of the 'courts established by Act of Congress.' We conclude that the answer is no" (*Ozenne v. Chase Manhattan Bank*, 2014)<sup>99</sup>. Having made our research, we are going to change our proposed translation. The collocation "votar por la negativa" can be then be translated as "to conclude that the answer is no."

- "(...) La actora *interpuso demanda* el día 29 de Junio de 2001 (...)" (p. 2, l. 15)

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<sup>97</sup> Retrieved from [http://www.justiciasantafe.gov.ar/ckfinder/userfiles/files/legislacion-y-jurisprudencia-destacada/camara-de-apelacion-en-lo-civil-y-comercial-de-rosario/1034-N%C2%B0%2083.pdf](http://www.justiciasantafe.gov.ar/ckfinder/userfiles/files/legislacion-y-jurisprudencia/jurisprudencia/jurisprudencia-destacada/camara-de-apelacion-en-lo-civil-y-comercial-de-rosario/1034-N%C2%B0%2083.pdf)

<sup>98</sup> Retrieved from <http://www.cochranfirm.com/how-does-the-court-of-appeal-decide-my-case/>

<sup>99</sup> Retrieved from <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/03/25/11-60039.pdf>

The collocation is “interponer demanda,” and we would translate it as “to file a complaint.” As for the definitions of “interponer” and “demanda,” they are stated above. Mazzuco (2009) translates “interponer” as “to file (a complaint)” (p. 467) and translates “demanda” as “complaint” (p. 409). It should be remembered that “to file” is “to deliver a legal document to the court clerk or record custodian for placement into the official record” (Garner, 2004, p. 660) and that a “complaint” is “the initial pleading that starts a civil action and states the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the demand for relief” (p. 303). The collocation that we propose as translation appears in the following fragment of the definition of “third-party complaint” given by Garner (2004): “A complaint filed by the defendant against a third party (...)” (p. 303). Having made our research, we can affirm that our proposed translation is correct. Therefore, the collocation “interponer demanda” can be translated as “to file a complaint.”

- “(...) *el Sr. Juez A Quo decreta* la citación de la demandada y el traslado de la demanda. (...)” (p. 2, l. 17)

The collocation is “el juez decreta (una cosa),” and we would translate it as “the judge orders (something).” Ossorio (2013) defines the word “juez” as “todo miembro integrante de Poder Judicial, encargado de juzgar los asuntos sometidos a su jurisdicción” (p. 517), and Cabanellas de las Cuevas (2010) translates “juez” as “judge” (p. 444). Moreover, “decretar” is “resolver, decidir; dictar un decreto” (Real Academia Española, 2015)<sup>100</sup>, and “decreto” refers to the “resoluciones dictadas por un juez o tribunal durante la tramitación del juicio” (Ossorio, 2013, p.

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<sup>100</sup> Retrieved from <http://dle.rae.es/?id=BzV0z93>

266). Regarding our proposed translation, “judge” is defined by Garner (2004) as “a public official appointed or elected to hear and decide legal matters in court” (p. 857). In addition, if the judge “orders” something, he delivers a direction or command (p. 1129). McIntosh (2009), moreover, states that “to order” collocates with “judge” (p. 457). The collocation also appears in the following example: “Unless the court otherwise orders, the defendant shall serve an answer within twenty days after service of the summons and complaint for contempt” (Mass. R. Civ. P. 65.3(f))<sup>101</sup>. We have to point out that in the example mentioned above, “court” is used instead of “judge”, but “court” is a synonym of “judge” (Garner, 2004, p. 378). Having made our research, we can affirm that our proposed translation is correct. Therefore, the collocation “el juez decreta (una cosa)” can be translated as “the judge orders (something).”

- “(...) el Sr. Juez A Quo decreta la *citación de la demandada* y el traslado de la demanda. (...)” (p. 2, l. 17)

The collocation is “citar al demandado,” and we would translate it as “to summon the defendant.” Ossorio (2013) defines “citación” as “acto por el cual un juez o tribunal ordena la comparecencia de una persona, sea parte, testigo, perito o cualquier otro tercero, para realizar o presenciar una diligencia que afecte un proceso” (p. 172). As for “citar al demandado,” such expression is explained by Ossorio (2013) in his definition of “citación del demandado,” which is the following: “acto procesal mediante el cual se ordena la presentación en juicio del demandado y la contestación de la demanda” (p. 173). Regarding the translation of “citar,”

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<sup>101</sup> Retrieved from <http://www.mass.gov/courts/case-legal-res/rules-of-court/civil-procedure/mrcp65-3.html>

Mazzucco (2009) makes the following distinction: “citar” has to be translated as “to summon” if the expression to be translated is “citar al actor/ al demandado,” and it has to be translated as “to subpoena” if the expression to be translated is “citar testigos” (p. 385). With regard to the verb “to summon,” Garner (2004) defines it as “to command (a person) by service of a summons to appear in court” (p. 1477). Moreover, the noun “summons” means “a writ or process commencing the plaintiff’s action and requiring the defendant to appear and answer” (p. 1477). Besides, “to subpoena” means “to call before a court or other tribunal by subpoena.” Garner (2004) also gives the following example in which we can see that “to subpoena” collocates with “witnesses”: “to subpoena the material witnesses” (p. 1467). In addition, the noun “subpoena” means “a writ commanding a person to appear before court or other tribunal, subject to a penalty for failing to comply” (p. 1467). Moreover, in criminal cases, subpoenas are issued to command third parties to give testimony before court (“What Is a Subpoena?,” n.d.)<sup>102</sup>. As for the usage of the expression “to summon a defendant,” it is illustrated by the following example: “You are commanded: To Summon the above named defendant(s) and serve upon said defendant(s) a copy of this summons and complaint” (“Sample summons,” 2008)<sup>103</sup>. According to our research, our proposed translation is correct; “citar al demandado” can be translated as “to summon the defendant”. Besides, we have to point out that, if the collocation being studied appears together with “traslado de la demanda,” as in the Spanish text, both expressions can be translated as a unit as “to serve the defendant with process,”

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<sup>102</sup> Retrieved from <http://www.litigation.findlaw.com/going-to-court/what-is-a-subpoena.html>

<sup>103</sup> Retrieved from <http://www.courts.delaware.gov/forms/download.aspx?id=20208>

because the summons and the copy of the complaint served on the defendant are known, collectively, as “process” (“Service of Process,” n.d.)<sup>104</sup>.

- “(...) el Sr. Juez A Quo decreta la citación de la demandada y *el traslado de la demanda*. (...)” (p. 2, l. 17)

The collocation is “trasladar la demanda,” and we would translate it as “to serve the defendant with the complaint.” Ossorio (2013) states that “trasladar” means “[la] comunicación de una parte a otra, para que la conozca y acepte o contradiga” and that “traslado de autos” means “la acción y efecto de comunicar a la parte contraria un escrito o documento para que haga valer contra él las defensas de que se crea asistida” (p. 956). Mazzucco (2009), besides, proposes to translate the collocation as “to serve notice of the complaint on somebody” (p. 578); “to serve” is “to make legal delivery of a writ, summons, or other legal process,” and “complaint” means “the initial pleading that starts a civil action and states the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the demand for relief” (Garner, 2004, pp. 303 and 1399). Moreover, the expression we propose as translation appears in the following example: “A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint; (...)” (Fed. R. Civ. P. 12(a) (1) (A) (i))<sup>105</sup>. According to our research, our proposed translation is faithful to the original expression. The collocation “trasladar la demanda” can be translated as “to serve the defendant with the complaint.”

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<sup>104</sup> Retrieved from [https://www.law.cornell.edu/wex/service\\_of\\_process](https://www.law.cornell.edu/wex/service_of_process)

<sup>105</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_12](https://www.law.cornell.edu/rules/frcp/rule_12)

- “(...) el decreto (...) es notificado a la demandada por *cédula diligenciada* en fecha 15 de Diciembre de 2008 (...)” (p. 2, l. 19)

The collocation is “diligenciar una cédula,” and we would translate it as “to serve a summons.” As for the verb “diligenciar,” it means to serve a person with a document (Irazabal, n.d., p. 50)<sup>106</sup>. In addition, the noun “cédula” means “papeleta de citación o de notificación, autorizada por funcionario judicial” (Ossorio, 2013, p. 164). Mazzuco (2009), besides, translates “cédula” as “notice” (p. 383). However, we have to take into account that, in this case, the “cédula” is notifying the defendant that a complaint has been filed against her. Therefore, we have to check the translation of “cédula de citación al demandado,” which is “summons” (Mazzucco, 2009, p. 383). It should be remembered that “summons” is “a writ or process commencing the plaintiff’s action and requiring the defendant to appear and answer” (Garner, 2004, p. 1477). As for the verb “to serve,” its definition is stated above. Moreover, the usage of the expression that we propose as the translation of the collocation is illustrated by the following example: “The cost for serving a summons varies depending on how you serve the summons” (“Serving a summons,” Cost of serving a summons section, para. 1)<sup>107</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “diligenciar una cédula,” taking into account the context in which the expression is located, can be translated as “to serve a summons.”

- “(...) La demandada *opone la caducidad de instancia* (...)” (p. 2, l. 21)

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<sup>106</sup> Retrieved from <http://www.ele-ve.com.ar/documentos/artdemos/terminosjusticia.pdf>

<sup>107</sup> Retrieved from <https://www.illinoislegalaid.org/legal-information/serving-summons>

The collocation is “oponer la caducidad de instancia,” and we would translate it as “to plead the statute of limitations as a defense.” As for the verb “oponer,” its definition is “poner algo contra otra cosa para entorpecer o impedir su efecto” (Real Academia Española, 2015)<sup>108</sup>. With regard to the expression “caducidad de instancia,” it means “modo de extinguirse la relación procesal por la inactividad de las partes durante cierto período” (Ossorio, 2013, p. 138). In addition, Mazzuco (2009) proposes to translate “caducidad de instancia” as “termination of an action by lapse of time” (p. 377), and Cabanellas de las Cuevas (2010) translates it as “non-suit” (p. 120). Garner (2004), besides, defines “non-suit” as “a plaintiff’s voluntary dismissal of a case or of a defendant, without a decision on the merits” and as “a court’s dismissal of a case or of a defendant because the plaintiff has failed to make out a legal case or to bring forward sufficient evidence” (p. 1084). Furthermore, a plaintiff must initiate legal proceedings before the lapsing of the statute of limitations, which is, according to Garner (2004), “a law that bars claims after a specified period; specif. a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)” (p. 1450). However, according to the Spanish text, the plaintiff pursued her rights, but she did not prosecute the case within the legal time limit. Therefore, we cannot use the expression “running of the statute of limitations” to refer to the “caducidad de instancia.” Moreover, we cannot use “non-suit,” because the plaintiff has not the intention to have her complaint dismissed at her option. Instead, it is the defendant who has the intention that the plaintiff’s complaint be dismissed. On the other hand, we consider that “involuntary dismissal” is the best

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<sup>108</sup> Retrieved from <http://dle.rae.es/?id=R6sHpEA>

option to translate the expression in question, because it takes place when “a plaintiff fails to prosecute” (Fed. R. Civ. P. 41 (b))<sup>109</sup>, and Garner (2004) defines it as follows: “a court’s dismissal of a lawsuit because the plaintiff failed to prosecute or failed to comply with a procedural rule or court order” (p. 502). As for the translation of “oponer,” we consider that “to plead (something) as a defense” covers the meaning of such verb, because the party answers the complaint stating the reasons why the plaintiff’s case has no validity (Garner, 2004, pp. 451 and 1191). Regarding the usage of the expression “to plead something as a defense,” it is illustrated by the following example: “When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required (...)” (Fed. R. Civ. P. 3(4))<sup>110</sup>. However, we consider that in this case the expression is not suitable, because a moving party cannot “plead a motion for involuntary dismissal as a defense”; instead, she “files a motion” to object to a pleading, and the idea of “pleading something as a defense” is understood taking into account the context in which the expression is embedded. In this case, the plaintiff moves to dismiss the action (Fed. R. Civ. P. 41(b))<sup>111</sup>. Having made our research, we can affirm that the collocation “oponer la caducidad de instancia” can be translated as “to file a motion for involuntary dismissal.”

- “(...) intimación a la parte para que manifieste si tiene interés en *la prosecución de la causa* (...)” (p. 3, l. 3)

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<sup>109</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_41](https://www.law.cornell.edu/rules/frcp/rule_41)

<sup>110</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_3](https://www.law.cornell.edu/rules/frcp/rule_3)

<sup>111</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_41](https://www.law.cornell.edu/rules/frcp/rule_41)

The collocation is “proseguir una causa,” and we would translate it as “to prosecute a case.” As for the verb “proseguir,” it means “seguir, continuar, llevar adelante lo que se tenía empezado” (Real Academia Española, 2015)<sup>112</sup>. Besides, the noun “causa” means “proceso, litigio, pleito” (Ossorio, 2013, p. 161). The expression “prosecución de una causa,” moreover, is related to the “impulso procesal,” which is “la actividad necesaria para el desarrollo normal del proceso, haciéndolo avanzar a fin de que pueda cumplir su propia finalidad dentro del orden jurídico” (p. 473). Cabanellas de las Cuevas (2010) proposes to translate “impulso procesal” as “prosecution of or activity in a lawsuit” (p. 402). Garner (2004), besides explains that “prosecution” is “the commencement and carrying out of any action or scheme” (p. 1258). As for our proposed translation, it appears in the following example: “Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced” (Fed. R. Civ. P. 3(4))<sup>113</sup> (it should be noted that in the example the word “action” is used instead of “case,” but “action” is a synonym of the word “case” in the context of the example [Burton, 2013]<sup>114</sup>). Having made our research, we consider that our proposed translation is faithful to the original expression. Therefore, the collocation “proseguir una causa” can be translated as “to prosecute a case.”

- “(...) *intimación a la parte* para que manifieste si tiene interés en la prosecución de la causa (...)” (p. 3, l. 3)

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<sup>112</sup> Retrieved from <http://dle.rae.es/?id=UQ9S1FA>

<sup>113</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_3](https://www.law.cornell.edu/rules/frcp/rule_3)

<sup>114</sup> Retrieved from <http://itunes.apple.com>

The collocation is “intimar a una parte,” but we have to point out that, in this case, “parte” refers to the plaintiff. Therefore, the collocation that we are going to translate is “intimar al demandante,” and we would translate it as “to summon the plaintiff.” Regarding the verb “intimar,” it means “declarar, notificar, hacer saber una cosa, especialmente con autoridad o fuerza para ser obedecido” (Ossorio, 2013, p. 507). In addition, “demandante” is defined as “el que asume la iniciativa de un juicio con la presentación de una demanda” (p. 287). Cabanellas de las Cuevas (2010) translates “demandante” as “plaintiff” (p. 248) and “citar” as “to summon” (p. 438). The “plaintiff” is “the party who brings a civil suit in a court of law,” and “to summon” is “to command (a person) by service of a summons to appear in court” (Garner, 2004, pp. 1188 and 1477). With reference to our proposed translation, it appears in the following example: “(...) it shall and may be lawful for the Defendant to apply to the Chief Justice or any of the Associate Justices for a Summons to summon the Plaintiff or his Attorney (...)” (Acts of the North Carolina General Assembly, n.d.)<sup>115</sup>. According to our research, our proposed translation is faithful to the original expression. Therefore, the collocation “intimar al demandante” can be translated as “to summon the plaintiff.”

- “(...) vencimiento del período de emplazamiento sin actividad procesal idónea para *impulsar el proceso* (...)” (p. 3, l. 4)

The collocation is “impulsar el proceso,” and we would translate it as “to prosecute the case.” Regarding the verb “impulsar,” it means “hacer crecer, aumentar o

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<sup>115</sup> Retrieved from <http://docsouth.unc.edu/csr/index.php/document/csr23-0017#p23-261>

progresar una cosa” (Real Academia Española, 2015)<sup>116</sup>. In addition, “proceso” means “juicio, causa, pleito” (Ossorio, 2013, p. 773). The collocation “impulsar el proceso” is related to the expression “impulso procesal,” which means “la actividad necesaria para el desarrollo normal del proceso, haciéndolo avanzar a fin de que pueda cumplir su propia finalidad dentro del orden jurídico” (Ossorio, 2013, p. 473) and which is translated by Cabanellas de las Cuevas (2010) as “prosecution of or activity in a lawsuit (which moves a case forward)” (p. 402). As stated above, the word “prosecution” is “the commencement and carrying out of any action or scheme” (Garner, 2004, p. 1258). Thus, the collocation being studied is a synonym of “proseguir una causa,” which is a collocation that is explained above. As for our proposed translation, it appears in the following example: “Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced” (Fed. R. Civ. P. 3(4))<sup>117</sup>. Having made our research, we consider that our proposed translation is faithful to the original expression. Therefore, the collocation “impulsar el proceso” can be translated as “to prosecute a case.”

- “(...) Sin embargo, esta situación presupone *una litis ya trabada* (...)” (p. 3, l. 4)

The collocation is “trabar la litis,” and we would translate it as “to answer the complaint.” According to Ossorio (2013), the term “traba de la litis” refers to the Latin expression “*litis contestatio*” (p. 947), which means “la comunicación que el

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<sup>116</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/impulsar>

<sup>117</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_3](https://www.law.cornell.edu/rules/frcp/rule_3)

demandante dirigía al demandado en el Derecho Romano, con noticia del motivo del juicio y al fecha señalada para comparecer ante el magistrado en el procedimiento *in iure*" (p. 558). In addition, "litis" refers to the suit (Ossorio, 2013, p. 558), and the "*litis contestatio*" exists when the defendant answers the complaint ("Traba de la litis," n.d.<sup>118</sup>). Garner (2004) also explains the expression "*litis contestatio*"; he argues that it means "contestation of suit" (p. 952). Besides, the author explains that "contestation of suit" is "the point in an action when the defendant answers the plaintiff's complaint" (p. 338). Besides, the "*litis contestatio*" is "a legal process by which controverted issues are established and a joinder of issues arrived at" ("Litis contestatio," n.d.)<sup>119</sup>. Although we could use this Latin expression, we consider that it is not largely used in the legal world; we could only find the following example in which the Supreme Court of Appeal of South Africa uses the expression in its judgment:

A sound basis for such rule is to be found in the common law authority, namely, that *litis contestatio* having been effected without the plea to the jurisdiction having been raised by the defendant, the latter must be taken to have assented to the court's jurisdiction. (*Zwelibanzi Utilities v. TP Electrical Contractors*, 2011)<sup>120</sup>

Thus, according to the definitions given above, we consider that the best translation for "trabar la litis" is "to answer the complaint," which refers to the

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<sup>118</sup> Retrieved from <http://www.encyclopedia-juridica.biz14.com/d/traba-de-la-litis/traba-de-la-litis.htm>

<sup>119</sup> Retrieved from <https://www.merriam-webster.com/dictionary/litiscontestation>

<sup>120</sup> Retrieved from [http://www.justice.gov.za/sca/judgments/sca\\_2011/sca2011-033.pdf](http://www.justice.gov.za/sca/judgments/sca_2011/sca2011-033.pdf)

responsive pleading served by the defendant on the plaintiff (Fed. R. Civ. P. 12(a)(1))<sup>121</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “trabar la litis” can be translated as “to answer the complaint.”

- “Lo que aquí tenemos es el caso de la demanda a los simples fines de *interrumpir la prescripción (...)*” (p. 3, l. 9)

The collocation is “interrumpir la prescripción,” and we would translate it as “to toll the statute of limitations.” Ossorio (2013) states that “prescripción” is “caducidad de los derechos en su eficacia procesal, por haber transcurrido los plazos legales para su posible ejercicio” (p. 756), and Cabanellas de las Cuevas (2010) proposes to define such expression as “running of statute of limitations on legal claim” (p. 631). Besides, Garner (2004) defines “statute of limitations” as “a law that bars claims after a specified period; specif. a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)” (p. 1450). In addition, “interrumpir” means “cortar la continuidad de algo en el lugar o en el tiempo” (Real Academia Española, 2015)<sup>122</sup>, and, together with the word “prescripción,” it is translated by Cabanellas de las Cuevas (2010) as “to toll the statute of limitations” (p. 436). Moreover, the verb “to toll” means “to stop the running of,” and the usage of such verb is illustrated by the following example: “to toll the limitations period” (Garner, 2004, p. 1525). In addition, our proposed translation appears in the following example:

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<sup>121</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_12](https://www.law.cornell.edu/rules/frcp/rule_12)

<sup>122</sup> Retrieved from <http://dle.rae.es/?id=Lx11HLa>

Statutes of limitations are designed to aid defendants. A plaintiff, however, can prevent the dismissal of his action for untimeliness by seeking to toll the statute.

When the statute is tolled, the running of the time period is suspended until some event specified by law takes place. ("Statute of Limitations - Tolling The Statute," n.d., para. 1)<sup>123</sup>

Having made our research, we can affirm that our proposed translation is correct. Therefore, the collocation "interrumpir la prescripción" can be translated as "to toll the statute of limitations."

In the previous paragraphs, we explain and translate the numerous collocations found in the Spanish text. We should point out that the most difficult collocation to translate was "los jueces se reúnen en acuerdo ordinario" due to the differences between the Spanish and English appellate procedures. In the following section, we proceed to explain and translate the terms and expressions found in the text under analysis.

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<sup>123</sup> Retrieved from <http://law.jrank.org/pages/10500/Statute-Limitations-Tolling-Statute.html>

#### **SECTION 4: TERMS AND EXPRESSIONS**

In this section, we analyze the terms and expressions present in the Spanish text. We first identify them and provide possible translations for them. Then, we conduct a research to verify if our translations are correct or if we need to change them. We check the meanings of the expressions, their translations in a bilingual dictionary, and the meanings of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage. In the following items, we explain the expressions in question:

- “(...) Lo que aquí tenemos es el caso de la demanda a los simples fines de interrumpir la *prescripción* (...)” (p. 3, l. 9)

The term is “prescripción,” and we would translate it as “running of the statute of limitations.” In this case, the term being studied is related to the expression “prescripción de las acciones,” which is “caducidad de los derechos en su eficacia procesal, por haber transcurrido los plazos legales para su posible ejercicio” (Ossorio, 2013, p. 756). The “prescripción” refers then to the running of the statute of limitations to bring suit, and it does not have to be confused with the term “caducidad,” which refers to the termination of a lawsuit due to the fact that the party did not pursue the legal proceedings already initiated (p. 138). In addition, the

“prescripción” does not have to be confused with the term “preclusión,” which refers to the lapse of the period of time during which a concrete procedural step must be taken (“Preclusión y diferencias con la caducidad y la prescripción,” 2014, Otras consideraciones section, para. 5)<sup>124</sup>. Mazzucco (2009), besides, states that “prescripción” can be translated as “the running of the statute of limitations” (p. 522), and Garner (2004) explains that the “statute of limitations” means “a law that bars claims after a specified period; specif. a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)” (p. 1450). In the following example, the usage of the English collocation is illustrated: “The absence of the plaintiff or defendant from the jurisdiction does not suspend the running of the statute of limitations, unless the statute so provides” (“Statute of Limitations - Tolling The Statute,” n.d., para. 1)<sup>125</sup>. Having made our research, we can affirm that our proposed translation is correct. Therefore, the term “prescripción” can be translated as “the running of the statute of limitations.”

