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# THE CONCEPT OF *JURISPRUDENCIA* IN MEXICAN LAW

José María SERNA DE LA GARZA*

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* Professor, Institute for Legal Research, National Autonomous University of Mexico.

## I. Introduction

This note describes the concept of *jurisprudencia* in Mexican law. This term refers to constant and unvarying criteria to interpret and apply the Constitution, federal and state statutes and rulings and international treaties, expressed in the decisions of either the Supreme Court of Justice sitting *en banc* or of one of its Chambers, the collegiate circuit courts, as well as the Federal Electoral Tribunal.[1] After meeting certain conditions and requirements analyzed below, the decisions issued by these courts may acquire binding authority with regard to lower courts. The notion of *Jurisprudencia* has certain similarities with the common law notion of precedent, however, as made evident below, there are important differences between the two concepts.

This note is organized as follows: First, there is a general, conceptual discussion on *jurisprudencia* in Mexican law. Then, constitutional and legal regimes of *jurisprudencia* are discussed. I go on to address the different rules found in the 1917 Mexican Constitution and different statutes that govern various aspects under study, such as types of *jurisprudencia* (binding/non-binding); the courts with the power to issue binding *jurisprudencia*; systems for forging/establishing binding *jurisprudencia;* the relationship between binding *jurisprudencia* and the concept of "tesis" in Mexico; the so-called *interruption* and *modification* of the binding effect of *jurisprudencia*; and a discussion of who is actually bound by *jurisprudencia* in Mexican law.

In the last to sections of this essay, I will briefly refer to the system for reporting *jurisprudencia* and the relationship between case law and legal teaching in Mexico.

## II. Binding Legal Decisions in Mexico (*Jurisprudencia*)

In Mexico, *jurisprudencia* is the term used to refer to the idea of binding legal decisions. Mexico's legal system developed under the so-called civil law tradition. Thus, statute law has been considered the supreme source of law (as the expression of the "general will" of the people through their representatives in Congress); while judge-made laws have been seen as having a secondary role, an idea closely tied in with the belief that judges's roles should be limited to applying statute laws.[2]

Along with these ideas, the early years of Mexico's legal system did not develop the concept of precedent that in some way resembled the *stare*

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[1] Octavio Hernández, Curso de Amparo, 362 (2nd ed., Porrúa 1980).

[2] John Henry Merryman, La Tradición Jurídica Romano-Canónica, 72-75 (Fondo de Cultura Económica 1997).

*decisis* principle characteristic of the common law tradition. When making decisions, courts were supposed to strictly adhere to the text of codified statute laws and these codes were supposed to be coherent, complete and clear legal documents capable of providing a solution for any possible dispute that might arise in society. When solving cases, judges should not look at other (previous) legal decisions, but at the statute law passed by the legislature.

Today, binding legal decisions are allowed at a federal level, as governed by the *Amparo* Law. However, it took years for this idea of binding legal decisions to formally gain recognition.

In the beginning, the 1861 *Amparo* Law clearly prohibited binding authority of any sort of legal decision, as established in article 30: "Legal decisions rendered in trials of this nature are only applicable to those who were parties to the dispute. Therefore, no person shall be allowed to invoke them in order to avoid complying with the statute law on which they are grounded."[3]

However, for the first time in Mexico, a new *Amparo* Law passed in 1882 established limited binding authority of legal decisions in *amparo* proceedings, as stated in article 34: "Decisions issued by judges shall be based on the constitutional text applicable to the case. For its proper interpretation, they shall consider the sense that has been defined by the decisions of the Supreme Court and by legal doctrine."[4]

Moreover, article 70 of this statute established that:

> Article 70. The granting or denial of the *amparo* against the express text of the Constitution or against its interpretation as defined by the Supreme Court in at least five consistent decisions shall be punishable by loss of employment and a period of incarceration between six months and three years if the judge behaved intentionally. If the judge's behavior is due to ignorance or carelessness, he shall be suspended in his functions for a period of one year.[5]

The statement of legislative intent for the 1882 *Amparo* Law, the legislative debates and Article 70 of this statute clearly established the binding effect of Supreme Court decisions "by reiteration." In other words, Supreme Court decisions interpreting the Constitution need to be repeated in five consistent decisions to have authoritative force.

