

10-1-1974

Civil Law Lexicon: *Sentencias*

C, Piñero Matthews

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

C, Piñero Matthews, *Civil Law Lexicon: Sentencias*, 6 U. Miami Inter-Am. L. Rev. 920 (1974)

Available at: <http://repository.law.miami.edu/umialr/vol6/iss3/14>

This Special Feature is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

CIVIL LAW LEXICON: *SENTENCIAS*

C. PIÑEIRO MATTHEWS*

The term *sentencia* is a basic term in the civil law system, and therefore well understood to a person trained in that system. This is not necessarily true for the common law lawyer. Initially, the latter must resist the inclination to translate the term into *sentence*, i.e. the order of a common law criminal court imposing punishment on a convicted person. Additionally, the term, although semantically basic, is structurally complex because of its many derivatives and their respective meanings. Lastly, the common law lawyer must face a problem not peculiar to the legal profession, that is, the precise meaning of a term, in our case *sentencia*, in the different jurisdictions which comprise the Latin American legal mosaic. In this connection it is well to bear in mind a difference between the Spanish and English languages. The former has a predilection to modify the noun with a series of terms to give meaning to the precise thing being identified; the latter normally defines through the use of a specific noun.

This brief study on the subject of *sentencias* proposes to give the common law jurist a better understanding of a term frequently arising in the civil law legal process. Its importance to the practitioner in the Latin American legal area depends, of course, on the nature and the extent of the practice of the attorney in question. Understanding of the term, however, is basic to anyone even peripherally interested in the civil law system. The caveat is again raised, however, that for the exact meaning of any term used herein, reference must be made to the legal language of the country in question.

Generally, the Spanish word *sentencia* may be equated to the judgment of a common law court. Thus, it is the decision of the judge on the legal controversy submitted to him for adjudication. On the criminal side it is a *sentencia en lo criminal*; on the civil side, a *sentencia en lo civil*.

If the *sentencia* does not adjudicate the ultimate rights of the parties, but rather determines some preliminary or subordinate question it is a

*J.D. Candidate, University of Miami School of Law.

sentencia interlocutoria, or interlocutory judgment. But if it is a judgment on the merits, terminating the suit in favor of one party or the other, it is called a *sentencia definitiva*.

If the judgment is from the first, or primary level of courts it is called a *sentencia de primera instancia*, and if it comes from the second level, whose courts also have the power to find and review facts, it is called a *sentencia de segunda instancia*. If the decision is on the merits the proper term would be *sentencia definitiva de primera instancia*, or *sentencia definitiva de segunda instancia*, depending on the level of the court. If no appeal is taken the judgment of the trial court may be called a *sentencia definitiva de única instancia*.

When dealing with a *sentencia de primera instancia* it is well to bear in mind that at common law in the United States the trial includes a final determination of facts, either by a judge or jury, and an appeal on the law to an intermediate appellate court. There may be a second appeal, also on the law, to a supreme court of the jurisdiction, either state or federal. In the civil law system, however, facts are reviewable at the first appellate level, but normally not so at the next level (Supreme Court or Court of Cassation) where the Court is usually restricted to deciding whether the ruling of the court *a quo* has violated or misinterpreted the law. Thus, an attorney advising his client on the status of Latin American litigation should be aware that the final judgment of the trial court does not permanently find the facts of the case. If his Latin American correspondent reports a *sentencia de primera instancia*, which can literally be translated as a judgment of a trial court, then factual matters can still be challenged by any party on first appeal, unless the former judgment is also a *sentencia definitiva de única instancia*.

The *sentencia absolutoria* rejects the claim or claims of the movant in a civil case, or the charge of the State in a criminal case. It is based on failure of proof or insufficiency of the legal arguments presented. The *sentencia condenatoria*, on the other hand, accepts, wholly or in part, the claim(s) of the movant or the criminal charge(s) of the State. Civilly it confirms the claim(s) raised in the litigation; on the criminal side the charges of the State, and leads to the imposition of sanctions prescribed by the law.

A *sentencia declaratoria*, like the common law declaratory judgment, simply declares the rights of the parties or expresses the opinion of the Court on a question of law, without ordering any specific action.

The last term directly connected with a *sentencia* to be considered is *sentencia firme* or *sentencia ejecutoriada*. *Sentencias*, depending on their nature, are subject to *aclaración* (clarification), *reposición* (rehearing), *apelación* (appeal), or *casación* (quashing of the judgment). Only when these possibilities are extinguished can a *sentencia firme* issue. The latter is an irrevocable judgment no longer open to attack at any level of courts; it is then *cosa juzgada* (*res judicata*). When this point is reached the attorney can advise his client to enjoy, or endure the ultimate result of the litigation in a civil law jurisdiction.

The following terms relating to the judicial process, but distinguishable from the *sentencia* also bear mention. *Providencia* is a judicial decision referring to procedural matters whereas an *auto* is a decree of a tribunal in regard to some question of fact, evidence, or jurisdiction. An *auto* is, in other words, any judicial decision which is neither a final decision (*sentencia*) nor one referring to a procedural matter (*providencia*). An *auto acordado* is a decision *en banc*, but in some jurisdictions it is a judicial ruling ordering compliance with an agreement previously reached.

The form or structure of civil and criminal *sentencias* will be considered next. The form of a civil judgment is normally prescribed in the Code of Civil Procedure which almost invariably states that a *sentencia* must be reduced to writing, dated and signed by a judge or the judges comprising the tribunal.

As a rule, the first part contains the date, the name of the tribunal, the names, domicile and profession of the parties, the names of the attorneys, and the object of the litigation. The second part, the *resultandos*, covers the *hechos*, that is the facts. The *considerandos* constitutes the third part and here the Court gives the legal grounds on which the judgment is based, including the evidence presented, the applicable law, citations, and the application of the law to the facts. The last part of the document contains the *parte resolutoria*: a clear positive, and precise judicial pronouncement, declaring the rights of the parties, and either imposing or absolving one from the liability alleged. Damages and costs are also included in this part.

On the criminal side the Code of Criminal Procedure normally determines the form of the *sentencia* and, in general, it can be said that the same matters covered in the civil judgment, modified, of course, by the difference in the two procedures, are covered in the *sentencia criminal*.

Generally speaking, then, the structure of the *sentencia* in criminal, civil, and administrative areas is basically the same, and consists of four parts: (1) the *encabezamiento*, stating the date, identification of the tribunal, parties and attorneys, and cause of action; (2) the *resultandos* or *fundamentos de hecho*, i.e., a statement of the facts; (3) the *considerandos* or *fundamentos de derecho* which set forth the legal grounds on which the judgment is based; and (4) the *fallo* or *resolutoria* in which the judge renders his decision.

The above, in general, covers the *sentencia* of the civil law. Subject to local variations it gives the common law lawyer fundamental notions to better understand the judgment of a civil law court.