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Amended by :

- Law No. (27) Of 2017 with respect to Real Estate Regulatory Act

**LEGISLATIVE DECREE NO. (19) OF 2001
WITH RESPECT TO PROMULGATING THE CIVIL CODE**

We, Hamad Bin Isa Bin Salman Al Khalifa, **the Amir of the State**
of Bahrain,

having perused the Constitution,
and Amiri Order No. (4) of 1975,
and Notice No. 46/1374 with respect to the Prescribed Time Limit for
Hearing Lawsuits in Courts, Commercial Transactions and Debtors'
Debt;
and the Contracts Law of 1969,
and the Civil Wrongs Act of 1970,
and the Civil and Commercial Procedures Act promulgated by
Legislative Decree No. (12) of 1971, as amended,
and the Land Registration Law promulgated by Legislative Decree No.
(15) of 1979,
and the Law Governing Trusteeship on Minors' Funds promulgated by
Legislative Decree No. (7) of 1986,

* This copy is translated by Bahrain Economic Development Board (EDB) as per the provisions in force up to January 2019.

**This is an unofficial translation and in the event of any conflict or discrepancy between the English text and the Arabic text, the Arabic text shall prevail.

and Legislative Decree No. (8) of 1987 with respect to Organizing the Ownership of Storeys and Flats,
and the Law of Evidence in Civil and Commercial Matters promulgated by Legislative Decree No. (14) of 1996,
and upon the submission of the Minister of Justice and Islamic Affairs,
and after consulting the Shura Council,
and with the approval of the Council of Ministers,
HEREBY DECREE THE FOLLOWING LAW:

Article 1

The Civil Code, attached to this Law, shall come into force.

Article 2

The following laws shall be abrogated:

The Contracts Law of 1969.

The Civil Wrongs Act of 1970.

Legislative Decree No. (8) of 1987 with respect to Organizing the Ownership of Storeys and Flats.

Article 3

The provisions of the Law attached herewith shall not prejudice the provisions contained in special legislation.

Article 4

The Ministers, each in his respective capacity, shall implement this Law which shall come into effect as from the first day of the month following the expiry of three months after its publication in the Official Gazette.

Hamad Bin Isa Al Khalifa
The Amir of the State of Bahrain

Issued: at Riffa Palace

On: 9 Safar 1422 Hejra,

Corresponding to: 3 May 2001

THE CIVIL CODE
General Provisions

PART I

Article 1

- (a) Provisions of laws govern all matters to which these provisions apply in letter or spirit.
- (b) In the absence of a provision of a law that is applicable, the Judge will decide according to custom and in the absence of custom in accordance with the principles of Islamic Shariaa that suit the conditions and circumstances of the country. In the absence of such principles, the Judge will apply the principles of natural justice and the rules of equity.

Article 2

- (a) A provision of a law can only be repealed explicitly or implicitly.
- (b) An explicit repeal shall be by enacting a subsequent law expressly providing for such repeal.

(c) An implicit repeal shall be by enacting a subsequent law containing a provision inconsistent with its provision or if a subsequent law is enacted to regulate a new matter previously regulated by a former legislation.

Article 3

(a) This Code shall be applicable to the events that occurred on its effective date and shall have no retroactive effect except by a special provision.

(b) However, the effects of acts shall continue to be governed by the former law unless the provisions of the new law are part of the public order which shall be applicable to all their consequences upon its effectiveness.

Article 4

(a) Legislative provisions as regards the legal capacity of a person are applicable to all persons who fulfil the conditions embodied in such provisions.

(b) When a person, who was deemed to possess legal capacity in accordance with the provisions of a former law, becomes legally incapable in accordance with the provisions of a new law, such legal incapacity does not affect the validity of acts previously done by him.

Article 5

(a) When the new law provides for a period of prescription longer than the period provided for in the former law, the new period will apply to all cases in which the period of prescription has not been completed and the remaining period shall be completed.

(b) When the new law provides for a period of prescription shorter than the period provided for in the former law, the new period will apply from the date the new law came into force. If, however, the remaining period still to run under the former law is shorter than that fixed by the new law, the prescription shall be completed upon the expiry of such remaining period

Article 6

The provisions of the law in force at the time of the occurrence of events or disposals that are required to be proved, shall be applicable to the establishment of proof.

Article 7

Save for the provisions set forth in the Civil and Commercial Procedures Act, a special law shall specify the law which shall be applicable to disputes that include a foreign person and where there is a conflict of laws.

Article 8

Dates shall be construed according to the Gregorian calendar unless there is a provision to the contrary.

PART II

Right

Chapter One

Right-holder

1. Natural Person

Article 9

Legal personality commences from the time a child is born alive and ends at death. The law, however, determines the rights in respect of a child en ventre de sa mere, missing and absent persons.

Article 10

Registers connected with births and deaths shall be regulated by a special law.

Article 11

Bahraini nationality shall be governed by a special law.

Article 12

(a). A domicile is the place where a person habitually resides. A person may have more than one domicile at the same time, as he may have none.

(b) The place where a person exercises a trade or profession is considered as his domicile as regards matters carried on in connection with such trade or profession.

(c) The domicile of a minor, a person under legal disability, a missing person or an absent person will be the domicile of his legal representative. A minor or person who is legally disqualified shall nevertheless have his special domicile in respect of acts he is capable of performing in accordance with the law.