This rule, however, was later repealed by the 1897 Federal Code of Civil Procedure, in which its statement of legislative intent stated that:

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[3] Ley de Amparo [L.A.] [Amparo Law], Diario Oficial de la Federación [D.O.], November 30, 1861 (Mex.).

[4] Ley de Amparo [L.A.] [Amparo Law], *as amended*, Diario Oficial de la Federación [D.O.], December 14, 1882 (Mex.).

[5] *Id.*

> ...the Judicial Branch's tendencies to intervene are suppressed… The Commission also took into consideration the principle of division of powers… especially the relevant principle according to which only the legislature can interpret, clarify, modify or repeal a statute law and it is the Court's duty to apply it.[6]

Nevertheless, the idea of authoritative decisions by reiteration in *amparo* proceedings was reclaimed in the 1908 Federal Civil Procedure Code. Article 786 of this code established that: "Article 786. Supreme Court of Justice decisions passed by a majority vote of nine or more of its members, form a binding decision if what was decided is reiterated in five consecutive decisions unbroken by any decision to the contrary."[7]

Article 787 of this code also stated that *jurisprudencia* established thus was mandatory for district judges and, to a certain extent, the Supreme Court, which should be bound by its own decisions.[8] However, it also opened up the possibility for the Supreme Court to detach itself from its decisions by expressing its reasons to do so in every case. These explanations refer to the reasons that were taken into account when the decisions that were being contradicted had been made.

To justify these rules, the statement of legislative intent of the 1908 Federal Civil Procedure Code expressed that:

> *Jurisprudencia* must bind lower level judges because of the inherent nature of *jurisprudencia*. Therefore, a district judge shall be able to argue reasons against it for the Court to take into consideration; but shall abide by the resolutions established as *jurisprudencia* because if not, their establishment would be useless.
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> The latter cannot be said of the Court itself because *jurisprudencia*, be it doctrinal or judicial, shall always be grounded on the authority granted to it by reason, and since the latter is progressive by nature, *jurisprudencia* must also be so by extension.
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> To constrain the Court and bind it unconditionally to its precedents would amount to imposing a dogma similar to those established by religions; it would be equivalent to establishing, as in religions, absolute truths and giving *jurisprudencia*, even if mistaken, a dogmatic attribute that not even statute laws or other institutions should have.
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> It is reasonable to establish that when the Court modifies its *jurisprudencia*, it should express the new reasons that it may have and that contradict precisely those it resorted to when it established the *jurisprudencia* it intends to modify.[9]

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[6] Código Federal de Procedimientos Civiles [C.F.P.C.] [Federal Civil Procedure Code], *as amended*, Diario Oficial de la Federación [D.O.], October 6th, 1897 (Mex.).

[7] Código Federal de Procedimientos Civiles [C.F.P.C.] [Federal Civil Procedure Code], *as amended*, Diario Oficial de la Federación [D.O.], December 26, 1908 (Mex.).

[8] *Id.*

[9] *Id.*

Article 785 of the 1908 Federal Code of Civil Procedure limited the possibility of creating binding decisions to the Supreme Court, which interprets the Constitution and federal statute laws. Meanwhile, article 788 established parties' possibility to invoke binding decisions by stating, in writing, its sense or meaning, its applicability to the respective case and showing that the decision was reiterated five times.[10] These rules denote explicit acceptance of a certain version of binding legal decisions in Mexican law.