- “(...) *el Principio Protectorio* (...) no implica una suerte de patente de corso para hacer y deshacer el Derecho en forma abusiva (...)” (p. 3, l. 20)

The expression is “Principio Protectorio,” and we would leave it as it is and add a translator’s note explaining what it is. The “Principio Protectorio” is one the principles that form the basis of Labor Law in Argentina. This principle safeguards the employees’ rights, because there is an unequal bargaining power between the

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<sup>124</sup> Retrieved from <http://www.laweblegal.com/blog/preclusion-y-diferencias-con-la-caducidad-y-la-prescripcion/>

<sup>125</sup> Retrieved from <http://law.jrank.org/pages/10500/Statute-Limitations-Tolling-Statute.html>

employer and the employee, i.e. the employee cannot choose the job he wants to have or the remuneration he wants to earn. In addition, this principle takes into account the protection of employees enshrined in section 14 *bis* of the Argentinian Constitution. Besides, this principle sets forth that no law shall be amended against the well-being of the employees; that, in case of doubt, all laws and employment contracts shall be construed in the most favorable sense for the employee; and that, when different rules or laws can be applied in a single situation, the most favorable rule or law for the employee must be applied (Alfie, n.d.)<sup>126</sup>. As this is a specific principle of Labor Law in Argentina, we believe that we cannot translate it into English. In addition, we consider that there is no parallel principle in other pieces of English legislation in order to provide a tentative translation. According to our research, we consider that the best option is, as we stated above, to leave the expression as it is and add a translator's note, which is the following: "One of the principles that form the basis of Labor Law in Argentina that safeguards the employees' rights."

- "(...) el control de constitucionalidad y convencionalidad (...) debe ser utilizado como última *ratio decidendi* (...)" (p. 5, l. 22)

The expression is "*ratio decidendi*," and we would leave it as it is, because it is a Latin expression. Garner (2004) states that this Latin expression means "the reason for deciding" and that it refers to "the principle or rule of law on which a court's decision is founded" (p.1290). Besides, Cabanellas de las Cuevas (2010)

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<sup>126</sup>

Retrieved from  
[http://www.trabajo.gob.ar/downloads/formacionSindical/Reglas\\_basicas\\_que\\_rigen\\_las\\_relaciones\\_de\\_trabajo.pdf](http://www.trabajo.gob.ar/downloads/formacionSindical/Reglas_basicas_que_rigen_las_relaciones_de_trabajo.pdf)

proposes to translate this expression as “justification for a legal decision” (p. 673). Said translation could be used, but, taking advantage of the fact that Latin expressions are largely used in legal documents (Delgado, García & Trunceanu, 2004)<sup>127</sup>, we consider that it is correct to leave the expression as it is. In addition, our proposed expression appears in the following example: “As a general rule, a court’s *ratio decidendi* “is found by taking account (a) of the facts treated by the judge as material, and (b) his decision as based on them”” (Goodhart, 1930, as cited in Schafer, 2013, p. 3)<sup>128</sup>. According to our research, our translation is correct. Therefore, the Latin expression “*ratio decidendi*” can be left as it is.

- “(...) el efecto interruptivo (...) sólo cede en los supuestos expresamente previstos en dicha norma (*desistimiento*, caducidad o “absolución”) (...)” (p. 9, l. 8)

The term is “desistimiento,” and we would translate it as “voluntary dismissal.” Ossorio (2013) defines “desistimiento” as “el acto de abandonar la instancia, la acción o cualquier otro trámite del procedimiento” (p. 320). Besides, in Argentina, if the abandonment of a legal action is express, it is called “desistimiento,” and, if it is implied, i.e. the plaintiff lets the period of time to take a procedural step expire without notifying so to the defendant or to the court hearing the case, it is called “perención” (p. 18). Moreover, Cabanellas de las Cuevas (2010) proposes to translate such term as “voluntary dismissal” (p. 270), which is defined by Garner (2004) as “a plaintiff’s dismissal of a lawsuit at the plaintiff’s own request or by

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<sup>127</sup> Retrieved from <http://produccioncientificaluz.org/index.php/lingua/article/view/17123>

<sup>128</sup> Retrieved from <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Matthew-Schafer-FederalLawFederalCourtsandBindingandPersuasiveAuthority.pdf>

stipulation of all the parties” (p. 502). In addition, Cabanellas de las Cuevas (2010) proposes another translation for the expression being studied, which is “voluntary discontinuance of an action” (p. 270), and Garner (2004) defines it as “the termination of a lawsuit by the plaintiff; a non-suit” (p. 497). It should be noted also that “non-suit,” “voluntary discontinuance,” and “voluntary dismissal” are equivalents under the Federal Rules of Civil Procedure (p. 1084). Therefore, we can employ the expressions “voluntary dismissal,” “non-suit,” and “voluntary dismissal” to refer to the “desistimiento,” because all these expressions refer to the plaintiff’s express abandonment of a lawsuit. In the following example, there appears the expression “voluntary dismissal”: “A claimant's voluntary dismissal (...) must be made: (1) before a responsive pleading is served; or (2) if there is no responsive pleading, before evidence is introduced at a hearing or trial” (Fed. R. Civ. P. 41(c))<sup>129</sup>. According to our research, our proposed translation is correct. Therefore, the term “desistimiento” can be translated as “voluntary dismissal.”

- “(...) privándole en cambio del *lucro cesante* que hubiere obtenido de su colocación financiera (...)” (p. 10, l. 25)

The term is “lucro cesante,” and we would translate it as “lost earnings.” Ossorio (2013) defines “lucro cesante” as “lo que una persona deja de ganar, o ganancia de que se ve privada, por el incumplimiento de la obligación que incumbe el deudor” (p. 562), and Mazzucco (2009) proposes to translate such term as “lost earnings” (p. 490). Besides, Garner (2004) defines “lost earnings” as “wages, salaries, or other income that a person could have earned if he or she had not lost

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<sup>129</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_41](https://www.law.cornell.edu/rules/frcp/rule_41)

a job, suffered a disabling injury, or died” (p. 584). In addition, our proposed translation appears in the following example: “Employees who have been injured as a result of a breach of duty by their employers are entitled to compensation in the ordinary courts, which in an appropriate case will include compensation for lost earnings and lost earning capacity” (“Work-related stress and dismissal,” n.d.)<sup>130</sup>. According to our research, our proposed translation is correct. In the document being studied, the employee suffered a loss of earnings, because the employer did not pay her the compensation for having been dismissed from her job. Therefore, the term “lucro cesante” can be translated as “lost earnings.”

- “(...) se reúnen en *Acuerdo Ordinario* los Señores Jueces de la Sala Segunda (...)” (p. 1, l. 1)

The term is “acuerdo ordinario,” and we would translate it as “general session.” First of all, we should take into consideration that, when in Argentina a case is brought to an appellate court for review, the three (or more) judges of the room that receives the record have to discuss in order to resolve the case, so they hold an assembly in which they have to vote before issuing an opinion. These assemblies can be general or special. The general assemblies refer to the daily activity of the court, and special assemblies are held, for example, when the court has to draft its rules of practice (Di Pierro, personal communication, February 25, 2017). As the expression being studied does not appear in the bilingual dictionaries used to prepare this thesis, we are going to check directly the meaning of our translation. Garner (2004) defines a “session” as “a meeting (...) throughout which a court,

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<sup>130</sup> Retrieved from <http://www.hrzone.com/engage/employees/work-related-stress-and-dismissal>

legislature, or other deliberative assembly conducts business in a continuing sequence”; a “regular session” as “a session that takes place at fixed intervals or specified times”; and a “special session” as “a legislative session, usu. called by the executive, that meets outside its regular term to consider a specified issue (...)” (p. 1403). The usage of the word “session” can be illustrated as follows: “(...) the clerk must attend sessions of the court” (“Appellate Courts,” n.d., Court Personnel section, para. 1)<sup>131</sup>. Notwithstanding the meanings of the types of court sessions and according to our experience translating legal documents, the expressions “regular session” and “special session” are not largely used by drafters when they prepare legal documents relating to the opinions issued by the judges of an appellate court. We then choose to leave the expression as it is and to add the following translator’s note to explain the idea of the “*acuerdo ordinario*”: “In Argentina, an *acuerdo ordinario* refers to the general assembly that the appellate judges hold to hear a case en banc.”

- “(...) para resolver los *recursos de nulidad y apelación* (...)” (p. 1, l. 3)

The terms are “recurso de nulidad” and “recurso de apelación,” and we would translate them as “motion to vacate” and “appeal,” respectively. Before translating both terms, we have to understand what a “recurso” is. Ossorio (2013) defines “recurso” as “(...) [un] medio que concede la ley procesal para la impugnación de las resoluciones judiciales, a efectos de subsanar los errores de fondo o los vicios de forma en que se haya incurrido al dictarlas” (p. 812). Furthermore, Ossorio

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<sup>131</sup> Retrieved from <https://www.azcourts.gov/guidetoazcourts/Appellate-Courts>

(2013) states that “recurso de nulidad” is a synonym of “recurso de anulación,” and he defines “recurso de anulación” in the following way:

El que procede contra la sentencia pronunciada con violación de formas procesales o por haberse omitido en el juicio trámites esenciales, y también, por haberse incurrido en error, cuando éste por determinación de la ley anula las actuaciones; en la legislación argentina el recurso de nulidad se encuentra comprendido en el recurso de apelación. (p. 815)

In addition, the “recurso de apelación” is “[un recurso] que se interpone ante el juez superior para impugnar la resolución del inferior (...)” (p. 813). Cabanellas de las Cuevas (2010), moreover, translates “recurso de anulación” as “motion to vacate” (p. 683) and “recurso de apelación” as “appeal” (p. 682). Although the translation of “recurso de anulación” proposed by Cabanellas de las Cuevas (2010) could be used, we consider that such type of motion does not have an exact equivalent in the target language; we believe that the best option is to add a tentative translation between brackets and the following translator’s note proposed by Mazzucco (2009):

Appeal filed in order that the final judgment be declared null and void based on the grounds that it was pronounced without complying with the requirements of time, place and form prescribed by law. Nowadays, according to the Argentine

Code of Procedure, the notice of appeal generally comprises this kind of appeal.

(p. 537)

According to the aforementioned translator's note, we consider that the tentative translation for "recurso de nulidad" can be the following: "[motion to vacate the lower court's judgment]." We should add that "to vacate" is defined by Garner (2004) as "to nullify or cancel, to make void, to invalidate" (p. 1584). Besides, Garner (2004) gives the following example to illustrate the usage of the verb in question: "the court vacated the judgment" (p. 1584) As for the expression "appeal," Garner (2004) states that it means "a proceeding undertaken to have a decision reconsidered by a higher authority; esp. the submission of a lower court's or agency's decision to a higher court for review and possible reversal" (p. 105). In addition, "an appeal is the exercise of the right of a party to have a judgment of a trial court modified or reversed by an appellate court" (Louisiana Court of Appeal, 2016, p. 2)<sup>132</sup>. Besides, the usage of the word "appeal" is illustrated by the following example: "An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment" (Fed. R. App. R. 3(a) (3))<sup>133</sup>. According to our research, we are going to leave "recurso de nulidad" as it is and add the tentative translation and the translator's note stated above. We have to point out, however, that in the translator's note we are going to use the expression "Argentinian Procedural Civil and Commercial Code" instead of "Argentine Code of Procedure" for style reasons and because we

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Retrieved  
<http://www.la3circuit.org/Documents/HANDBOOK%20OF%20LOUISIANA%20COURT%20OF%20APPEAL,%20THIRD%20CIRCUIT%20PROCEDURE.pdf>

<sup>133</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_3](https://www.law.cornell.edu/rules/frcp/rule_3)

are analyzing a text that deals with a civil case. As for the term “recurso de apelación,” we are going to translate it as “appeal.”

- “(...) Dispuesto el *orden de votación*, resulta: Coppoletta, Machado, Alzueta (...)” (p. 1, l. 12)

The expression is “orden de votación,” and we would translate it as “voting order.” First of all, we should take into consideration that, when in Argentina a case is brought to an appellate court for review, the three (or more) judges of the room that receives the record have to discuss in order to resolve the case, so they hold an assembly in which they have to vote before issuing an opinion (Di Pierro, personal communication, February 25, 2017). The order in which each judge is going to vote is set by way of a draw (*artículo 268, Código Procesal Civil y Comercial de la Nación* [section 268, Argentinian Procedural Civil and Commercial Code])<sup>134</sup>. The judge that goes first writes the document containing the decision, stating the opinion of each judge, either positive or negative, in the order determined by the draw. In the United States of America, however, the panel of appellate judges discusses without a voting order, and then one judge is chosen by the panel to write the decision of the majority of judges, including at the end dissenting or concurrent opinions (*Ozenne v. Chase Manhattan Bank*, 2014)<sup>135</sup>. Having explained the meaning of the expression being studied and considering that it does not present difficulties to be understood, we believe that the simplest way of translating “orden de votación” is “voting order.” Nevertheless, according to the

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<sup>134</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#5>

<sup>135</sup> Retrieved from <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/03/25/11-60039.pdf>

explanation *ut supra*, we are going to translate the whole fragment in the following way: "(...) According to the draw, the judges shall vote in the following order: Coppoletta, Machado, Alzueta (...)."

- "(...) el Sr. *Juez A Quo* rechaza el planteo de caducidad de instancia (...)"  
(p. 1, l. 14)

The expression to be studied is "juez *a quo*," and we would translate it as "trial judge." Ossorio (2013) states that "juez *a quo*" is "aquel del cual se apela ante el superior, que puede confirmar, modificar o anular la resolución anterior" (p. 517). Mazzucco (2009) proposes to translate "juez *a quo*" as "trial judge" (p. 469), and Garner (2004) defines "trial judge" as "the judge before whom a case is tried" (p. 858). Besides, the expression "trial judge" appears in the following example: "Section 8-224 appears to satisfy the litigant's rights while at the same time it allows the trial judge to exercise his discretion which usually goes undisturbed" (Barr Jr., 1962, p. 518)<sup>136</sup>. Having made our research, our proposed translation is correct. Therefore, the expression "juez *a quo*" can be translated as "trial judge."

- "(...) el Sr. Juez A Quo rechaza el planteo de *caducidad de instancia* (...)"  
(p. 1, l. 14)

The term is "caducidad de instancia," and we would translate it as "the running of the statute of limitations." As for the definition of the expression "caducidad de instancia," it is "[el] modo de extinguirse la relación procesal por la inactividad de las partes durante cierto período" (Ossorio, 2013, p. 138). Mazzucco (2009),

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<sup>136</sup> Retrieved from <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3263&context=wmlr>

besides, proposes to translate “caducidad de instancia” as “termination of an action by lapse of time” (p. 377), and Cabanellas de las Cuevas (2010) translates it as “non-suit” (p. 120). Garner (2004), besides, defines “non-suit” as “a plaintiff’s voluntary dismissal of a case or of a defendant, without a decision on the merits” and as “a court’s dismissal of a case or of a defendant because the plaintiff has failed to make out a legal case or to bring forward sufficient evidence” (p. 1084). In addition, a plaintiff must initiate legal proceedings before the lapsing of the statute of limitations, which is, according to Garner (2004), “a law that bars claims after a specified period; specif. a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)” (p. 1450). However, according to the Spanish text, the plaintiff pursued her rights before the running of the statute of limitations, but she did not prosecute the case within the legal time limit. Therefore, we consider that we cannot use the expression “running of the statute of limitations” to refer to the “caducidad de instancia.” Moreover, we believe that we cannot use “non-suit” to translate the expression studied, because the plaintiff has not the intention to have her complaint dismissed at her option. On the other hand, we reckon that “involuntary dismissal” is the best option to translate the expression in question, because it takes place when “a plaintiff fails to prosecute” (Fed. R. Civ. P. 41 (b))<sup>137</sup>, and Garner (2004) defines it as follows: “A court’s dismissal of a lawsuit because the plaintiff failed to prosecute or failed to comply with a procedural rule or court order” (p. 502). Having made our research, we consider that we have to

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<sup>137</sup> Retrieved from [https://www.law.cornell.edu/rules/frcp/rule\\_41](https://www.law.cornell.edu/rules/frcp/rule_41)

change our proposed translation. The expression “caducidad de instancia” can be translated as “involuntary dismissal.”

- “(...) se alza la vencida mediante los recursos de nulidad y *apelación total* (...)” (p. 1, l. 16) and “(...) se alzan ambas partes: la actora, por medio de los recursos de nulidad y *apelación parcial* (...)” (p. 1, l. 19)

The terms are “apelación total” and “apelación parcial,” and we would translate them as “total appeal” and “limited appeal,” respectively. In Argentina, when a judge decides a case, the aggrieved party can raise a “recurso de apelación,” which is “[un recurso] que se interpone ante el juez superior para impugnar la resolución del inferior (...)” (Ossorio, 2013, p. 813). Cabanellas de las Cuevas (2010) proposes to translate “apelación” as “appeal” (p. 80), and Garner (2004) states that an “appeal” is “a proceeding undertaken to have a decision reconsidered by a higher authority; esp. the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal” (p. 105). Thus, the aggrieved party can appeal the total final decision or some portions of such decision; therefore, we can talk about the “apelación total” and the “apelación parcial” (Rincón Hernández, 2011, para. 18)<sup>138</sup>. Taking into consideration the definition of “appeal” given above, it is understood that the term refers to the fact that the aggrieved party wants to have the total decision considered for review. Therefore, we consider that there is no need to add the word “total” to the term

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<sup>138</sup> Retrieved from <http://hernandez-estudiolegal.blogspot.com.ar/2011/04/la-apelacion.html>

“appeal” if we want to translate “apelación total.” As for the expression “apelación parcial,” Cabanellas de las Cuevas (2010) proposes to translate it as “limited appeal” (p. 81), which is defined by Garner (2004) as “an appeal from only certain portions of a decision, usu. only the adverse or unfavorable portions” (p. 106). The expression “appeal,” besides, appears in the following example: “The first thing that occurs following the filing of a new appeal is that the Administrative Judge (AJ) who has been assigned to the case will issue an Acknowledgment Order to both the appellant (and his or her representative, if any) and the agency” (“How to file an Appeal,” n.d., Procedures After an Appeal is Filed section, para. 1)<sup>139</sup>. We would like to point out, however, that the Federal Rules of Appellate Procedure do not make a distinction between “total” and “limited” appeals like in the Argentinian legislation; instead, they set forth that in the appellate brief the appellant shall “designate the judgment, order, or part thereof being appealed” (Fed. R. App. P. 3(B) (c))<sup>140</sup>. Notwithstanding the foregoing, we choose to use the expressions “appeal” and “limited appeal” to refer to the types of appeals that exist in Argentina. According to our research, the expressions “apelación total” and “apelación parcial” can be translated as “appeal” and “limited appeal,” respectively.

- “(...) se alza la vencida mediante los recursos de nulidad y apelación total que interpone y son concedidos *con efecto diferido* (...)” (p. 1, l. 17)

The expression is “con efecto diferido,” and we would translate it as “with deferred effect.” In Argentina, an appeal can be granted with “efecto diferido,” and Cotrina

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<sup>139</sup> Retrieved from <http://www.mspb.gov/appeals/appeals.htm#after>

<sup>140</sup> Retrieved from [https://www.law.cornell.edu/rules/frap/rule\\_3](https://www.law.cornell.edu/rules/frap/rule_3)

Vargas (n.d.) explains what the expression “apelación concedida con efecto diferido” is as follows:

Es la apelación (...) [que] implica que su trámite queda reservado por el Juez para que sea resuelto por el Superior jerárquico conjuntamente con la apelación de la sentencia o el auto definitivo del proceso. Es decir, esta apelación es concedida pero su tramitación y consiguiente resolución queda condicionada a la formulación de otro recurso de apelación que se interponga contra la sentencia o auto que pone fin al proceso en la instancia inicial. En caso de plantearse ésta última apelación, a la que se puede llamar “apelación principal”, los autos serán elevados al Superior para que resuelva también, y en forma previa, la apelación diferida. (p. 5)<sup>141</sup>

Cabanellas de las Cuevas (2010) makes an explanatory translation of the “efecto diferido,” which is the following: “Effect of an appeal that operates only after carrying out certain procedures in the court whose decision has been appealed (e.g. such court has issued a final decision in a case where a prior interlocutory decision is being appealed)” (p. 295). We consider then that the “apelación concedida con efecto diferido” is like an interlocutory appeal, and Garner (2004) states that an “interlocutory appeal” is “an appeal that occurs before the trial court’s final ruling on the entire case” (p. 106). In addition, an interlocutory appeal is

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<sup>141</sup> Retrieved from [https://www.academia.edu/8608747/La\\_apelaci%C3%B3n\\_diferida\\_en\\_el\\_proceso\\_civil](https://www.academia.edu/8608747/La_apelaci%C3%B3n_diferida_en_el_proceso_civil)

allowed when the judge issuing the decision that is being appealed states in such decision that “a controlling question of law is in doubt” (“Interlocutory Appeals Act Law,” n.d.)<sup>142</sup>. We desire, however, to translate the expression in such a way as to state the “effect” in which the appeal is granted, because all motions for appeal granted “en relación” are granted with “efecto diferido” in Argentina<sup>143</sup> (section 243, Código Civil y Comercial de la Nación [section 243 of the Argentinian Civil and Commercial Code])<sup>144</sup>. Furthermore, we should point out that the word “deferred,” which is included in our translation, means “withheld for or until a stated time” (“Deferred,” n.d.)<sup>145</sup>. Besides, we are going to add a translator’s note, which is going to explain the following: “In the Argentinian Republic, an appeal granted “en relación” (i.e. new evidence and arguments are not allowed to be presented in the upper court) is granted with deferred effect when it is an interlocutory appeal, which is resolved by the upper court together with the appeal of the final decision of the lower court.” According to our research, our proposed translation is correct. Therefore, “con efecto diferido” can be translated as “with deferred effect,” but we have to add the translator’s note *ut supra* to expand the idea of such expression.

- “(...) la actora expresa sus *agravios* por memorial (...)” (p. 1, l. 21)

The term is “agravio,” and we would translate it as “error.” Ossorio (2013) states that “agravio” is “(...) mal, daño o perjuicio que el apelante expone ante el juez superior habérsele irrogado por la sentencia inferior (...)” (p. 71). Cabanellas de las Cuevas (2010) proposes to translate “agravio” as “lower-court error” (p. 65),

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<sup>142</sup> Retrieved from <https://definitions.uslegal.com/i/interlocutory-appeals-act/>

<sup>143</sup> How appeals are granted in Argentina is explained in more detail in page 18.