(d) A special domicile may be elected for the performance of a specific legal act. The election of a domicile shall be evidenced by writing.

A domicile elected for the performance of a legal act shall be deemed to be the domicile in so far as all matters relating to such act are concerned, including the procedure for enforcement by legal means unless otherwise expressly stipulated.

Article 13

The family of a person is composed of his spouse and relatives. Persons having a common ascendants are deemed to be relatives.

Article 14

Direct lineal relationship is the relationship existing between ascendants and descendants. Collateral relationship is the relationship existing between persons who have a common ascendant without one of them being a descendant of the other.

Relationship in law also includes relationship by marriage.

Article 15

The degree of relationship will be calculated, as regards direct lineal relationship, by ascending to the common ancestor and counting each relative excluding the common ancestor. The degree of relationship will be calculated, as regards collateral relationship by ascending from the descendant to the common ancestor, then descending to the other descendant. Each relative, excluding the common ancestor counts for one degree.

The degree of relationship shall be determined according to the degree of relationship with the other spouse.

Article 16

A special legislation shall regulate the manner of acquiring names and surnames and the alteration thereof.

2. Juristic Person

Article 17

Any group of persons or properties are recognised as juristic persons by virtue of a provision of the law.

Article 18

A juristic person enjoys, within the limits established by law, all rights with the exception of those rights which are inherent in the nature of an individual. A juristic person shall have its own patrimonial, legal capacity, the right to sue, its own domicile and a representative to express will.

Chapter Two

Proprietary Right

Article 19

Anything that is not outside the ambit of trade by its nature or by virtue of the law, may be the object of proprietary rights.

Things outside the ambit of trade by their nature are things that cannot be objects of exclusive possession. Things outside the ambit of trade by law are things which, in accordance with law, cannot be objects of proprietary rights.

Article 20

Things which are fixed and which cannot be removed without damage are immovable.

A movable placed by its owner in an immovable owned by him with the intention of serving or exploiting such immovable is considered as immovable by reason of its destined use.

Article 21

All real rights over immovable property including the right of ownership and all suits relating to a real right over an immovable are deemed to be immovable property.

Article 22

All real properties rights are deemed to be movable property.

However, things are considered movables if their separation from immovable property is imminent and independently deemed as such.

Article 23

Fungibles are those things which can be replaced one by another or approximated in a payment and which it is customary in trade to estimate by number, measure, volume or weight.

Values are those things which are traditionally different in character or value recognised traditionally or can rarely be available in trading.

Article 24

Consumable things are those things whose utility, by reason of their destined use, consists in their consumption or disposal.

All things destined for sale in commercial establishments are deemed to be consumable.

Article 25

Intellectual property rights and other rights in respect of a non-material object are regulated by special laws.

Article 26

(a) Immovable and movable property owned by the State or a corporate persons and allocated either in fact or by virtue of a law, decree or by an order of the concerned minister for purposes of public utility, forms part of the public domain.

(b) Such immovable and movable property is not alienable, is not liable to seizure nor to acquisition by prescription.

(c) Properties forming part of the public domain lose this status in fact with the cessation of their allocation for public utility purposes, by virtue of a law, decree or by an order of the concerned minister.

Chapter Three

Exercise of Right

Article 27

The lawful exercise of right shall not imply liability even though it results in damage to third parties.

Article 28

The exercise of a right shall be unlawful in the following cases:

- (a) If the sole aim thereof is to harm another person.
- (b) If it is aimed to achieve unlawful interest or interests.
- (c) If the benefit or benefits it is desired to realise is out of proportion to the harm caused thereby to another person.
- (d) If it is designed to cause a serious and unfamiliar damage to third parties.

SECTION ONE

PERSONAL RIGHTS OR OBLIGATIONS

BOOK ONE

OBLIGATIONS IN GENERAL

Part I

Sources of Obligations

Chapter One

Contract

Article 29

A contract is an agreement where a proposal is made and subsequently accepted with the intent of creating a certain legal effect.

Section I
Conclusion of Contract

Article 30

A contract is created, subject to any special formalities that may be required by law for its conclusion, from the moment that two persons have exchanged two concordant intentions without prejudice to the requirements of the law in special cases in terms of certain requirements for rendering the validity of such contract.

First: Elements of Contract

Consent:

Article 31

For conclusion of a contract, an intention of consent shall be expressed Consent shall be available upon disposal unless proved to the contrary or the law requires otherwise.

(a) Declaration of Intention

Article 32

An intention may be declared verbally, in writing, by signs in general use, and also by such conduct, as the case may be, leaves no doubt as to its true meaning, unless otherwise required by the law in special circumstances to declare an intention in a certain manner.

A declaration of intention may be implied when neither the law nor the parties require it to be expressed.

Article 33

A declaration of intention becomes effective from the time that it comes to the knowledge of the person for whom it was intended.

Communicating a declaration of intent to the intended person shall be a presumption of his knowledge thereof unless he provides proof to the contrary.

Article 34

A declaration of intention shall have no effect if the person for whom it was intended receives a renunciation before receiving the declaration of intention or at the time of its receipt.

Article 35

If the person who declared the intention dies or becomes legally incapable before the declaration of intention takes effect, the declaration of intention shall not be less effective at the time it comes to the knowledge of the person for whom it was intended, unless the contrary is shown by the declaration of intention or by the nature of the business.

Article 36

(a) If a declaration of intention differs from the actual intention of the person who declared it, the actual intention shall prevail.