## III. The Constitutional Regime of *Jurisprudencia*

Before 1951, *jurisprudencia* had no constitutional basis. However, in that year article 107-XIII of the Constitution was amended to establish the following: "XIII. Statute law shall determine the terms and cases in which the jurisprudencia from Federal Judicial Branch Courts is binding, as well as the requirements for its modification."[11]

In 1967, this rule was transferred to article 94 of the Constitution with an amendment that sought to clarify the kind of norms that could be the object of *jurisprudencia*: "Statute law shall determine the terms in which the *jurisprudencia* from Federal Judicial Branch Courts on the interpretation of the Constitution, federal and local statutes and rulings, and international treaties entered into by the Mexican State is binding, as well as the requirements for its interruption and modification."[12]

From this paragraph, it is clear that:

A) Only federal courts can issue binding legal decisions.
B) These binding decisions refer to the interpretation of the Constitution, federal and state statutes and rulings and international treaties.
C) Statute laws passed by Federal Congress are the instruments that define the terms under which binding legal decisions can be produced.

These three aspects are part of the current constitutional system of binding legal decisions in Mexican law.

## IV. The Legal Regime of *Jurisprudencia*

As explained above, the Constitution states that statute law determines the conditions under which binding legal decisions can be produced. In

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[10] *Id.*

[11] The reform was published on February 19, 1951. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Diario Oficial de la Federación [D.O.], February 19, 1917 (Mex.).

[12] Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Diario Oficial de la Federación [D.O.], October 25, 1967 (Mex.).

fact, two statues carry out this constitutional mandate: the *Amparo* Law (articles 192-197-B)[13] and the Organic Law of the Federal Judicial Branch (articles 177-179 and 232-235).[14]

From the analysis of the rules contained in these statutes, it is possible to describe the following:

1. *Types of* Jurisprudencia

There are two types of *jurisprudencia* in Mexican law:

A) Binding *Jurisprudencia*: These fulfill all the requirements established by statute law to have mandatory force, as explained below in the analysis of articles 192 and 193 of the *Amparo* Law,[15] and article 103 of the Organic Law of the Federal Judicial Branch.[16]
B) Non-Binding *Jurisprudencia*: Although they do not fulfill the abovementioned requirements, they at least have a persuasive force, as recognized by legal doctrine and the Supreme Court itself.

Indeed, there is a Supreme Court decision on which federal and local judges and magistrates can legitimately uphold their decisions in either type of *jurisprudencia*. However, the Court makes it clear that the only mandatory one is that which complies with the requirements established by statute law, while the other one has only persuasive value.[17]

2. *Courts Authorized to Issue Binding Legal Decisions*

According to articles 192 and 193 of the *Amparo* Law,[18] and article 232 of the Organic Law of the Federal Judicial Branch[19] only four kinds of federal courts can establish mandatory *jurisprudencia*:

A) The Supreme Court of Justice, working in plenary sessions (*en banc)* or in Chambers,

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[13] See Ley de Amparo [L.A.] [Amparo Law] *as amended*, Diario Oficial de la Federación [D.O.], January 10, 1936 (Mex.).

[14] See Ley Orgánica del Poder Judicial de la Federación [L.O.P.J.F.] [Federal Judicial Branch Law] *as amended*, Diario Oficial de la Federación [D.O.], May 24, 1995 (Mex.).

[15] *Supra* note 13.

[16] *Supra* note 14.

[17] JURISPRUDENCIA DE LA SUPREMA CORTE, OBLIGATORIEDAD DE LA, Primera Sala [First Chamber], Semanario Judicial de la Federación, Quinta Época, Vol. Fifth Epoch, Vol. CV, p. 1196.

[18] *Supra* note 13.

[19] *Supra* note 14.

B) Collegiate circuit courts,
C) The Upper Chamber of the Federal Electoral Tribunal, and
D) Regional Chambers of the Federal Electoral Tribunal.

