

# The Influence of Miguel Reale's three-Dimensional theory on the Brazilian Civil Code and its Case Law

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**Abstract**— *This article reviews the development of the three-dimensional theory of law and its impact on the Civil Code and case law, as a way to solve new problems claimed world around today, notably situations like the COVID-19 pandemic. Hence, the three-dimensional theory has apparently proved to be an excellent way to provide proper and fair guidance to solve new contractual issues.*

**Keywords**— *Three-dimensional theory of law; Standard; Law Science; Brazilian Civil Code; Law Case.*

## I. INTRODUCTION

This article aims at reviewing the three-dimensional theory of law as developed by the jurist Miguel Reale, and its influence on the Brazilian Civil Code and the case law.

Firstly, a review encompassing the rule of law will be presented, distinguishing the legal order from the legal system. In addition, the paper approaches the Science of Law and the role it plays in understanding the standards either in place or existing. It will elucidate the approximation between Science of Law and Philosophy of Law commenced in the 20th century, which significantly increased the engagement of jurists in the Philosophy of Law aiming at a dialectic unit.

Thereafter, the paper approaches the legal system established by Miguel Reale through the development of his three-dimensional theory, based on the study of law as a set of standard, fact, and value. It will describe how jurists supportive to Miguel Reale's three-dimensional theory of law shall construe the standards, coordinating and systematizing them to rule out inconsistencies and incoherences of the legal order. In order to do so, jurists shall preform a joint analysis of the three elements (standard, fact, and value) considering the 'calibration rules', i.e., rules that allow changing the order standard, whenever required.

Therefore, it presents the concretion of the three-dimensional theory of law, showing that the legal standard, remaining unchanged, may have different interpretations depending on changes in the surrounding world. In addition, the paper explains that the current Civil Code was drafted by a commission of jurists supervised by Miguel Reale and, therefore, Reale's three-dimension theory influenced many of the Civil Code provisions, deliberately using an open, volatile or obscure language, in accordance with the general provisions.

## II. METHODOLOGY

The methodology adopted in this research work is of a theoretical nature, using doctrines, jurisprudence, bibliographies in general, scientific databases and legislation, such as Brazilian Code Civil of 1916, Brazilian Code Civil of 2002 and Federal Law 8.009 of 1990.

The research took into consideration the analysis of concrete facts from the past and contemporaries, as a way to verify the incidence of Miguel Real's Three-dimensional Theory on them, notably in contractual relations.

In fact, it was verified how Miguel Reale's Three-Dimensional Theory, known worldwide, has contributed to the evolution of law, mainly to give a sustainable direction

to the interpreter, as a way of adjusting the interpretation of the legislation to new concrete cases, providing a solution unpredictable and extraordinary situations.

Finally, the adopted research presents practical results of the incidence of the Three-Dimensional Theory in the Brazilian Civil Code and in the Brazilian jurisprudence, as a way to give a fair solution to their disputes.

## 2.1. LEGAL STANDARD AND SCIENCE OF LAW

The legal standard derives from a final ruling issued by the competent legislature, giving rise to its character of decidability. Legal standards will always be established by a legislature. Therefore, our behaviors are ruled by legal standards that enforce specific behaviors that are mandated, allowed or prohibited. Consequently, it has imperativeness when it dictates behaviors to individuals, i.e., it means that something has the 'duty to be' as it is an order for the human conduct.

The set of legal standards makes up the legal order, which is incoherent and abounds in inconsistencies, i.e., antinomies. The legal order is markedly different from the legal system, established by the Science of Law through the jurist.

The legal system is not laid down by positive law, but by the Science of Law and it is not a reality, it is an ideal object. In order to know the law, the Science of Law shall put forward the systematic set of legal standards as a valid class.<sup>1</sup>

The Science of Law is inherent to the knowledge and description of the legal standards, hence its descriptive nature where the jurist makes propositions. Since it is a judgment subject to the control of logic, its enunciate is either true or false. When jurists come to know and describe the standards, they build the normative system in order to provide unit and coherence to the standards. Science of Law belongs to the 'duty to be' category. For Miguel Reale, the legal dogmatics is not much different from the Science of Law, but the highest instance of application of the Science of Law. Here, the jurist stands to the theoretical level of general principles and concepts required to interpret, establish, and systematize the precepts and institutes making up the legal order.<sup>2</sup>

It is not so much a matter of judicial activity in a broad sense, a legal technique inherent to the work of attorneys, judges, prosecutors, reviewers, etc.<sup>3</sup>, but a scientific technique requiring jurists to use a technique aimed at systematizing and arranging the legal order, for the purpose of instructing the law enforcer, as well as of

enabling the proper interpretation, evicting any antinomies, and filling any existing gaps.

