

INTERNATIONAL LITIGATION: LITIGATION IN LATIN AMERICA A COMPARATIVE CHART

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Introduction

Litigating in a jurisdiction other than the one of your original legal background may entail difficulties, not only regarding the differences of substantive and procedural law, but also regarding practical aspects of litigation and advocacy, such as specific rules of procedure of the different jurisdiction, how to commence a lawsuit, court fees and other aspects. With that in mind, the following article aims to present a comparative study regarding the litigation system of six countries in Latin America (Brazil, Mexico, Chile, Argentina, Colombia and Peru), with the purpose to serve as a reminder of some practical differences in commercial litigation in such countries.

Without the intention to provide a comprehensive discussion of legal differences, advantages and disadvantages of the various national systems, but rather to provide practical tips for practitioners that have to deal with international litigation, the article

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is organized in the format of a chart, in which it is possible to compare the rules of procedure of each country, regarding specific topics selected for their practical materiality.

The topics covered by this analysis comprise, in a pragmatic manner, the rules of procedure for production of evidence and interim/injunctive relief, the role of judges in civil litigation, res judicata, court fees, enforcement and recognition of judgments or awards, the role of alternative dispute resolution methods and other specific topics of international litigation in the context of Latin America.

1. Procedure to initiate a lawsuit

Brazil ⁴	Argentina ⁵	Mexico ⁶	Peru ⁷	Colombia ⁸	Chile
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⁴ Articles 319 to 321. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019.

⁵ All 23 Argentinian provinces have legislative powers, under the Argentinian National Constitution, to legislate over civil procedural law, meaning that the National Civil Procedure Code shall regulate the civil procedure in general and each province shall regulate the particularities of its civil procedures. The following comments are related to commercial litigation in Buenos Aires, capital city of Argentina, except where there is an express reservation

⁶ The Political Constitution of the United Mexican States has established that commercial matters are governed by federal law and are regulated in the Commerce Code, which are applicable to the entire country. The following comments are related to the provisions of the Mexican Commerce Code, except

<p>To initiate a lawsuit the interested party must filing a statement of claim and addresses it to the court. The statement must fulfill the formal requirements set forth in the Brazilian Civil Procedure Code of 2015. Contract disputes among commercial parties are mostly handle by the State courts. However, the States of Brazil organize their own judicial systems. Thus, each of them has its</p>	<p>Filing the Statement of Claim, on paper, in the court-house. Payment of filling fees is required. The files in Argentina are solely on paper, so to file a claim one must present its procedural documents on paper at the Court-House (at this stage, the Statement of Claim, all relevant documents and a formulary provided by the Judicial Power).</p>	<p>The lawsuit initiate with the proposition of a statement of claim, which must follow the constitutional procedural principles, set forth in the Political Constitution of the United Mexican States, as the opportunity to exercise defense by the defendant.¹⁰ With the initial pleading, all facts and arguments shall be submitted. Additionally, all</p>	<p>To submit a claim, the interested party must fulfill all the requirements established by the law to the competent jurisdiction. The judge will attest if it fulfills all the necessary requirements to commence a lawsuit. Once all the requirements are met, the lawsuit will be admitted for proceeding. However, if the Judge considers it lacks any of the</p>	<p>There are two jurisdictions upon which disputes can be brought: ordinary or administrative jurisdictions. If one of the parties is the state or a state entity it falls automatically into the administrative jurisdiction. (Articles 234 to 238 of the GPC)</p>	<p>Filing the Statement of Claim, electronically, in the court system. No payment of filling fees is required.¹². The plaintiff must present his claim by online platform (called Oficina Judicial Virtual)¹³. Chilean Judicial Power have prepared a manual explaining how to file lawsuits in the online platform, which can be accessed through this link. There are no filling fees in Chile. The typical costs relate to court-appointed</p>
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when the matter in question is not regulated by it, then, the Mexican Federal Code of Civil Procedures shall supply. (Article 1054. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 feb. 2019)

⁷ FREITAS, Gabriela Oliveira. *Direito Processual Civil Peruano* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 259-260

⁸ ARAUJO, Fabrício Simão da Cunha. *Direito Processual Civil Colombia* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 168

¹⁰ MENEZES, Rafael Filipe Fonseca de. *Direito Processual Civil Mexicano* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 205-206

¹² ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

¹³ PODER JUDICIAL DE LA REPÚBLICA DE CHILE. **Preguntas y Respuestas**. Available at: <http://www.tramitacionelectronica.cl/preguntas-y-respuestas/>. Accessed in: 28 de jan. 2019

<p>own procedures to initiate a lawsuit, as filling fees, costs and online judicial platform.</p>	<p>However, it is mandatory to upload a digital copy of every document 24hs after its filing on paper, through this link. The general filling fee country-wide is 3% of the amount of the claim⁹ (in the Province of Buenos Aires the fee is 2,2%) and should be paid by the claimant at the beginning of the proceeding. In order to pay the filling fee you have to fill a form and pay in the “<i>Banco Ciudad</i>”, and proof of the deposit should be presented in court.</p>	<p>documents existing in the possession of the claimant and which shall serve as evidence shall be annexed to such pleading and must meet the formal requirements set forth in Article 1061 of the Mexican Commerce Code.¹¹</p>	<p>formal requirements the party will be summoned to comply and make the adjustments. If it is considered to lack the substantial requirements, the lawsuit will be rejected.</p>		<p>experts, notification of court orders and hearing transcriptions. Notification of court orders costs approximately USD 75,00 per notification.</p>
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⁹ LE PERA, Sergio; TAQUELA, Maria Blanca Noodt. **Special Supplement 2012: ICC Guide to National Procedures for Recognition and Enforcement of Awards under the New York Convention.** Available at: http://library.iccwbo.org/content/dr/COUNTRY_ANSWERS/CA_SUPP_0029_2.htm?l1=Country+Answers&l2=Argentina#TOC_BKL1_4. Accessed in: 01 feb. 2019.