As a federal state, Mexico has federal and state court systems. The only courts authorized to render binding legal decisions are certain federal courts. The Supreme Court of Justice is found at the very top of the federal court system. It is formed of 11 Justices, who can work in plenary sessions, *en banc*, or in chambers. There are two chambers with five Justices each (the president of the Supreme Court is not a member of either chamber). Each chamber has jurisdiction over a particular subject-matter.[20]

The Supreme Court working in plenary sessions has absolute jurisdiction to solve conflicts of competence at federal, state and municipal levels of government, as well as between the federal executive and legislative branches. It also has the power to exercise abstract control of federal and state statutes through actions of unconstitutionality. In these cases, Supreme Court decisions may become *jurisprudencia* (for the conditions needed for this to happen, see below).

In addition, the Supreme Court has the power to intervene in *amparo* proceedings. As explained by Fix-Zamudio, the Mexican *amparo* is a combination of various procedural instruments, each with its own specific protective function: *a)* protecting fundamental rights; *b)* attesting to allegedly unconstitutional laws; *c)* contesting legal decisions; *d)* petitioning against official administrative acts and resolutions; and *e)* protecting the social rights of farmers subject to Agrarian Reform Laws.[21] Eventually, a challenge of unconstitutionality to a statute, legal decision or administrative act may reach the Supreme Court through the *amparo* proceeding. Supreme Court decisions rendered in these cases may also become *jurisprudencia*.

The main function of collegiate circuit courts is to review the legal decisions of both federal and state courts, by means of a proceeding that closely resembles the French *cassation* (*Amparo Judicial* or *Amparo casación*),[22] while (in general and without entering into the details) the Upper and Regional Chambers of the Federal Electoral Tribunal resolve electoral disputes arising from federal and, in some cases, state and municipal elections. The decisions of these courts may also become *jurisprudencia*.

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[20] The First Chamber has the competence to hear civil and criminal cases, while the Second Chamber is empowered to hear administrative and labor cases.

[21] Héctor Fix-Zamudio, *A Brief Introduction To The Mexican Writ Of Amparo*, CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL, Vol. 9, Issue 2, 316-317 (Spring 1979).

[22] Héctor Fix-Zamudio, *Presente y Futuro de la Casación Civil a través del Juicio de Amparo Mexicano*, in HÉCTOR FIX-ZAMUDIO, ENSAYOS SOBRE EL DERECHO DE AMPARO, 237-284 (Porrúa, México, 2003).

### 3. *Systems for Establishing* Jurisprudencia Obligatoria *(Binding Legal Decisions)*

#### A. *Through Reiteration of Criteria*

According to articles 192 and 193 of the *Amparo* Law, both the Supreme Court and collegiate circuit courts may issue binding legal decisions by upholding the same point of law in five consecutive judgments. In the Supreme Court, these decisions require a majority vote of eight Justices (in plenary sessions or *en banc*) or four Justices (when sitting in their respective Chambers) for it to acquire binding authority. In collegiate circuit courts, all three judges must agree on the decision.[23]

This system of establishing binding decisions by reiteration requires, however, consecutive reiteration (that is, five consecutive decisions) of a decision upholding a different point of law regarding the same issue.

Article 232 of the Organic Law of the Federal Judicial Branch establishes specific rules that the Upper and Regional Chambers of the Federal Electoral Tribunal must follow to issue binding decisions by reiteration. In this way, the Upper Chamber is required to issue three consecutive decisions upholding a different point of law regarding to the same issue. Regional Chambers are required to issue five consecutive decisions upholding a different point of law regarding the same issue, in addition to the ratification by the Upper Chamber. For these courts to establish a binding decision, they must meet these requirements, but must also obtain a formal declaration from the Upper Chamber, stating that a binding decision has actually been made.[24]

#### B. *Through the Resolution of Contradictory Criteria in Collegiate Circuit Courts*

The emergence of this form of establishing binding decisions is closely related to the modifications the Federal Judicial Branch has undergone since 1951. In the late 19th century, the Supreme Court of Justice was granted the power to review and eventually annul appellate judgments of both federal and state courts. This power has led to the *Amparo Judicial*, which according to Fix-Zamudio bears direct similarities to the French remedy of cassation.[25]

In its original form, the Supreme Court had the power to make this kind of review. However, the number of *Amparo Judicial* claims increased significantly in the first decades of the 20th century. In 1928, the Supreme Court was structured not only to sit *en banc*, but also to work in chambers (for a to-

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[23] *Supra* note 21 at 347.