Decidability became the core issue of science of law. That is why the jurist, in seeking decisions that are justifiable in the current legal standard, provides answers that are neither true nor false, but that are fit or not to demonstrate that a given decision can be sustained in the standard under analysis. For that reason, the scientific-legal enouncements that make up the legal theories entail programmatic consequences of the decisions. They are expected to assist solving social problems with no disruption.

Since the legal order has inconsistencies and incoherences, the science of law has the purpose of interpreting the legal standards and drawing conclusions, coordinating and systematizing them to rule out such inconsistencies and incoherences. To that, it shall create a unified view of the system, in order to give directions to the law enforcer. This is the reason why the legal order is a technical work, thus named as a technological thinking.

## 2.2. PHILOSOPHY OF LAW

Late in the 19th century jurists were associated exclusively to a strict positivist attitude, whose behavior faithfully followed the legal texts, that is, there was nothing but the subsumption of the fact to the standard, disregarding the historical reality and social values. This ended by creating a dualism, that is, as if there existed a law for the jurist, and another for the philosopher, each being isolated in their field of analysis.

However, due to the discrepancy between regular norms and the underlying flows of social life, the Science of Law was stirred by a movement called 'free law', which brought about questions regarding elements of certainty in the existing legal order. Thus, discussions arose about the general theory of interpretation, allowing the Philosophy of Law to be associated to the science of law, and vice versa.

Miguel Reale perceives the need for a concrete Science of Law, connected to axiological, economic and social processes, to be observed under multiple perspectives, in sundry forms and directions, with the many expressions employed by authors, such as 'legal experience', 'reality of law', 'law as fact, value and standard', 'case law of interests', 'case law of values', among others. Jurists become increasingly interested in Philosophy, and the same also happens with regard to the philosophers of law, who also abandon their formal and abstract schemes to come into contact with the positivity of law.

Hence, there was a deep renovation in philosophical-juridical studies in the 20th century, with the growing interest of jurists in Philosophy of Law, understanding that the reason of this discipline could not be appreciated *in abstracto*, but in connection with the historical and sociological factors arising from the new attitude.<sup>4</sup>

There is no more room for the reductionist mentality of solving the social and historical problems existing in the 19th century, where law consists only of standard and, therefore, understanding the concept of legal experience will give meaning to the unity of law, and engender the required integration between Philosophy of Law, Legal History and case law. Thus, those adopting a three-dimensional position will understand the law in terms of concrete experience. As such, the isolated analysis of fact, value and standard is insufficient.

The axiological-normative framework of the legal reality makes it the object of philosophy by examining values as a transcendental condition of the experience of law and of the Science of Law, as it challenges the valuations materialized in juridical models.

The discourse on the validity of law is set out by three interconnected criteria, namely the validity that corresponds to the formal enforceability of juridical precepts (standard); the effectiveness that is the effective social equivalence to its content (fact); and the foundation that are the values that legitimize it in a society of free men (value).

This way, the three criteria are linked together in a three-dimensional framework, with one or the other prevailing depending on the circumstances, and shall be understood under a dialectic of complementarity.

### 2.3. DEVELOPMENT OF THE THREE-DIMENSIONAL THEORY OF LAW

Miguel Reale reports that, still in his youth, he used to overthink the fact that the great philosophers of Italian law, among others, such as Iacopo Vanni and Del Vecchio, agreed on splitting the Philosophy of Law into three parts: (i) one designed to examine the theory of legal phenomena; (ii) another aimed at the interests and values engaged in the legal experience; and, (iii) the last one referring to the theory of legal standard.