(b) However, the person for whom the declaration of intention was intended may comply therewith in spite of its contravention of the actual intention of the person who declared it, if he proves that he relied on believing that it complies with the actual intention without any doubt of the circumstances in such compliance.

Offer

Article 37

A proposal is an offer made by a person to another person of his intention to conclude a certain contract merely by acceptance of the person to whom it is offered.

It shall include at least the nature of the contract required to be concluded and its fundamental conditions.

Article 38

The person who makes the offer shall have the choice to withdraw from his offer as long as it is not associated with an acceptance.

Article 39

When a time limit is fixed for acceptance or if the circumstances or the nature of the transaction required such time limit, the person who makes the offer is bound to maintain his offer until the expiration of the time limit.

Article 40

If at the time a contract is being framed an offer is made without a time limit being fixed for acceptance, the offeror is released from his offer if it is not accepted forthwith. This also applies, if the offer is made by one person to another person by telephone or by any other similar means as long as no time limit is fixed for acceptance.

A contract is concluded, however, even if acceptance is not immediate, when, during the interval between offer and acceptance, there is nothing to indicate that the offeror has withdrawn his offer and the declaration of acceptance is made before the end of the meeting at which the contract was being framed.

Article 41

- (a) An offeree shall have the choice of acceptance.
- (b) A contract is deemed to have been concluded if acceptance conforms with the offer.
- (c) An acceptance that goes beyond the offer, or that is accompanied by a restriction or a modification, is deemed to be a rejection comprising a new offer.

Article 42

- (a) No statement is ascribed to a silent. However, a silence in connection with a need is a statement.
- (b) Failure to reply is equivalent to acceptance in particular when the offer relates to dealings already existing between the parties, or when the offer is solely in the interest of the offeree.

Article 43

When the parties have agreed on all the essential points of a contract and have left certain details to be agreed at a later date without stipulating that failing agreement on these details, the contract shall not be concluded, the contract is deemed to have been concluded, and the points of detail will, in the event of dispute, be decided by the Court according to the provisions of the law, nature of the transaction, custom and equity.

Link Between Offer and Acceptance

Article 44

If an offer is linked with acceptance, the contract shall be binding upon both parties and either party shall not abide by its provisions even before they physically leave

the place of the meeting, unless they agree to another contract or as otherwise the law or custom may require.

Article 45

In the absence of custom, agreement or a provision of the law to the contrary, a contract between persons concluded by correspondence is deemed to have been concluded at the time and place when the offeror became aware of the acceptance.

Article 46

A contract concluded by telephone or by any other similar means shall have the same effect as a contract concluded by persons present in respect of its validity and time, and the contract concluded by correspondence shall be applicable in respect of the place.

Types of Contracts

Initial Contract

Article 47

A contract shall be considered initial if it will be concluded in another new form or to be re-concluded.

The parties of every initial contract shall conclude a final contract at the time determined by the initial contract, or within a reasonable period in case the initial contract does indicate the period within which the initial contract is to be concluded.

Article 48

A final contract shall be concluded under the same terms and conditions of the initial contract unless the parties agree to make amendments thereto or such amendment is required by the nature of transaction or circumstances.

Article 49

(a) If a party to the initial contract refuses to conclude a final contract without a reason, the other party shall have the right to file a legal action to validate and enforce the initial contract.

(b) A judgement replacing the contract to validate and enforce the initial contract shall possess the power of the adjudged matter, provided that the judgement shall be published in the cases required by the law.

Agreement of Promise

Article 50

An agreement by which the two parties, or one of them, promise to enter into a particular contract in the future, is only binding if all the essential points of the contract are envisaged and the time when the contract should be concluded are stated.

When the law provides that a contract shall not be valid unless a certain form is observed, this form must also be observed in any agreement embodying a promise to enter into such a contract.

Article 51

(a) It is necessary that the promise of contract shall exist when it is accepted by the promisee and the party who has promised becomes aware of such acceptance within the fixed period for the said promise.

(b) If the party who has promised dies or is legally disqualified, the promise shall not be affected if it is accepted in the manner indicated in the preceding paragraph.

(c) If the promisee dies, the choice of acceptance of the promised contract shall devolve upon his successors unless the promisee is a crucial consideration in the promise.

Earnest Money Contract

Article 52

Payment of earnest money at the time the contract is concluded indicates that either party may withdraw from the contract, unless they intend otherwise or the custom requires the contrary.

Article 53

(a) If a contract or custom does not fix a date for exercising the withdrawal option, such option shall remain until the time when a contracting party expresses his desire to confirm the contract's existence.

(b) However, if a contracting party has not fulfilled his obligations within the fixed period, or fails to do so within the normal period, the other contracting party may deem such failure as a withdrawal from the contract.

Article 54

The person who has paid the earnest money and withdrawn from the contract forfeits the earnest money, and the person who has received earnest money and withdraws from the contract shall repay double the amount of the earnest money, even if the withdrawal does not cause any prejudice.

Impossibility to perform the contract due to a reason attributed to a contracting party shall be deemed as a withdrawal from the contract.

If the impossibility to perform the obligations resulting from the contract is due to a force majeure, earnest money shall be returned to the payer.

Contract of Auction

Article 55

A contract by public auction is only concluded when the final bid is accepted. A bid is nullified from the moment a higher bid is made, even if the higher bid is void. All that unless it is obvious that the contracting parties have an intention to the contrary or the law otherwise provides.