[24] See article 232 of the "Ley Orgánica del Poder Judicial de la Federación".

[25] See Fix-Zamudio, *supra* note 22, 237-284.

tal of four plus one "auxiliary" chamber until 1994). Subsequently, Supreme Court chambers were unable to handle the workload, which led to the creation of collegiate circuit courts specializing in *Amparo Judicial* cases. Only in matters of national importance and relevance can the Supreme Court still hear this kind of cases. However, the general rule is that collegiate circuit courts have the authority to hear these cases. Thus, the country is divided into 29 judicial circuits and while the number of collegiate circuit courts in each circuit varies, they total 184.[26]

Having a Supreme Court organized into chambers and a considerable number of Collegiate Circuit Courts solving similar cases often involving the same points of law gives way to the possibility of contradictory interpretations on the same laws. When this happens, there is a "contradiction of thesis"[27] which must be settled.

When there are contradictory theses issued by Supreme Court chambers, the Supreme Court *en banc* has the power to settle the contradiction. When the contradiction of theses involves two circuit courts, a Supreme Court chamber has the power to settle the contradiction.

This explanation refers to a second method to create binding precedents in Mexico.

In 1986, article 192 of the *Amparo* Law was amended and a third paragraph was added to clarify that resolutions solving contradictions of theses that arise in chambers of the Supreme Court or collegiate circuit courts also constituted *jurisprudencia* (binding legal decisions).

The rules for settling contradictions of theses can be found in the *Amparo* Law (articles 192, 197 and 197-A):[28]

1) This method does not apply in instances of contradictions between criteria held by a Chamber and a collegiate circuit court, but only in contradictions of courts at the same level.
2) No reiteration of criteria is required for establishing binding decisions under this method, nor is a specific number of votes of the Justices or Magistrates needed.
3) This procedure can only be initiated if the contradiction is "reported" *(denunciar)*. The subjects that can "claim" the existence of a contradiction of theses are:

   A) Contradictions of Theses in Supreme Court Chambers:

      a) The Chambers themselves (through their president).

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[26] See the "Acuerdo General 57/2006 del Pleno del Consejo de la Judicatura Federal", published in the Federal Oficial Gazzette on September 4, 2006.

[27] In Mexican law, the concept of "thesis" (in plural, "theses") has a technical meaning explained below.

[28] *Supra* note 13.

b) Any of the Justices members of these Chambers.
c) The Federal Attorney General.
d) Parties to the dispute to which the theses refer.

B) Contradictions of Theses in Collegiate Circuit Courts:

a) Supreme Court Justices.
b) The Federal Attorney General.
c) Judges of the Collegiate Circuit Courts that issued the contradictory theses.
d) Parties to the dispute to which the theses refer.

4) The decision that settles the contradiction has no impact on the parties to the disputes that led to the contradicting theses. The only purpose of this procedure is to unify federal court interpretations of the law.
5) Contradictions of theses in chambers are settled by the Supreme Court sitting *en banc*, while contradictions of theses in collegiate circuit courts are settled in Supreme Court chambers.

Article 232 of the Federal Judicial Branch Law allows the Upper Chamber of the Federal Electoral Tribunal to create binding decisions by settling contradictory theses in the Tribunal's Regional Chambers.[29]

C. *The Binding Character of the Reasons Stated in Supreme Court Rulings in Two Kinds of Proceedings:* "Controversias Constitucionales" [*Constitutional Controversies*] *and* "Acciones de Inconstitucionalidad" [*Actions of Unconstitutionality*]

Acting as a constitutional court, the Supreme Court of Justice has the power to settle disputes brought before it under a proceeding called "*controversia constitucional*." With this proceeding, different levels of government in the Mexican federal system (vertical division of power) and different branches of the federal and state governments (horizontal division of power) can defend their constitutional sphere of competence against interference from other organs or branches.