¹¹ Article 1061. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 feb. 2019)

2. Main dispute resolution method used to resolve large commercial disputes

Brazil ¹⁴	Argentina ¹⁵	Mexico	Peru	Colombia ¹⁶	Chile ¹⁷
The main dispute resolution method is litigation in the State courts. However, "it must be noted that other ADR procedures are now under the spotlight in Brazil. Conciliation, for instance, has served as a preliminary stage in	Litigation in State courts. There are no general statistics available to determine the number of arbitrations in Argentina, leading to the conclusion that Litigation in State courts is the prevailing method. Although conciliation	Although commercial litigation is the most common method, "there is a judicial trend to boost other ADR mechanisms such as mediation. Today most states' judiciary have a mediation center that is actively promoted by courts as an ideal alternative to litigation. Also, there are private	On larger commercial disputes the most promoted ADR is arbitration. One interesting fact is that when a dispute arises from a State, acting as a contractor there will be a mandatory arbitration.	It is estimated that more 70% of the large commercial disputes are dealt through ADR. Conciliation is the first and mandatory measure when disputes are to be dealt on national courts. Followed by arbitration as the second most used ADR.	Arbitration. In general, arbitral proceedings are preferred to general court proceedings for complex matters. "Arbitration is generally seen as the preferred method of commercial dispute resolution for a wide spectrum of entities ranging from sophisticated parties to small-business owners".

¹⁴ GONÇALVES, Eduardo Damião; BARBOSA, Flavio Spaccaquerche. **Arbitration Guide: Brazil**. International Bar Association Arbitration Committee. Available at: https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx. Accessed in: 01 Feb. 2019

¹⁵ TAWIL, Guido Santiago; CAMPOLIETI, Federico. **Arbitration Guide: Argentina**. International Bar Association Arbitration Committee. Available at: https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx. Accessed in: 01 Feb. 2019

¹⁶ QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03/02/2019

¹⁷ JANA, Andrés. **Arbitration Guide: Chile**. International Bar Association Arbitration Committee. Available at: https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx. Accessed in: 01 Feb. 2019

<p>judicial proceedings after the initial submission of briefs, but now negotiation and mediation are increasingly featured in multi-tier clauses of contracts as necessary conditions precedent to arbitration. Last but not least, dispute boards are now prominent." In addition, "since the enactment of the Brazilian Arbitration Act in 1996 (Law 9,307/96 – the</p>	<p>exits, Argentina has not yet passed a modern international conciliation law. Parties in Argentina usually attempt to reach a settlement, however, these attempts are generally pursued through direct negotiations between the parties. It is not a well-established practice that parties resort to mediation, although in commercial litigation there is mandatory court-ordered mediation.</p>	<p>institutions such as <i>the Instituto Mexicano de la Mediación, A.C.</i> that actively promote the use of mediation in Mexico".¹⁹ Article 17 of the Political Constitution of the United Mexican States provides that: "Laws shall provide for alternative mechanisms for the settlement of disputes." In addition, Mexican Commerce Code also governs the arbitration proceedings under book five, title fourth.</p>			<p>There is a strong tradition of conciliation as part of arbitration proceedings. Other ADR methods such as mediation are not commonly used in Chile.</p>
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¹⁹ WOBESER, Claus von. **Arbitration Guide: México.** International Bar Association Arbitration Committee. Available at: https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx. Accessed in: 01 de Feb. de 2019.

<p>'Brazilian Arbitration Act' or 'Act'), most parties to business transactions, whether domestic or foreign, have agreed to arbitration as the means to resolve disputes".¹⁸</p>					
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¹⁸ BRAZIL. Arbitration Law no 9.307/1996. Available at: < http://www.planalto.gov.br/ccivil_03/leis/L9307.htm >. Accessed in: 01 Feb. 2019.

3. Main advocacy stages, including motions or applications

Brazil	Argentina ²⁰	Mexico	Peru ²¹	Colombia ²²	Chile
Commercial cases, in ordinary proceedings can be divided in three stages: pleadings stage, evidentiary stage and decision making stage. The lawsuit starts with the statement of claim, then	There are three stages: pleadings stage, evidentiary stage and ruling stage. The pleadings stage starts with the plaintiff's file of the complaint. The complaint shall be presented in writing and contain the following elements: name and	"The ordinary commercial proceeding regulated by the Commerce Code develops generally as follows: once the claim is presented, the defendant is notified and must respond within 15	Before resorting to a formal legal proceeding, a preliminary step is required for all processes containing determined and determinable causes of action involving disposable	To start a claim, the claimant must comply with all the requirements set out in Article 82 of the GCP, and under Article 612 of the GCP, the defendant must receive, in its official electronic mailbox, a copy of the admission of the claim as well as the statement of claim. After	Basically, there are three (non-official) stages: pleadings stage, evidentiary stage and ruling stage. Commercial litigation before lower courts is written ²⁵ . Parties are not required to submit all facts, arguments and