Article 56

If it is indicated in the conditions of the contract by auction that it is necessary to approve its award, the contract shall not be completed except by such approval.

Contract of Submission

Article 57

Submission in the case of a contract of submission is confined to yielding to standard conditions which are drawn up by the offeror and which are not subject to discussion.

Article 58

When a contract of submission contains arbitrary conditions, the judge may at the adhering party's request, modify such conditions or relieve the adhering party of the obligation to perform these conditions even though he was aware thereof, in accordance with the principles of equity. Any agreement to the contrary is void.

Article 59

In cases of doubt in the contracts of submission, it shall be interpreted in favour of the adhering party

Conclusion of Contract by a Representative

Article 60

A contract may be concluded by a representative unless the law requires it to be concluded by the principal.

Article 61

(a) When a contract is entered into by a representative, such representative and not the principal will be the person who will be looked to in examining the question of vices of consent, or the effects attached to the fact that the contracting party knew or should necessarily have been aware of certain special circumstances.

(b) When, however, the representative is appointed by an agreement who acted in accordance with his principal's precise instructions, the principal cannot plead the ignorance of his representative of circumstances which the principal knew or should necessarily have known, thereupon, the principal's vices of consent should be reckoned.

Article 62

When a contract is concluded by a representative within the limits of his authority in the name of his principal, the rights and obligations resulting therefrom will be in favour of and binding upon the principal.

Article 63

When a contracting party did not disclose at the time of the conclusion of a contract that he is acting as a representative of the principal, the contract only operates in

favour of or binds the principal, if the third party with whom the representative contracted should necessarily have known that the contracting party was the representative of the principal, or if it was of no importance to the third party whether he entered into the transaction with the principal or with the representative.

Article 64

(a) If a person concludes a contract on behalf of another person without being his representative or exceeded the limits of his authority, the contract shall have no effect upon the principal unless he issued a declaration to him according to the law.

(b) In case no declaration of disposal was issued, the other contracting party may claim against the person who acted as a representative or exceeded the limits of the authority without an acceptable reason, a compensation for damages caused to him unless he was aware or should necessarily have known that there was no representation or exceeding limits thereof.

Article 65

If a representative and a third party with whom the representative concluded a contract were both unaware and unable to know of the extinction of the representation even if they would have made efforts required by the circumstances of an ordinary person, the effects of the contract shall revert to the principal or his successor in title.

Article 66

If a third party with whom the representative concluded a contract was not compelled to consider that the contract was concluded between him and the principal and did not accept it, the contract shall be deemed to have been concluded between him and the representative personally and the latter shall have no right to insist that the contract should be in the principal's name.

Article 67

(a) A representative may not appoint a third party to act on his behalf unless the law or agreement permit such appointment.

(b) Except where otherwise provided by law or by commercial rules, no one may contract with himself in the name of the person he represents, either for his own benefit or for that of a third party, without the authority of his principal, who, nevertheless, in such a case, may ratify the contract.

Article 68

A representative shall return his representation document immediately upon its expiry.

Form of Contract

Article 69

A contract shall have no particular form, however, if the law stipulates a certain form to conclude a contract and such form was not complied with, it shall be void.

Article 70

If the contracting parties agree to a certain form of a contract, either party may not, without the consent of the other, invoke its existence unless it is according to the form mutually agreed upon by both parties.

(a) Valid Consent

Article 71

A consent to enter into a contract shall not be valid unless concluded by a person who has a legal capacity and shall be free from faults.

Legal Capacity to Conclude a Contract:

Article 72

Every person who has not been declared to be under total or partial legal incapacity, has the legal capacity to conclude a contract.

Article 73

(a) A minor lacking discretion has no the legal capacity to dispose of his property. All his acts in law are deemed to be void.

(b) Every person under seven years shall be deemed as lacking discretion.

Article 74

Contracts and other dispositions of property entered into by a minor possessing discretion are valid when wholly to his advantage and void when wholly to his disadvantage.

Dispositions of property which may be, at the same time, profitable and detrimental, may be annulled, if this is in the interest of the minor. Annulment cannot be claimed if the act is ratified by the minor upon attaining his legal age or by his guardian or by his curator or by the Minors Estate Guardianship Council or likewise, as the case may be, in accordance with the law.

Article 75

A minor shall possess discretion from the discretion age until attaining legal age.

Article 76

A person under legal incapacity may demand avoidance of the contract, although he claimed possession of legal capacity.

However, he shall be subject to liability to payment of a compensation for damages caused to the other party, if he has employed fraudulent methods to conceal his legal incapacity.

A judge may, by way of compensation entitlement, reject the avoidance claim pursuant to the preceding paragraph.

Article 77

The competent Shariaa Court shall pronounce or raise interdictions on all persons suffering from insanity, mental derangement or imbecility and prodigals pursuant to the provisions of Islamic Shariaa in accordance with the rules and procedures prescribed by the Shariaa Courts.

Article 78

An act entered into by a person suffering from insanity or mental derangement after the registration of the sentence of interdiction is null.

An act done before the registration of the sentence of interdiction is null only if the state of insanity or derangement was a matter of common notoriety at the time the contract was entered into or if the other party had knowledge thereof.

Article 79

An act entered into by a person placed under interdiction for imbecility or prodigality after the registration of the sentence of interdiction, will be governed by the provisions regulating acts performed by minors possessing discretion. An act entered into before the registration of the sentence of interdiction shall only be void or voidable if there has been fraudulent collusion.