Moreover, the Mexican Constitution also provides for abstract control of constitutionality that can be brought before the Supreme Court of Justice, called "*acción de inconstitucionalidad*." In this case, legislative minorities, the Federal Attorney General, political parties and the National Commission on Human Rights, can challenge the constitutionality of a statute law passed by federal and state legislatures, within 30 days of its ratification.

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[29] *Supra* at 14.

The constitutional basis for these proceedings is found in Article 105 of the Federal Constitution, and the statute governing them is the Law on Article 105 of the Constitution.

Articles 43 and 73 of this statute law establish that the reasons included in Supreme Court rulings on "*controversias constitucionales*" and "*acciones de inconstitucionalidad*," approved by no less than eight votes, shall have mandatory authority for all courts (federal and local) in the land, including Supreme Court chambers.[30]

### 4. *Binding Legal Decisions and the Concept of* "Tesis" *in Mexico*

It is important to note that after one of the above-mentioned decisions has been issued, the criteria maintained by the respective court must still pass through a drafting process, the result of which is known in Mexico as a "*tesis*" [thesis]. This process implies extracting from the ruling the point of law that can be considered a law formulated by the court and can be applied to similar cases in the future.

The Supreme Court itself has drafted and published a "Manual" on the rules for drafting the above-mentioned "theses." Rule 1 defines what a thesis is: a written expression in an abstract form of the criteria used to interpret a legal norm which was applied to solve a specific case. Therefore, a thesis is not an extract, a synthesis or a summary of a legal decision. Rule 2 states that the text of a thesis shall not contain specific information, such as people's names, quantities, objects, etc., or that of a tentative, particular or contingent nature, but only those of a general and abstract nature. Rule 3 refers to the correlation that must exist between the thesis and the legal resolution of the case. Rule 4 orders that the thesis be written clearly and in such a way that it is fully understandable without the need to resort to the legal decision. However, it is not to be a simple transcript of a certain part of said decision. Rule 5 states that each thesis must contain only one criteria for interpretation. Rule 6 states that theses that form *jurisprudencia obligatoria* (that is, theses upholding the same point of law in five consecutive decisions as explained above) shall be amalgamated into a single text that corresponds to the five theses. Rule 7 refers to a thesis classification system to locate it easily and quickly. This system entails identifying each thesis under a heading, for example, "DIVORCE, ABANDONMENT OF CONJUGAL DOMICILE AS A CAUSE OF." Finally, Rule 8 states that at the end of the text of each thesis, the information identifying the corresponding case must be in-

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[30] Ley Reglamentaria de las Fracciones I y II del Artículo 105 de la Constitución Política de los Estados Unidos Mexicanos [L.R.Art. 105] [Law of Article 105 of the Federal Constitution], *as amended*, Diario Oficial de la Federación [D.O.], November 22, 1996 (Mex.).

dicated, as well as the existence of any prior theses with the same implications.[31]

Rule 2 has been particularly criticized by some authors, who have pointed out that the requirement of theses being both general and abstract, and the prohibition of specific references to persons, objects, etc., amounts to reproducing the abstraction of statute law. However, they argue that by nature, judge-made law cannot (and should not) be separated from the facts of the specific case because the facts determine the argument that leads to the point of law upheld.[32]

It is also important to note that not every thesis is deemed binding under Mexican law. When it does not, it is known as an "isolated thesis." Only after five decisions have been issued and approved by the majorities described above, can one properly speak of a binding thesis (*tesis jurisprudencial*).