In 1934, due to the disquiet in his subconscious, Miguel Reale had the first insight of three-dimensionalism, whose theory evolved in 1940 by opposing to Kelsen's theory. Reale disagreed that law could be conceived exclusively as a legal standard, as it shows the path, with the fact being the starting point of the standard towards a

given value.<sup>5</sup> In other words, while the system created by Kelsen was limited to the knowledge and description of legal standards, i.e., law should be seen as a system of standard, for Miguel Reale law is standard, fact and value, and fact could not be related to legal standard in the absence of an investigation of the axiological dimension of the social fact.

For Miguel Reale, law is standard, fact and value for anyone who analyzes it. The idea of three-dimensionalism persisted in his consciousness, so much so that in 1953 he had another insight concerning the idea of dialecticity of the three elements, that is, he envisaged that the three elements are not only correlated, but are dialectical.

Besides stating the factual-axiological-normative nature of law, the three-dimensional theory enables the enlightenment and solution of both known and new problems claimed by the surrounding world today. It is premised on the result of the objective verification of the axiological-normative consistency of the moment of legal experience submitted to spiritual comprehension.<sup>6</sup>

It is therefore observed that when the jurist stands to the theoretical level of the general principles and concepts required for interpretation, establishment and systematization of the precepts and institutes that make up the legal order, the analysis of values and facts shall be objective, verifying the value encompassed by the standard and the fact also outlined in the standard, moving away from a subjective analysis for systematization.

To effectively correlate fact, value and standard a shared and concrete way, two premises must take place. One refers to the concept of value, which plays a threefold role of constitutive, gnoseological and deontological element of the ethical experience. Another one relates to the existing implication between value and history, that is, between ideal demands and their referencing in the historical-social setting as value, duty to be and end. The analysis of both premises effectively evidences the dialectic nature of law.<sup>7</sup>

It is also worth emphasizing that one can only speak of three-dimensionality with reference to the plan of culture, since the material or spiritual goods that men build throughout history always assume a factual basis, a determinant value of action, and a legal standard.<sup>8</sup>

Law is included in the dimension of human life, i.e., it exists in the existential process of both the individual and the collective, thus giving rise to the existential dialectic of law.<sup>9</sup>

For example, when one interprets a legal standard prescribing the payment of a bill of exchange on the date of its maturity, under penalty of protest and recovery, the creditor enjoys the right to promote the credit foreclosure. The foreign exchange standard stands for a legal provision based on a fact of economic order, aimed to ensure a value - the value of the credit -, the advantage of payment as stated on the bill of exchange. Therefore, there is an economic fact that attaches to a guarantee value that is externalized through a legal standard that covers both elements.<sup>10</sup>

Thus, the legal standard depicts the value-based integration of facts, i.e., it portrays the values that are gradually realized in the conditionality of historical-social facts.

Therefore, wherever the legal experience occurs, law shall be analyzed by abstraction in its threefold sense, that is, through fact, value and standard, according to a dialectical process of implication-polarity or complementarity. Its unity assumes the existence of correlation among factual, axiological and normative aspects.

#### 2.4. CONCRETION OF THE THREE-DIMENSIONAL THEORY OF LAW

It should be noted that sometimes the words contained in the legal standards remain immutable, but their meaning undergoes a process of enrichment due to the interference of other factors that come to provide a new spirit to the letter of the law, and may give rise to changes in the normative semantics<sup>11</sup>: (i) the impact of new valuations, or unforeseen changes in the hierarchy of dominant values; (ii) the supervenience of facts that increase or decrease data of the normative incidence; (iii) the intercurrent of other standards that do not exactly revoke an existing standard, but interfere on its field or line of interpretation; and (iv) the conjugation of two or more of the three above mentioned factors.

When interpreting the legal standard, one shall consider its social purposes and the values it intends to ensure, so that the interpreter shall take into consideration the axiological and social coefficient contained therein, based on the historical moment it occurs. In other words, the interpreter retraces the path of the normative formula to the normative act, taking into account the facts and values that gave rise to them, as well as the supervening facts and values since, as Siches teaches, the legal standard undergoes changes to fit into the new reality being experienced.<sup>12</sup>

For that reason, Miguel Reale explains that the unaltered legal standard starts having different

interpretations ensuing from changes in the surrounding world, like in the transition from individualism to a social understanding of law. He refers to the changes to the interpretation of Article 924 of the 1916<sup>13</sup> Civil Code that allowed a judge to reduce eventual fines in the event of substantial settlement of the liability.

