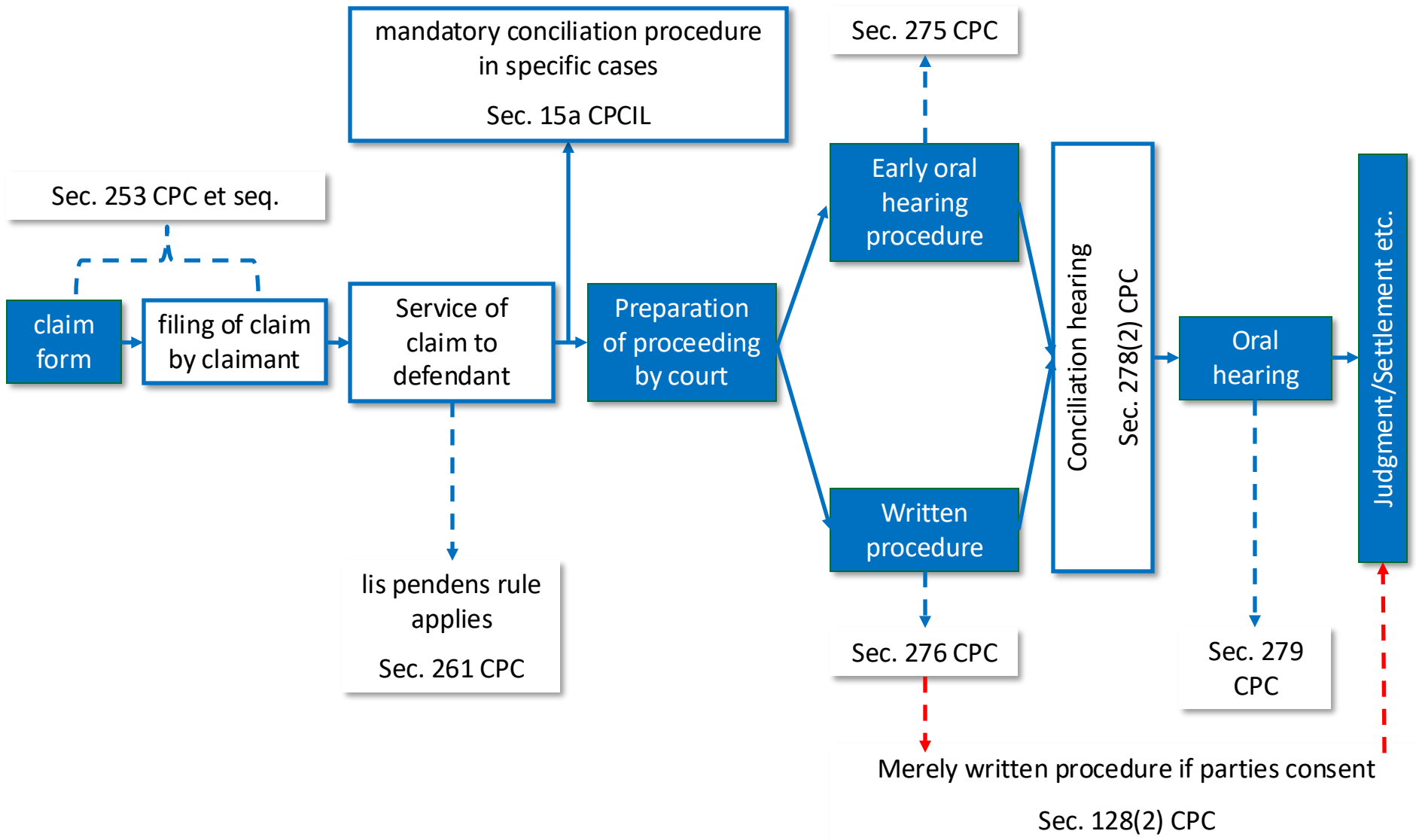


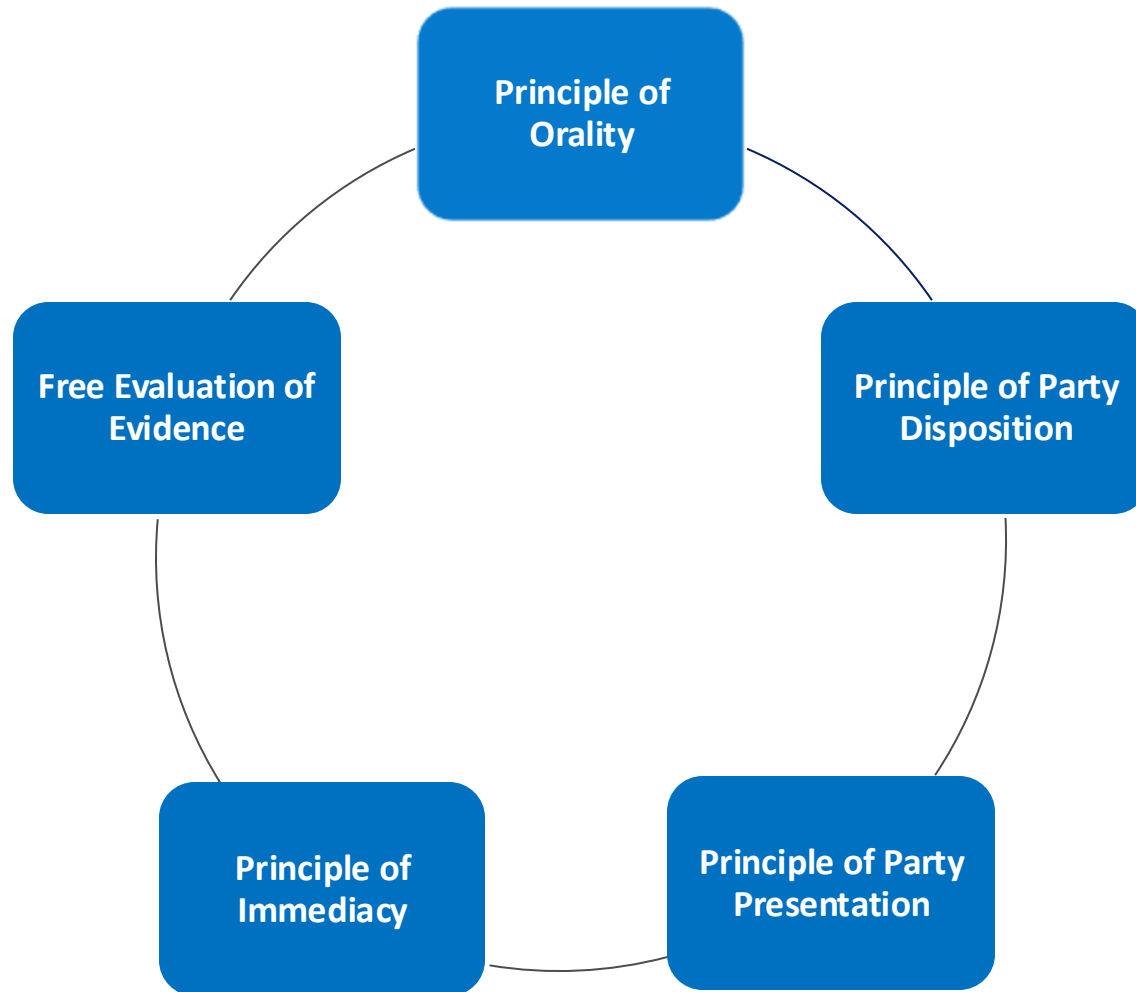
# General Principles Part 2

## 6. Course of Civil Court Proceedings – 1<sup>st</sup> instance



## 7. Procedural Principles and Fundamental Procedural Rights (1)

- Procedural Principles



## 7. Procedural Principles and Fundamental Procedural Rights (2)

### ■ Principle of Orality

- Generally: oral hearing, Sec. 128 Para. 1 CPC
- Exceptions, e.g. Sec. 128 Para. 2 to 4, Sec. 495a CPC

### ■ Principle of Immediacy

- Immediacy of the trial, Sec. 128 Para. 1 CPC
- Immediacy of Evidence, Sec. 355 Para. 1 CPC
  - Material Immediacy
  - Formal Immediacy

### ■ Publicity

- Publicity in the courtroom
  - Generally: public hearing, Sec. 169 Para. 1 CCA
  - Exception: protection of privacy and confidential information, Sec. 170 ff. CCA
- Attendance of Parties, Sec. 357 CPC

## 7. Procedural Principles and Fundamental Procedural Rights (3)

### ■ Principle of Party Disposition

- Autonomy of the Parties over the procedure: parties have the procedure partly at their disposal
  - E.g.: Content of Claim (Sec. 253 Para. 1 CPC)
  - termination of lawsuit by Settlement or Discharge