The "theses" drafting process of "theses" is governed by article 195 of the *Amparo* Law.[33] The most relevant rules of this process are:

A) The Supreme Court *en banc*, its chambers or the corresponding collegiate circuit court must approve the text and heading (*rubro*) of the *tesis jurisprudencial*, and must give it a progressive number.
B) Within 15 business days, they must present the corresponding thesis to the federal judicial branch's official reporting instrument, the *Semanario Judicial de la Federación* [Weekly Federal Court Report], for its publication.
C) They must also submit the thesis to those who did not issue the thesis.
D) They must set up a database to allow the public access to said theses.

### 5. *The* Interruption *and* Modification *of the Binding Effect of* Jurisprudencia

Mexican legal doctrine makes a distinction between the interruption and the modification of *jurisprudencia obligatoria*.

Interruption refers to the removal of the authoritative nature of a decision when a decision that contradicts a former one has been approved with the required majority by the corresponding court (that is, by the court that produced the original binding decision). In these cases, the new decision must explain the reasons that justify the interruption, taking into account the reasons that supported the decision to interrupt the binding force (see article 194 of the *Amparo* Law).[34]

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[31] Suprema Corte de Justicia de la Nación [S.C.J.N.] [Supreme Court], Gaceta del Semanario Judicial de la Federación, Issue 1, 115-16 (February 1988).

[32] HÉCTOR GERARDO ZERTUCHE GARCÍA, LA JURISPRUDENCIA EN EL SISTEMA JURÍDICO MEXICANO 124-125 (Porrúa 1990).

[33] *Supra* note 13.

[34] *Id.*

Modification implies the emergence of a new binding decision which overrules the previously existing *jurisprudencia obligatoria*. Article 194 of the *Amparo* Law states that the modification of a binding decision must follow the same rules required for the establishing the above-mentioned *jurisprudencia* (that is, five consecutive decisions supported by the vote of the required majorities).[35]

The *Amparo* Law also allows the possibility that, for a specific case, a collegiate circuit court may ask a chamber of the Supreme Court to modify a binding decision produced by this circuit court, stating reasons that justify the modification. The same can be done by a chamber of the Supreme Court. In this case, it must direct its petition to the Supreme Court of Justice *en banc* (see article 197, fourth paragraph).[36]

### 6. *Who is Bound by* Jurisprudencia *in Mexican Law?*

Neither the Executive branch nor the Legislative branch are bound to binding precedents issued by Mexican federal courts. According to articles 192 and 193 of the *Amparo* Law, binding decisions of the Supreme Court *en banc* have authoritative force for all the courts on Mexican territory, including its own chambers. In turn, binding decisions of the Supreme Court chambers are binding for all the courts in the land (with the exception of the Supreme Court *en banc*). Moreover, binding decisions produced by collegiate circuit courts are binding for all the courts in the land (with the exception of the Supreme Court *en banc* and its chambers).[37]

Using the words of a Supreme Court Justice, these rules imply that *jurisprudencia* does not produce binding effects for those who can contravene it (to thus prevent it), but only for those who may rectify the violation once it has been committed.[38]

## IV. The Reporting System for *Jurisprudencia* in Mexico

Binding decisions issued by the Supreme Court, its chambers and collegiate circuit courts are published in the *Semanario Judicial de la Federación*. Founded in 1870, this publication has appeared regularly ever since with two interruptions (1875-1880 and August 1914-May 1917).[39]

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35 *Id.*

36 See the discussion of Jorge Ulises Carmona, *La Jurisprudencia obligatoria de los Tribunales del Poder Judicial de la Federación*, Boletín Mexicano de Derecho Comparado, Issue 83, 544-545 (May-August 1995).

37 *Supra* note 13.

38 José de Jesús Gudiño Pelayo, *¿A quién obliga la jurisprudencia?*, Revista Mexicana de Procuración de Justicia, Vol. I, Issue 3, 47 (October 1996).