He refers to a case where a seamstress failed to pay 2 (two) of a total of 22 (twenty-two) installments of a sewing machine. However, the contract provided that, nonetheless, a fine would still be applicable, and until 1930 the prevailing interpretation was in the sense that it was an enforceable standard. However, the Court of Justice of São Paulo later understood that this legal standard was of public order, and was up to the judge to make a judgment of equity to the specific case. The judge understood the exception as null and void by law, and also decided for the partial reimbursement of the installments paid by the seamstress.<sup>14</sup>

That change of paradigm ensuing from a new social reality was expressly incorporated into article 413 of the 2002 Civil Code<sup>15</sup>, in compliance with the principle of sociality provided therein since, in opposition to the provisions of article 924 of the 1916 Civil Code, the current law is decisive when it prescribes that judges have the duty rather than the responsibility of reducing, contrary to the provisions of the revoked legal instrument. The standard is of public order, and does not allow the parties to deny its incidence, establishing that the fine provided for is irreducible.

Miguel Reale's three-dimensional theory of law is applicable, based on the interpretation of article 317 of the Civil Code jointly with articles 478 and 479 of the same Code, to also allow the debtor to make use of the contract revision mechanism for excessive cost, through judicial intervention, as it is understood that the provision of Article 317 of the Civil Code is applicable to all installments, as a means to solving new problems claimed by the current surrounding world.

In other words, the standard of unchanged Article 317 of the Civil Code, when considered jointly with articles 478 and 479 of the same Code comes to have a different interpretation. It is so because the surrounding world undergoes changes that require new interpretation, notably in the light of the exceptional period we are experiencing as a result of the COVID-19 pandemic, in order to avoid the resolution remedy, and ensure judicial review, as a way of providing efficacy to the principle of contract preservation.

This interpretation is grounded on the objective observation of the factual-axiological-normative



consistency of the moment of the current legal experience, which allows the jurist to navigate the logical-systematic framework of the Civil Code, evaluating the content of the standards, considering the values in force by that time.

In this sense, an example was the case involving the delivery service.<sup>16</sup> By virtue of the restrictions imposed on trade by the public authorities, the claimant company doing business of delivery services and snacks sought before the judiciary the reduction of rental fees during the COVID-19 pandemic, on the grounds that the pandemic affected its business activity. The trial court of the District of São Paulo granted the petition for urgent relief for that purpose.

The Court of Justice held that the COVID-19 Pandemic fits into the theory of unpredictability and, therefore, “*Article 317 of the Civil Code and Article 478 of the same Code authorize, for unforeseeable reasons, the adjustment of payments*”, but eventually amended the trial court’s decision by virtue of failure to prove financial inability on the side of the plaintiff, as well as the fact that it had always provided delivery services and maintained earnings during the quarantine, i.e., it was not affected by the effects of the restrictions imposed in relation to the COVID-19 pandemic.

In the same sense the case involving bakery and mini-market services.<sup>17</sup> The claimant company sought the reduction of rental fees during the period of the COVID-19 pandemic, because of the restrictions imposed by the public authority that restricted the exercise of its business activity. The trial court’s judge granted the petition for urgent relief for a 15% reduction of the rental fees of the property object of the rental contract.

The Court of Justice of the State of São Paulo understood that the “*intended reduction of the rental fees, within the period of quarantine imposed by the public authority, equivalent to 85 % (eighty-five per cent) - coronavirus pandemic framed by the concept of unpredictable supervenient fact triggering excessive onerousness, thus authorizing the review of the rental contract - exegesis of articles 317, ‘caput’, and 478, ‘caput’, both of the Civil Code*”, in a way to produce the “*additional applicability of the theory of unpredictability*”, justifying the requisites of the exceptional measure, and upheld the petition of the claimant company to reduce the rental fees in 30 % of the value provided for in the rental contract, by virtue of the peculiarities of the specific case.