<sup>144</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#5>

<sup>145</sup> Retrieved from <https://www.merriam-webster.com/dictionary/deferred>

and Garner (2004) states that an “error” is “a mistake of law or of fact in a tribunal’s judgment, opinion, or order” (p. 582). In addition, in the United States, the appellate judges restrict the scope of review to “errors” that are “prejudicial” (they “contribute to the adverse part of the judgment”), “preserved below” (they are preserved in the record by timely objection by the appellant), and “presented above” (they are set out in an appellate brief) (“Appeal,” 2004, p. 64)<sup>146</sup>. As we can see, the word “errors” is used to refer to the issues that contribute to the moving party’s decision to appeal a lower court’s decision. According to our research, we can affirm that our proposed translation is correct. Therefore, the term “agravio” can be translated as “error”.

- “(...) la actora expresa su agravios por *memorial* (...)” (p. 1, l. 22).

The collocation is “*memorial*,” and we would translate it as “appellate brief.” First of all, we should point out that in Argentina an appeal can be granted “libremente” or “en relación.” If the appeal is granted “libremente,” it means that the moving party can present new evidence and arguments in the upper court. If the appeal is granted “en relación,” it means that new evidence and arguments are not going to be allowed to be presented in the upper court. When appeals are granted “libremente,” the appellant files a notice with the lower court in which she states that she wants to appeal a final decision, and then, if the motion for appeal is granted, she files an appellate brief called “*expresión de agravios*” containing the

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<sup>146</sup> Retrieved from <http://abogado.pbworks.com/w/file/attach/74676293/civpro.pdf>

issues she wants to be reviewed before the upper court. On the other hand, if the appeal is granted “en relación,” the appellant files a motion for appeal directly with the upper court, and then, if the motion is granted, the appellant files an appellate brief called “memorial” containing the issues she wants to be reviewed before the upper court (Di Pierro, personal communication, February 25, 2017). Thus, we consider that the expression “appellate brief,” which is “a brief submitted to an appeals court; specif., a brief filed by a party to an appeal pending in a court exercising appellate jurisdiction” (Garner, 2004, p. 204), is quite general to refer to both kinds of briefs submitted by the appellant in Argentina. Thus, we consider that we can use the expression “appellate brief” to translate “memorial” only if our choice does not cause a change of meaning. If the meaning of the expression “memorial” is crucial to the content of the document being translated, the best choice is to add the tentative translation [“appellate brief”] and to make a translator’s note, which would be the following: “In the Argentinian Republic, type of appellate brief filed with the upper court when the motion for appeal is granted “en relación,” i.e. when the moving party cannot present new evidence and arguments in the upper court.” However, we must warn the reader that, in the translation of the Spanish text attached to the sixth section of the thesis, we remove the section “i.e. when the moving party cannot present new evidence and arguments in the upper court” from the translator’s note in question, because such explanation appears in a previous translator’s note included at the end of the translation.

- “(...) no se advierten *vicios* (...) (p. 2, l. 2)

The term is “vicio,” and we would translate it as “defect.” Ossorio (2013) defines “vicio” as “defecto que anula o invalida un acto o contrato, sea de fondo o de forma” (p. 984), and Mazzucco (2009) proposes to translate “vicio” as “defect” (p. 590). In addition, a “defect” is defined as “want of something required by law,” and “it can be an error or flaw or a shortcoming in a legal process or in a legal document” (“Defect Law and Legal Definition,” n.d.)<sup>147</sup>. Garner (2004), as Ossorio (2013), also states that there are substantive defects and defects of form (p. 450). In addition, the expression “defect” appears in the following example: “A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules, unless the defendant raises the defect before the conclusion of the trial in a summary case (...)” (234 Pa. Code Rule 109)<sup>148</sup>. According to our research, our proposed translation is correct. Therefore, we can translate “vicio” as “defect.”

- “(...) no se advierten vicios que impusieran *de oficio* la anulación de ninguna de las sentencias (...)” (p. 2, l. 3)

The expression is “de oficio,” and we would translate it as “*sua sponte*.” As for the definition of the expression “de oficio,” it is the following: “En Derecho Procesal, las actuaciones y diligencias, así como las facultades, que pueden realizar los jueces por su propia iniciativa; es decir, sin instancia de parte” (Ossorio, 2013, p. 984). Besides, Cabanellas de las Cuevas (2010) translates “de oficio” as “*sua sponte*”

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<sup>147</sup> Retrieved from <https://definitions.uslegal.com/d/defect/>

<sup>148</sup> Retrieved from <http://www.pacode.com/secure/data/234/chapter1/s109.html>

(p. 232). With regard to the expression “*sua sponte*,” it means “without prompting or suggestion; on its own motion,” and the expression is used in the following example: “the court took notice *sua sponte* that it lacked jurisdiction over the case” (Garner, 2004, p. 1464). According to our research, our proposed translation is faithful to the original expression. Therefore, the expression “de oficio” can be translated as “*sua sponte*.”

- “(...) El expediente registra una *actividad procesal* hasta el día 7 de Septiembre de 2001 (...)” (p. 2, l. 16)

The expression is “*actividad procesal*,” and we would translate it as “procedural acts.” As for the definition of “*actividad procesal*,” it is related to the expression “*actos procesales*,” which means “los producidos dentro del procedimiento, en la tramitación por los órganos judiciales, las partes o los terceros, y que crean, modifican o extinguen derechos de orden procesal” (Ossorio, 2013, p. 57) (we should point out that the “procedimiento” refers to the set of actions that the parties must perform to prosecute a case [p. 771]). Cabanellas de las Cuevas (2010) translates “*acto procesal*” as “procedural step or legal act or action” (p. 50). As for the word “step,” it appears in the definition of “procedural law” given by Garner (2004), which is the following: “the rules that prescribe the steps for having a right or duty judicially enforced (...)” (p. 1241). In addition, the word “act” appears in the definition of “proceeding” also given by Garner (2004): “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment” (p. 1241). Thus, we consider that we can use both words to refer to the actions performed by the parties to prosecute

the case. Besides, “procedural” means “of or relating to procedure; esp. of or relating to the procedure used by courts or other bodies administering substantive law” (“Procedural,” n.d.)<sup>149</sup>. The expression “procedural steps” appears in the following example: “(...) the procedural steps that were taken as the case wended its way through the court system (...)” (“How to Read a Civil Procedure Case: First Steps,” n.d., p. 1)<sup>150</sup>. However, we choose to employ the word “acts” for style reasons. According to our research, our proposed translation is correct. Therefore, the expression “actividad procesal” can be translated as “procedural acts.”

- “(...) el Sr. Juez A Quo decreta *la citación de la demandada* y el traslado de la demanda (...)” (p. 2, l. 17)

The expression is “citación del demandado,” and we would translate it as “service of summons.” Ossorio (2013) defines “citación” as “acto por el cual un juez o tribunal ordena la comparecencia de una persona, sea parte, testigo, perito o cualquier otro tercero, para realizar o presenciar una diligencia que afecte un proceso” (p. 172). As for the expression “citación del demandado,” it can be explained as “acto procesal mediante el cual se ordena la presentación en juicio del demandado y la contestación de la demanda” (p. 173). Regarding the translation of “citar,” Mazzucco (2009) makes the following distinction: “citar” should be translated as “to summon” if the expression to be translated is “citar al actor/ al demandado,” and it should be translated as “to subpoena” if the expression to be translated is “citar testigos” (p. 385). With regard to the verb “to

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<sup>149</sup> Retrieved from <https://www.merriam-webster.com/dictionary/procedural>

<sup>150</sup> Retrieved from [https://courses.washington.edu/civpro03/helpful\\_hints/Briefing1stSteps.doc](https://courses.washington.edu/civpro03/helpful_hints/Briefing1stSteps.doc)

summon,” Garner (2004) defines it as “to command (a person) by service of a summons to appear in court” (p. 1477). Moreover, the noun “summons” means “a writ or process commencing the plaintiff’s action and requiring the defendant to appear and answer” (p. 1477). Besides, “to subpoena” means “to call before a court or other tribunal by subpoena.” Garner (2004) also gives the following example in which we can see that “to subpoena” collocates with “witnesses”: “to subpoena the material witnesses” (p. 1467). In addition, the noun “subpoena” means “a writ commanding a person to appear before court or other tribunal, subject to a penalty for failing to comply” (p. 1467). Moreover, in criminal cases, subpoenas are issued to command third parties to give testimony before court (“What Is a Subpoena?,” n.d.)<sup>151</sup>. Therefore, we consider that subpoenas are served generally on witnesses. As for the word “service,” which appears in our proposed translation, it means “the formal delivery of a writ, summons, or other legal process; legal notice” (Garner, 2004, p. 1399). Besides, our proposed translation appears in the title of a rule of the Federal Rules of Bankruptcy Procedure, which is the following: “Process; Service of Summons, Complaint” (Fed. R. Bankr. P. 7004)<sup>152</sup>. Having made our research, we can affirm that our proposed translation is correct. Therefore, the expression “citación del demandado” can be translated as “service of summons.” Besides, we should point out that, if the expression being studied appears together with “traslado de la demanda,” as in the fragment, both expressions can be translated as a unit as “service of process,” because the summons and the copy of the complaint served

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<sup>151</sup> Retrieved from <http://www.litigation.findlaw.com/going-to-court/what-is-a-subpoena.html>

<sup>152</sup> Retrieved from [https://www.law.cornell.edu/rules/frbp/rule\\_7004](https://www.law.cornell.edu/rules/frbp/rule_7004)

on the defendant are known, collectively, as “process” (“Service of Process,” n.d.)<sup>153</sup>.

- “(...) el Sr. Juez A Quo decreta la citación de la demandada y *el traslado de la demanda* (...)” (p. 2, l. 17)

The expression is “traslado de la demanda,” and we would translate it as “service of the complaint.” Ossorio (2013) states that “trasladar” means “[la] comunicación de una parte a otra, para que la conozca y acepte o contradiga” and that “traslado de autos” means “la acción y efecto de comunicar a la parte contraria un escrito o documento para que haga valer contra él las defensas de que se crea asistida” (p. 956). Besides, “demanda” means “escrito que inicia el juicio y tiene por objeto determinar las pretensiones del actor mediante el relato de los hechos que dan lugar a la acción, invocación del derecho que la fundamenta y petición clara de lo que se reclama” (p. 286). We have to point out that “demanda” is used in civil cases, and it does not have to be confused with “querrela,” which is used in criminal cases (p. 286). In addition, Mazzucco (2009) translates “traslado de la demanda” as “to serve notice of the complaint on somebody” (p. 579). Furthermore, we should point out that “service” means “the formal delivery of a writ, summons, or other legal process; legal notice” and that “complaint” means “the initial pleading that starts a civil action and states the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the demand for relief” (Garner, 2004, pp. 303 and 1399). The expression we propose as translation appears in the title of a rule of the Pennsylvania Code, which explains how service shall be made:

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<sup>153</sup> Retrieved from [https://www.law.cornell.edu/wex/service\\_of\\_process](https://www.law.cornell.edu/wex/service_of_process)

“Service of complaint” (246 Pa. Code Rule 307)<sup>154</sup>. According to our research, we can affirm that our translation is correct. Therefore, the expression “traslado de la demanda” can be translated as “service of the complaint.”

- “(...) La demandada (...) plantea la *inconstitucionalidad* del art. 37 del Código (...) (p. 2, l. 21)

The term is “inconstitucionalidad,” and we would translate it as “unconstitutionality”. Ossorio (2013) states that the expression being studied refers to “(...) los actos, leyes, decretos o resoluciones que se aparten de las normas [de la Constitución (Argentinian Constitution)] o que las contradigan” (p. 481). Furthermore, Cabanellas de las Cuevas (2010) proposes to translate the expression being studied as “unconstitutionality” (p. 408), and Garner (2004) points out that the state of being “unconstitutional” is being “contrary to or in conflict with a constitution (...)” (p. 1561). Besides, the word “unconstitutionality” is the noun that we can use to refer to something that is unconstitutional (“Unconstitutional,” n.d.)<sup>155</sup>. Our proposed translation, moreover, appears in the following example: “(...) after the Civil War and the Fourteenth Amendment, there can be no question about the unconstitutionality of secession” (Farber, 2012, p. 512)<sup>156</sup>. Having made our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, the term “inconstitucionalidad” can be translated as “unconstitutionality”.

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<sup>154</sup> Retrieved from <http://www.pacode.com/secure/data/246/chapter300/s307.html>

<sup>155</sup> Retrieved from <https://www.merriam-webster.com/dictionary/unconstitutional>

<sup>156</sup> Retrieved from <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3048&context=facpubs>

- “(...) la demandada sostiene la arbitraria interpretación del A Quo sobre el *instituto* de caducidad de instancia (...)” (p. 2, l. 25)

The expression is “instituto,” and we should point out that this word is wrongly used; the drafter of the text should have used the word “institución,” because “instituto” means “corporación científica, literaria, artística o benéfica [o] el edificio en que alguna de estas corporaciones funciona” (Ossorio, 2013, p. 499), and, on the other hand, the word “institución” means “cosa establecida o fundada; cada una de las materias de las diversas ramas del Derecho: institución de la familia, del matrimonio, de la patria potestad, de las sucesiones, de la propiedad” (p. 499). In addition, Ossorio (2013) employs the word “institución” in his definition of “prescripción” as follows: “(...) el Diccionario de la Academia define con acierto esta institución cuando dice que es la acción y efecto de prescribir (...)” (p. 755). Furthermore, Cabanellas de las Cuevas (2010) translates “institución” as “institution,” which is defined by Garner (2004) as “an elementary rule, principle, or practice” (p. 813). In addition, Garner (2004) provides the following example by which the usage of the word is illustrated: “The institution of private property is protected from undue governmental interference” (p. 1252). Thus, according to our research, the drafter of the document being studied should have used the word “institución” instead of “instituto.” Moreover, the word “institución” can be translated as “institution.”

- “(...) vencimiento del *período de emplazamiento* sin actividad procesal (p. 3, l. 3)

The expression is “período de emplazamiento,” and we would translate it as “summoning.” The “emplazamiento” is defined by Ossorio (2013) as follows:

Fijación de un plazo o término en el proceso durante el cual se intima a las partes o a terceros vinculados (testigos, peritos) para que cumplan una actividad o formulen alguna manifestación de voluntad; en general, bajo apercibimiento de cargar con alguna consecuencia gravosa (...). (p. 361)

In addition, Ossorio (2013) states that “emplazamiento” should not be confused with the term “citación,” because “emplazamiento” is not a summons to appear in court; it is a period of time fixed by the judge during which the parties must perform some activity in the proceeding, under penalty of the corresponding punishment if they do not perform the required acts (p. 172). Cabanellas de las Cuevas (2010) translates the expression being studied as “summoning; fixing of a time period during which the parties must fulfill a designated act” (p. 303). As for the verb “to summon,” Garner (2004) states that it means “to command (a person) by service of a summons to appear in court” (p. 1477); that “to serve” is “to make legal delivery of a writ, summons, or other legal process (p. 1399); and that “summons” is “a notice requiring a person to appear in court as a juror or witness” (p. 1477). Taking into account these definitions, we cannot employ the expression “summoning” proposed by Cabanellas de las Cuevas (2010), because, according to Ossorio (2013), during the “período de emplazamiento,” no party is commanded to appear in court (p. 172). According to our research, we cannot employ our proposed translation. We conclude that we have to leave the term as it is and add the

following tentative translation between brackets, which contains the idea proposed by Cabanellas de las Cuevas (2010) stated above: [time period during which the parties must fulfill a designated procedural act].

Having explained and translated the terms and expressions included in the Spanish document, we conclude that the most difficult expressions to translate were “caducidad de instancia” and “prescripción,” because they do not have exact equivalents in the target language. In addition, as we have corrected the orthographic and grammatical mistakes of the Spanish document and translated the collocations and expressions present in such text, we can proceed to pass the last comments on the analysis of the text. After the comments, we translate the section of the document analyzed according to the format guidelines set forth by the Certified Legal Translators' Association of the City of Buenos Aires.

## ***SECTION 5: CONCLUSION***

We consider that the analysis of the Spanish document was a detailed and careful study that entailed understanding the type of document we were dealing with and the judicial system of Argentina, as well as the judicial system of the province of Santa Fe (in which the document was drafted) and the laws and codes cited in the text. In addition, the analysis included the examination of the orthographic and grammatical mistakes present in the text and the investigation and translation of the collocations, terms, and expressions that we considered important for the translation of the document. The study revealed that a vast number of orthographic and grammatical mistakes were made and that there were several words considered legal jargon that were essential for the meaning of the text. Those results, coupled with the investigation about the type of document we were dealing with and the judicial system of the country of origin, served as a basis to help us make the translation of the section of the text for which we conducted the in-depth analysis, yet the process of translation posed different challenges, because there were terms and expressions that did not have exact equivalents in the target language. Nevertheless, the translation was an interesting task that expanded our knowledge of appellate procedure in Argentina. In the following section, we present the translation of the pertinent section of the Spanish text, and then we analyze the English text.

## **SECTION 6: TRANSLATION**

As stated before, in this section we translate the part of the text that we have been asked to translate into English. As it is a certified legal translation, it bears the signature and the seal of the translator who has a professional license issued by the Certified Legal Translators' Association of the City of Buenos Aires. In addition, it is drafted according to the formalities established by such entity. We should point out that, in order to make the translation in question, we must take into consideration the analyses that we have performed to translate the text in the most faithful way. In the following pages, we present the product of our study of the Spanish document.

(Expte. N° 68- Año 2013)

En la ciudad de Santa Fe, a los 5 días de febrero del año dos mil catorce , se reúnen en Acuerdo

Ordinario los Señores Jueces de la Sala Segunda de la Cámara de Apelación en lo Laboral, Dres.

José Daniel Machado, Sebastián César Coppoletta y Julio César Alzueta, para resolver los recursos

de nulidad y apelación puestos por ambas partes, contra la sentencia dictada por el Señor Juez de

Distrito 1 de Primera Instancia en lo Laboral de la Primera Nominación de Santa Fe, en los autos

caratulados: **“MIRABET, Hilda Graciela De Lía C/ESC. INCORP. N° 1179 M. A. PAUTASSO**

**s/C.P.L.” (Expte. 68- Fo. 133- Año 2013).**

Acto seguido el Tribunal se plantea las siguientes cuestiones:

**PRIMERA:** ¿Procede el recurso de nulidad?

**SEGUNDA:** En caso contrario ¿se ajusta a derecho la sentencia impugnada?

**TERCERA:** ¿Qué pronunciamiento corresponde dictar?

Dispuesto el orden de votación, resulta: **Coppoletta, Machado, Alzueta.**

A la **primera cuestión** el Dr. **Coppoletta** dice:

Contra la Resolución n° 106 de fecha 13 de Abril de 2009 por la cual el Sr. Juez A Quo

rechaza el planteo de caducidad de instancia interpuesto por la demandada, se alza la vencida

mediante los recursos de nulidad y apelación total que interpone y son concedidos con efecto

diferido. A su vez, contra la Resolución n° 283 de fecha 27 de Noviembre de 2012 por la cual el Sr.

Juez A Quo admite la demanda se alzan ambas partes: la actora, por medio de los recursos de nulidad

y apelación parcial indicando que el rubro recurrido es la tasa de interés reducida aplicada por el A

Quo, que son concedidos; y la parte demandada a través de los recursos de nulidad y apelación total

que interpone y son concedidos. Elevados los autos a esta instancia, la actora expresa sus agravios

por memorial que se agrega al expediente, los que son contestados por la demandada quien a su vez

expresa sus propios agravios por escrito agregado a los autos, los que a su vez son contestados por la

actora. Habiéndose decretado el pase de los autos a resolución, quedan las presentes en estado de

dictar sentencia.

Ambas partes interponen recursos de nulidad contra la Resolución n° 283; y la

(Expte. N° 68- Año 2013)

demandada interpone recurso de nulidad contra la Resolución n° 106, pero, en sus respectivos

escritos en esta Instancia, ninguna queja expresan sobre el tema. Por otra parte, no se advierten vicios

que impusieran de oficio la anulación de ninguna de las sentencias. A mi juicio pues, de acuerdo con

las breves consideraciones expuestas, los planteos de nulidad han de rechazarse.

En consecuencia, voto por la negativa.

A la misma cuestión el Dr. **Machado** dice:

Que expone las mismas razones vertidas por el Juez preopinante y, como él, vota por la

negativa.

A igual cuestión el Dr. **Alzueta** dice:

Que comparte los fundamentos vertidos por los preopinantes, y como ellos, vota por la negativa.

A la **segunda cuestión** el Dr. **Coppoletta** continúa diciendo:

Paso ahora a tratar el recurso de apelación de la parte demandada contra la Resolución nº 106.

La actora interpuso demanda el día 29 de Junio de 2001 a las 8,45hs (fs. 0). El

expediente registra una actividad procesal hasta el día 7 de Septiembre de 2001, fecha en la cual el

Sr. Juez A Quo decreta la citación de la demandada y el traslado de la demanda. Luego, no existen

constancias de actividad procesal alguna hasta el día 7 de Noviembre de 2008, cuando la parte actora

presenta un escrito. Y el decreto del 07/09/01 es notificado a la demandada por cédula diligenciada

en fecha 15 de Diciembre de 2008 (fs. 91).

La demandada opone la caducidad de la instancia, y plantea la inconstitucionalidad del

art. 37 del Código Procesal Laboral de la Provincia de Santa Fe (fs. 82 vta).

El A Quo rechazó el

planteo de caducidad y no trató la cuestión constitucional, decisión recurrida por vía de apelación..

En su expresión de agravios, la demandada sostiene la arbitraria interpretación del A

Quo sobre el instituto de caducidad de instancia y reitera la petición de declaración de

inconstitucionalidad del art. 37 C.P.L. invocando la protección de sus garantías constitucionales.

(Expte. N° 68- Año 2013)

Al tratar la caducidad, el A Quo hizo referencia a los requisitos del art. 37 C.P.L.: 1)

inactividad procesal por mas de un año; 2) intimación a la parte para que manifieste si tiene interés

en la prosecución de la causa; 3) vencimiento del período de emplazamiento sin actividad procesal

idónea para impulsar el proceso. Sin embargo, esta situación presupone una litis ya trabada, por la

cual la parte demandada que interviene en el proceso, ante la inactividad procesal por mas de un año

opone la caducidad e intima a la parte actora a que se pronuncie en tiempo y forma válida; mas no es

ese el caso de autos, pues la demandada no tuvo conocimiento del juicio iniciado en Junio de 2001 sino hasta Diciembre de 2008. Lo que aquí tenemos es el caso de la demanda a los simples fines de interrumpir la prescripción, aunque ello no surge explícito de la demanda (para no confundir con los casos en que en la demanda se hace expresa referencia que su objeto es a los simples fines interruptivos de la prescripción) ha resultado evidente del comportamiento de la parte actora..

La actividad de la actora implica un ejercicio abusivo del art. 37 C.P.L. y del art. 3987

del Código Civil que le permite interrumpir la prescripción con la presentación de la demanda y, sin notificar la misma por un prolongado período de tiempo sin ningún tipo de justificativo (7 años), mantiene su reclamo sin prescribir y sin que se produzca la caducidad de la instancia por disposición del art. 37 C.P.L..