Article 80

An act for which the assistance of a judicial adviser has been ordered is voidable pursuant to the provisions of the law, if the act is performed by the person provided

with a judicial adviser without the assistance of such adviser, after the registration of the decision providing for such assistance.

Article 81

Registration of the decisions in the preceding three Articles shall be regulated by an order to be issued by the Minister of Justice and Islamic Affairs.

Article 82

An act by a natural guardian, a legal guardian or a curator is valid within the limits provided by law.

Article 83

The provisions of the Trusteeship over Funds Law shall be applicable in respect of all matters which are not specifically dealt with in this Law.

Faults of Consent

Mistakes

Article 84

A party to a contract may claim the avoidance of the contract if he committed a mistake causing him to accept such contract, as if it had not been committed, he would not have concluded the contract, provided that the other party that committed the same mistake without having effect on him, could avoid it, had knowledge thereof or could have easily detected the mistake.

Article 85

Avoidance of a contract may be demanded in donations, regardless of the other contracting party's sharing the mistake or had knowledge thereof.

Article 86

In the absence of a provision of the law to the contrary, a mistake in law entails the void ability of the contract, if the mistake fulfils the elements of a mistake of fact in accordance with the preceding two Articles.

Article 87

A party who has committed a mistake cannot take advantage of the mistake in a manner contrary to the principles of good faith. Such a party remains bound by the contract which he intended to conclude, if the other party shows that he is prepared to perform the contract.

Article 88

Mere mistakes of calculation or clerical mistakes do not affect the validity of a contract, these errors must, however, be corrected.

Fraudulent Misrepresentation

Article 89

A contract may be declared void on the grounds of fraudulent misrepresentation when the artifices practised are of such gravity that the contract would not have been concluded.

Article 90

Lies or intentional silence on the part of one of the parties as to a fact or as to the accompanying circumstances shall constitute fraudulent misrepresentation if it can be proved that the contract would not have been concluded by the other party had he had knowledge thereof.

Article 91

(a) A contract may be declared void on the grounds of fraudulent misrepresentation when the artifices are practised by one of the parties, by his representative, his relatives, a contract mediator or for whom the contract was concluded in his favour.

(b) A party who is the victim of fraudulent misrepresentation by a third party can only demand the avoidance of the contract, if it is established that the other contracting party was aware of, or should necessarily have been aware thereof.

Article 92

Save for the provisions of the preceding Article, avoidance of donation contracts may be demanded when the consent was made as a result of fraudulent misrepresentation regardless of the party who practised the artifices.

Article 93

If both parties committed fraudulent misrepresentation against each other and as a result the contract was concluded, both of them shall have no right to demand avoidance of the contract.

Duress

Article 94

A contract is voidable as a result of duress, if one of the parties has contracted under the stress of justifiable fear unlawfully instilled in him by the other party.

Fear is deemed to be justified when the party who invokes it has been led to believe, in view of the circumstances, that a serious and imminent danger to life, body, honour or property threatened him or others.

In appreciating the extent of duress, the sex, age, social position and the condition of health of the victim should be taken into consideration, as well as any other circumstances that might have aggravated the duress.

Article 95

(a) A contract may be declared void on the grounds that the fear which led the contracting party to consent to the contract, was practised by the other party, by his representative, his relatives, a contract mediator or for whom the contract was concluded in his favour.

(b) When the duress is practised by a person other than of the contracting parties, the victim cannot demand the avoidance of the contract, unless it is established that the other contracting party had, or should necessarily have had, knowledge thereof. All this without prejudice to the requirement of the following paragraph.

(c) In donations, avoidance may be demanded if the consent was as result of duress regardless of the party who practised the duress.

Exploitation

Article 96

(a) If the obligations of one of the contracting parties are out of proportion to the advantages that he obtains from the contract or to the obligations of the other contracting party, and it is established that the party who has suffered prejudice entered into the contract only as a result of the other party exploiting his obvious levity of character or his unbridled passion, the judge may, at the request of the party so prejudiced, annul the contract or reduce the obligations of such party or increase the obligations of the other contracting party.

(b) In a contract entered into for donation, powers of the judge shall be in the case of exploitation limited to annulling the contract or reducing the donated funds according to the circumstances, requirements of equity and human considerations.

Article 97

(a) Proceedings instituted in respect of a case of exploitation shall be barred after lapse of one year from the date of the contract.

(b) If the contract was concluded as a result of exploiting obvious levity of character or unbridled passion, effectiveness of the one-year period shall only commence from date of the removal of passion and levity, provided that the exploitation case shall not be heard in any case upon the lapse of fifteen years from the date of the contract.

1- Injury

Article 98

Injury shall have no effect on the contract except in case the contract was a result of a wrongful act, fraudulent representation, duress or exploitation. All the above shall be in compliance with the special conditions set forth in this Code and provisions of the following articles.

Article 99

(a) In case a contract results in serious injury to the state or other juristic entities, the injured party may demand the alteration of the other party's obligation or its own obligation to remove the serious injury caused thereto.

(b) The above provision shall be applicable if the contract resulted in a serious injury to the persons under legal incapacity or to a waqf authority.

(c) An injury shall be deemed serious if it becomes more than one fifth upon concluding a contract.