### ■ Principle of Party Presentation

- Parties' responsibility to obtain and present facts and evidence to the court
- In contrast: Management of the Trial by the court (Sec. 139 Para. 1 CPC) ex officio

### ■ Free Evaluation of Evidence

- Assessment of the evidence is the sole responsibility of the court, Sec. 286 CPC

## 7. Procedural Principles and Fundamental Procedural Rights (4)

### Civil Procedure

**Principle of Disposition**

Principle of Party  
Presentation

Formal Immediacy

### Criminal Procedure

**Ex Officio**

Principle of Official  
Investigation

Material Immediacy



## 7. Procedural Principles and Fundamental Procedural Rights (5)

### Procedural Rights

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graph LR; A[Procedural Rights] --> B[Access to Justice]; A --> C[Due Process]; A --> D[Equality before the Law]; A --> E[Fair Trial]; A --> F[Legally Designated Judge]; A --> G[Publicity]; A --> H[Material protection of fundamental rights]; B --> I[Art. 20 (3) BL]; C --> J[Art. 20 (3) BL]; D --> K[Art. 3 BL]; E --> L[Art. 103 (1) BL]; F --> M[Art. 101 (1) 2 BL]; G --> N[Art. 20 (3) BL]; H --> O[e.g. Art. 14 (1), Art. 6 BL];
```

Access to Justice

Art. 20 (3) BL

Due Process

Art. 20 (3) BL

Equality before the Law

Art. 3 BL

Fair Trial

Art. 103 (1) BL

Legally Designated Judge

Art. 101 (1) 2 BL

Publicity

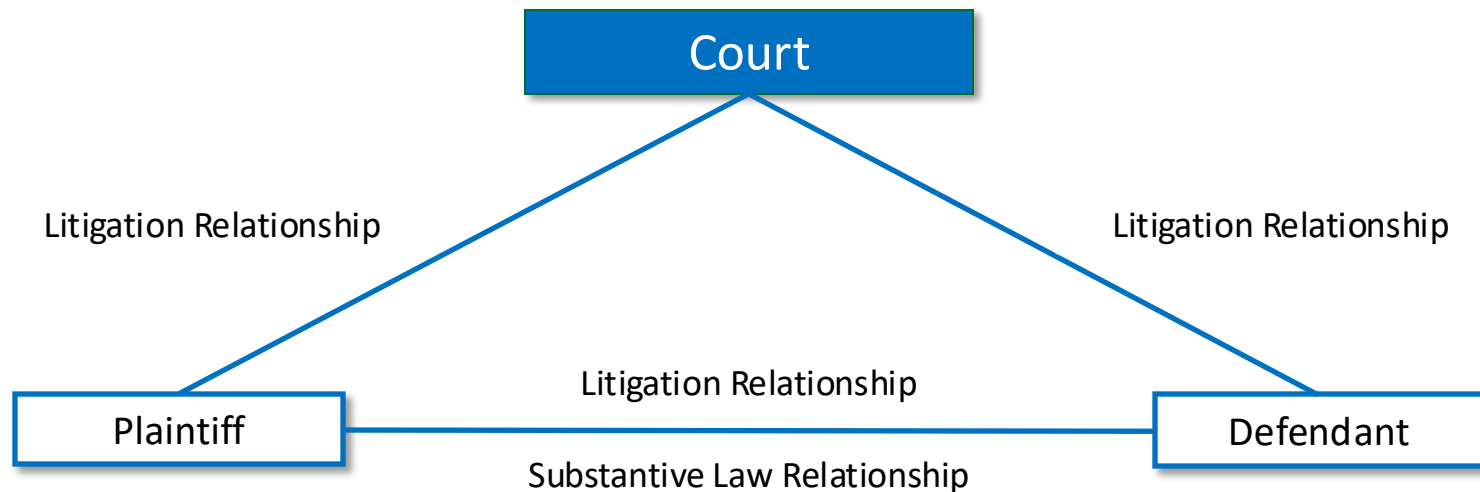
Art. 20 (3) BL

Material protection of fundamental rights

e.g. Art. 14 (1), Art. 6 BL

## 8. Parties and Litigation Relationships

- Two-Party-Principle
- Requirements for litigants: Capacity to be a Party; Capacity to Act; Legal Representation; Pursuit of Court Proceedings; Capacity to Sue and be Sued





# Summary

- Course of Civil Court Proceedings – 1<sup>st</sup> instance
- Procedural Principles
- Fundamental Procedural Rights
- Parties and Litigation Relationships