El abuso del derecho ha sido reconocido de alguna forma por el A Quo, ya que reduce

a la mitad los intereses moratorios devengados.

Y el ejercicio de un derecho en forma abusiva no puede ser amparado por el Derecho.

Desde ya que entiendo que el Principio Protectorio -cardinal en el Derecho del Trabajo- no implica

una suerte de patente de corso para hacer y deshacer el Derecho en forma abusiva, pues de tal forma se llega a la inexistencia de reglas.

La disposición normativa del art. 37 C.P.L. es violatoria de los derechos subjetivos

constitucionales de propiedad, debido proceso y defensa en juicio de la demandada porque, además

de los requisitos comunes de inactividad procesal y de transcurso del tiempo, requiere para la

declaración judicial de caducidad de instancia la manifestación por la contraparte sobre si aún tiene

(Expte. N° 68- Año 2013)

interés en el pleito, posibilitando de ésta manera el abuso de derecho de mantener la instancia aún sin

impulso procesal tal como lo ha realizado la actora en estos autos.

El abuso del derecho procesal de la actora afecta el derecho subjetivo constitucional de

propiedad de la demandada. Así, el Código Civil posibilita a todas las personas liberarse de las deudas por la prescripción liberatoria, modo de extinción de las obligaciones por el transcurso del tiempo y la inacción del acreedor. La ley 20.744 recepciona en forma especial para el Derecho del Trabajo este modo de extinción de las obligaciones estipulando un plazo de prescripción de dos años.

Pues bien, la demandada se encuentra reclamada en Diciembre de 2008 por deudas que la actora reclama como devengadas exactamente diez años antes, dado que el despido se produjo en 17 de Diciembre de 1998 y la cédula anoticiando el juicio se diligenció el 15 de Diciembre de 2008. Si bien éstas deudas se encontrarían prescriptas y la demandada debería liberarse de la deuda reclamada, lo cierto es que el ejercicio abusivo por parte de la actora del art. 37 C.P.L. y del art. 3987 del Código Civil permite mantener jurídicamente vigente la deuda reclamada, impidiendo a la empleadora de liberarse por el instituto de la prescripción liberatoria. Esta actividad abusiva es permitida por el art. 37 C.P.L., que exige la manifestación de voluntad de la contraparte para operar la caducidad de la instancia. Como acertadamente lo afirma Nicolás Vitantonio, situaciones como la de autos donde la actora presenta la demanda y luego abandona el expediente para notificar el traslado de la demanda mucho tiempo después sin justificación alguna de la demora, *"...proyectan una situación no querida por el legislador y resulta evidente que –al margen de cualquier opinión sobre la existencia o inexistencia de caducidad en el procedimiento laboral- no fue la teleología del legislador provocar situaciones como las referidas. La distorsión resulta consecuencia de la oscuridad normativa. Ello supone que el operador judicial debe utilizar todos los medios técnicos y doctrinales necesarios para dar respuesta a una situación fáctica no querida ni buscada por el legislador"* (Vitantonio, Nicolás; Caducidad de instancia. Comentario al art. 37 CPL, en: Vitantonio,

Nicolás (Dir); Código Procesal Laboral de la Provincia de Santa Fe. Tomo I. Ed. Nova Tesis.; pág.

(Expte. N° 68- Año 2013)

299).

El análisis constitucional del caso es difícil, toda vez que frente al sujeto de especial

tutela constitucional que es la parte actora amparado en sus derechos laborales por el Principio

Protectorio, se encuentra el sujeto empleador con las garantías constitucionales a su propiedad y la

obtención por parte de la jurisdicción de un debido proceso y de una sentencia suficientemente

fundada. Y en la ponderación del caso, estimo relevante que como indudable expresión del Principio

Protectorio, la Constitución de la Provincia de Santa Fe, en su art. 20, dispone que Santa Fe

*"Establece tribunales especializados para la decisión de los conflictos individuales de trabajo, con*

*un procedimiento breve y expeditivo..."*, es decir, que la necesidad de la brevedad en el juicio es

reconocida a nivel constitucional en ésta Provincia, y si bien en el trabajo de ponderación entre dos

derechos subjetivos constitucionales como son la protección del trabajador y la propiedad del

empleador tiene cierta ventaja el primero atento el mencionado carácter de sujeto de preferente tutela

constitucional con la cual está investido el trabajador, esta "preferencia" debe por lo menos ser

honrada por el sujeto trabajador en su carácter de actor laboral, y por el profesional abogado que

represente sus intereses en el litigio y, por lo tanto, si la propia conducta procesal de la parte actora es

claramente contraria a la brevedad de su pleito (de tal forma que se toma 10 años entre el despido y

la notificación de la demanda) el Principio Protectorio se encuentra bastardeado por el propio sujeto

titular del interés y no merece entonces una "preferente" protección.

Tengo especialmente en cuenta que la declaración de inconstitucionalidad de una

norma jurídica es un acto de suma gravedad y, si bien el control de constitucionalidad y

convencionalidad debe ser efectuado -aún de oficio- por todos los jueces, debe ser utilizado como

ultima *ratio decidendi*, pues implica desconocer en el caso concreto la voluntad democrática expresada por el Poder Legislativo.

Como corolario, voto por la negativa y, modificando la sentencia de grado declarar en

éste caso la inconstitucionalidad del art. 37 C.P.L. y, por aplicación del art. 233 párrafo 2do. del

Código Procesal Civil y Comercial de la Provincia de Santa Fe declarar operada la caducidad de la

(Expte. N° 68- Año 2013)

instancia en estos autos el día 08 de Septiembre de 2002.

Atento mi voto, resulta abstracto el tratamiento de los demás recursos de apelación de ambas partes.

A la misma cuestión el Dr. **Machado** dice:

Disiento en esta oportunidad con el Sr. Juez preopinante, sin perjuicio de valorar la

inspiración ética y moralizadora del proceso que subyace a su opinión.

La cuestión de la caducidad del proceso laboral reconoce un debate de vieja data en la

doctrina nacional y también en los operadores de nuestra provincia. Muchos códigos provinciales no

la contemplan bajo ninguna modalidad puesto que se la estima antitética con un procedimiento en

que *el impulso de oficio* es la regla (Cfr. TOSELLI, Carlos y ULLA, Alicia: Código Procesal del

Trabajo-Ley 7987; Alveroni, Córdoba, 2007; pág.141; SOMARÉ, José I. y MIROLO, René:

Comentarios a la ley procesal del trabajo de la provincia de Córdoba; Advocatus, 1998, pág.99). La

calidad predominantemente inquisitiva del proceso laboral implica que incumbe al juzgado la

impulsión del proceso, por cuanto se ha entendido, en general, que el instituto de la perención resulta

un "cuerpo extraño" en su seno y una "contradicción en sus términos", ya que convoca al juez a

declarar la caducidad de un proceso cuya instancia omitió (FERNÁNDEZ GIANOTTI, Enrique: "La

perención de instancia en el proceso laboral de la Capital y de la Provincia de Buenos Aires"; D.T.

1974, pág.277). También se ha entendido que el art.259 del RCT en tanto declara que "*no hay otros*

*modos de caducidad que los que resultan de esta ley” proyecta sus consecuencias sobre el campo específicamente procesal impidiendo que las legislaciones provinciales regulen en sentido contrario (Cfr. BERMÚDEZ, Jorge Guillermo; en RCT Comentado dirigido por Miguel Maza; La Ley, 2012, III-505).*

Algunas provincias argentinas legislan específicamente en ese sentido, aclarando que la caducidad es improcedente (Mendoza -ley 2144 y sus modificatorias- art.108 y Tierra del Fuego -ley 6204-). En otras legislaciones rituales que nada explícito dicen sobre el tema, se ha arribado a la misma conclusión por vía interpretativa (Entre Ríos, Córdoba y Justicia Nacional del Trabajo de la (Expte. N° 68- Año 2013 Capital Federal) (Cfr. MADDALONI, Osvaldo y TULA, Diego: “Prescripción y caducidad en el derecho del trabajo”; Abeledo Perrot; 2008, pág.198). Las únicas provincias que responden afirmativamente a la pregunta sobre la caducidad en el proceso laboral sin modificaciones respecto del instituto del proceso civil son Tucumán, Catamarca y San Juan.. Las demás, no sin matices, adoptaron la solución mixta que en su hora propiciara Antonio Vázquez Vialard (“La caducidad en el proceso laboral”; T y SS 1973, pág.801), admitiendo la caducidad pero de manera *modalizada o adaptada* no solo en tanto prevén plazos más largos que los usuales en materia civil, sino que requieren una vista previa al trabajador (o a ambas partes) para que produzcan actividad procesal útil que revele su interés en continuar o no con el proceso. Es la solución, entre otras, de la Provincia de Buenos Aires (art.12, ley 11.653), de la de Corrientes (art.16, ley 3540), de Formosa (art.11 ley 639), de Misiones (art.33, ley 2884), de Río Negro (art.13 ley 1504) y, obviamente, de Santa Fe.

De lo dicho se sigue que, en una epidérmica mirada comparatista, la posibilidad de que los derechos del trabajador caduquen ha de entenderse excepcional y por ende, como toda excepción

a una regla de derecho, debe interpretarse restrictivamente. El C.P.L. santafesino, ley 7945, elastizó si se quiere esta directriz al posibilitar que opere la caducidad pero bajo reglas precisas que permitan cerciorarse del efectivo desinterés de las partes en continuar con el proceso. La idea rectora es que, a diferencia de lo que acontece en el proceso civil, ese desinterés no puede presumirse por el solo transcurso del tiempo de inactividad. La reforma al art.37 del C.P.L. dispuesta por la ley 13.039, y que diera lugar a un intenso e interesante debate en el seno de la Comisión reformadora entre quienes proponían la lisa y llana derogación de la posibilidad de caducidad y quienes, por el contrario, propiciaban la adopción del sistema del C.P.C.C. aunque con un plazo más largo, optó a propuesta del suscripto y de los Dres. Vitantonio, De Petre, Suasnábar y Mambelli por una fórmula “de compromiso” por la que se mantuvo el sistema *cuyo eje es la intimación a las partes* con la limitación de que solo podrá utilizarse esta modalidad redentora una sola vez durante el proceso. Con todo lo cual quiero significar que estamos en presencia de un instituto al que *deliberadamente* se le (Expte. N° 68- Año 2013) ha impuesto un determinado tratamiento legal tomando como punto de partida que la tutela de la pervivencia del derecho (del crédito alimentario laboral) ha de prevalecer sobre los argumentos basados en la seguridad jurídica. Marginalmente anoto, aunque no necesariamente tenga que ver con el caso en examen, que pueden haber razones no espurias ni indolentes por las cuales se decida no notificar la demanda. Tales por ejemplo los casos en que se desea la continuidad del vínculo sin dejar que prescriba un crédito por diferencias salariales o por un accidente, o el esperar la decantación (a favor o en contra) de la jurisprudencia sobre ciertas cuestiones cuya interpretación o constitucionalidad esté en crisis. También es frecuente que el empleador “evanesca” quitando interés actual a la causa para “materializarse” luego en otra actividad económica que renueva las

posibilidades de efectivizar el cobro. O que sea el propio trabajador quien migra -esto es especialmente común en el medio rural- dejando a su abogado sin la información suficiente para impulsar el proceso. No me atrevería a calificar a ninguna de dichas especulaciones como maniobras contrarias a la buena fe.

La propuesta del vocal preopinante en cuanto propone la declaración de inconstitucionalidad del art.37 del C.P.L., aun cuando lo fuera para el caso en particular y no con carácter absoluto, conlleva a la dificultad de establecer casuísticamente cual plazo de inactividad ha de entenderse abusivo y cual no, abriendo un espacio a la discrecionalidad judicial y, paradójicamente, a *la incerteza jurídica* de los litigantes. Es impensable un sistema de perención sin plazo cierto, de modo que, a falta de otro, habría que tomar el de un año de inactividad, lo que nos conduciría a un camino en que inexorablemente se terminaría por afirmar una voluntad contraria a lo que explícitamente especificó el legislador.

Pero además de ese argumento consecuencial entiendo que el proceso laboral, que como todos los ritos debe estar al servicio instrumental del derecho de fondo (CS, "Azimonti c/Cianni"; La Ley 1979-A, 59), está íntimamente ligado a la garantía constitucional de protección del trabajo del cual derivan, entre otras, la directriz de irrenunciabilidad de los créditos, de que el silencio del trabajador no comporta un abandono de derechos y de que el desistimiento -del cual la (Expte. N° 68- Año 2013) caducidad no es sino una manifestación distinta- requiere de su conformidad expresa y del contralor judicial suficiente para descartar que suponga una vía oblicua para burlar el orden público.

Voto pues por la confirmación de la resolución recurrida.

Tocante a la prescripción, ha dicho esta Sala en su composición originaria y en la causa

"Bogado c/Casa Tía" (expte. n° 12/año 2005) (auto de fecha 01.11.05).

"Es doctrina recibida que el efecto interruptivo asignado por el art.3987 C.C. a las

demandas judiciales sólo cede en los supuestos expresamente previstos en dicha norma (desistimiento, caducidad o “absolución”), tradición que se remonta a un antiguo Plenario de la C.N.C.C. (“Mulhall c/Nouguier”; del 23.08.1922; J.A.-12-863; ver también Salvat, Tratado, III-2160) según el cual la norma adopta el adagio romanista “las acciones que por el tiempo y la muerte se pierden, incluidas en juicio, se salvan para siempre” (*omnes actiones qua morte aut tempo peremit, semel inclusae iudicio salvae permanent*). Así lo ha entendido también la C.S.J.N. de manera reiterada desde el 26.04.1957 (en “Diltlevsen c/Gobierno Nacional”; L.L.-87-725): “la interrupción de la prescripción causada por la demanda se prolonga cualquiera sea luego la rapidez o continuidad del trámite en toda la duración del proceso”. (Cfr. CIFUENTES, Santos: C.C. Comentado; IV-703; La Ley, 2004 y sus citas.)”

De allí que, cuando el Sr. Juez de la anterior instancia razona que el rechazo de la caducidad condiciona en sentido negativo la posibilidad de que el plazo de prescripción pueda computarse nuevamente, se ajusta a derecho más allá de las razonables críticas que al funcionamiento del dispositivo en el caso dedica el recurso.

Del relato de la secuencia que culmina en el despido de la actora por abandono de trabajo hecha por la recurrente a f. 195, fluye sin más explicada la falta de justificación del mismo.

El art. 209 L.C.T. no impone al dependiente otra carga que la de dar aviso de la incapacidad laboral por motivo de enfermedad, circunstancia que aparece cumplida por medio de la pieza postal remitida por su esposo el día 16.12.98 y de cuya recepción por la demandada antes de la formalización del despido da cuenta su telegrama de f. 42. Luego, a la fecha en que este último se comunica (Expte. N° 68- Año 2013) (17.12.98), obraba entonces en perfecto conocimiento de la imposibilidad argumentada por la trabajadora, lo cual excluye la posibilidad de interpretar su inasistencia como *intención de*

*abandonar el contrato*. Y aunque no haya sido argumento utilizado por el *a quo*, cabe recordar además que según pacífica interpretación de los arts.57 y 242 de la L.C.T. el plazo de la intimación (24 horas) resultó irrazonable, máxime cuando mediaban antecedentes inmediatamente anteriores de licencia por enfermedad inculpable.

Doctrina y jurisprudencia son pacíficas en el entendimiento de que el instituto reglado por el art. 244 L.C.T. no puede entenderse configurado sino cuando el trabajador, que tiene “la obligación de explicarse según la ley”, omite responder a la intimación. De modo que la sola invocación del derecho a licencia por enfermedad aborta la posibilidad de despedirlo bajo tal motivación. Y, en todo caso, si la empleadora entiende que la excusa es inválida cuenta con las atribuciones que le confiere el art. 210 L.C.T. para encaminar luego el despido por violación al deber de fidelidad.

La actora se agravia por la reducción a la mitad de la tasa de interés usual dispuesta por

el *a quo* entre la fecha de la mora y la de la contestación de la demanda.

Advierto, para empezar,

cierta oscuridad en este pasaje del fallo que merece ser aclarada, ya que omite especificar desde que

momento corresponde pasar del 7,5% anual al 11 % anual, quedando en cambio en claro que la tasa

del 22% corre desde la contestación de la demanda. Ese momento, en mi opinión, no puede ser otro

que el del abandono del criterio de la libre apreciación -coincidente con la “salida de la

convertibilidad”- para adoptar mayoritariamente la llamada *tasa activa*, es decir que la fecha de corte

entre una y otra tasa ha de coincidir con lo dispuesto por la Resolución CNAT 2357/02 -seguida por

la jurisprudencia de esta Cámara- es decir el 01.01.02.

Aclarado ello, resulta que la tasa impuesta se asemeja a la tasa de *interés puro* con la

que corresponde indemnizar al acreedor por la indisponibilidad del capital, privándole en cambio del

lucro cesante que hubiere obtenido de su colocación financiera. Y ello, en el caso, resulta de estricta

justicia en la medida en que los argumentos considerados para rechazar la caducidad opuesta no (Expte. N° 68- Año 2013) valen en cambio para justificar que sea el deudor quien deba internalizar totalmente las consecuencias de la depreciación de la moneda -ingrediente insoslayable entre los fundamentos que oportunamente se dieran para aplicar la tasa activa- cuando no ha mediado una diligencia razonable de la acreedora en la constitución o prosecución de la litis. Voto por la afirmativa. Costas a la demandada.

A igual cuestión el Dr. **Alzueta** dice:

Que comparte los fundamentos vertidos por el Dr. Machado, y como él, vota en idéntico sentido.

A la **tercera cuestión** los Dres. **Coppoletta, Machado y Alzueta** dicen:

Que atento el resultado de las votaciones precedentes corresponde: 1)

Rechazar los

recursos puestos por actora y demandada: 2) Aclarar la sentencia alzada en punto a que los intereses

del 11% anual correrán entre el 01.01.02 y la fecha de contestación de la demanda, sin perjuicio de

los dispuestos por el fallo para la etapa anterior (7,5% desde la mora) y posterior (22% hasta el

efectivo pago); 3) Los honorarios de segunda instancia se regulan en el 50% de los que se fijan en la

anterior.

Por los fundamentos y conclusiones del Acuerdo que antecede, la

**SALA II DE LA CÁMARA DE APELACIÓN EN LO LABORAL**

**R E S U E L V E:**

1) Rechazar los recursos puestos por actora y demandada.

2) Aclarar la sentencia alzada en punto a que los intereses del 11% anual correrán

entre el 01.01.02 y la fecha de contestación de la demanda, sin perjuicio de los dispuestos por el fallo

para la etapa anterior (7,5% desde la mora) y posterior (22% hasta el efectivo pago).

3) Los honorarios de segunda instancia se regulan en el 50% de los que se fijan en la

anterior.

Resérvese el original, agréguese copia, hágase saber y oportunamente bajen.

Concluido el Acuerdo, firman los Señores Jueces por ante mí, que doy fe.

(Expte. N° 68- Año 2013)

Dr. **COPPOLETTA** Dr. **MACHADO** Dr. **ALZUETA**

Dra. **Claudia BARRILIS**

Secretaria

TRADUCCIÓN PÚBLICA -----

[In the upper margin of all the pages of the document, there appears an expression that reads] (Case record no. 68, year 2013) -----

On February 5, 2014, in the City of Santa Fe [in the province of Santa Fe of the Argentinian Republic], the judges of the *Sala Segunda de la Cámara de Apelación en lo Laboral* [Room no. 2 of the Appellate Court on labor matters] José Daniel Machado, Sebastián César Coppoletta, and Julio César Alzueta, all of them Juris Doctors, sit en banc in an *acuerdo ordinario*<sup>1</sup> to rule on the *recursos de nulidad* [motions to vacate the lower court's judgment]<sup>2</sup> and the appeals filed by both parties against the final decision issued by the judge of *Distrito 1 de Primera Instancia en lo Laboral de la Primera Nominación de Santa Fe* [District no. 1 of Original Jurisdiction on labor matters of the First Division of Santa Fe] in the case entitled "*MIRABET, Hilda Graciela De Lía C/ESC. INCORP. N° 1179 M. A. PAUTASSO s/C.P.L.*" ["Mirabet, Hilda Graciela De Lía v. ESC. INCORP. no. 1179 M. A. PAUTASSO, on Procedural Labor Code of Santa Fe"] (case record no. 68, p. 133, year 2013).-----

Thereafter, the tribunal sets out the following questions:-----

FIRST: Is the motion to vacate the lower court's judgment lawful? -----

SECOND: If not, is the judgment being appealed in accordance with the law? ---

THIRD: What is the final judgment that should be issued? -----

According to the draw, the judges shall vote in the following order: Coppoletta, Machado, Alzueta. -----

Regarding the first question, Judge Coppoletta states the following: -----

Against the ruling no. 106 of April 13, 2009, by which the lower-court judge denies the motion for involuntary dismissal filed by the defendant, the losing party files a motion to vacate the lower court's judgment and an appeal, which are granted with deferred effect<sup>3</sup>. In addition, against the ruling no. 283 of November 27, 2012, by which the lower-court judge sustains the complaint, the plaintiff files a motion to vacate the lower court's judgment and a limited appeal, stating that the portion of the judgment that is appealed is the reduced interest rate applied by the lower-court judge, and the defendant files a motion to vacate the lower court's judgment and an appeal. Said motions and appeals filed by the plaintiff and the defendant are granted. -----

Once the case is sent to this Court, the plaintiff files a *memorial* [appellate brief]<sup>4</sup> that is added to the case record and answered by the defendant by an appellate brief that is also added to the case record. In addition, the plaintiff answers the defendant's appellate brief. Being the case ready to be decided, the legal proceedings are pending before this Court.-----

Both parties file a motion to vacate the lower court's judgment against ruling no. 283, and the defendant files a motion to vacate the lower court's judgment against ruling no. 106; however, in their appellate briefs filed with this Court, no issue is set out in respect of such motions. Furthermore, there are not defects that compel this Court to vacate either judgment *sua sponte*. In my opinion and in accordance with the foregoing, the motions to vacate the lower court's judgment shall be denied.