(d) A challenge against injury shall not be barred by the fact that a contract may have been made on behalf of the injured party by one of the representatives authorised to act according to the law or by permission of the Court or of the Minors Funds Trustee Council.

Article 100

A party contracting with another suffering prejudice may avoid alteration to the effects of the contract by demanding annulment, unless the party suffering prejudice is the State and other public corporate persons.

Article 101

Challenge to prejudice may not be made in a contract concluded by way of bidding or public auction, if this happens in accordance with the requirements of the law

Article 102

A case of injury suffered shall not be heard if not filed within one year. A year in respect of the State, other juristic entities and waqf authority begins from the date of concluding the contract and in respect of the legally disqualified or semi-disqualified persons begins from the date of acquiring full competence or death. However, a case shall not be heard after the lapse of fifteen years from the date of concluding the contract.

2. Object

Article 103

The object subject to obligation arising from the contract shall be possible otherwise the contract shall be void.

Article 104

The object of an obligation shall be things that may happen in the future unless the existence of such things depends on chance.

An agreement with regard to the succession of a living person shall be void, even if he consents to such an agreement, except in cases provided for by law.

Article 105

A contract in respect of a third party's property or acts, shall not result in any obligation towards such third party, unless he admits such action.

Article 106

(a) The object subject to obligation shall be certain and definite beyond any reasonable doubt, otherwise it shall be void.

(b) The object of an obligation shall be determined as to its kind, quantity and degree of its quality, provided that determination of quality does not result in avoidance of the contract. If its kind, quantity and degree of quality cannot be ascertained by usage or by any other circumstances, the debtor shall then supply an article of average quality.

Article 107

When the object of an obligation is a sum of money, the debtor is bound only to the extent of the actual figure of the sum of money stated in the contract, whatever be the increase or decrease in the value of such money at the date of payment even though there is agreement to the contrary.

Article 108

(a) For obligations of payment of a sum of money, payment shall be made in Bahrain Dinars.

(b) However, settlement may be agreed in a foreign currency.

Article 109

A contract is void if its object is contrary to public order or morality.

Article 110

(a) A contract may include any condition agreed upon by both contracting parties, provided that such condition shall not be forbidden by law or contrary to public order or morality.

(b) If the condition included in the contract is unlawful, it is void and the contract is valid. The contract shall be void if a contracting party proves that the contract would not have been entered into without such condition.

3. Consideration

Article 111

(a) A contract is void when an obligation is assumed without consideration or for a consideration contrary to the public order or morality.

(b) An obligation is deemed to have lawful consideration by the motive that urges a contracting party to conclude a contract if the other contracting party was aware of such motive, or should have been aware thereof.

Article 112

An obligation is deemed to have lawful consideration, even if such consideration is not expressed in the contract, unless the contrary is proved.

The consideration expressed in the contract is deemed to be the true consideration until evidence to the contrary is produced. Upon evidence being produced that the consideration is feigned, the onus falls on the person who maintains that the obligation has another lawful consideration of proving his contention.

Second

Nullity

1. Voidable Contract

Article 113

A voidable contract produces its effects unless it is voided. If it is voided it shall be deemed null and void.

Article 114

(a) When the law recognises the right of one of the contracting parties to procure the avoidance of the contract, the court may not order avoidance except according to his request.

(b) If a reason of avoidance is established and claimed by the party in favour thereof, the court shall order it unless the law otherwise provides.

Article 115

The right to procure avoidance of the contract is extinguished by an express or implied ratification of the contract by the person having right to demand avoidance. Ratification clears up the mistake from the contract without prejudice to the rights of third parties.

Article 116

The right to procure avoidance of a contract is prescribed, if not invoked within three years.

This period runs, in case of legal incapacity, from the date of the cessation of such incapacity; in the case of mistake or fraudulent misrepresentation, from the date the

mistake or misrepresentation is discovered; in the case of duress, from the date it has ceased. In no case can avoidance be claimed as a result of mistake, fraudulent misrepresentation or duress, when fifteen years have elapsed from the date of the conclusion of the contract.

Article 117

(a) When a contract is void, its nullity may be invoked by every person having an interest in the contract within a period not less than three months commencing from the date of receiving the invocation without resulting in any effect on the prescribed period of the nullity's lapse of right.

(b) Invocation of a person having an interest in the contract for the reason of mistake, fraudulent misrepresentation or duress shall not be lawful unless submitted after the date the mistake, misrepresentation is discovered or cessation of duress. Invocation of legal incapacity person shall not be lawful unless forwarded to him after cessation of incapacity.

(c) If the prescribed period expires and no invocation received, the contract shall be deemed ratified.

2. Void Contract

Article 118

A void contract has no effect and may be invoked by every person having an interest in the contract and may be nullified by the Court on its own initiative. Nullity cannot disappear by ratification of the contract.

Nullity proceedings are prescribed after fifteen years from the date of the conclusion of the contract.

3. Effects of Nullity

Article 119

When a contract is void or annulled, the parties are reinstated in their position prior to the contract unless the law provides otherwise. If such reinstatement is impossible for one of the parties, damages equivalent to the loss may be awarded.

All this without prejudice to the provisions of the following Articles 120,121 and 124.

Article 120

When a contract concluded by a person without legal capacity is void or annulled, he shall only be liable to refund such profits as he derived from the performance of the contract.

Article 121

(a) Avoidance of a contract shall not be applicable to a particular successor in title of the other contracting party if such successor receives his right of compensation in good faith.