For Miguel Reale, the legal standard is somewhat flexible, so that variations in interpretations shall be compatible with it. However, at specific moments flexibility no longer withstands and is broken. It means to

say that the standard ceases to match the needs of life, and shall be revoked to allow to emergence of a new normative solution.<sup>18</sup>

In this way, the issue of three-dimensionality of law got new features when it proved that where is a legal phenomenon, there is always an underlying fact (economic, geographical, demographic, technical fact etc.); a value that assigns given meaning to that fact, ruling the human action in the sense of fulfilling a given purpose; and a standard that represents the relation that connects one of those elements to the other, fact to value. These elements (fact, value and standard) do not exist apart, but coexist in a concrete unit. They serve as links of a process where the life of law results from the dynamic and dialectic interaction of the three elements that make it up.<sup>19</sup>

It is thus observed that Miguel Reale’s three-dimensional theory of law is concrete and dynamic from the legal experience and, therefore, law corresponds to the legal standard, the facts and the values that gave rise to it, as well as to the supervenient facts and values existing in a dialectical process of complementarity.

## 2.5. INFLUENCE OF THE THREE-DIMENSIONAL THEORY OF LAW ON THE BRAZILIAN CIVIL CODE

In addition to the changes of principles to the Civil Code resulting from the valuation of the principles of sociality, ethics and operability, undefined general clauses and legal concepts were also introduced, making room for the judge’s interpretation to decide on the specific case.

The general clause is substantiated in a normative provision that deliberately employs an open, volatile or obscure language of comprehensive semantic scope, addressed to the judge to grant him competence, in the specific case, to develop legal standards through referral to elements that ground the decision. The decision implementation may be external to the system, ensuring the rational control of the sentence.<sup>20</sup>

The undetermined legal concept has in the antecedent (factual support) vague and obscure terms, and its consequent effect is determined. Its solution is predefined in the law, and whenever the enforcer finds it occurred, the judge shall apply the solution established by the legislator to the specific case.

Since Miguel Reale was one of the jurists participating in the coordination and drafting of the current Civil Code, his three-dimensional theory of law influenced the Civil Code wording, including undefined legal concepts and general clauses in its provisions. That is mainly because due to their vagueness the provisions are

endowed with great flexibility, which allows matching the variations of facts and values with time span and the development of society, not demanding a new normative solution.

For example, the Civil Code has general clauses on the social function of the contract (article 421 of the Civil Code), as a way to protect the interests of the party that is weak or disadvantaged in a legal relationship, or due to a dysfunctional behavior, and the objective good faith (Article 422 of the Civil Code), as a sort of integrative function complementary to the contract that assigns duties to the parties, that will contribute towards a reasonable interpretation of contracts. Moreover, the general clause on the social function of property (Article 1.228, paragraph 1 of the Civil Code).

Likewise, with regard to undefined legal concepts, for example, they are found in the provision of Article 423 of the Civil Code, dealing with the standard of interpretation in accession contracts, since the antecedent comprises the 'ambiguous or inconsistent' expressions that shall be evaluated by the judge, while the legal consequence has been previously defined by the legislator in the sense of 'adopting the interpretation that is most favorable to the adherent'. The same is true for Article 424 of the Civil Code that uses the expression 'adhesion' in the antecedent and defines its legal consequence, even though the judge will value that expression through the analysis of business circumstances.

Thereby, jurists started understanding private law as an open system, equipped with mechanisms that allow data entry, processing and return with minor changes, in order to contemplate Miguel Reale's three-dimensional theory of law. This is so because the theory is concrete and dynamic in the legal experience, since law corresponds to the legal standard, facts and values that gave rise to them, as well as the supervenient facts and values existing in a consistent dialectical process of complementarity.

### III. RESULTS AND DISCUSSIONS

The research approaches the reflexes brought by the current Brazilian Civil Code in contractual relations, as well as the Brazilian Courts have applied Miguel Real's Three-Dimensional Theory to solve new problems.

The concretion of general clauses established in the infra-constitutional laws, supported by the constitutional case law on fundamental rights, prevents the issuance of new laws every time a new problem arises<sup>21</sup>, and allows updating the Civil Code accordingly to the development of social facts.