Therefore, I conclude that the answer to the first question is no. -----

Regarding the same question, Judge Machado states the following:-----

That he sets out the same reasons stated by Judge Coppoletta and, like him, concludes that the answer to the first question is no. -----

Regarding the same question, Judge Alzueta states the following: -----

That he agrees to the reasons set out by Judge Coppoletta and Judge Machado and, like them, concludes that the answer to the first question is no.-----

Regarding the second question, Judge Coppoletta states the following: -----

I shall now address the appeal filed by the defendant against the ruling no. 106. The plaintiff files the complaint on June 29, 2001, at 8:45 a.m. (p. 0). According to the case record, procedural acts are performed until September 7, 2001, when the lower-court judge orders that the defendant be served with process. No procedural acts are performed thereafter until November 7, 2008, when the plaintiff files a brief. In addition, the order of September 7, 2001 is notified to the defendant by summons served on December 15, 2008 (p. 91).-----

The defendant files a motion for involuntary dismissal and states that the *artículo 37* of the *Código Procesal Laboral* of Santa Fe [section 37 of the Procedural Labor Code of the province of Santa Fe] is unconstitutional (p. 82, overleaf). The lower-court judge denies the motion for involuntary dismissal and does not address the constitutional issue, and the defendant appeals such decision.-----

In her appellate brief, the defendant argues that the lower-court judge construes the institution of the involuntary dismissal arbitrarily and, again, asks that section 37 of the Procedural Labor Code of Santa Fe be declared unconstitutional, invoking the protection of her constitutional guarantees.-----

When addressing the involuntary dismissal, the lower-court judge makes reference to the requisites set forth in section 37 of the Procedural Labor Code of Santa Fe, which are the following: (1) no procedural acts performed for more than one year, (2) the summoning of the party so that she expresses if she has the intention to pursue the case, and (3) the running of the period of *emplazamiento* [time period during which the parties must fulfill a designated procedural act] without procedural acts that are effective for the prosecution of the case. Nevertheless, this situation presupposes the answer of the complaint, for which the defendant, as no

procedural acts are performed for more than one year, files a motion for involuntary dismissal and summons the plaintiff to answer in due time. However, that is not the case, because the defendant is not served with the complaint filed on June 2001 until December 2008. What we are dealing with is the case in which the complaint is filed for the sole purpose of tolling the statute of limitations; although this fact does not arise expressly from the complaint, it is evident due to the behavior of the plaintiff (this is not to be confused with the case in which a plaintiff expressly states in the complaint that the latter is filed for the sole purpose of tolling the statute of limitations).-----

The behavior of the plaintiff constitutes the abuse of section 37 of the Procedural Labor Code of Santa Fe and of *artículo* 3987 of the *Código Civil* [section 3987 of the former Argentinian Civil Code], which makes it possible for the plaintiff to toll the statute of limitations with the filing of the complaint and, without serving notice of the complaint on the defendant for a long period of time with no grounds for doing so (7 years), to avoid that her claim become statute-barred and that the involuntary dismissal be considered -----

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as having taken place as set forth in section 37 of the Procedural Labor Code of Santa Fe. [...] -----

Translator's notes: -----

<sup>1</sup> In Argentina, the *acuerdo ordinario* refers to the general assembly that the appellate judges hold to hear a case en banc. -----

<sup>2</sup> In Argentina, a *recurso de nulidad* is an appeal filed in order that the final judgment be declared null and void based on the grounds that it was pronounced without complying with the requirements of time, place, and form prescribed by law. Nowadays, according to the Argentinian Procedural Civil and Commercial Code, the notice of appeal generally comprises this kind of appeal. -----

<sup>3</sup> In Argentina, an appeal granted *en relación* (i.e. new evidence and arguments are not allowed to be presented in the upper court) is granted with “deferred effect” when it is an interlocutory appeal, which is resolved by the upper court together with the appeal of the final decision of the lower court. -----

<sup>4</sup> In Argentina, type of appellate brief filed with the upper court when the motion for appeal is granted *en relación*. -----

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It is a faithful translation into English from the beginning to page 3, line 16 of the photocopy of the original document in Spanish that I attach hereto. The translation is comprised of 5 pages. Buenos Aires, April 29, 2017. -----

Es traducción fiel al inglés desde el comienzo hasta la página 3, línea 16 de la fotocopia del documento original en español que adjunto al presente. La traducción consta de 5 fojas. Buenos Aires, 29 de abril del 2017. -----

### **PART 3: LOGBOOK OF THE ENGLISH TEXT**

#### ***SECTION 1: INTRODUCTION TO THE ENGLISH TEXT***

The original text is a final judgment issued by the Supreme Court of Canada in 2016. Moreover, the text of this recent judicial decision is comprised of 38 pages

and 81 paragraphs. The sentences are short, and the drafter employs different linking expressions to organize the ideas of the text, such as the contrast linkers “however” and “in contrast” (p. 4, ll. 3 and 14) and the result linker “thus” (p. 5, l. 13)<sup>157</sup>. We can also detect that the text includes vocabulary of everyday English and colloquial idioms, such as “to jump to conclusions” and “to fill in the blanks” (p. 21, l. 22; p. 20, l. 13). The text is also written with a reduced number of expressions that are considered legal jargon; for example, the following terms and expressions are included: “circumstantial evidence” (p. 4, l. 8), “requirement of proof beyond reasonable doubt” (p. 14, l. 19), and “certiorari” (p. 27, l. 13). The register is formal, and the text is written mainly in Plain English, because it contains vocabulary that is legal but that can be understood by non-experts; for example, the words “judge” (p. 3, l. 15), “inference” (p. 13, l. 9), and “jury” (p. 14, l. 8) are repeated throughout the document. As the document is drafted by the Supreme Court of Canada, we must understand Canada’s judicial system, which is explained below.

Canada is a bijural country, i.e. its judicial system combines features of the common-law and civil-law systems. In countries based on common-law tradition, the law derives from judicial decisions. On the opposite hand, countries with civil-law systems draft different codes and statutes that govern all law fields, such as criminal, civil, and procedural law (Garner, 2004, p. 293; “The Common Law and Civil Law Traditions,” n.d.<sup>158</sup>). While some matters are governed in Quebec by the civil-law system, other matters are governed in the rest of the provinces by the common-law system, and federal bills and regulations must be based on both

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<sup>157</sup> See the English document in the sixth section of the logbook of the English text.

<sup>158</sup> Retrieved from <https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html>

systems and written in English and French. In addition, Canada is a constitutional monarchy, i.e. a queen governs in the territory in accordance with the provisions of a constitution. The Canadian Constitution, moreover, establishes that the democratic government of Canada is divided into three powers: the executive power, the legislative power, and the judicial power. The executive power is vested in Her Majesty Queen Elizabeth II, but such power is entrusted to the Governor General and ten Lieutenant Generals, who are in charge of enforcing the acts passed by the Parliament. Besides, the legislative power is vested in the Parliament, which is formed by the Governor General (who represents the Queen), the Senate, and the House of Commons, who pass bills with Her Majesty's consent. In addition, the Queen's representatives act according to the pieces of advice given by the Prime Minister and the ministers of the 13 Canadian provinces. Finally, the judicial power is vested in the judiciary, which is formed by federal and provincial judges, who construe and apply the law and who resolve cases submitted to them ("Constitutional Monarchy," n.d.<sup>159</sup>; "The Canadian Constitution," n.d.<sup>160</sup>). We consider it important to point out that, in Canada, at the bottom of the court hierarchy, there exist provincial and territorial lower courts. Then, we find provincial and territorial superior courts, which hear appeals and cases involving serious crimes, and the Federal Court, which hears civil matters submitted to it by statute. In the next section of the hierarchy, there are Courts of Appeal and Federal Courts of Appeal, which hear appeals from the superior courts, the Federal Court, and the lower courts. Finally, at the top of the court ladder, we find the Supreme

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<sup>159</sup> Retrieved from <http://www.monarchist.org.uk/constitutional-monarchy.html>

<sup>160</sup> Retrieved from <http://www.justice.gc.ca/eng/csj-sjc/just/05.html>

Court of Canada, which is the court of last resort and which hears appeals of cases of public importance and national significance involving constitutional, criminal, civil, and administrative matters (“How Does Canada’s Court System Work?,” n.d.)<sup>161</sup>.

Having explained the features of the judicial system of Canada, we can briefly comment on the Canadian appellate procedure. The subject-matter of the document is a final judgment issued by the Supreme Court of Canada. As in the introduction to the Spanish document, we should point out that a final judgment is “a court’s final determination of the rights and obligations of the parties in a case” (Garner, 2004, p. 858). Moreover, if a judgment is issued by the Supreme Court of Canada, we must understand that a previous final judgment pronounced by the Canadian Court of Appeal or Federal Court of Appeal has been appealed. In other words, either party to a case that is not satisfied with the outcome of the case resolved by the appellate judge can apply for a motion to have the appellate judge’s final judgment reviewed by the court of last resort. In addition, we should point out that the Supreme Court can “affirm” (it confirms the judgment on appeal), “remand” (it sends the case to the lower court for further action), or “reverse” (it overturns the decision on appeal), although the Court can also modify the lower court’s decision (Garner, 2004, pp. 64, 1319, and 1344). Moreover, the statute of limitations to file the motion for appeal with the superior court is 30 days as from the entry of the lower court’s judgment (“Canadian Appeals Law,” n.d.)<sup>162</sup>.

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<sup>161</sup> Retrieved from <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/01.html>

<sup>162</sup> Retrieved from <http://www.canadianlawsite.ca/appellate.htm>

Regarding the texts containing the judgments of the Supreme Court of Canada, they are divided into nine sections. In the first section, the drafter establishes the information that enables the case to be identified; it includes the name of the case, the parties to the case, and the intervening judges and attorneys. In the second section, there appear the keywords and expressions that make it possible for the reader to understand the subject-matter of the judgment. In the third section, the information of the case is summarized, and the final judgment of the Supreme Court is rendered. In the fourth section, the drafter points out the case law and laws and regulations cited throughout the document. In the fifth section, the drafter states from which court the case is brought and who are the appellant, the respondent, and the judge who delivered the lower court's decision. In the sixth section, there is an introduction to the case brought before the Supreme Court, and the judge who drafts the document sets out different questions, the answers of which determine the final decision. In the seventh section, there is an overview of the facts of the case and the decision of the lower court's decision, which includes information about the background of the case and the lower court's findings. In the eighth section, the analysis of the alleged errors is performed, and the questions set out in the sixth section are answered. Finally, in the ninth section, the Supreme Court renders judgment (Canada Supreme Court Reports, 2016)<sup>163</sup>.

Having briefly described the Canadian appellate procedure and the sections of judgments issued by the Supreme Court of Canada, we can analyze the judgment that is the subject-matter of the English text. The case is entitled "R. v. Villaroman,

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<sup>163</sup> Retrieved from <https://scc-csc.lexum.com/scc-csc/scr/en/5467/1/document.do>

2016 SCC 33”; the appellant is Her Majesty the Queen Elizabeth II, the respondent is Oswald Oliver Villaroman, and the case on appeal comes from the Court of Appeal for Alberta. Villaroman, who was convicted of possession of child pornography by a trial court, stated that the police search of his laptop violated section 8 of the Canadian Charter of Rights and Freedoms, but the trial judge disagreed with him. Moreover, the Court of Appeal for Alberta decided that the trial judge had misstated the law relating to circumstantial evidence and that the verdict that was based on such evidence was unreasonable. Thus, the Court of Appeal acquitted the convict and did not consider the alleged violation of the Charter. In its judgment, the Supreme Court of Canada analyzes if the Court of Appeal erred in finding a legal error in the trial judge’s analysis in relation to the circumstantial evidence and if the verdict of guilt was unreasonable. It concludes that the Court of Appeal erred in finding that the trial judge had made a reversible error, because the trial judge correctly decided that the evidence and lack of evidence excluded all reasonable inferences other than the guilt of the accused. In addition, the verdict was a reasonable one, and the Court of Appeal erred in speculating about the innocence of the convict. Thus, the Supreme Court orders that the appeal be allowed, that the acquittal of the convict be annulled, and that the case be remanded to the Court of Appeal to discuss and render judgment on the Charter issues raised by Villaroman.

Regarding the foundation of the decision issued by the Supreme Court, we can identify different laws and cases cited throughout the text. We concentrate in the

laws and regulations cited by the judges to justify their votes, and we describe those pieces of legislation in the following items:

- Section 8 of the Canadian Charter of Rights and Freedoms (which appears in the first part of the Constitution Act of Canada of 1982)

According to this section (which is similar to the Fourth Amendment of the Constitution of the United States of America [U.S. Constitution, Amendment 4]<sup>164</sup>), the Canadian police cannot perform unreasonable searches and seizure.<sup>165</sup>

- Section 24(2) of the Canadian Charter of Rights and Freedoms

According to this section, evidence obtained in a manner that constitutes a breach of any section of the Charter shall not be admissible at a trial of infringement of rights and freedoms protected by the Charter.<sup>166</sup>

- Section 163.1(4) of the Canadian Criminal Code (R.S.C. 1985, c. C-46)

In this section, it is set forth that the possession of child pornography constitutes an offense. In addition, the terms of imprisonment as punishment for such offense are established.<sup>167</sup>

- Section 10.2 of the Model Jury Instructions (prepared by the National Committee on Jury Instructions of the Canadian Judicial Council)

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<sup>164</sup> Retrieved from [https://www.law.cornell.edu/constitution/fourth\\_amendment](https://www.law.cornell.edu/constitution/fourth_amendment)

<sup>165</sup> Retrieved from <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

<sup>166</sup> Retrieved from <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

<sup>167</sup> Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-36.html#docCont>

This section of the Model Jury Instructions explains how the jury shall be instructed on direct and circumstantial evidence. In addition, the jury must consider both kinds of evidence as a whole to reach a verdict. The members of the jury, moreover, “cannot reach a verdict of guilty on circumstantial evidence unless they are satisfied beyond a reasonable doubt that the accused’s guilt is the only reasonable conclusion to be drawn from the whole of the evidence” (“Direct and Circumstantial Evidence,” 2012)<sup>168</sup>.

- Hodge’s Case rule

This is a rule derived from case law that establishes that a jury must receive special instructions in cases involving circumstantial evidence (*R. v. Villaroman, 2016*)<sup>169</sup>.

Having commented on the general aspects of the English text, including the type of text, the judicial system of Canada, the subject-matter of the document, and the laws and codes cited in the text, we can now proceed to perform the analysis of the orthographic and grammatical mistakes, collocations, and terms and expressions present in the document. In the following section, the orthographic and grammatical mistakes are explained and corrected.

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<sup>168</sup> Retrieved from <https://www.nji-inm.ca/index.cfm/publications/model-jury-instructions/#794B11A5-D8B5-4A30-9A22E1526BC814BD>

<sup>169</sup> Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16078/index.do>

## ***SECTION 2: ORTHOGRAPHIC AND GRAMMATICAL ANALYSIS***

As explained before, in this section we identify the orthographic and grammatical mistakes present in the English text. We point them out, explain why they are considered as such, and then we provide the correct versions of the fragments containing the mistakes. First, we explain five mistakes found throughout the whole document, and then we explain the errors found in the section of the text that we have to translate. We should warn the reader, however, that, in the correct versions of the fragments containing the errors, only the specific mistakes that are analyzed are corrected; thus, the reader must take into consideration that the other mistakes that may be present in a correct version are explained in the rest of the items. In the following items, we list and explain the mistakes in question:

- “(...) It follows that in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about (...)” (p. 22, l. 5)

There should be a comma before “in a case,” because adverbial constructions that are not placed in their original position (like “in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence”)

should be separated from the rest of the sentence by commas (European Commission: Directorate-General for Translation, 2017, p. 17)<sup>170</sup>. The mistake is repeated in page 24, line 9 and in page 26, lines 6 and 13. The correct version would be then "(...) It follows that, in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about (...)."

- "(...) Which of these words should be used was one of the issues touched on by the Court of Appeal (at para. 9) and I should explain why I think that (...)" (p. 23, l. 6)

There should be a comma before "and," because a comma precedes the conjunction "and" when such word joins two independent clauses ("Using Coordinating Conjunctions," n.d.)<sup>171</sup>. The correct version would be then "(...) Which of these words should be used was one of the issues touched on by the Court of Appeal (at para. 9), and I should explain why I think that (...)."

- "(...) The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences;" that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that (...)" (p. 26, l. 19)

The first semicolon of the fragment is placed before the quotation mark, and that is a punctuation error. The rule establishes that semicolons are placed outside the

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<sup>170</sup> Retrieved from [https://ec.europa.eu/info/sites/info/files/styleguide\\_english\\_dgt\\_en.pdf](https://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf)

<sup>171</sup> Retrieved from <http://writing.wisc.edu/Handbook/CoordConj.html>

quotation marks (Canadian Translation Bureau, n.d.)<sup>172</sup>. Therefore, the correct version is “(...) The court stated that “[c]ircumstantial evidence does not have to totally exclude other conceivable inferences”; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that (...)”

- “(...) He relied on the evidence of Mr. LaFontaine and Mr. Sopczak, and referred to the following pieces of evidence (...)” (p. 33, l. 19)

The comma present in the fragment should be removed, because a comma should not be written before the conjunction “and” if such word is coordinating two words of the same grammatical category (in this case, it is coordinating two verbs) (“Using Coordinating Conjunctions,” n.d.)<sup>173</sup>. This error is repeated in page 20, line 18. The correct version would be then “(...) He relied on the evidence of Mr. LaFontaine and Mr. Sopczak and referred to the following pieces of evidence (...)”

- “(...) These were gaps in the Crown evidence (...)” (p. 36, l. 13)

The genitive inflection “s” shows possession, and, in this case, the drafter of the text omits using such inflection. The “evidence” is from the Crown; therefore, the marked genitive should be used (Greenbaum & Quirk, 1990, p. 102). The same error appears in page 6, line 8; and in page 37, line 4 and 10, although the drafter uses the marked genitive in page 5, line 7. The correct version would be then “(...) These were gaps in the Crown’s evidence (...)”

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<sup>172</sup> Retrieved from <http://www.btb.termiumplus.gc.ca/tcdnstyl-chap?lang=eng&lettr=chapsect7&info0=7>

<sup>173</sup> Retrieved from <http://writing.wisc.edu/Handbook/CoordConj.html>

- “(...) charging the jury that it must be satisfied beyond a reasonable doubt that (...)” (p. 18, l. 3)

In this fragment, the judge writing the opinion cites another judge who refers to the jury as “it,” and the same cited judge refers to the jury in page 16, line 19 as “they.” This constitutes an inconsistency that must be corrected, because it is considered as bad style (Farkas, 1985). In Canada, the jury should be referred to as “they,” as in the following example: “After both sides have called all their witnesses and presented their arguments, the judge instructs the jury on the law and on what they must take into account when making their decision” (“The Role of the Public,” n.d., Jury duty section)<sup>174</sup>. The judge that writes the opinion, however, refers to the jury correctly, as in the following example taken from the document being studied: “it may be helpful for the jury to receive instructions that will assist them to understand the nature of circumstantial evidence” (p. 4, l. 4). It should be noted that the object form of “they” is used in this case, because the pronoun follows a preposition (“Them,” n.d.)<sup>175</sup>. The correct version would be then “(...) charging the jury that they must be satisfied beyond a reasonable doubt that (...)”

- “(...) *per* Ritchie J. (...)” (p. 18, l. 5)

In this fragment, the judge who writes the opinion chooses to write the word “per” in italics, but, in page 18, line 29, he does not italicize it. This is an inconsistency that should be corrected, because it is considered as bad style (Farkas, 1985). The Latin word in question is considered part of the English language; therefore, it

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<sup>174</sup> Retrieved from <http://www.justice.gc.ca/eng/csj-sjc/just/12.html>

<sup>175</sup> Retrieved from <http://www.oxfordlearnersdictionaries.com/definition/english/them?q=them>

should not be italicized (European Commission: Directorate-General for Translation, 2016, p. 42<sup>176</sup>; Garner, 2004, p. 1171). The correct version would be then "(...) per Ritchie J. (...)."

- "(...) the judgment is confirmed by our subsequent decision in *Mayuran* in which the Court reiterated the statement from *Griffin (...)*" (p. 18, l. 27)

We note that there is a comma missing before "in which". A comma should be added because the expression "in which" is introducing a non-restrictive relative clause ("Grammar Handbook: Restrictive and Nonrestrictive Clauses," n.d.)<sup>177</sup>. The correct version would be then "(...) the judgment is confirmed by our subsequent decision in *Mayuran*, in which the Court reiterated the statement from *Griffin (...)*."

- "(...) There is therefore no particular form of mandatory instruction (...)" (p. 18, l. 30)

Commas should enclose adverbs that interrupt a sentence (Straus, 2008, p. 57); therefore, a comma should be written before and after "therefore." The correct version would be then "(...) There is, therefore, no particular form of mandatory instruction (...)."

- "(...) He noted the jury may "look for – and often slightly ... distort the facts" to make them fit the inference that they are invited to draw (...)" (p. 20, l. 15)

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<sup>176</sup> Retrieved from [https://ec.europa.eu/info/sites/info/files/styleguide\\_english\\_dgt\\_en.pdf](https://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf)

<sup>177</sup> Retrieved from <http://www.cws.illinois.edu/workshop/writers/restrictiveclauses/>

There is a dash missing after the ellipsis points, because inserted phrases like “often slightly...” should be enclosed with dashes. Moreover, the coordinating conjunction “and” is coordinating two verbs, and it is not part of the comment mentioned, so it should be placed before the dash (European Commission: Directorate-General for Translation, 2017, pp. 17-19)<sup>178</sup>. The correct version would be then “(...) He noted the jury may “look for and –often slightly...– distort the facts” (...).”

- “(...) While this 19th century language is not suitable for a contemporary jury (...).” (p. 21, l. 1)

There should be a hyphen connecting “19th” and “century,” because both words are modifying the noun “language” as a compound adjective (“Hyphen,” n.d.)<sup>179</sup>. The same mistake appears in page 36, line 11. The correct version would be then “(...) While this 19th-century language is not suitable for a contemporary jury (...).”

- “(...) at p. 60-61 (...).” (p. 21, l. 8)

The abbreviation of “page” is “p.,” and the plural of such abbreviation is “pp.” (Paiz et al., 2014)<sup>180</sup>. In this case, the judge refers to more than one page; therefore, the abbreviation “pp.” should be used. The correct version would be then “(...) at pp. 60-61 (...).”

- “(...) see, e.g. *Schuldt v. The Queen* (...).” (p. 21, l. 12)

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<sup>178</sup> Retrieved from [https://ec.europa.eu/info/sites/info/files/styleguide\\_english\\_dgt\\_en.pdf](https://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf)

<sup>179</sup> Retrieved from <http://www.grammarbook.com/punctuation/hyphens.asp>

<sup>180</sup> Retrieved from <https://owl.english.purdue.edu/owl/resource/560/21/>

There is a comma missing after “e.g.,” because expressions that introduce examples should be enclosed with commas if they are embedded in a sentence (Straus, 2008, p. 57). The correct version would be then “(...) see, e.g., *Schuldt v. The Queen* (...)”

After identifying the orthographic and grammatical mistakes of the text, we conclude that the errors present in the English document are mainly of orthographic nature and that there is a reduced percentage of inconsistency issues. In addition, we cannot identify grammar mistakes. Having analyzed the mistakes in question, we can now proceed to perform the analysis of the collocations present in the text.