(b) The particular successor is deemed in good faith, if upon disposing in his favour, was unaware of the avoidance of his successor's contract and would not be able to know even if he does his efforts as required by the circumstances of a reasonable person.

Article 122

When a part of a contract is void or voidable, that part alone will be annulled, unless it is established that the contract would not have been entered into without such part, in which case the contract will be void as a whole.

Article 123

When a void or voidable contract contains the elements of another contract, the contract will be deemed to be valid to the extent of the other contract, if it appears that the parties intended to conclude such another contract.

Article 124

(a) If a contract becomes void or annulled due to a mistake of one of the parties, the other party or a third party shall have the right to claim a compensation for damages resulting from such avoidance.

(b) No compensation shall be claimed, if the person to whom the damage was caused as a result of the avoidance, has participated in the reason thereof, he was aware or should have been aware thereof.

Part II

The Effects of a Contract

First: Interpretation and Determination of its Contents

1. Construction of Contract

Article 125

(a) When the wording of a contract is clear, it cannot be deviated from in order to ascertain by means of interpretation the intention of the parties.

(b) When a contract has to be construed, it is necessary to ascertain the common intention of the parties and to go beyond the literal meaning of the words, taking into account the nature of the transaction as well as that loyalty and confidence which should exist between the parties in accordance with commercial usage.

Article 126

In cases of doubt, the construction of a contract shall be in favour of the contracting party who may be prejudiced by enforcing the condition.

In particular, doubt shall be construed in favour of the debtor if performance of the condition creates an obligation binding upon him or increases its burden upon him.

All this shall be without prejudice to the provisions of Article 59.

2. Contents of Contract

Article 127

A contract is not only limited to its expressed conditions, but also as regards everything which according to law, usage and equity is deemed in view of the nature of the obligation, to be a necessary sequel to the contract, taking into consideration custom and usage, requirements of equity, nature of business, good faith and honesty.

Second

Binding Force of Contract

Article 128

The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.

Article 129

A contract must be performed in accordance with its contents and in compliance with the requirements of good faith and honesty.

Article 130

When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits by lessening its extent or increasing its consideration, the obligation that has become excessive. Any agreement to the contrary is void.

Article 131

When a simulated contract containing its elements without the apparent contract was concluded and effective among the contracting parties and universal successors in title, the reality shall be taken into account.

Article 132

(a) When a simulated contract is concluded, the contracting parties' creditors and particular successors in title shall have the right to prove the simulation by all means and claim the hidden contract. They shall also have the right to claim the simulated contract if they are unaware of the simulated nature thereof.

(b) In case of conflict in the concerned parties' interest by that some parties invoke the simulated contract and others claim the hidden contract, the former parties shall have right of priority.

Third

Relative Nature of the Contract's Effects

Article 133

(a) Subject to the rules relating to successions, the effects of a contract apply to the contracting parties and to their universal successors in title.

(b) Unless it follows from the contract, nature of the transaction or a provision of the law the effects of the contract do not pass to the universal successors in title of a party or both.

Article 134

(a) Obligations and personal rights created by contracts relating to property that has subsequently been transferred to particular successors in title are transferred to such particular successors in title together with the property.

(b) However, the obligations relating to the property shall not be transferred to a particular successor in title unless upon conclusion of disposal the particular successor in title had knowledge or was able to know thereof unless otherwise provided for by the law.

1. Acts of Others

Article 135

(a) A person who binds himself to procure the performance of an obligation by a third party, does not in so doing bind the third party.

(b) If the third party refuses to perform the obligation, the person who bound himself to obtain such performance, will be liable to indemnify the other contracting party by himself performing the obligation, the performance of which he undertook to procure.

(c) In the event of the third party consenting to perform the obligation, he shall assume such obligation while the person giving the undertaking is discharged therefrom but the former's consent is effective only from the time that it is given,

unless it is indicated expressly or by implication that the consent is retroactive as from the date of the agreement between the contracting parties.

2. Stipulation for the benefit of a third party

Article 136

(a) A person may by a contract in his own name stipulate that an obligation shall be performed for the benefit of a third party, when he has a personal interest, material or moral, in the performance of such an obligation.

(b) A stipulation in favour of a third party may be made in favour of a future person and also in favour of a person who is not identified at the date of the contract, provided that such person can be identified at the date when the effects of the contract come into operation in accordance with the stipulation.

Article 137

(a) A stipulation in favour of a third party shall establish a personal right to the beneficiary due from the person who gave the undertaking to be performed directly to him, unless agreed to the contrary and subject to the provisions of the following Article.

(b) The stipulator may demand the performance of the obligation in favour of the beneficiary, unless it appears from the contract that performance may only be demanded by the beneficiary.

Article 138

The person who gave the undertaking may invoke against the beneficiary all the defences arising out of the contract which he could have claimed against the stipulator.

Article 139

- (a) The stipulator himself, but not his creditors or heirs, may revoke the stipulation, provided that the revocation is made before the beneficiary advises the stipulator or undertaker of his desire to have the benefit of the stipulation, and that the revocation is not contrary to the spirit of the contract or provision of the law.
- (b) The revocation does not discharge the debtor vis-a-vis the stipulator, unless otherwise agreed or the nature of the obligation requires it.
- (c) Upon revocation of the stipulation, the stipulator may substitute a new beneficiary in the place of the former beneficiary or may retain for himself the benefit of the stipulation.