The Superior Court of Justice, in the judgment of the special appeal 159.213/RS, expressly applied the three-dimensional theory of Miguel Reale when deciding on the immunity from seizure of a leased property of a debtor, on the grounds of the applicability of the prohibition provided for in Article 1 of Law 8.009/1990, as follows: (i) Law No. 8.009/1990 normative obligation that restrains the general principle of the law of obligations, according to which the assets of the debtor is accountable for the debts of a debtor, whose interpretation shall always be driven by its leading purpose, considering the specific circumstances of each case; and, (ii) under a teleological and evaluative interpretation, actually grounded in the three-dimensional theory of law-fact, value and standard (Miguel Reale), lives up to the benefits of Law 8.009/1990 the debtor who, even if not residing in the only property of said debtor, uses the amounts earned from the lease of that property as complement to the family income, considering that the objective of the standard was observed, namely that of ensuring the family housing or livelihood.

In that specific case, the Court considered whether the legal hypothesis provided for in article 1 of Law 8.009/1990<sup>22</sup> on the immunity from seizure for family assets, could be extended to the debtor who is not residing in the property, given that this factual support is not expressly provided for in the provision that provides that 'are owners and reside in it'.

The Highest Court of Justice held that if the only residential property of the couple or the family entity is leased, serving as income for the family who move into a rented property, it does not lose its intended purpose that remains that of guaranteeing family housing. This interpretation is based on the integration of fact, value and standard, with the preponderance of the first two, as a way of protecting the debtor's assets.

The Rio de Janeiro State Court of Justice, in the trial of the Civil Appeals 0419877-04.2010.8.19.0001<sup>23</sup>, decided for the conviction of an engineering company for non-material damage to the condominium, based on Miguel Reale's three-dimensional theory of law, as follows: (i) the non-material damage [is] configured because the condominium may be equated with the legal person, according to enunciation 227 of the STJ Summary, by virtue of the modern legal theory of a civil system that is open and dynamic, and according to Reale's three-dimensional theory of law towards extending the realities of fact, value and standard; (ii) Bill 80/2011 and enunciation 144 of the Third Journey of Civil Law that steps closer to the suffrage of that understanding; (iii) disturbances and position of helplessness of the condominium (and co-owners) in face of the vendor that

go beyond mere annoyance, considering the need to address the complaint to the court pursuing for remedy, as well as the abusive protest of debt in the circumstances of unenforceability; and (iv) non-material damage fixed at R\$ 10,000.00 (ten thousand reais), adjusted after publication and arrears interest of the summons.

In that specific case, the condominium filed a contract termination suit claiming for interim relief and compensation for non-material and material damages against an engineering company, on the argument of existence of flaw in the delivery of services that caused several inconveniences to the condominium.

The respective Court of Justice, by upholding the appeal of the condominium towards convicting the engineering company for non-material damages, understood that although the classical legal theory of the 1916 Civil Code perceives the condominium as an entity with no legal personality, the modern legal theory with analysis of the 2002 Civil Code, based on Miguel Reale's three-dimensional theory of law, which inspired the open and dynamic system, started appreciating article 44 of the Civil Code as non-imperative, but illustrative, as the enunciate 144 of the Third Civil Law Journey of the Federal Justice Council came to interpret when it asserted that "*The relationship of legal persons governed by private law set out in Article 44; subparagraphs I to V of the Civil Code is not exhaustive*".

Therefore, it considered that the condominium is comparable to the legal person for the purposes of enunciate 227 of the STJ Summary, which allows the recognition of non-material damage to the legal person.

On the other hand, the Highest Court of Justice<sup>24</sup>, in the judgment of the AgRG in REsp 841.942/RJ, recognized the existence of general clauses in the legal order and, given their relevance, the judge may judge the questions inherent to them irrespectively the request of the party or stakeholder, as follows: (i) where the judge has to decide irrespectively the request of the party or stakeholder that occurs, for example, with matters of public order, the rule of congruence is not applicable. It means there will be no extra judgment, *ultra et infra petita* when the judge or court decides *ex officio* on said matters of public order; and, (ii) some examples of matters of public order: a) substantial: unconscionable contractual clauses (articles 1 and 51 of the Civil Law Code); general clauses (sole paragraph of Article 2035 of the Civil Code) on social function of the contract (article 421 of the Civil Code), social function of the property (article 5, XXIII, and 170, III, of the Federal Constitution, and article 1228, paragraph 1, of the Civil Code), social function of the company (article 170 of the Federal Constitution; articles 421 and

981 of the Civil Code), and of objective good faith (article 422 of the Civil Code); simulation of legal act or business (articles 166, VII and 167 of the Civil Code).