### **SECTION 3: COLLOCATIONS**

In this section, we identify the collocations present in the English text. We first study five collocations found throughout the whole document, and then we explain the collocations found in the section of the text that we have to translate. As explained in the introduction to the thesis, we identify the collocations and propose translations for them. Then, we conduct a research to verify if our translations are correct or if we need to change them. We check the meanings of the collocations, their translations in a bilingual dictionary, and the meanings of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage. In the following items, we analyze the collocations in question:

- “(...) *Judgment rendered: July 29, 2016* (...)” (p. 1, l. 2)

The collocation is “to render judgment,” and we would translate it as “dictar sentencia.” The English collocation being studied means “to deliver formally the court’s final determination of the rights and obligations of the parties in a case” (Garner, 2004, pp. 858 and 1322). Mazzuco (2009), besides, proposes to translate “to render sentence” as “dictar sentencia” (p. 274), which means to issue a judicial decision that puts an end to a criminal or civil case (Ossorio, 2013, pp. 329 and 878). The usage of the expression “dictar sentencia” can be illustrated by the following example: “(...) su misión, propiamente juzgadora, es la de dictar sentencia en el plenario” (Ossorio, 2013, 517). According to our research, our proposed translation is correct. Therefore, the collocation “to render judgment” can be translated as “dictar sentencia.”

- “(...) V was charged with a number of pornography related offences (...)”  
(p. 3, l. 10)

The collocation is “to charge someone with an offense,” and we would translate it as “acusar a alguien de un delito.” The collocation in English means “to accuse (a person) of an act that the law makes punishable” (Garner, 2004, pp. 248 and 399). In addition, Mazzucco (2009) proposes to translate the collocation as “acusar de un delito” (pp. 91 and 230), which means “imputar, atribuir a una o varias personas (...) un acto típicamente antijurídico, sometido a veces a condiciones objetivas de penalidad y sometido a una sanción penal” (Ossorio, 2013, pp. 59 and 275). Nevertheless, the verb “imputar,” which means “atribuir un delito o falta a

determinada persona” (Ossorio, 2013, p. 475), is used more frequently in the Argentinian Procedural Criminal Code, as in the following example: “Si a una persona se le imputare un delito de jurisdicción nacional y otro de jurisdicción federal, será juzgado primero en la jurisdicción federal” (section 19, Argentinian Procedural Criminal Code)<sup>181</sup>. Having made our research, we can affirm that our proposed translation is correct, but we are going to change the verb of the Spanish collocation and use “imputar” for the reason stated above. Therefore, the collocation “to charge someone with an offense” can be translated as “imputar un delito a alguien.”

- “(...) certiorari applications to *quash committals to stand trial* (...)” (p. 27, l. 14)

The collocation is “to quash a committal to stand trial,” and we would translate it as “revocar el auto de elevación a juicio.” As for the verb “to quash,” it means “to annul, to make void, to terminate” (Garner, 2004, p. 1278). Regarding the expression “committal to stand trial,” it means “an order from the lower court that an accused must stand trial for his or her criminal charge(s)” (Gold, n.d.)<sup>182</sup>. In addition, Cabanellas de las Cuevas (2010) proposes to translate “to quash” as “revocar” (p. 568), which means “dejar sin efecto un acto jurídico” (Ossorio, 2013, p. 854). As for the expression coming after the verb, Cabanellas de las Cuevas (2010) proposes to translate it as “envío a juicio de una causa penal” (p. 138), which is directly related to the “auto de elevación a juicio.” In Argentina, in the first

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<sup>181</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm>

<sup>182</sup> Retrieved from <https://robichaudlaw.ca/certiorari-quash-committal/>

stage of a criminal case called “instrucción,” after the accused is examined and the evidence is produced, the plaintiff and the prosecutor must ask the judge to either command the accused to stand trial or acquit him. If such parties ask the judge to command the accused to stand trial and the judge agrees to the petition, said judge issues an order known as the “auto de elevación a juicio” (sections 346-353, Argentinian Procedural Criminal Code)<sup>183</sup>. Therefore, we can use the expression “auto de elevación a juicio” to translate “committal for trial,” because both expressions refer to orders of similar nature. As for the usage of the Spanish collocation, we can provide the following example to illustrate it: “(...) la Cámara de Apelación y Garantías de Pergamino resolvió (...) revocar el auto de elevación a juicio dictado por el Juzgado de Garantías N° 2 (...)” (Sotelo, Juan Antonio s/ Recurso de casación, n.d.)<sup>184</sup>. Having made our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, the collocation “to quash a committal to stand trial” can be translated as “revocar el auto de elevación a juicio.”

- “(...) the Crown has not proven he *is guilty of the offences* (...)” (p. 28, l. 20)

The collocation is “to be guilty of an offense<sup>185</sup>,” and we would translate it as “ser culpable de un delito.” As for the definition of the English collocation, Garner (2004) states that it is “to be responsible for an act that the law makes punishable” (pp. 727 and 1110). Moreover, Mazzucco (2009) proposes to translate “guilty” as “culpable” and “offense” as “delito” (pp. 155 and 230). Ossorio (2013), in addition,

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<sup>183</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#13>

<sup>184</sup> Retrieved from [www.defensapublica.org.ar/JURISDICCIONAL/.../61393.doc](http://www.defensapublica.org.ar/JURISDICCIONAL/.../61393.doc)

<sup>185</sup> We choose to spell the word “offense” according to the American spelling rules.

states that “culpable” means “responsable de un delito o falta” and that “delito” means “un acto típicamente antijurídico, sometido a veces a condiciones objetivas de penalidad y sometido a una sanción penal” (pp. 250 and 275). As for the usage of the Spanish collocation, it can be illustrated by the following example: “La resolución judicial por la cual se declara procesado al presunto culpable de un delito” (Ossorio, 2013, p. 108). According to our research, we can affirm that our proposed translation is correct. Therefore, the collocation “to be guilty of an offense” can be translated as “ser culpable de un delito.”

- “(...) This limited *weighing of the evidence* on appeal must be done in light of the standard of proof in a criminal case (...)” (p. 30, l. 17)

The collocation is “to weigh evidence,” and we would translate it as “valorar las pruebas.” As for the verb of the collocation in English, it means “to consider something carefully before making a decision” (“Weigh,” n.d.)<sup>186</sup>. Regarding the noun “evidence,” it means “something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact” (Garner, 2004, p. 595). Moreover, Cabanellas de las Cuevas (2010) proposes to translate “weigh the evidence” as “apreciar la prueba” (p. 735). As for the verb “valorar,” which is included in our translation, it means “reconocer, estimar o apreciar el valor o mérito de alguien o algo” (Real Academia Española, 2015)<sup>187</sup>; in addition, “prueba” means “conjunto de actuaciones que dentro de un juicio, cualquiera sea su índole, se encamina a demostrar la verdad o la falsedad de los

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<sup>186</sup> Retrieved from <http://www.oxfordlearnersdictionaries.com/definition/english/weigh?q=weigh>

<sup>187</sup> Retrieved from <http://dle.rae.es/?id=bJiPomE>

hechos aducidos por cada una de las partes, en defensa de las respectivas pretensiones litigiosas” (Ossorio, 2013, p. 787). We could use the verb “apreciar” to translate “to weigh,” because it is a synonym of the verb “valorar” (Real Academia Española, 2015)<sup>188</sup>, but we believe that the verb “valorar” is used more frequently in the legal world, as in the following example: “Se esgrime que el órgano de alzada no está en condiciones de valorar una prueba que no ha presenciado directamente” (Viale de Gil, n.d., p. 156)<sup>189</sup>. Nevertheless, the English collocation refers to the weighing of the “burden of proof,” which is “a party’s duty to prove a disputed assertion or charge” (Fleming, 1961, p. 4<sup>190</sup>; Garner, 2004, p. 209). Cabanellas de las Cuevas (2010) translates “burden of proof” as “carga de la prueba” (p. 101), which means “la obligación de probar lo alegado” (Ossorio, 2013, p. 151). The following example illustrates the usage of the collocation “valorar el peso de la prueba”:

De todas maneras, sea en la audiencia preliminar o en el juicio, el juez tiene la responsabilidad de avalar la idoneidad del perito para efectos de admisión de la prueba. Si no se convence al juez acerca de la idoneidad por los medios contemplados y en las etapas especificadas, no se admite la prueba. Si se logra, de todas maneras el juez siempre tiene la responsabilidad adicional de

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<sup>188</sup> Retrieved from <http://dle.rae.es/?id=3IBOF6d>

<sup>189</sup> Retrieved from <http://www.derecho.uba.ar/publicaciones/pensar-en-derecho/revistas/4/la-prueba-es-suficiente-cua>

<sup>190</sup> Retrieved from [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4121&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4121&context=fss_papers)

valorar el peso de la prueba tomando en cuenta, entre otros factores, la idoneidad del perito. (“Taller de Investigación,” n.d.)<sup>191</sup>

According to our research, we should change our proposed translation. The collocation “to weigh the evidence” can be translated as “valorar el peso de las prueba.”

- “(...) *charging the jury* in accordance with that language (...)” (p. 17, l. 28)

The collocation is “to charge the jury,” and we would translate it as “instruir al jurado.” As for the verb “to charge,” it means “to instruct a jury on matters of law” (Garner, 2004, p. 248). In addition, the noun “jury” means “a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them” (p. 873). Besides, Cabanellas de las Cuevas (2010) proposes to translate “to charge” as “instruir” (p. 119), which means “dar a conocer a alguien el estado de algo, informarle de ello, o comunicarle avisos o reglas de conducta” and “comunicar sistemáticamente ideas, conocimientos o doctrinas” (Real Academia Española, 2015)<sup>192</sup>. Moreover, “jury” is translated as “jurado” (Cabanellas de las Cuevas, 2010, p. 396), which is defined by Ossorio (2013) in the following manner:

Tribunal constituido por ciudadanos que pueden o no ser letrados y llamado por la ley para juzgar, conforme a su conciencia, acerca de la culpabilidad o de la

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<sup>191</sup> Retrieved from [www.icesi.edu.co/blogs/.../06/TALLER-FISICA-FORENSE2.docx](http://www.icesi.edu.co/blogs/.../06/TALLER-FISICA-FORENSE2.docx)

<sup>192</sup> Retrieved from <http://dle.rae.es/?id=Lo2KGeF>

inocencia del imputado, limitándose únicamente a la apreciación de los hechos (mediante un veredicto). (p. 523)

Ossorio (2013) also adds that the Argentinian Constitution sets forth that criminal trials shall be resolved by a jury, but such provision has never been applied (p. 523). Thus, we consider that the following translator's note should be added, because juries do not exist in Argentina (p. 523): "En los sistemas jurídicos como los de Estados Unidos de América y Canadá, grupo de personas seleccionadas de acuerdo al Derecho para juzgar cuestiones de hecho y dictar un veredicto para determinar la culpabilidad o inocencia del acusado." Moreover, we cannot give an example of the usage of "instruir al jurado" for the reason stated above. According to our research, our proposed translation is correct. Therefore, "to charge the jury" can be translated as "instruir al jurado," but the translator's note stated above should be added if the word "jury" appears for the first time in a text to be translated.

- "(...) the necessity to *acquit the accused* (...)" (p. 17, l. 30)

The collocation is "to acquit the accused," and we would translate it as "absolver al acusado." As for the verb "to acquit," it means "to clear (a person) of a criminal charge" (Garner, 2004, p. 25). Regarding the expression "the accused," it means "a person who has been formally charged with a crime (...)" (p. 23). Cabanellas de las Cuevas (2010) proposes to translate "acquit" as "absolver" (p. 28) and "the accused" as "el acusado" (p. 27). The verb "absolver" means "dar por libre en un juicio civil o criminal al demandado o al encausado" (Ossorio, 2013, p. 27), and the

expression “el acusado” means “persona a la que se le atribuye la comisión de un delito” (p. 59). The usage of the Spanish collocation “absolver al acusado” is illustrated by the following example: “(...) el Tribunal Oral y Criminal IV resolvió por mayoría absolver al acusado, Walter Flores, al observar que según las pruebas que obran en la causa el policía imputado actuó en legítima defensa” (Tocho, 2017)<sup>193</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “to acquit the accused” can be translated as “absolver al acusado.”

- “(...) the other *inferences* that the defence says should *be drawn from* the evidence (...)” (p. 17, l. 29)

The collocation is “to draw an inference (from something),” and we would translate it as “inferir una deducción.” As for the verb “to draw something (from something),” it means “to have a particular idea after you have studied something or thought about it” (“Draw,” n.d.)<sup>194</sup>. In addition, an “inference” is “a conclusion reached by considering other facts and deducing a logical consequence from them” (Garner, 2004, p. 793). According to Galimberti Jarman and Russell (2008), “to draw an inference” is translated as “sacar una inferencia” (p. 1326), which means to deduce something (Real Academia Española, 2015)<sup>195</sup>. The following is an example in which we show how the collocation in Spanish is used: “(...) su omisión puede, como razonamiento de sentido común, permitir sacar en conclusión la inferencia de que no ha habido explicación y de que el acusado es culpable” (“El silencio del

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<sup>193</sup> Retrieved from <http://andigital.com.ar/policiales-y-judiciales/item/60211-la-justicia-absolvio-al-policia-acusado-de-gatillo-facil>

<sup>194</sup> Retrieved from [http://www.oxfordlearnersdictionaries.com/definition/english/draw\\_1](http://www.oxfordlearnersdictionaries.com/definition/english/draw_1)

<sup>195</sup> Retrieved from <http://dle.rae.es/?id=LVoBEku>

acusado,” n.d.)<sup>196</sup>. Nevertheless, we choose to translate the collocation as “inferir una deducción,” because “inferir” is “extraer un juicio o conclusión a partir de hechos, proposiciones o principios, sean generales o particulares” (“Inferir,” n.d.)<sup>197</sup> and because “deducción” means “acción y efecto de sacar una conclusión de algo” (Real Academia Española, 2015<sup>198,199</sup>). Besides, the following example illustrates the usage of such Spanish collocation: “(...) su capacidad para inferir una deducción acertada a partir de los hechos debidamente comprobados” (“Sentencia condenatoria,” 2009)<sup>200</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “to draw an inference (from something)” can be translated as “inferir una deducción.”

- “(...) if any of those inferences *raises* a reasonable *doubt* (...)” (p. 18, l. 1)

The collocation is “to raise a doubt,” and we would translate it as “suscitar una duda.” As for the expression “to raise a doubt,” it means “to produce an uncertainty about something” (“Raise,” n.d.<sup>201</sup>; “Doubt,” n.d.<sup>202</sup>). Besides, Galimberti Jarman and Russell (2008) propose to translate this expression as “suscitar una duda” (pp. 1127 and 1580), which means to cause someone to feel uncertain about a fact or belief (“Suscitar,” n.d.<sup>203</sup>; “Duda,” n.d.<sup>204</sup>). The usage of the Spanish collocation is

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<sup>196</sup> Retrieved from <http://www.economistjurist.es/actualidad-juridica/jurisprudencia/el-silencio-del-acusado-puede-servi-r-como-dato-corraborador-de-su-culpabilidad-siempre-que-exista-ya-una-prueba-de-cargo-considerada-como-suficiente/>

<sup>197</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/inferir>

<sup>198</sup> Retrieved from <http://dle.rae.es/?id=C0u0Q9o>

<sup>199</sup> Retrieved from <http://dle.rae.es/?id=C0kjoXN>

<sup>200</sup> Retrieved from [www.derechos.org/nizkor/colombia/doc/roble.html](http://www.derechos.org/nizkor/colombia/doc/roble.html)

<sup>201</sup> Retrieved from [http://www.oxfordlearnersdictionaries.com/definition/english/raise\\_1?q=raise](http://www.oxfordlearnersdictionaries.com/definition/english/raise_1?q=raise)

<sup>202</sup> Retrieved from [http://www.oxfordlearnersdictionaries.com/definition/english/doubt\\_1?q=doubt](http://www.oxfordlearnersdictionaries.com/definition/english/doubt_1?q=doubt)

<sup>203</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/suscitar>

<sup>204</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/duda>

illustrated by the following example: “El nuevo método ha suscitado muchas dudas en la comunidad médica” (“Suscitar,” n.d.)<sup>205</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “to raise a doubt” can be translated as “suscitar una duda.”

- “(...) the only reasonable inference to be drawn from *the proven fact* (...)” (p. 18, l. 5)

The collocation is “to prove a fact,” and we would translate it as “comprobar un hecho.” With respect to the verb “to prove,” it means “to establish the truth of (a fact or hypothesis) by satisfactory evidence” (Garner, 2004, p. 1261). In addition, the noun “fact” means “an actual or alleged event or circumstance (...)” (p. 628). Besides, Galimberty and Jarman (2008) propose to translate the collocation as “comprobar un hecho” (pp. 1176 and 1563). Moreover, “comprobar” means “confirmar la veracidad o exactitud de algo” (Real Academia Española, 2015)<sup>206</sup>, and “hecho” means “cosa que ocurre o sucede” (“Hecho,” n.d.)<sup>207</sup>. The usage of the Spanish collocation is illustrated by the following example: “La prueba de presunciones o indirecta está destinada a comprobar un hecho, en todas sus fases, mediante un razonamiento inductivo” (Insunza Barrios, 1967)<sup>208</sup>. According to our research, our proposed translation is faithful to the original expression.

<sup>205</sup> Retrieved from <http://www.spanishdict.com/translate/suscitar>

<sup>206</sup> Retrieved from <http://dle.rae.es/?id=A3csXkj>

<sup>207</sup> Retrieved from <https://es.oxforddictionaries.com/definicion/hecho>

<sup>208</sup> Retrieved from [http://books.google.com.ar/books?id=ljsK11m9E7gC&pg=PA368&lpg=PA368&dq=%22comprobar+un+hecho%22&source=bl&ots=TcvuL3\\_PLA&sig=NXI94BACmySf5pA\\_tUSJqf134tQ&hl=en&sa=X&ved=0ahUKEwinr43A-djSAhUGlpAKHQ-wDBMQ6AEIMjAD#v=onepage&q=%22comprobar%20un%20hecho%22&f=false](http://books.google.com.ar/books?id=ljsK11m9E7gC&pg=PA368&lpg=PA368&dq=%22comprobar+un+hecho%22&source=bl&ots=TcvuL3_PLA&sig=NXI94BACmySf5pA_tUSJqf134tQ&hl=en&sa=X&ved=0ahUKEwinr43A-djSAhUGlpAKHQ-wDBMQ6AEIMjAD#v=onepage&q=%22comprobar%20un%20hecho%22&f=false)

Therefore, the collocation “to prove a fact” can be translated as “comprobar un hecho.”

- “(...) the steps of logic to be followed in *assessing* circumstantial as distinct from direct *evidence* (...)” (p. 18, l. 20)

The collocation is “to assess evidence,” and we would translate it as “evaluar la prueba.” Regarding the verb “to assess,” it means “[to] evaluate or estimate the nature, ability, or quality of” (“Assess,” n.d.)<sup>209</sup>. In addition, the noun “evidence” means “something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact” and “the collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute” (Garner, 2004, p. 595). Galimberty Jarman and Russell (2008) propose to translate the collocation “to assess evidence” as “evaluar la prueba” (pp. 918 and 1165). Moreover, the verb “evaluar” means “señalar el valor de algo” (Real Academia Española, 2015)<sup>210</sup>, and the noun “prueba” means “conjunto de actuaciones que dentro de un juicio, cualquiera sea su índole, se encamina a demostrar la verdad o la falsedad de los hechos aducidos por cada una de las partes, en defensa de las respectivas pretensiones litigiosas” (Ossorio, 2013, p. 787). As for the usage of this Spanish collocation, it is illustrated by the following example: “El juez evalúa la prueba producida y analiza las pretensiones de las partes a la luz de las normas jurídicas que considera aplicables al caso” (Reynaldo, 2010)<sup>211</sup>. Having made our research, we consider that our proposed

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<sup>209</sup> Retrieved from <https://en.oxforddictionaries.com/definition/assess>

<sup>210</sup> Retrieved from <http://dle.rae.es/?id=H8KldC6>

<sup>211</sup> Retrieved from <http://psicologiaforenseylaboral.blogspot.com.ar/p/determinacion-pericial-del-dano.html>

translation is faithful to the original expression. Therefore, the collocation “to assess evidence” can be translated as “evaluar la prueba.”

- “(...) the need to *establish guilt* beyond a reasonable doubt (...)” (p. 18, l. 23)

The collocation is “to establish guilt,” and we would translate it as “establecer la culpabilidad.” As for the verb “establish,” it means “show (something) to be true or certain by determining the facts” (“Establish,” n.d.)<sup>212</sup>. In addition, the noun “guilt” means “the fact or the state of having committed a wrong, esp. a crime” (Garner, 2004, p. 727). Furthermore, Cabanellas de las Cuevas (2010) translates “to establish guilt” as “establecer la culpabilidad” (pp. 259 and 331). Regarding our translation, “establecer” means “dejar demostrado y firme un principio, una teoría, una idea (...)” (Real Academia Española, 2015)<sup>213</sup>, and “culpabilidad” means “el hecho de haber incurrido en culpa determinante de responsabilidad civil o de responsabilidad penal” (Ossorio, 2013, p. 250). The usage of the Spanish collocation is illustrated by the following example: “En materia penal, la culpabilidad de un acusado debe establecerse “más allá de toda duda razonable”” (Mazzuco, 2009, p. 341). Having made our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, the collocation “to establish guilt” can be translated as “establecer la culpabilidad.”

- “(...) you may rely on direct evidence and on circumstantial evidence in *reaching your verdict* (...)” (p. 19, l. 13)

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<sup>212</sup> Retrieved from <https://en.oxforddictionaries.com/definition/establish>

<sup>213</sup> Retrieved from <http://dle.rae.es/?id=GilsITP>

The collocation is “to reach a verdict,” and we would translate it as “llegar a un veredicto.” The collocation being studied refers to the moment in which a jury achieves the aim of agreeing to “the decision on the factual issues of a case” (“Reach,” n.d.<sup>214</sup>; Garner, 2004, p. 1592). Furthermore, Mazzucco (2009) translates “to reach a verdict” as “llegar a un veredicto” (pp. 267 and 322). As for the verb “llegar,” it means “alcanzar o producir una determinada acción” (Real Academia Española, 2015)<sup>215</sup>; in addition, “veredicto” means “la resolución que dictan los jurados (...) [por la que determinan] la culpabilidad o inculpabilidad del reo (...)” (Ossorio, 2013, p. 981). As for the usage of the Spanish collocation, we can provide the following example to illustrate it: “[el] jurado cuyas opiniones se encuentran de tal forma divididas que no puede llegar a un veredicto” (Cabanellas de las Cuevas, 2010, p. 343). According to our research, our proposed translation is correct. Therefore, the collocation “to reach a verdict” can be translated as “llegar a un veredicto.”