²⁰ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 60

²¹ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 263

²² QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03 de Feb. 2019

²⁵ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

statement of defense, reply and (rarely) rejoinder are filed. A settlement hearing may be held. "Based on the parties' pleadings, the judge will determine the issues in dispute between the parties, and order the production of evidence, and the applicable burden of proof. The main methods of	address (domicile) of both parties; the object of the lawsuit; the facts that corroborates the lawsuit; and succinct explanation of the invoked right. The defense shall be presented within the time limit of 15 days. The defense shall contain all applicable "exceptions of previous and special pronouncements" (arguments relating to jurisdiction issues, expiry of statute of limitations, etc.), as well as the merits defense. The	days, and may, during this period, file a counterclaim. Once the claim is answered or a counterclaim is filed the proceeding will be opened to an evidentiary period, which cannot exceed 40 days. Once the evidentiary period has concluded, the parties are given a period of three days to formulate and present pleadings,	rights of the parties: a non-jurisdictional application must be filed with a Settlement Centre or a Justice of the Peace Professional Court. The requirements and provisions regulating this pre-trial proceeding are contained in Law 26872 and Supreme Decree N° 001-98-JUS. Once the lawsuit is filed, the Court will	this 25-day term, the defendant's response to the complaint must be filed within the 20 days following the expiration of the 25-day term. Once the defendant has answered the claim, the first hearing is held (<i>Article 372, GCP</i>) where the judge will decide any preliminary objections and encourage the parties to settle their dispute.	evidences with their Statement of Claim ²⁶ . A party has 15 business days to present its defense, from the date that all defendants have been served. The statement of defense may contain: dilatory exception or material defense ²⁷ . The counterclaim must be filed in the same procedural document ²⁸ . In executory or enforcement
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²⁶ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

²⁷ SOARES, Carlos Henrique. *Direito Processual Civil Chileno* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 124

²⁸ SOARES, Carlos Henrique. *Direito Processual Civil Chileno* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 124

<p>producing evidence are through court-appointed experts and oral hearings. The court may order the delivery of closing arguments orally or in writing. After closing the evidential stage, the judge will issue his final judgment, based on the parties' arguments and the evidence</p>	<p>counterclaim shall be presented in the same procedural document. The plaintiff shall have a time limit of 15 days to reply. If there are only questions of law to be decided, there will be no evidentiary stage. However, if there is no agreement of the parties regarding the factual background, the evidentiary stage shall start. The evidentiary proceeding ends when</p>	<p>after which the judge must issue the decision within 15 days. The parties may file an appeal within nine days from the issuance of the decision."²⁴</p>	<p>review whether the claimant has complied with the pre-trial proceeding.</p>		<p>proceedings or summary proceeding, parties have four or five days, respectively, to answer the complaint²⁹. Sundays and holidays are not considered business days when counting the procedural's time limits³⁰. Appeals must be filed within 10 business days after the appealing party has been served of the decision³¹.</p>
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²⁴ VENEGAS, Marco Túlio. **Litigation 2017: México**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003062/mexico>. Accessed in: 28 de jan. 2019

²⁹ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

³⁰ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

³¹ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de Jan. 2019

<p>produced. The defeated party may lodge an appeal before the relevant appellate court to have the award reviewed; in very few cases, further appeals to the Superior Court of Justice or even the Supreme Court may be admissible."²³</p>	<p>there is no more production of evidence. Then, the ruling stage starts, rendering the first-instance judgment.</p>				
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²³ BIANCO, Rogério Carmona; CORRÊA, Fábio Peixinho Gomes; PEREIRA, Guilherme Gomes; MURAYAMA, Mônica Naomi. **Practical Law: Litigation and enforcement in Brazil.** Thomson Reuters. Available at: [https://uk.practicallaw.thomsonreuters.com/9-502-2479?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a137151](https://uk.practicallaw.thomsonreuters.com/9-502-2479?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a137151). Accessed in: : 01 Feb. 2019

4. Mandatory court-ordered mediation

Brazil	Argentina ³²	Mexico	Peru ³³	Colombia ³⁴	Chile ³⁵
The Brazilian Civil Procedure Code provides that the judge shall schedule a conciliation or mediation hearing. However, its not mandatory since the hearing shall not be held in some cases, as if both parties expressly	Yes. Mediation is a mandatory step prior to commencing judicial court proceedings at the federal and national levels.	One of the fundamental principles in Mexican law regarding the mediation process is that it is essentially voluntary. ³⁷ Consequently, a mediation process cannot be a condition precedent to accessing local courts. ³⁸	No, however it is possible for the parties to conciliate their dispute and find a common ground.	In Colombia there is no express provision mandating a prior mediation, interesting enough it is the least used ADR.	Yes. In civil and commercial proceedings there is a compulsory conciliation hearing. However, judges rarely play an active role in those hearings. Therefore, “as a consequence, in most cases, conciliation hearings end up being a mere formality in

³² TAWIL, Guido Santiago; CAMPOLIETI, Federico. **Arbitration Guide: Argentina**. International Bar Association Arbitration Committee. Available at: https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx. Accessed in: 01 Feb. 2019

³³ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 265

³⁴ QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03/02/2019

³⁵ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 Jan. 2019

<p>manifest their lack of interest in an amicable resolution of the dispute.³⁶</p>		<p>The Mexican Commerce Code provides for a preliminary hearing in which the judge may conduct a mediation or conciliation procedure.³⁹</p>			<p>which the parties do not settle their disputes”.</p>
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³⁷Article 8. MEXICO. Alternative Dispute Resolution Law for Mexico City.. Available at:http://www.poderjudicialcdmx.gob.mx/cja/wp-content/uploads/Ley_Justicia_Alternativa_TSJDF-Todas-las-Rfmas_Lic-AnaHdzCJA.pdf. Accessed in: 01 Feb. 2019

³⁸ Access to the courts is a fundamental right expressly granted in Article 17 of the Constitution.