In that specific case, the Federal Government brought a special appeal before the Highest Court of Justice, preliminarily alleging infringement of Article 535 of the Civil Procedure Code/1973 and, on the merits, denial of effectiveness of articles 460 and 467 of the CPC/1973 in order to rediscuss the right to indexation with incidence of monetary losses due to inflation, recognized in the sentence uttered by the Court of origin, which was not even object of express request.

The Highest Court of Justice, however, held that the existence of general clauses, for being inserted in matters of public order, allows the judge to address the question, irrespectively the request of the party or stakeholder, not giving rise to violation to the principle of congruence, given its relevance.

#### IV. CONCLUSION

Miguel Reale's three-dimensional theory dissents from the classical interpretation based exclusively on the subsumption of fact to the norm, by adding the element of value in a dialectical process of complementarity with the other two elements. Therefore, it enhanced the process by absorbing the impact of new valuations, supervenience of new facts, and intercurrent of other standards resulting from the development of the surrounding world.

Hence, wherever the legal experience occurs, law shall be analyzed by abstraction in its threefold sense, that is, through fact, value and standard, according to a dialectical process of implication-polarity or complementarity. The unit to be implemented by the jurist assumes an existing correlation between the physical, axiological and normative aspects. Because of that the current Civil Code, through the incorporation of Miguel Reale's three-dimensional theory, notably by means of general clauses, allows the law enforcer to retrace the path of the normative formula to the normative act, considering the facts and values that gave rise to it, as well as supervenient facts and values, in order to keep pace with vicissitudes, ruling out the need for a new normative formula.

The concretion of the general clauses established in the infra-constitutional laws, supported in the case law, thus avoids the issuance of new laws whenever any new problem arises, and allows updating the Civil Code in the light of the development of social facts.

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- [16] <sup>16</sup> TJSP; Interlocutory Appeal 2195502-42.2020.8.26.0000; Rapporteur: Court Judge Silvia Rocha; Judging Authority: 29th Chamber of Private Law; Central Civil Jurisdiction - 13th Civil District Court; Date of Judgment: 10/22/2020; Date of Registration: 10/22/2020.
- [17] <sup>17</sup> TJSP; Interlocutory Appeal 2150756-89.2020.8.26.0000; Rapporteur: Court Judge Tercio Pires; Judging Authority: 34th Chamber of Private Law; Regional Jurisdiction III - Jabaquara - 3rd Civil District Court; Date of Judgment: 10/16/2020; Date of Registration: 10/16/2020.
- [18] <sup>18</sup> *Teoria tridimensional do direito*, Ed. Saraiva, 5ª ed., 1994, p. 127.
- [19] <sup>19</sup> REALE, Miguel. *Lições preliminares de direito*, 27ª ed., Saraiva, 2002, p. 65.
- [20] <sup>20</sup> MARTINS-COSTA, Judith Martins. *O Direito Privado como um "Sistema em Construção" – As Cláusulas Gerais no Projeto do Código Civil Brasileiro*, RT, RT: 753/29-30.
- [21] <sup>21</sup> MARTINS-COSTA, Judith. *O Direito Privado como um "Sistema em Construção" – As Cláusulas Gerais no Projeto do Código Civil Brasileiro*, RT, RT: 753, p. 36.
- [22] <sup>22</sup> Art. 1 The residential property of the couple, or of the family entity, is immune to levy execution, and will not be accountable for any kind of civil, business, fiscal, social security or other debts incurred by the spouses or by the parents or children who own it and reside in it, except in the cases provided for in this law.
- [23] <sup>23</sup> TJRJ, Proceeding 0419877-04.2010.8.19.0001, 27th Civil Chamber, Judge Antônio Carlos dos Santos Bitencourt, Date of judgment: 12/12/2014.
- [24] <sup>24</sup> AgRg in REsp 841.942/RJ, 1ª T., Rapporteur Minister Luiz Fux, Date of judgment: 06/16/2008.