- “(...) the jury may unconsciously “*fill in the blanks*” or *bridge gaps* in the evidence (...)” (p. 20, l. 13)

The idioms are “to fill in the blanks” and “to breach a gap,” and we would translate them as “completar los espacios en blanco” and “cubrir una laguna,” respectively. The idiom “to fill in the blanks” means “to complete the interruption, ambiguity or vagueness in understanding, perception or context of a situation” (“Fill in the blanks,” n.d.)<sup>216</sup>. This expression would be translated as “rellenar los espacios en

<sup>214</sup> Retrieved from [http://www.oxfordlearnersdictionaries.com/definition/english/reach\\_1?q=reach](http://www.oxfordlearnersdictionaries.com/definition/english/reach_1?q=reach)

<sup>215</sup> Retrieved from <http://dle.rae.es/?id=Nv155vl>

<sup>216</sup> Retrieved from <http://www.yourdictionary.com/bridge-gaps#mgQdEbMISoXpFywi.99>

blanco” (“Blank,” n.d.)<sup>217</sup>, which means to write the necessary data in the spaces present in a document (Real Academia Española, 2015)<sup>218,219</sup>. Nevertheless, we believe that the expression “completar los espacios en blanco” is used more frequently in the Spanish language. As for the idiom “to breach a gap,” it means to cover the lack of something (“Bridge a/the gap,” n.d.)<sup>220</sup>, and it would be translated as “cubrir una laguna” (“Gap,” n.d.)<sup>221</sup>, which is an expression that appears in the following example: “(...) la regla prevista en la Ley (...) para cubrir “las lagunas” de cotización de los trabajadores que a lo largo de su vida laboral se sitúan en la inactividad durante uno o más períodos de tiempo” (“El TC avala cubrir las “lagunas” de cotización,” 2014)<sup>222</sup>. We should point out, in addition, that this Spanish idiom means to “complete” the lack of information in an argument or idea (“Cubrir,” n.d.<sup>223</sup>; “Laguna,” n.d.<sup>224</sup>). According to our research, our proposed translations are correct; the idioms “to fill in the blanks” and “to bridge a gap” can be translated as “completar los espacios en blanco” and “cubrir una laguna,” respectively.

- “(...) the degree of persuasion that entitles and requires a juror *to find* an accused *guilty* (...)” (p. 21, l. 10)

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<sup>217</sup> Retrieved from <https://es.oxforddictionaries.com/traducir/ingles-espanol/blank>

<sup>218</sup> Retrieved from <http://dle.rae.es/?id=VqkYv9s>

<sup>219</sup> Retrieved from <http://dle.rae.es/?id=5eNsBBo>

<sup>220</sup> Retrieved from <http://dictionary.cambridge.org/dictionary/english/bridge-a-the-gap>

<sup>221</sup> Retrieved from <https://es.oxforddictionaries.com/traducir/ingles-espanol/gap>

<sup>222</sup> Retrieved from <http://todolaboral365.wordpress.com/2014/10/06/el-tc-avala-cubrir-las-lagunas-de-cotizacion-en-contra-del-criterio-del-supremo/>

<sup>223</sup> Retrieved from <http://dle.rae.es/?id=BX3wWcW>

<sup>224</sup> Retrieved from <http://dle.rae.es/?id=MoKYIPi>

The collocation is “to find (someone) guilty,” and we would translate it as “declarar culpable (a alguien).” As for the collocation being studied, it means to determine by a decision that the accused is responsible for a crime (Garner, 2004, pp. 664 and 727), and it would be translated as “declarar culpable” (Cabanellas de las Cuevas, 2010, p. 294). In addition, “declarar” means “manifestar una decisión sobre el estado o la condición de alguien o algo” (Real Academia Española, 2015)<sup>225</sup>, and “culpable” means “responsable de un delito o falta” (Ossorio, 2013, p. 250). The usage of the expression in Spanish can be illustrated by the following example: “El juez lo declaró culpable” (Real Academia Española, 2015)<sup>226</sup>. According to our research, our proposed translation is correct. Therefore, the collocation “to find (someone) guilty” can be translated as “declarar culpable (a alguien).”

- “(...) a finding of fact that needs support in the *evidence presented* at trial (...)” (p. 21, l. 12)

The collocation is “to present evidence,” and we would translate it as “ofrecer pruebas.” The collocation being studied refers to the act of offering documents, exhibits, objects, and testimonies to prove a fact at trial (Garner, 2004, p. 595). Cabanellas de las Cuevas (2010), besides, proposes to translate “present” as “presentar” (p. 541) and “evidence” as “prueba” (p. 263). We consider that a synonym of “to present” is “to offer,” and Mazzuco (2009) translates the combination of such verb with the noun “evidence” as “presentar prueba” (p. 132). The Spanish collocation means to bring documents that prove that a fact is true or

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<sup>225</sup> Retrieved from <http://dle.rae.es/?id=BxiWP4r>

<sup>226</sup> Retrieved from <http://dle.rae.es/?id=BxiWP4r>

false before court (“Presentar,” n.d.<sup>227</sup>; Ossorio, 2013, p. 787). Although the collocation in Spanish is viable, the verb “ofrecer” is used more frequently in the Argentinian Procedural Criminal Code when talking about the evidence presented at trial, as in the following example: “El presidente del tribunal ordenará la recepción oportuna de las pruebas ofrecidas y aceptadas” (section 356, Argentinian Procedural Criminal Code)<sup>228</sup>. According to our research, our proposed translation is correct, but we are going to use the verb “ofrecer” for the Spanish collocation for the reason stated above. Thus, the collocation “to present evidence” would be translated as “ofrecer pruebas.”

In the previous paragraphs, we explain and translate the numerous collocations found in the English text. We should point out that the translation of such collocations has not proved difficult for us because of the availability of equivalents in the target language. In addition, we did not know the meaning of the collocation “to quash a committal to stand trial,” but, after checking its meaning, we rapidly related it to its equivalent in the target language. In the following section, we proceed to explain and translate the terms and expressions found in the text under analysis.

#### ***SECTION 4: TERMS AND EXPRESSIONS***

In this section, we analyze the terms and expressions present in the English text. We first identify them and provide possible translations for them. Then, we conduct

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<sup>227</sup> Retrieved from <http://dle.rae.es/?id=U67k94e>

<sup>228</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm>

a research to verify if our translations are correct or if we need to change them. We check the meaning of the expressions, their translations in a bilingual dictionary, and the meanings of our translations. If the translations we propose are faithful to the original expressions, we provide examples to illustrate their usage. In the following items, we explain the expressions in question:

- “(...) The Court of Appeal therefore set aside the conviction and entered an *acquittal* (...)” (p. 3, l. 18)

The expression is “acquittal,” and we would translate it as “absolución.” According to Garner (2004), “acquittal” is “the legal certification, usu. by jury verdict, that an accused person is not guilty of the charged offense” (p. 25). Besides, Cabanellas de las Cuevas (2010) proposes to translate the expression being studied as “absolución” (p. 28). In addition, Ossorio (2013) explains what the “absolución” is under the definition of the verb “absolver,” which means “dar por libre en juicio civil o criminal al demandado o al encausado” (p. 27). The usage of the word “absolución” can be illustrated by the following example: “La absolución del procesado no impedirá al tribunal penal pronunciarse sobre la acción civil, en la sentencia” (section 16, Argentinian Procedural Criminal Code)<sup>229</sup>. According to our research, our proposed translation is correct. Therefore, the expression “acquittal” can be translated as “absolución.”

- “(...) the *trier of fact* should consider other plausible theories (...)” (p. 5, l. 12)

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<sup>229</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#12>

The expression is “trier of fact,” and we would translate it as “jurado.” Garner (2004) points out that the expression being studied means “one or more persons – such as jurors in a trial (...)– who hear testimony and review evidence to rule on a factual issue” (p. 629). Mazzucco (2009) proposes to translate “trier of fact” as “persona que juzga los hechos” (p. 315). As we can see, Mazzucco (2009) translates the expression in an explicative way, because, as the expression “trier of fact” refers to the jury and as juries do not exist in Argentina (Ossorio, 2013, p. 523), there is no equivalent in the Argentinian legislation. Although such translation is viable, we believe that we can take advantage of the fact that we know that the expression in question refers to the jury and translate it as “jurado.” Nevertheless, we consider that a translator’s note explaining what a jury is must be added if the word “jurado” has not been previously explained in the text to be translated. The explanation that can be included is stated above. According to our research, our proposed translation is correct. Therefore, the expression “trier of fact” can be translated as “jurado.”

- “(...) the judge did not lose sight of (...) the overall *burden of proof* (...)” (p. 6, l. 2)

The expression is “the burden of proof,” and we would translate it as “la carga de la prueba.” As for the definition of the expression in question, it is “a party’s duty to prove a disputed assertion or charge” (Garner, 2004, p. 209). Moreover, Cabanellas de las Cuevas (2010) proposes to translate “burden of proof” as “carga de la prueba” (p. 101), which is “la obligación de probar lo alegado, que corresponde a la parte que afirma” (Ossorio, 2013, p. 151). The usage of the

expression in Spanish is illustrated by the following example: “El problema de determinar a quién incumbe la carga de la prueba, sólo se le presentará al juez si en el momento de dictar sentencia considera que la prueba aportada es insuficiente para la verificación de algún hecho (...)” (Ubertone, n.d., p. 101)<sup>230</sup>. According to our research, our proposed translation is correct. Therefore, the expression “the burden of proof” can be translated as “la carga de la prueba.”

- “(...) the difference between the standard applied to a *committal for trial* and the reasonable doubt standard applied to a finding of guilt (...)” (p. 6, l. 3)

The expression is “committal for trial,” and we would translate it as “auto de elevación a juicio.” The expression “committal for trial” is defined as “an order from the lower court that an accused must stand trial for his or her criminal charge(s)” (Gold, n.d.)<sup>231</sup>. Cabanellas de las Cuevas (2010) proposes to translate the expression as “envío a juicio de una causa penal” (p. 138), which is directly related to the “auto de elevación a juicio.” In Argentina, in the first stage of a criminal case called “instrucción,” after the accused is examined and the evidence is produced, the plaintiff and the prosecutor must ask the judge to either command the accused to stand trial or acquit him. If such parties ask the judge to command the accused to stand trial and the judge agrees to the petition, said judge issues an order known as the “auto de elevación a juicio” (sections 346-353, Argentinian Procedural Criminal Code)<sup>232</sup>. Therefore, we can use the expression “auto de elevación a juicio” to translate “committal for trial,” because they refer to orders of similar

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<sup>230</sup> Retrieved from <http://www.derecho.uba.ar/publicaciones/lye/revistas/37/la-carga-de-la-prueba.pdf>

<sup>231</sup> Retrieved from <https://robichaudlaw.ca/certiorari-quash-committal/>

<sup>232</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#13>

nature. The following is an example that illustrates the usage of the Spanish version of the expression being studied: “Esta Defensa se opone a la elevación a Juicio requerida por el Sr. Agente Fiscal (...)” (“Oposición a elevación a juicio,” n.d.)<sup>233</sup>. According to our research, our proposed translation is correct; “committal for trial” can be translated as “auto de elevación a juicio.”

- “(...) when deciding to commit someone to stand trial at a *preliminary inquiry* (...)” (p. 27, l. 17)

The expression is “preliminary inquiry,” and we would translate it as “investigación preliminar.” Garner (2004) states that “preliminary inquiry” is “a criminal hearing (...) to determine whether there is sufficient evidence to prosecute an accused person” (p. 1218). In Canada, when the accused is going to stand trial with a jury present, he has the right to a preliminary inquiry, in which, as Garner (2004) states above, the judge decides if there is sufficient evidence to set the case for trial (“Criminal Procedure,” n.d.)<sup>234</sup>. In addition, Cabanellas de las Cuevas (2010) proposes to translate the expression being studied as “investigación preliminar” (p. 539), which refers to an investigation conducted before trial to gather evidence and to decide if such evidence is sufficient as to set the case for trial; it is also called “investigación penal preparatoria,” and it takes place in the first stage of the criminal proceedings in Argentina called “instrucción,” which is explained above (“Fiscalías de Instrucción,” n.d.)<sup>235</sup>. Moreover, the expression “investigación preliminar” appears in the following example: “La “instrucción sumaria” es un

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<sup>233</sup> Retrieved from <http://iestudiospenales.com.ar/modelosdeescritosjudiciales/escritos-penales/1535-oposicion-a-elevacion-a-juicio.html>

<sup>234</sup> Retrieved from <http://www.thecanadianencyclopedia.ca/en/article/criminal-procedure/>

<sup>235</sup> Retrieved from <http://www.mpfcordoba.gob.ar/de-instruccion/>

procedimiento que simplifica rotundamente la investigación preliminar y es aplicable para casos de flagrancia donde no resulta necesario dictar la prisión preventiva” (Marchisio, n.d., p. 80)<sup>236</sup>. According to our research, our proposed translation is correct. Therefore, “preliminary inquiry” can be translated as “investigación preliminar.”

- “(...) charging the *jury* in accordance with that language (...)” (p. 17, l. 28)

The term is “jury,” and we would translate it as “jurado.” Garner (2004) explains that “jury” means “a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them” (p. 873). Besides, Cabanellas de las Cuevas (2010) proposes to translate this term as “jurado” (p. 396), which is defined by Ossorio (2013) in the following manner:

Tribunal constituido por ciudadanos que pueden o no ser letrados y llamado por la ley para juzgar, conforme a su conciencia, acerca de la culpabilidad o de la inocencia del imputado, limitándose únicamente a la apreciación de los hechos (mediante un veredicto) (...). (p. 523)

Ossorio (2013) also adds that the Argentinian Constitution sets forth that criminal trials shall be resolved by a jury, but such provision has never been applied (p. 523). As juries do not exist in Argentina (p. 523), we consider that the best option is

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<sup>236</sup>

Retrieved from  
<http://www.mpf.gov.ar/Institucional/Coordinacion/Documentos/Plazos%20de%20duracion%20del%20proceso%20penal.pdf>

to translate the term as “jurado” and to add a translator’s note. According to our research, our proposed translation is correct; “jury” can be translated as “jurado,” but we have to add a translator’s note like the following: “En los sistemas jurídicos como los de Estados Unidos de América y Canadá, grupo de personas seleccionadas de acuerdo al Derecho para juzgar cuestiones de hecho y dictar un veredicto para determinar la culpabilidad o inocencia del acusado.”

- “(...) pointing out to the jury the other *inferences* that the defence says should be drawn from the evidence (...)” (p. 17, l. 29)

The expression is “inference,” and we would translate it as “deducción.” As for the definition of the expression in question, it is “a conclusion reached by considering other facts and deducing a logic consequence from them” (Garner, 2004, p. 793). Besides, Galiberty Jarman and Russell (2008) propose to translate the word as “deducción” (p. 1326). The word “deducción” is defined as “acción y efecto de deducir” (Real Academia Española, 2015)<sup>237</sup>, and “deducir” means “sacar una conclusión de algo” (Real Academia Española, 2015)<sup>238</sup>, which is similar to the definition of “inference” given by Garner (2004). The usage of this word is illustrated by the following example: “Estos elementos internos al no ser propiamente hechos sino deducciones derivadas de hechos externos pueden ser revisables en casación (...)” (Padrón, 2013)<sup>239</sup>. According to our research, our proposed translation is correct. Therefore, the word “inference” can be translated as “deducción.”

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<sup>237</sup> Retrieved from <http://dle.rae.es/?id=C0kjoXN>

<sup>238</sup> Retrieved from <http://dle.rae.es/?id=C0u0Q9o>

<sup>239</sup> Retrieved from <http://lawcenter.es/w/blog/view/4613/prueba-de-indicios-juicios-de-valor-o-inferencias>

- “(...) pointing out to the jury the other inferences that the *defence* says should be drawn from the evidence (...)” (p. 17, l. 29)

The word is “defence,” and we would translate it as “el abogado defensor.” Garner (2004) states that “defence” means “one or more defendant in a trial, as well as their counsel” (p. 452). Moreover, Mazzucco (2009) proposes to translate the expression as “abogado defensor” (p. 102), which is “el encargado de actuar en nombre de una persona acusada de un delito” (Ossorio, 2013, p. 24). Furthermore, such expression is used in the following way:

La persona a quien se le imputare la comisión de un delito por el que se está instruyendo causa tiene derecho, aun cuando no hubiere sido indagada, a presentarse al tribunal, personalmente con su abogado defensor, aclarando los hechos e indicando las pruebas que, a su juicio, puedan ser útiles (section 73, Argentinian Procedural Criminal Code)<sup>240</sup>.

According to our research, our proposed translation is correct. Therefore, “defence” can be translated as “el abogado defensor.”

- “(...) pointing out to the jury the other inferences that the defence says should be drawn from the *evidence* (...)” (p. 17, l. 30)

The term is “evidence,” and we would translate it as “pruebas.” Garner (2004) states that “evidence” means “something (including testimony, documents, and

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<sup>240</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#9>

tangible objects) that tends to prove or disprove the existence of an alleged fact” and “the collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute” (p. 595). Cabanellas de las Cuevas (2010) proposes to translate the word as “prueba” (p. 263), which means “conjunto de actuaciones que dentro de un juicio, cualquiera sea su índole, se encamina a demostrar la verdad o la falsedad de los hechos aducidos por cada una de las partes, en defensa de las respectivas pretensiones litigiosas” (Ossorio, 2013, p. 787). We must point out that we consider that the “evidence” can be referred to as “la prueba” o “las pruebas” indistinctly. In addition, our proposed translation is used in the following example:

La policía o las fuerzas de seguridad deberán investigar, por iniciativa propia, en virtud de denuncia o por orden de autoridad competente, los delitos de acción pública, impedir que los hechos cometidos sean llevados a consecuencias ulteriores, individualizar a los culpables y reunir las pruebas para dar base a la acusación. (section 183, Argentinian Procedural Criminal Code)<sup>241</sup>

According to our research, our proposed translation is correct. Therefore, the expression “evidence” can be translated as “pruebas.”

- “(...) as the trial judge did (...) in the final portion of his *recharge* (...)” (p. 18, l. 2)

The expression is “recharge,” and we would translate it as “instrucción adicional al jurado.” Garner (2004) states that “charge” is related to the expression “jury

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<sup>241</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm>

instruction,” which means “a direction or guideline that a judge gives a jury concerning the law of the case” (pp. 248 and 874). In addition, “recharge” is related to an “additional instruction,” which means “a jury charge, beyond the original instructions, that is usu. given in response to the jury’s question about the evidence or some point of law” (Mehta, 2015<sup>242</sup>; Garner, 2004, p. 874). Cabanellas de las Cuevas (2010) proposes to translate “additional instructions” as “instrucciones adicionales al jurado” (p. 33). However, we cannot provide a Spanish definition for “instrucción adicional al jurado,” because criminal cases in Argentina are not tried by juries (Ossorio, 2013, p. 523). Therefore, if we face the expression in a document to be translated and the expression “jury” has not been explained previously in the text, we consider that the best option is to translate “recharge” as “instrucciones adicionales al jurado” and add a translator’s note explaining what a jury is, like the one stated above.

- “(...) charging the jury that it must be satisfied *beyond a reasonable doubt* that the guilt of the accused (...)” (p. 18, l. 3)

The expression is “beyond a reasonable doubt,” and we would translate it as “más allá de toda duda razonable.” Garner (2004) explains that “reasonable doubt” means “the doubt that prevents one from being firmly convinced of a defendant’s guilt, or the belief that there is a real possibility that a defendant is not guilty,” and he adds that “beyond a reasonable doubt” is “the standard used by a jury to determine whether a criminal defendant is guilty” (p. 1293). Besides, Mazzucco

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<sup>242</sup> Retrieved from <http://news.nationalpost.com/news/canada/weve-got-to-get-this-right-judge-to-recharge-jurors-deciding-fate-of-two-men-in-via-rail-terror-plot>

(2009) proposes to translate the expression as “más allá de toda duda razonable” and states that the following translator’s note can be used: “(...) En materia penal, la culpabilidad de un acusado debe establecerse “más allá de toda duda razonable”, es decir, que los hechos probados deben establecer, en virtud de su propia fuerza probatoria, dicha culpabilidad” (pp. 49 and 341). As stated before, cases in Argentina are not tried by juries; therefore, the “reasonable doubt standard” is not applied in such country (Ossorio, 2013, p. 523). For that reason, we are going to translate the expression as “más allá de toda duda razonable” and add the following translator’s note: “En los sistemas jurídicos como los de Estados Unidos y Canadá, la culpabilidad de un acusado debe establecerse “más allá de toda duda razonable”, es decir, que los hechos probados deben establecer, en virtud de su propia fuerza probatoria, dicha culpabilidad.”

- “(...) charging the jury that it must be satisfied beyond a reasonable doubt that the *guilt* of the accused (...)” (p. 18, l. 3)

The term is “guilt,” and we would translate it as “culpabilidad.” Garner (2004) states that “guilt” is “the act or state of having committed a wrong, esp. a crime” (p. 727). In addition, Cabanellas de las Cuevas (2010) proposes to translate the word as “culpabilidad” (p. 331), which is defined as “el hecho de haber incurrido en culpa determinante de responsabilidad civil o de responsabilidad penal” (Ossorio, 2013, p. 250). As for the usage of the expression “culpabilidad,” it is illustrated by the following example: “Si el imputado confesara circunstanciada y llanamente su culpabilidad, podrá omitirse la recepción de la prueba tendiente a acreditarla (...)”

(section 183, Argentinian Procedural Criminal Code)<sup>243</sup>. According to our research, our proposed translation is correct. Therefore, the expression “guilt” can be translated as “culpabilidad.”

- “(...) charging the jury that it must be satisfied beyond a reasonable doubt that the guilt of *the accused* (...)” (p. 18, l. 4)

The expression is “the accused,” and we would translate it as “el acusado.” With respect to the definition of the expression being studied, it is “a person who has been formally charged with a crime (...)” (Garner, 2004, p. 23). Besides, Cabanellas de las Cuevas (2010) proposes to translate “the accused” as “el acusado” (p. 27), which means “persona a la que se le atribuye la comisión de un delito” (Ossorio, 2013, p. 59). Moreover, the usage of the expression “el acusado” is illustrated by the following example: “(...) Cuando se revoque el auto de prisión preventiva se sobresea en la causa, se absuelva al acusado o se lo condene en forma condicional” (subsection 2, section 327, Argentinian Procedural Criminal Code)<sup>244</sup>. According to our research, our proposed translation is correct; the expression “the accused” can be translated as “el acusado.”

- “(...) The modern approach to the problem of *circumstantial evidence* (...) is to reject a formulaic approach (...)” (p. 18, l. 9)

The expression is “circumstantial evidence,” and we would translate it as “prueba indirecta.” With reference to the definition of “circumstantial evidence,” Garner (2004) states that it is “evidence based on inference and not on personal

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<sup>243</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm>

<sup>244</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm>

knowledge or observation” and adds that the expression is also termed “indirect evidence” (p. 595). In addition, Cabanellas de las Cuevas (2010) proposes to translate the expression as “pruebas circunstanciales o indiciarias” (p. 124). According to Ossorio (2013), the “prueba indiciaria” and the “prueba circunstancial” refer to the type of evidence called “prueba indirecta,” which is “[la que,] por fundarse en circunstancias provenientes de un hecho conocido[,] (...) conduce a conclusiones inductivas” (p. 483). Moreover, Ossorio (2013) points out that the “indicios” refer to “las circunstancias y antecedentes que, teniendo relación con un delito, pueden razonablemente fundar una opinión sobre hechos determinados,” and he adds the following: “El indicio constituye un medio probatorio conocido como “prueba indiciaria”” (pp. 788 and 789). Thus, according to Ossorio (2013), the expressions “prueba circunstancial,” “prueba indiciaria,” and “prueba indirecta” are synonyms. We choose to use the expression “prueba indirecta,” which appears in the following extract:

El concubinato debe tenerse por acreditado ante la existencia de prueba directa e indirecta, como es la contratación de un seguro de vida en el cual la mujer fue instituida beneficiaria y se la hizo constar como “esposa”, de un certificado de convivencia y de testigos que dan cuenta de la relación, tomando como pauta

interpretativa las disposiciones del art. 509 del Código Civil y Comercial.