³⁶ Article 334. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019

³⁹ Article 1390 Bis 32, item II. Article 1054. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 Feb. 2019

5. Public access to files by all citizens

Brazil	Argentina ⁴⁰	Mexico	Peru ⁴¹	Colombia ⁴²	Chile ⁴³
Yes. The acts and terms of the file are public, including the acts of the parties, the judges and the hearings, allowing everyone to know and freely consult the case file. ⁴⁴ However, the Brazilian Federal Constitution provides	Yes. The acts of the Judicial Power are public and can be accessed through this link , by providing the case docket number. The parties' submissions and attached documents,	The Mexican Commerce Code provides that hearings must always be held in public ⁴⁵ . Following that, the Federal Code of Civil Procedures, also states that the hearings must be held in public, exceptionally of those that the court considers	Yes, as a general rule, hearings are open to the general public, which is a jurisdictional guarantee. Therefore, parties can attend the hearings; however, there are exceptions in matters related to	Article 26 of the Decree 196/71 provides that the only personnel authorized to examine the files are: -civil servants -attorney exercising their mandate -the parties	Yes. The acts of the Judicial Power are public and can be accessed through this link , by providing the case docket number. The parties' submissions and attached documents, however, are not of public knowledge.

⁴⁰ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 46

⁴¹ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 259-260

⁴² QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03/02/2019

⁴³ PODER JUDICIAL DE LA REPUBLICA DE CHILE. **Preguntas y Respuestas**. Available at: <http://www.tramitacionelectronica.cl/preguntas-y-respuestas/>. Accessed in: 28 Jan. 2019

⁴⁴ Article 5, item LX. BRAZIL. Brazilian Federal Constitution, 1988. Available at: <www.planalto.gov.br/cf1988>. Accessed in: 01 Feb. 2019

⁴⁵ Article 1080. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 Feb. 2019

<p>that the law may restrict publicity when necessary to ensure the defense of privacy or social interest. Those are the cases of secrecy of justice specified in Article 189 of the Brazilian Civil Procedure Code.</p>	<p>however, are not available online to all citizens, as the files are officially on paper.</p>	<p>appropriate to be held in private.⁴⁶ The court documents, however are not available to all citizens, and only the parties can access the court file and the final award.</p>	<p>personal intimacy, public order, national security and other similar cases. The documents related to the proceedings are not made to the public, only parties or representatives may access the files.</p>	<p>-people appointed to assist the court -law students accompanied by the attorney responsible of the proceedings; -legal clinic workers, when the law authorizes them to act as counsel.</p>	
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46 Article 274. MEXICO. Federal Code of Civil Procedures. Available at:<https://www.oas.org/dil/esp/C%C3%B3digo%20Federal%20de%20Procedimientos%20Civiles%20Mexico.pdf>. Accessed in: 01 Feb. 2019

6. System of exemption of litigation fees

Brazil	Argentina ⁴⁷	Mexico	Peru ⁴⁸	Colombia ⁴⁹	Chile ⁵⁰
Yes. A natural or legal person, Brazilian or foreign, who cannot afford to pay court costs, procedural expenses and counsel fees is entitled to free legal aid since it proves the lack of resources.	Yes. Argentina's National Civil Procedure Code provides the possibility of free legal aid, if the requesting party meets the requisites. The requesting party must prove its incapacity to pay court costs, presenting documentary evidence and witness testimonies. The ruling that denies the benefit of	Pursuant article 1081 of the Mexican Commerce Code, any judicial act will be charged costs, even when acting with witnesses for assistance or proceedings are carried out outside the trial.	Justice is to be free, however, procedural acts and its costs are to be determined by the Court. When arrived at a final sentence, the disadvantaged party must comply within the first 3 working days, otherwise interests	Fees are not mandatorily regulated by law. Additionally, proportionality, justice and equivalency principles should be considered when agreeing on the fees payable (<i>Constitutional Court, Decision T-625/2016</i>). The Superior Judicial	Yes. The benefit is called "poverty privilege" (<i>privilegio de pobreza</i>) that may be granted by the Judicial Assistance Corporations and/or judges during or before trial, to those with no financial means. Once granted, the beneficiary is exempted from paying some costs or fees associated the procedure, such as court costs payable by the losing

⁴⁷ ARAUJO, Camila Almeida. *Direito Processual Civil Argentino* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 52

⁴⁸ FREITAS, Gabriela Oliveira. *Direito Processual Civil Peruano* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 258

⁴⁹ QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhpc=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhpc=1) Accessed in: 03/02/2019

⁵⁰ LATHAM & WATKINS LLP. **Pro Bono Practices and Opportunities in Chile**. Available at: <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-chile.pdf>. Accessed in: 01 Feb.. 2019

<p>However, if the beneficiary loses the case, he will not be exempted from paying those costs at the end of the litigation.⁵¹</p>	<p>free legal aid is appealable. If it is proven that the requesting party was dishonestly alleging its incapacity to pay the court costs, the requesting party shall be charged with a fine, worth twice as the value of the court costs.</p>		<p>begin to accrue.</p>	<p>Council has established that fees can vary, depending on the:</p> <ul style="list-style-type: none"> -Prestige of the lawyer. -Complexity of the subject matter of the dispute. -Amount of the claim. -Economic capacity of the client. 	<p>party. It is important to note that in Chile there are no filing fees, so the benefit of poverty privilege is more related to other court fees and attorney's fees payable by the losing party.</p>
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⁵¹ Articles 98 to 102. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019.