39 Miguel Carbonell, *Una Aproximación al Surgimiento Histórico de la Jurisprudencia en México*,

The original idea was that the *Seminario* should include complete Federal Court rulings.[40] Today, however, this publication mainly includes the theses described above (which can be either "*tesis aisladas*" or "*tesis de jurisprudencia*"). Moreover, theses that have acquired the character of binding criteria ("*tesis de jurisprudencia*") are published every year in an Appendix to the *Semanario*.

Complete judgments are not commonly published in the *Semanario,* though it is not unheard of if the Supreme Court, collegiate circuit courts or the General Coordinator of Compilation and Systematization of Theses deems they should be published. In this sense, Title Four, Chapter One, paragraph 5 of the Agreement on the rules for the creation, remission and publication of theses issued by federal judicial branch courts (Agreement Number 5/1996) states that:

> 5. Rulings shall be published, either totally or partially, following the respective theses whenever the Supreme Court or collegiate circuit courts expressly decide to do so and whenever dissenting opinions have been formulated; or when the Coordination [of Compilation and Systematization of Theses] decides to publish them, depending on the relevance of the legal issues settled by the ruling or because their complexity makes it difficult to fully understand them on the thesis only.[41]

## V. Case-Law and Legal Teaching in Mexico

Since the 1960s, intermittent efforts have surfaced in Latin America, and particularly in Mexico, aimed at introducing important changes in law-teaching methods. For example, at a Law School Conference in Lima, Peru, in 1961, it was concluded that teaching law should be "active" and should reconcile theory with practice. This way, "practical teaching" was understood as teaching oriented at solving practical cases and problems.[42]

However, in current teaching methods at Mexican law schools, there has been little progress made along the path mapped out by conferences like

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Revista de la Facultad de Derecho de México, Vol. XIV, Issue 199-200, 84 (January-April 1995).

40 See the decree that created the Semanario Judicial de la Federación, in Héctor Zertuche García, La Jurisprudencia en el Sistema Jurídico Mexicano, 349-350 (Porrúa, 1990).

41 Acuerdo relativo a las Reglas para la Elaboración, Envío y Publicación de las Tesis que Emiten los Órganos del Poder Judicial de la Federación (Acuerdo No. 5/1996), found in Raúl Plascencia Villanueva, Jurisprudencia, Panorama del Derecho Mexicano, 100 (UNAM-McGraw-Hill 1999).

42 Richard Wilson, *The New Legal Education in North and South America*, Stanford Journal of International Law, Vol. 25, 394 (1989).

the one mentioned above. The predominant teaching method used is the so-called "master class" (*cátedra magistral*), in which the teacher *explains* the law (predominantly statute law) to the students. This in turn has inhibited the use of more "active" methodologies in the legal teaching process.

Nevertheless, it is increasingly clear that this situation must be changed. As explained above, binding and non-binding legal decisions play an important role in Mexico's law-making process. In fact, litigators take court opinions into account when preparing their arguments to make their case before the court.

The use of case law in teaching, however, is determined to an important degree by the way court opinions are published. In the case of Mexico, the publication of court opinions is very limited. At a federal level, the *Semanario Judicial de la Federación* publishes excerpts pronounced by federal courts. Moreover, they are not published immediately, but often show a delay of several months. Besides that, they are hardly or rarely published as complete judgments, which could give analysts a more detailed and in-depth knowledge of the case. On a local level, the publication of opinions is even more limited or simply nonexistent.

The analysis of complete judgments is very important for students to see not only the outcome, but also the reasoning that led to it. Likewise, if the publication of opinions were quick and immediate, professors would be able to organize classes to discuss the current issues under legal debate.

Moreover, the analysis of complete opinions would make it possible for students to see how the principles and rules included in a judgment can be applied to future cases, as well as identify the elements, theoretical and empirical considerations, and methods used by judges to settle disputes through their decisions.

Finally, the analysis of complete legal decisions would allow students to acquire expertise in critical examination of rulings; and expertise is needed to better exercise social control over the judiciary in a constitutional democracy.