(“Prueba directa e indirecta,” 2015)<sup>245</sup>

According to our research, our proposed translation is correct. Therefore, the expression “circumstantial evidence” can be translated as “prueba indirecta.”

- “(...) *Trial judges* are given a degree of latitude to formulate the appropriate instruction as befits the circumstances of the case (...)” (p. 18, l. 12)

The expression is “trial judge,” and we would translate it as “juez de primera instancia.” With regard to the definition of this expression, Garner (2004) states that it is the following: “the judge before whom a case is tried” (p. 858). Besides, Cabanellas de las Cuevas (2010) proposes to translate the word as “juez de primera instancia” (p. 700). Nevertheless, we cannot use “juez de primera instancia,” because that kind of judge is the one who hears civil cases in original jurisdiction (Ossorio, 2013, p. 517). In Argentina, there are two types of judges that deal with criminal cases: the “juez de instrucción” and the “juez de sentencia.” The “juez de instrucción,” on the one hand, is the judge that deals with the case in the first stage of the criminal prosecution called “instrucción,” in which the evidence is gathered and the accused is examined. On the other hand, the “jueces de sentencia” are the judges that deal with the case in the second stage of the criminal prosecution called “juicio plenario,” in which the prosecutor files a written accusation based on the merits and the defendant files her plea and which ends with the pronouncement of the final judgment by a panel of three “jueces de

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<sup>245</sup> Retrieved from <http://thomsonreuterslatam.com/2015/07/27/se-admite-prueba-directa-e-indirecta-para-acreditar-el-concubinato-en-una-division-de-condominio>

sentencia” (Ossorio, 2013, p. 517; Mazzucco, 2009, p. 472). Therefore, we cannot employ either expression to refer to a “trial judge,” because in other countries, like the United States and Canada, the same judge deals with the case in all the stages of the criminal prosecution (“Criminal Cases,” n.d.<sup>246</sup>; “Trial,” n.d.<sup>247</sup>). According to our research, we cannot use our proposed translation. We consider then that “trial judge” can be translated as “juez de sentencia” and that the following translator’s note should be added: “En los sistemas jurídicos como los de Estados Unidos de América y Canadá, un solo juez se encarga tanto de la instrucción penal como del dictado de la sentencia.”

- “(...) Trial judges are given a degree of latitude to formulate the appropriate *instruction* as befits the circumstances of the case (...)” (p. 18, l. 12)

The expression is “instruction,” and we would translate it as “instrucciones al jurado.” Garner (2004) states that “jury instruction” refers to “a direction or guideline that a judge gives a jury concerning the law of the case” (p. 874). In addition, Cabanellas de las Cuevas (2010) proposes to translate the expression as “instrucciones al jurado” (p. 371). Nevertheless, as cases in Argentina are not tried by juries, jury instructions do not exist in such country (Ossorio, 2013, p. 523). If we face this expression in a document to be translated and the expression “jury” has not appeared yet in the text, we consider that the best option is to translate “instruction” and add a translator’s note explaining what a jury is, like the one stated above. According to our research, our proposed translation is correct;

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<sup>246</sup> Retrieved from <http://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases>

<sup>247</sup> Retrieved from <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/court-tribunaux/trial-proces.html>

“instruction” can be translated as “instrucciones al jurado” taking into account the recommendation stated above.

- “(...) trial judges are not required to deliver to the jury a general, abstract lecture on (...) the steps of logic to be followed in assessing circumstantial as distinct from *direct evidence* (...)” (p. 18, l. 20)

The expression is “direct evidence,” and we would translate it as “prueba directa.” Regarding the definition of the expression being studied, it is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption” (Garner, 2004, p. 596). Besides, Cabanellas de las Cuevas (2010) proposes to translate the expression as “prueba directa” (p. 218), which means “la que se relaciona de modo inmediato y concreto con el hecho controvertido, como la falsedad de un documento (...)” (Ossorio, 2013, p. 789). The example by which the usage of the expression in Spanish is illustrated is included in the explanation of the process of translation of the expression “prueba indirecta,” which appears above. According to our research, our proposed translation is faithful to the original expression. Therefore, the expression “direct evidence” can be translated as “prueba directa.”

- “(...) *An academic exercise* along those lines may well confuse rather than assist the jury (...)” (p. 18, l. 21)

The expression is “academic exercise,” and we would translate it as “ejercicio académico.” According to Fisher (2012), the expression being studied “has long

had a pejorative meaning, as something with little or no relevance”<sup>248</sup>. In addition, it is something of theoretical nature or with no value (“Academic exercise,” n.d.)<sup>249</sup>. In addition, we choose to translate the expression literally, as in the following example, in which the meaning that acquires the expression is the same as the one stated above:

Otra postura errónea consiste en afirmar, contra viento y marea, que los paradigmas son los mismos, y tratar de aducir razones de orden abstracto y puramente académico para demostrar esto. Peor, como los hechos son testarudos y las prácticas científicas son a veces divergentes, todo queda en un puro ejercicio académico sin utilidad alguna. (Martínez Veiga, 1989, p. 117)

According to our research, our proposed translation is correct. Therefore, the expression “academic exercise” can be translated as “ejercicio académico.”

- “(...) This reading of the *judgment* is confirmed by our subsequent *decision* in Mayuran (...)” (p. 18, l. 26)

The expressions are “judgment” and “decision,” and we would translate them as “fallo” and “decisión judicial,” respectively. Garner (2004) states that “judgment” means “a court’s final determination of the rights and obligations of the parties in a case” (p. 858) and that “decision” means “(...) a ruling, order, or judgment pronounced by a court when considering or disposing of a case” (p. 436). Besides,

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<sup>248</sup> Retrieved from [http://www.huffingtonpost.com/thomas-fisher/flipped-classroom\\_b\\_2122470.html](http://www.huffingtonpost.com/thomas-fisher/flipped-classroom_b_2122470.html)

<sup>249</sup> Retrieved from <http://www.yourdictionary.com/academic>

Cabanellas de las Cuevas (2010) proposes to translate “judgment” as “fallo, decisión judicial” (p. 390) and “decision” as “fallo, decisión” (p. 199). Ossorio (2013), in addition, explains that “fallo” means “acción y efecto de fallar, de dictar sentencia” (p. 402) and that “decisión” means “sentencia o fallo en cualquier pleito o causa” (p. 260). Thus, we consider that “judgment” and “decision” and “fallo” and “decisión” are synonyms. Furthermore, we believe that “judgment” can be translated as “fallo” or “decisión,” and “decision” can also be translated in the same manner. The expression “fallo” appears in the following example: “(...) La sentencia impugnada se hubiera fundado en prueba documental o testifical cuya falsedad se hubiese declarado en fallo posterior irrevocable” (subsection 2, section 479, Argentinian Procedural Criminal Code)<sup>250</sup>. In addition, the expression “decisión” appears in the following example: “El juez puede acudir a una decisión anterior con dos finalidades: confirmarla (confirmando simultáneamente su propia decisión) o rechazarla (también para confirmar su decisión)” (Ezquiaga Gamuzas, 1984, p. 51)<sup>251</sup>. According to our research, our proposed translations are correct. Therefore, “judgment” and “decision” can be translated as “fallo” and “decisión” respectively. However, for the word “decision,” we choose to use the expression “decisión judicial,” which is proposed by Cabanellas de las Cuevas (2010) above and which is also used by Ossorio (2013) in his definition of “sentencia” in the *Diccionario de ciencias jurídicas, políticas y sociales* as follows: “Decisión judicial que en la instancia pone fin al pleito civil o causa criminal, resolviendo

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<sup>250</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#2>

<sup>251</sup> Retrieved from <https://dialnet.unirioja.es/descarga/articulo/1984714.pdf>

respectivamente los derechos de cada litigante y la condena o absolución del procesado” (p. 878).

- “(...) departed from any legal requirement for a ‘*special instruction*’ on circumstantial evidence (...)” (p. 18, l. 28)

The expression is “special instruction,” and we would translate it as “instrucciones especiales al jurado.” As for the definition of the expression, it is “an instruction on some particular point or question involved in the case, usu. in response to counsel’s request for such an instruction” (Garner, 2004, p. 875). In addition, Cabanellas de las Cuevas (2010) proposes an explicative translation for “special translation,” which is the following: “instrucción especial a un jurado (sobre un punto específico del litigio)” (p. 643). We cannot provide a definition for “instrucción especial a un jurado,” because criminal cases are not tried by juries in Argentina (Ossorio, 2013, p. 523). Thus, we consider that the best option is to translate the expression as Cabanellas de las Cuevas (2010) and add a translator’s note explaining what a jury is, like the one stated above. According to the research, our proposed translation is faithful to the original expression. Therefore, the expression “special instruction” can be translated as “instrucción especial al jurado” taking into account the recommendation stated above.

- “(...) However, where proof of one or more *elements of the offence* depends solely or largely on circumstantial evidence (...)” (p. 19, l. 1)

The expression is “the elements of the offense,” and we would translate it as “los elementos constitutivos del delito.” Garner (2004) explains that the “elements of

the offense” are “the constituent parts of a crime –usu. consisting of the *actus reus*, *mens rea*, and causation– that the prosecution must prove to sustain a conviction” (p. 559). Moreover, Cabanellas de las Cuevas (2010) proposes to translate the expression as “los elementos constitutivos del delito” (p. 245), which are “(...) [los] elementos que constituyen una conducta calificable como delito” (Ossorio, 2013, p. 358). As for the usage of the expression explained by Ossorio (2013), we can provide the following example to illustrate it: “En primer lugar, es inadmisibles reputar como tipos de homicidio el culposo (art. 84 C.P.) y el preterintencional (art. 82 C.P.) porque sus elementos constitutivos son distintos de los que integran el homicidio simple” (LaPlaza, n.d., p. 91)<sup>252</sup>. Having made our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, “the elements of the offense” can be translated as “los elementos constitutivos del delito.”

- “(...) the relationship between proof by circumstantial evidence and the requirement of *proof beyond reasonable doubt* (...)” (p. 19, l. 4)

The expression is “proof beyond a reasonable doubt,” and we would translate it as “la prueba más allá de toda duda razonable.” Garner (2004) states that the expression in question means “proof that precludes every reasonable hypothesis except that which it tends to support” (p. 1251). Besides, Cabanellas de las Cuevas (2010) proposes to translate such expression as “prueba más allá de toda duda razonable” (p. 556). As stated before, criminal cases in Argentina are not

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<sup>252</sup> Retrieved from <http://www.derecho.uba.ar/publicaciones/lye/revistas/46-1/elementos-constitutivos-del-homicidio.pdf>

tried by juries; therefore, the requirement of proof beyond a reasonable doubt, which refers to the reasonable doubt standard applied by juries, is not applied in such country (Garner, 2004, p. 1251; Ossorio, 2013, p. 523). Thus, we believe that we should use a tentative translation like the one proposed by Cabanellas de las Cuevas (2010), which matches our translation. According to our research, our proposed translation is correct. Therefore, the expression “beyond a reasonable doubt” can be translated as “la prueba más allá de toda duda razonable.”

- “(...) prepared by the *National Committee on Jury Instructions of the Canadian Judicial Council* (...)” (p. 19, l. 10)

The expression is “National Committee on Jury Instructions of the Canadian Judicial Council,” and we would leave it as it is and add a tentative translation. In the first place, we should point out that the Canadian Judicial Council is a federal body that controls and supervises the judicial activity of the superior courts of Canada (“About the council,” n.d.)<sup>253</sup>. In addition, the National Committee on Jury Instructions is in charge of drafting model jury instructions to be used in criminal cases (“Jury instructions,” n.d.)<sup>254</sup>. As these bodies are from Canada and as we believe that we do not have a similar council or committee in Argentina, we are going to leave the names as they are and add the following tentative translation: [Comité Nacional de Instrucciones al Jurado del Consejo Judicial de Canadá].

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<sup>253</sup> Retrieved from [http://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_main\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_main_en.asp)

<sup>254</sup> Retrieved from [http://www.cjc-ccm.gc.ca/english/lawyers\\_en.asp?selMenu=lawyers\\_juryinstruction\\_en.asp](http://www.cjc-ccm.gc.ca/english/lawyers_en.asp?selMenu=lawyers_juryinstruction_en.asp)

According to our research, the expression being studied can be left as it is, and the tentative translation stated above can be added.

- “(...) As I explained at the beginning of the *trial* (...)” (p. 19, l. 12)

The expression is “trial,” and we would translate it as “juicio.” Garner (2004) states that “trial” means “a formal judicial examination of evidence and determination of legal claims in an adversary proceeding” (p. 1543). Cabanellas de las Cuevas (2010), besides, proposes to translate the expression as “juicio” (p. 700), which means “la controversia que, con arreglo a las leyes, se produce entre dos o más personas, ante un juez competente, que le pone término por medio de un fallo (...)” (Ossorio, 2013, p. 517). As for the usage of the word “juicio,” we can provide the following example to illustrate it: “La suspensión del trámite del proceso impedirá la declaración indagatoria o el juicio (...)” (section 77, Argentinian Procedural Criminal Code)<sup>255</sup>. According to our research, our proposed translation is correct. Therefore, the expression “trial” can be translated as “juicio.”

- “(...) you may rely on direct evidence and on circumstantial evidence in reaching your *verdict* (...)” (p. 19, l. 13)

The term is “verdict,” and we would translate it as “veredicto.” Garner (2004) points out that “verdict” means “a jury’s finding or decision on the factual issues of a case” (p. 1592). In addition, the jury finds the accused guilty or not guilty through a verdict (“The Role of the Public,” n.d.)<sup>256</sup>. Moreover, Mazzucco (2009) proposes to translate the expression as “veredicto” (p. 322), which means “la resolución que

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<sup>255</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#12>

<sup>256</sup> Retrieved from <http://www.justice.gc.ca/eng/csj-sjc/just/12.html>

dictan los jurados (...) [por la que determinan] la culpabilidad o inculpabilidad del reo, apreciando libremente y de acuerdo con su conciencia las pruebas practicadas ante ellos, así como las alegaciones verbales de los letrados que intervienen en el juicio defendiendo a las partes” (Ossorio, 2013, p. 981). Although the word “veredicto” is a common word, it should be used only when referring to the decision issued by juries, which do not exist in Argentina (p. 523). According to our research, we can affirm that our proposed translation is faithful to the original expression. Therefore, the term “verdict” can be translated as “veredicto.”

- “(...) Usually, *witnesses* tell us what they personally saw (...)” (p. 19, l. 15)

The term is “witness,” and we would translate it as “testigo.” According to Garner (2004), “witness” means “one who gives testimony under oath or affirmation (1) in person, (2) by oral or written deposition, or (3) by affidavit” (p. 1633). Besides, Cabanellas de las Cuevas (2010) proposes to translate the word as “testigo” (p. 739), which means “persona que da testimonio de una cosa”. The testimony of this person, in addition, is crucial to prove the facts alleged by the parties to a case (Ossorio, 2013, p. 939). As for the usage of the word “testigo,” we can provide the following example to illustrate it: “La intervención de una persona como querellante no la exime de la obligación de declarar como testigo en el proceso” (section 86, Argentinian Procedural Criminal Code)<sup>257</sup>. According to our research, our proposed translation is correct. Therefore, the expression “witness” can be translated as “testigo.”

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<sup>257</sup> Retrieved from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm#12>

- “(...) one or more elements of the *Crown's case* depends solely or mainly on circumstantial evidence (...)” (p. 20, l. 2)

The expression is “the Crown’s case,” and we would translate it as “la acusación de la Corona.” In Canada, which is a constitutional monarchy, prosecutors act on behalf of the Crown, i.e. Her Majesty Queen Elizabeth II, and that is the reason why a case is said to be from the Crown (“Criminal Law,” n.d., About Criminal Law section<sup>258</sup>; “The Crown,” n.d.<sup>259</sup>). In addition, a “case” refers to “a set of facts or arguments supporting one side in a trial” (“Case,” n.d.)<sup>260</sup>. Moreover, “Crown” is translated as “Corona” (Cabanellas de las Cuevas, 2010, p. 188), and “case” is translated as “acusación” (“Case,” n.d.)<sup>261</sup>. In addition, “Corona” means “reino o monarquía; en un régimen monárquico, órgano al que corresponde la jefatura del Estado” (Real Academia Española, 2015)<sup>262</sup>, and “acusación” means “petición ante la jurisdicción penal de una condena mediante la aportación de pruebas que demuestren un hecho delictivo y destruyan la presunción de inocencia del imputado” (Real Academia Española, 2015)<sup>263</sup>. We should point out that Argentina is governed by a president, not a queen (“Organización,” n.d.)<sup>264</sup>; therefore, we cannot find examples of Argentinian criminal cases containing the expression “la acusación de la Corona.” Nevertheless, we can provide the following example in which the word “acusación” appears: “El control formal gira alrededor del cumplimiento del Fiscal de los requisitos legales que tiene que observar al

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<sup>258</sup> Retrieved from [https://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/criminal\\_law.php#about](https://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/criminal_law.php#about)

<sup>259</sup> Retrieved from <http://canada.pch.gc.ca/eng/1444999462589>

<sup>260</sup> Retrieved from <https://en.oxforddictionaries.com/definition/case>

<sup>261</sup> Retrieved from <https://es.oxforddictionaries.com/traducir/ingles-espanol/case>

<sup>262</sup> Retrieved from <http://dle.rae.es/?id=AvKOq1e>

<sup>263</sup> Retrieved from <http://dle.rae.es/?id=0fzjJMI>

<sup>264</sup> Retrieved from <http://www.caserosada.gob.ar/nuestro-pais/organizacion>

formular acusación” (Arbulu Martinez, 2010, p. 16)<sup>265</sup>. It should be noted that in such example the collocation “formular acusación” appears, and it means to present the arguments against the accused before court (Real Academia Española, 2015)<sup>266</sup>. According to our research, our proposed translation is correct, but we choose to use the collocation “formular acusación” to translate the expression being studied. Therefore, “the Crown’s case” can be translated as “la acusación formulada por la Corona.”

- “(...) A reasonable doubt is not an inference or a *finding of fact* that needs support in the evidence presented at trial (...)” (p. 21, l. 11)

The expression is “finding of fact,” and we would translate it as “determinación de una cuestión de hecho.” Garner (2004) states that “finding of fact” means “a determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usu. presented at the trial or hearing” (p. 664). Cabanellas de las Cuevas (2010), moreover, proposes to translate the expression in question as “determinación de una cuestión de hecho” (p. 295). Thus, we believe that we can talk about a decision on a “cuestión de hecho,” which is, according to Ossorio (2013), “la relativa a un punto controvertido que necesita ser objeto de prueba” (p. 248). The usage of the expression “determinación de una cuestión de hecho” can be illustrated by the following example: “Cuando se determina si una sentencia de muerte debe imponerse a un acusado, la determinación de una cuestión de hecho deberá considerar los factores atenuantes (...)” (Garza, 2001)<sup>267</sup>. According to our

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<sup>265</sup> Retrieved from [https://www.unifr.ch/ddp1/derechopenal/articulos/a\\_20100727\\_01.pdf](https://www.unifr.ch/ddp1/derechopenal/articulos/a_20100727_01.pdf)

<sup>266</sup> Retrieved from <http://dle.rae.es/?id=IFjax11|IFk22Sb>

<sup>267</sup> Retrieved from <https://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/EEUU12.243.htm>

research, our proposed translation is correct. Therefore, the expression “finding of fact” can be translated as “determinación de una cuestión de hecho.”

- “(...) The reasonable doubt instructions are all directed to describing for the jurors how sure they must be of guilt in order to *convict* (...)” (p. 21, l. 17)

The expression is “convict,” and we would translate it as “declarar culpable al acusado.” Garner (2004) states that “to convict” is “to find (a person) guilty of a criminal offense” (p. 358). In addition, Cabanellas de las Cuevas (2010) proposes to translate the verb as “declarar culpable” (p. 169), which refers to a decision by which the accused is found guilty (Real Academia Española, 2015<sup>268</sup>; Ossorio, 2013, p. 250). Moreover, the expression “declarar culpable” requires a direct object, as in the following example: “El juez lo declaró culpable” (Real Academia Española, 2015)<sup>269</sup>. We consider that the direct object can be “el acusado,” which is an expression that refers to the person who is charged with a crime (Ossorio, 2013, p. 59), and that is the reason why we include such expression in our translation. According to our research, our proposed translation is correct. Therefore, the verb “condenar” can be translated as “declarar culpable al acusado.”

Having explained and translated the terms and expressions found in the English document, we conclude that the majority of the words did not pose challenges when we had to translate them due to the availability of equivalents in the target language. In addition, we learned the difference between “direct” and

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<sup>268</sup> Retrieved from <http://dle.rae.es/?id=BxiWP4r>

<sup>269</sup> Retrieved from <http://dle.rae.es/?id=BxiWP4r>

“circumstantial” evidence. As we have corrected the orthographic and grammatical mistakes of the English document and translated the collocations and expressions present in such text, we can proceed to pass the last comments on the analysis of the text. After the comments, we translate the section of the document analyzed according to the format guidelines set forth by the Certified Legal Translators' Association of the City of Buenos Aires.

## ***SECTION 5: CONCLUSION***

We consider that the analysis of the English document was a thorough study, which enabled us to understand the type of document we were dealing with, the judicial system of Canada, and the laws and regulations cited in the text. Moreover, the analysis included the identification and correction of the orthographic and grammatical mistakes present in the text and the investigation and translation of the collocations, terms, and expressions that we considered important for the translation of the document. The analysis in question revealed that only a reduced number of orthographic mistakes and inconsistency issues were included in the text and that there were different legal words that could be understood by laymen, such as “jury,” “judge,” “evidence,” and “trial.” Those results, coupled with the investigation about the type of document we were dealing with and the form of

government of the country of origin, served as a basis to help us translate the section of the text for which we conducted the in-depth analysis, and the process of translation did not pose challenges because of the availability of equivalents in the target language. Finally, we should add that the research has proved useful to expand our knowledge of appellate and criminal procedure in Canada. In the following section, we present the translation of the pertinent section of the English text.

## ***SECTION 6: TRANSLATION***

As stated before, in this section we translate the part of the text that we have been asked to translate into Spanish. As it is a certified legal translation, it bears the signature and the seal of the translator who has a professional license issued by the Certified Legal Translators' Association of the City of Buenos Aires. In addition, it is drafted according to the formalities established by such entity. We should point out that, in order to make the translation in question, we must take into consideration the analyses that we have performed to translate the text in the most faithful way. In the following pages, we present the product of our study of the English document.