BRAZIL. Federal Law no 1.060, 1950. Available at: < http://www.planalto.gov.br/ccivil_03/leis/L1060.htm >. Accessed in: 01 Feb. 2019

7. Recovery of litigation costs and attorney fees of the successful party by the losing party

Brazil	Argentina ⁵²	Mexico	Peru ⁵³	Colombia	Chile ⁵⁴
The losing party in judicial cases usually must bear the opposing party's court costs and attorney's fees. The Brazilian Civil Procedure Code state a minimum amount of 10% of the total amount of the judgment for attorney' fees. ⁵⁵	Yes. As a general rule, the losing party in judicial cases must bear the costs of the proceedings	Each party shall be immediately responsible for the costs arising from the diligences that it promotes. In case of condemnation in costs, the condemned part will indemnify the other of all that would have been caused. ⁵⁶ In commercial litigation it is not necessary for	It is up for the judge to determine whether or not the losing party must pay for the prevailing party's legal costs and attorney fees. It is taken into consideration the behavior of the party and its arguments during trial.	Pursuant to Resolution 1887/03, the Superior Council for the Judiciary has issued that the losing party is liable for the payment of the prevailing party's attorney's fees and legal costs.	Yes. Parties that have been totally defeated must bear all costs of litigation. "The court, however, can determine that each party shall bear its own costs if it considers that the losing party had plausible grounds to litigate". Again, it is important to note that, as there are no filling fees, the liability of the losing party is related with attorney's fees and other procedural

⁵² GODOY, Frederico. **Argentina: Law and Practice**. Available at: http://www.berettagodoy.com/wp-content/uploads/2015/08/197_ARGENTINA_LP.pdf. Accessed in: 01 fev. 2019

⁵³ CALVINHO, Gustavo. **Apuntes Sobre La Actuación De Los Jueces Y Árbitros En Un Sistema Democrático**. Revista Iberoamericana de Derecho Procesal Garantista, Anuario, 2008

⁵⁴ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 Jan. 2019

⁵⁵ Article 85. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019

		litigants to have a lawyer. However, if there is a lawyer and if there is a condemnation in costs, only the lawyer qualified to practice law will be paid. ⁵⁷			related costs, such as notification costs. The amount of attorneys' fees determined by courts, however, "is normally substantially lower than the actual fees."
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56 Article 1082. Article 1054. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 Feb. 2019

57 Article 1083. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 Feb. 2019

8. Process of recognition and enforcement of judgments

Brazil	Argentina	Mexico	Peru	Colombia ⁵⁸	Chile ⁵⁹
Foreign judgments are not automatically enforceable before the local courts, and will only become enforceable after undergoing a procedure of confirmation (or homologation) of judgment, under which the STJ must consider whether	First-instance courts are competent to enforce its own judgments and to recognize and enforce foreign judgments. In Argentina, the judge that rules on a case is the same one that will conduct the proceedings for the enforcement of its ruling. ⁶¹ For foreign judgments, the enforcement must be ruled by a first instance judge with jurisdiction on	In accordance with international treaties (enforcement of domestic judgments abroad) and the Federal Code of Civil Procedures, article 571, Mexican courts are willing to recognize and execute a foreign judgment, provided that: (I) the formalities and conditions regarding	It is possible to enforce a foreign judgment in Peru. For this purpose it is necessary to follow a procedure before the Superior Court from the domicile of the person against whom the judgment will be enforced. The court will consider whether the foreign judgment is compatible with domestic law and treaties, if they exist,	“Article 422 of the GCP provides that final decisions that order the payment of clear and express amounts are enforceable before the same judge that issued the order if the collection proceeding is a continuation of the declaratory (verbal) proceeding. The procedure to be applied is contained in Article 422 (and following) of	First-instance courts are competent to enforce its own judgments and Chilean Supreme Court must recognize foreign judgments prior to enforcement. “For the recognition of a foreign judgment or arbitral award, the interested party must file a request/petition before the Chilean Supreme Court. Once, and if, the Supreme Court grants

⁵⁸ QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03/02/2019

⁵⁹ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 Jan. 2019

⁶¹ ARAUJO, Camila Almeida. *Direito Processual Civil Argentino* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 48

<p>the judgment: (i) Is valid and was issued by a competent authority. (ii) Conforms with the Brazilian national public order. This procedure was further detailed by the Civil Procedure Code.⁶⁰</p>	<p>the subject matter. Domestic and foreign provisional decisions are enforceable. Domestic decisions must be final and acquiesced to be enforceable. However, a judicial decision that has been appealed is nonetheless partially enforceable in relation to the part of the judgment that is final. Foreign decisions may only be enforced if final.⁶² The enforcing court reviews if the foreign court respected public policy and due process</p>	<p><i>rogatory</i> letters have been met; (ii) the resolution did not result from the exercise of an action in rem; (iii) the foreign court had correctly assumed jurisdiction; (iv) the claim was properly served on the defendant; (v) the foreign judgment is non-appealable and res judicata in the country in which it was rendered; (vi) the action that gave rise to the</p>	<p>signed with the state from which the judgment comes from. If the foreign judgment is found to conform, the judge shall authorize the enforcement of the judgment in the Peruvian jurisdiction.</p>	<p>the GCP. In order to enforce a foreign judgment in Colombia, it is necessary to initiate the exequatur procedure set out in Article 607 of the GCP.”</p>	<p>the exequatur, the enforcement can take place before a lower court. Also, Chilean law lists certain instruments (<i>títulos ejecutivos</i>) that allow a party to collect a debt, through an enforcement proceeding, without having to argue about the existence of the debt”. The only requirements for such proceeding are that the debt must be documented in one of these instruments, be currently enforceable and the amount must be liquidated.</p>
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60 Article 960 to 965. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019

⁶² ARZAC, Rafael Gonzalez. **Enforcement of judgments in Argentina: overview**. Available at: [https://uk.practicallaw.thomsonreuters.com/7-619-5451?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a586688](https://uk.practicallaw.thomsonreuters.com/7-619-5451?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a586688). Accessed in: 01 Feb. 2019

of law. After the recognition is sought, the enforcement procedure is the same as for domestic judgment.⁶³

resolution is not a pending matter between the same parties in Mexican courts; unless a letter *rogatory* had been processed and delivered to the Foreign Ministry or to the authorities of the state where the claim should be served; and
(vii) the judgment does not conflict with a mandatory law or Mexican public policy.

⁶³ ARZAC, Rafael Gonzalez. **Enforcement of judgments in Argentina: overview**. Available at: [https://uk.practicallaw.thomsonreuters.com/7-619-5451?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a586688](https://uk.practicallaw.thomsonreuters.com/7-619-5451?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a586688). Accessed in: 01 Feb. 2019

9. Role of judges and jury on national courts

Brazil	Argentina ⁶⁴	Mexico	Peru ⁶⁵	Colombia	Chile ⁶⁶
Judicial power is provided for and protected by the Federal Constitution. Judges have their powers, duties and liabilities determined by the Brazilian Civil Procedure Code. Among them we could mention the duty to conduct the proceedings, ensure for the	In Argentina, the judge exercises all powers of the judicial function, either on the pleadings/motions, discovery and enforcement phases, as also to provide interim reliefs. It is of the judge's duty to conduct and order the advancement of the proceedings, until the final judgment is pronounced. The judge may collaborate, by its own initiative, to the production	The judges duties and powers are determined by the Mexican Civil Federal Procedural Code. Judges, magistrates and ministers have a duty to maintain good order, and demand respect and consideration from litigants and such as by officials and employees. ⁶⁸⁻⁶⁹	Judges in Peru have a very important role on caring the judicial system and are accountable to all its acts without any bond to the State when it concerns its responsibility or negligence. There is no legal concept of a jury in the Peruvian judicial system.	Trial by jury does not currently exist in Colombia in either commercial or civil disputes.	Active participation. No trials by jury in commercial litigation. According to Chilean law, it is of the judge's duty to personally examines witnesses, although each party has the right to examine the witness, by directing questions through the judge. "In practice, however, in most cases, judges do not personally examine

⁶⁴ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 46

⁶⁵ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 261

⁶⁶ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 Jan. 2019

<p>reasonableness of the duration of the process and equal treatment of the parties.⁶⁷ There are no jury trials in civil law litigation.</p>	<p>of the evidences, despite being the parties responsibility. Argentina's procedural law enacts the principle of <i>kompetenz-kompetenz</i>. There are no trials by jury in commercial litigation.</p>	<p>There are no jury trials in Mexico.</p>			<p>witnesses, which is done by parties' counsels." In commercial litigation, there is no trial by jury in Chile.</p>
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68 Articles 54 to 60. MEXICO. Mexican Federal Code of Civil Procedures. Available at: <https://www.oas.org/dil/esp/C%C3%B3digo%20Federal%20de%20Procedimientos%20Civiles%20Mexico.pdf>. Accessed in: 01 Feb. 2019

⁶⁹ MENEZES, Rafael Filipe Fonseca de. *Direito Processual Civil Mexicano* in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 208.

67 Article 139 to 143. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 Feb. 2019

10. Res judicata and preclusion

Brazil	Argentina ⁷⁰	Mexico	Peru ⁷¹	Colombia	Chile ⁷²
Yes. A party cannot re-litigate any claim as there were previous proceedings on the same matter under, for example, estoppel, <i>lis pendens</i> or <i>res judicata</i> . ⁷³ However, under very strict circumstances, a party may rescind a final award on the merits	Argentina adopts the res judicata doctrine. A party cannot re-litigate any claim or defense already litigated; if the matter has already been decided by a definitive sentence (see definition of definitive sentence	Mexican Civil Federal Procedure Cod, in its articles 354 to 357, provides for this institute. Article 355 provides that preclusion is applicable when the judgment is enforceable, that is, (i) the award does not admit an appeal, (ii) those that admit an appeal but have not been appealed, (iii) the	As a final sentence is rendered, the enforcement must be done by the court, and the Judge must apply for all legal procedural mechanisms necessary.	It is applicable if the party does not appeal of the sentence on the following timelines: -During the hearing if the party wishes, must do it orally. -If the ruling was no at the hearing it has 3 days to appeal after notified of the sentence..	Chile adopts the res judicata doctrine. Chilean law provides for a consolidation mechanism that applies to two or more cases that its decisions could have res judicata effect on the other. Chilean law also provides that a defendant can request that the court give notice of the lawsuit to other potential plaintiffs so they can decide

⁷⁰ RIVERO, Ivana. **La Cosa Juzgada Irrita**. Revista de Derecho del Trabajo de la Provincia de Buenos Aires, Argentina, Número 1, setembro 2013. Available at: <https://ar.ijeditores.com/articulos.php?idarticulo=66204&print=1>. Accessed in: 01 fev. 2019

⁷¹ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 265

⁷² ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

⁷³ Article 502 to 508. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 fev. 2019

after it has become res judicata. ⁷⁴	below, item 14).	action has been declared "desert" or that the applicant has withdrawn, or (iv) those sentences in which the parties agree. ⁷⁵		(Article 322, GCP; Article 244, CAP.)	to join the proceedings. If they do not join the proceeding, they will lose their right to sue the defendant for the same reason in the future.
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⁷⁴ Article 966. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 feb. 2019

⁷⁵ MENEZES, Rafael Filipe Fonseca de. Direito Processual Civil Mexicano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 213

11. Discovery or evidence production

Brazil	Argentina	Mexico	Peru ⁷⁶	Colombia	Chile
"Generally, the person making a claim is responsible for gathering the evidence to support it. Certain exceptions apply and the burden of proof can be shifted from the claimant to the respondent. Expert evidence may be produced as determined by	There is no discovery in Argentina. Evidence production rules are similar to Brazil. All the proof should be presented (documentation) and requested (other methods such experts reports or witness statement) at the beginning of the procedure with the Statement of Claim or	In Mexico commercial litigation, which has the burden of proof is who files the lawsuit. ⁷⁸ Article 1205 provides for the admitted evidences as the parties statements, third parties, experts, public or private documents, judicial inspection,	Pursuant to article 284 of the Code of Civil Procedure, if there is an imminent danger, damage or disappearance, pre-trial evidence may be presented. However, discovery is not available on Peruvian civil cases before the institution of the proceedings.	Pre-trial collection of evidence is available as per article 183 GCP, however, as understood as discovery in many jurisdictions don't occur in Colombia.	There is no discovery in Chile, only slightly similar procedures. Evidence production rules are similar to Brazil. Each party must prove, according to the rules that assign weight to each type of evidence, the facts supporting its allegations. ⁸⁰ The Code of Civil Procedure regulates the grounds on which a party may challenge documents or witnesses. ⁸¹ Chilean law also provides a

⁷⁶ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 264

⁷⁸ Article 1194. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 feb. 2019

⁸⁰ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

⁸¹ SOARES, Carlos Henrique. Direito Processual Civil Chileno in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 127

<p>the court, and the parties and their expert assistants must cooperate with the court-appointed expert. Individuals and goods may be inspected directly by the court and the parties, and their expert and factual witnesses, and the court-appointed expert, may be heard at an evidence production hearing.</p>	<p>the Statement of Defense. After the first hearing the judge determines which evidences he expects the parties to produce, and order its production, always by request of the interest party. There is no discovery such as in the US. However, a rejection to present documents can be interpreted as a proof against rejecting party.</p>	<p>photographs, cinematographic films, videos, sound, data messages, reconstructions of facts and any other similar object that serves to find out the truth.⁷⁹ Article 1194 to 1210 of the Commerce Code provides for the evidences general rules.</p>			<p>set of rules that establish the requirements to be met for each type of evidence in order to have probative weight to prove facts.⁸² There is no pre-trial discovery.⁸³ However, there is a limited opportunity to request from the future defendant to present documents prior the commence of the lawsuit. The sanction for failing to produce the documents is that the future defendant will lose the right to submit such documents during the proceeding.⁸⁴</p>
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⁷⁹ Article 1205. MEXICO. Mexican Commerce Code. Available at: <https://wipolex.wipo.int/en/text/199810>. Accessed in: 01 feb. 2019

⁸² ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile.** Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

⁸³ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile.** Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

⁸⁴ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile.** Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

<p>The court may order the delivery of closing arguments orally or in writing. The length of the evidence production hearing varies according to the complexity of the matter, the number of depositions and the decision on oral or written closing arguments, but it will typically be held on a single day."⁷⁷</p>					
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⁷⁷ ZABAGLIA, Rafael; MIDE, Luiz Gustavo; MENEZES, Isabella Simão. **Complex Commercial Litigation**. Getting the deal through. Available at: <https://gettingthedealthrough.com/area/102/jurisdiction/6/complex-commercial-litigation-brazil/#link-1>. Acessado em: 28 de janeiro de 2019.

12. Interim remedy or injunctive relief

Brazil	Argentina	Mexico	Peru ⁸⁵	Colombia ⁸⁶	Chile ⁹⁴
"Parties can obtain interim injunctions at any time. A party seeking an interim injunction must demonstrate: (i) Irreparable harm if relief is not granted. (ii) The likelihood of success on the merits. Interim injunctions are usually required to preserve the status	There are three requisites for an interim relief be granted: i) the likelihood that the claims of the party who is seeking the interim relief shall prevail; ii) the truthful fear of frustration or impairment of the right of the party who is seeking the interim relief; and iii) the supply of a bond/guarantee by	"In the course of the proceedings or even before its commencement, an interim relief may be granted, at the request of the party, as well as the deposit or guarantee of things, books, documents, or papers on which will see the demand. ⁹¹	Yes, it is possible for a Judge to grant injunctive relief prior to the beginning of the dispute in pursuant to art. 608.	When it comes to emergency decisions or interim measures the Procedural Code from Colombia is rather strict on situations. Nor it mentions anticipation of the effects of the interim measure.	Yes. Parties can request interim relief on an emergency basis during the proceedings or before commencing a lawsuit and Chilean Law only indicates the possibility of interim reliefs be granted in order to secure the result of the lawsuit ⁹⁴ . If such a preliminary

⁸⁵ OLIVEIRA, Guilherme José Braz de. Direito Processual Civil Peruano In: CRUZ E TUCCI, José Rogério (coord.). Direito Processual Civil Americano Contemporâneo. São Paulo: Lex, 2009, p. 299

⁸⁶ MORALES, Fernando Madero. **Tendencias de las ultimas reformas del proceso civil colombiano**. Revista virtual Via Inveniendi et Iudicandi "Camino del Hallazgo Y del Juicio", 2006. Available at: <<http://viei. Usta.edu.co/articulos/edi3/tendenciasultimasreformasdelproesocivil.pdf>>. Accessed in: 03/02/2019, p. 12

<p>quo. The most common interim injunctions available are: Restraining orders against individuals. Suspensions of legal effect of certain acts. Attachment orders to preserve assets. The Civil Procedure Code expressly provides for a temporary relief based on solid and irrefutable evidence that shows a prima facie case, even if</p>	<p>the party seeking the interim relief⁸⁸. The supply of a bond/guarantee shall be exempted if the party is entitled to free legal aid⁸⁹. The interim relief shall automatically lose its effectiveness if the benefited party do not file the respective lawsuit within the next ten days after the interim relief have become effective.⁹⁰</p>	<p>The party requesting one of the interim reliefs shall grant a prior guarantee to respond to any damages and losses occasioned, without the counterparty can grant a guarantee for the interim relief to be lifted.⁹²The decision denying the interim relief is subject to appeal, with effect of staying the proceedings."⁹³</p>			<p>measure is granted, the applicant will be required to file its lawsuit within 30 days, or the measure will lose its effectiveness and the benefited party will be held liable for any damages caused as a consequence of the measure.⁹⁵ The only pre-requisite for an interim relief in Chile is that the order will be pronounced to secure the final result</p>
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91 Article 389. MEXICO. Mexican Federal Code of Civil Procedures. Available at: <https://www.oas.org/dil/esp/C%C3%B3digo%20Federal%20de%20Procedimientos%20Civiles%20Mexico.pdf>. Accessed in: 01 feb. 2019

⁹⁴ SOARES, Carlos Henrique. Direito Processual Civil Chileno in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 127

there is no risk of irreparable harm." ⁸⁷					of the lawsuit (there is no <i>fumus boni iuris</i> or <i>periculum in mora</i>). ⁹⁶
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⁸⁸ PALACIO, Lino Alberto; PALACIO, Luis Henrique. **Manual de Derecho Procesal Civil**. Buenos Aires: Alberto Perrot, 2011, p. 640

⁸⁹ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 53

⁹⁰ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 53

⁹² Article 393. MEXICO. Mexican Federal Code of Civil Procedures. Available at: <https://www.oas.org/dil/esp/C%C3%B3digo%20Federal%20de%20Procedimientos%20Civiles%20Mexico.pdf>. Accessed in: 01 feb. 2019

⁹³ MENEZES, Rafael Filipe Fonseca de. Direito Processual Civil Mexicano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 205

⁹⁵ ANINAT, Francisco; BOFFIL-DUPE, Jorge; YANINE, Sebastian. **Litigation 2017: Chile**. Latin Lawyer. Available at: <https://latinlawyer.com/jurisdiction/1003057/chile#answer34>. Accessed in: 28 de jan. 2019

⁸⁷ BIANCO, Rogério Carmona; CORRÊA, Fábio Peixinho Gomes; PEREIRA, Guilherme Gomes; MURAYAMA, Mônica Naomi. **Practical Law: Litigation and enforcement in Brazil**. Thomson Reuters. Accessed in: [https://uk.practicallaw.thomsonreuters.com/9-502-2479?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a137151](https://uk.practicallaw.thomsonreuters.com/9-502-2479?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1#co_anchor_a137151).

⁹⁶ SOARES, Carlos Henrique. Direito Processual Civil Chileno in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 127

13. Types of court decisions

Brazil	Argentina ⁹⁷	Mexico	Peru ⁹⁸	Colombia ⁹⁹	Chile ¹⁰⁰
Court proceedings can be awarded with or without prejudice. A without prejudice (judgment without merit resolution) decision will be given when certain procedural rules were not followed and this defect was not, or could not, be remedied, meaning that it was not	Definitive sentences, interlocutory orders and simple measures. Definitive sentence, whereby the judge rules on the merits of the case. The simple measures are the ones pronounced without the need of	The sentences can be definitive, which decide the merit, or interlocutory, which decides a procedural incident. The sentence must be clear and when dealing with law, acquit or condemn. The sentence must be written in Spanish, must	There are 3 ways a judge may manifest its decisions. Through decrees, decisions and sentences that put an end to the dispute and are unable to appeal.	Juridical decisions are classified as: sentence or files. In accordance with article 302 of the GPC the sentence decisions are made to decide the merits. And all other decisions are classified as filing decisions, being	Definitive sentences, interlocutory orders, <i>autos</i> and <i>decretos</i> . Definitive sentence, whereby the judge rules on the merits of the case. Interlocutory orders are those that settle incidents of the proceeding.

⁹⁷ ARAUJO, Camila Almeida. Direito Processual Civil Argentino in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 53

⁹⁸ FREITAS, Gabriela Oliveira. Direito Processual Civil Peruano in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 270-272

⁹⁹ QUIJANO, David Araque. **Litigation and enforcement in Colombia: overview** Available at: [https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-010-1549?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) Accessed in: 03/02/2019

¹⁰⁰ SOARES, Carlos Henrique. Direito Processual Civil Chileno in SOARES, Carlos Henrique; DIAS, Ronaldo Brêtas de Carvalho (coord.). **Direito Processual Civil Latino-Americano**. Belo Horizonte: Arraes, 2013, p. 126

<p>possible to reach a decision on the merits of the case. Without prejudice decisions do not prevent the filing of a new court proceeding with the same purpose, within the applicable statute of limitation. However, a judicial decision that does review the merits of the case can only be questioned on appeal. A new court proceeding with the same purpose may not</p>	<p>previous pronouncements by the party that orders the advancement of the proceeding. Interlocutory orders are those pronounced by the judge in the course of the proceeding and depend on previous production of evidence and pronouncement by the parties, as well as a previous hearing for the judgment.</p>	<p>contain the name of the place and the judge who wrote it, as well as signature, the names of the parties and the subject matter of the lawsuit.¹⁰²</p>		<p>these subcategorized into two: files in procedural do not have any decision character and the interlocutory that are much more sublime and simpler according to article 303 item 3.</p>	<p>“Auto” is the decision that it is not an interlocutory order. A “<i>decreto</i>” is the pronouncement that orders the advancement of the proceeding.</p>
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102 Article 1321 to 1330. MEXICO. Mexican Commerce Code. Available at: <https://wipo.lex.wipo.int/en/text/199810>. Accessed in: 01 Feb. 2019

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Conclusion

In conclusion, although Latin American countries share many cultural and legal characteristics stemming from their common European background, several aspects of litigation differ in each country addressed in this article. A practitioner must take such differences into account while setting a strategy or contemplating a lawsuit in Latin America.

The information in this article is to be used only as a first reference for foreign trained lawyers or in-house counsel regarding commercial litigation in Latin America. While it does not supersede the need for local legal advice in the relevant countries, the authors hope the information presented in the article may help practitioners, companies and in-house counsel in a first assessment of the region and especially in their interplay with local counsel in Brazil, Argentina, Mexico, Peru, Chile or Colombia

¹⁰¹ Article 485 to 488. BRAZIL. Brazilian Civil Procedure Code. Available at: < http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm >. Accessed in: 01 feb. 2019.