Part III

Expiry of Contract

First: Dissolution of Contract

Article 140

- (a) In bilateral binding contracts if one of the parties does not perform his obligation, the other party may, after serving a formal summons on the other party, demand from the judge the performance or dissolution of the contract, with damages, if due, in either case, unless the party demanding dissolution does not also perform his obligation.
- (b) The judge may grant additional time to the debtor, if it is necessary as a result of the circumstances. The judge may also reject an application for dissolution when the part of the contract which the party has failed to perform is of little importance in comparison with the obligation in its entirety.

Article 141

(a) The ipso facto dissolution shall not be applicable of its own accord without a court judgement or subject to the condition for limiting the Court's power with respect to dissolution of the contract unless it is clear that such action represents the full express desire of the contracting parties who are aware of its actual effects.

(b) A condition providing for dissolution of the contract of its own accord does not, in case of failure to honour the obligation, release the parties from the obligation of serving a formal summons in non-commercial matters even though the parties agree to exemption therefrom.

Article 142

(a) What is dissolved, the parties are reinstated in their former position, taking into consideration provisions of the following Articles.

(b) If it becomes impossible for a party to reinstate the other party to his former position, he may be ordered to make an equal performance.

Article 143

Dissolution shall have no effect on the continuous contracts except from the effective date thereof.

Article 144

(a) Dissolution of a contract shall not be applicable towards the particular successor in title of either party if such successor has been paid a compensation in good faith.

(b) A particular successor is deemed to be acting in good faith, if upon dealing therewith, was unaware of the avoidance of his successor's contract and would not be able to know even if he makes his efforts as required in the circumstances from an ordinary person.

Second
Rescission of Contract

Article 145

(a) When an obligation of one of the parties arising out of a bilateral contract becomes impossible to perform by a reason beyond his control, such obligation is extinguished and correlative obligations of the other party are also extinguished and the contract is rescinded ‘ipso facto’.

(b) If the impossibility is in respect of a part of the obligation, the creditor, as the case may be, shall invoke the enforceable remaining part of the contract or demand rescission of the contract.

Article 146

(a) When an obligation arising out of a unilateral contract becomes impossible to perform by a reason beyond the control of the debtor, such contract is rescinded ‘ipso facto’.

(b) If the impossibility is in respect of a part of the contract, the creditor shall invoke the enforceable remaining part of the obligation.

Article 147

When a contract is rescinded, the parties are reinstated in their former position within the terms set forth in Articles 142, 143 and 144 in respect of rescission.

Third
Termination

Article 148

(a) The contracting parties may terminate the contract by mutual agreement after conclusion thereof whenever the matter-subject of the contract exists and is possessed by one of the parties.

(b) When the matter-subject to the contract is damaged, destroyed or if a third party is authorised to dispose of part of such subject-matter, the remaining part thereof may be terminated to the extent of his share of the compensation.

Article 149

The effect of termination is considered as a dissolution in towards the contracting parties and as a new contract towards third parties.

Fourth

Plea for Non-Performance

Article 150

When, in the case of a bilateral contract, correlative obligations are due for performance, either of the contracting parties may abstain from the performance of his obligation, if the other party does not perform his obligation, unless agreed to the contrary or otherwise required by practice.

Chapter II

Unilateral Undertakings

Article 151

(a) A lawful act performed by unilateral undertaking does not constitute an obligation, amend nor rescind an existing obligation except in certain circumstances set forth in the law.

(b) If the law requires constitution, amendment or rescission of the obligation according to the act performed by the unilateral undertaking, the provisions of the law which are applicable to the contract are applicable as well to such act, except those acts which conflict with the acts of unilateral undertaking particularly in relation to contracting parties' mutual agreement.

Promise of a reward to the public

Article 152

A person who makes a promise to the public of a reward in exchange for a specific act shall pay the reward to the person who performs such act according to the published conditions, even if he acted without thought of the promise of reward, or without knowledge thereof.

Article 153

(a) When the person who made the promise fixes a period of time for the promise of reward, he may not withdraw his promise during the said period and shall be prescribed by expiry of the period.

(b) When the person who made the promise does not fix a period of time for the performance of the act, he may withdraw his promise by means of a notice to the public by the same manner whereby the promise was made or by any similar means of information. Withdrawal of the promise shall have no effect except from the date of publication to the public of the notice of withdrawal. Such withdrawal shall not

affect the right of reward of a person who performed the service in good faith before the date of the notice.

Article 154

In the case of the notice of withdrawal of the person who made the promise to the public of a reward and no person completed performance of the act, the person who began the act in good faith and was not completed before the withdrawal, shall claim from the person who made the promise, to the extent of the reward, the amount spent and efforts made by him, if he proves that he was in the process of completing the act in good faith within an appropriate time.

Article 155

The person who made the promise shall decide upon the right to the reward within six months from the expiry of the period fixed in the notice, unless the notice indicates a longer period.

Article 156

Promise of reward and paying it to the person who has right thereof shall not create a right to the person who made the promise in the profit of the act unless the terms of the promise contain anything to the contrary.

Article 157

The right of action for the reward shall be forfeited if such action is not lodged within six months from the expiry period of the right of reward decision or from the date of publication of the notice of withdrawal, as the case may be.

Chapter III

Liability Arising From Unlawful Acts (Injury Acts)

First
Cases of Liability for Unlawful Acts

1. Liability Arising from Personal Acts

Article 158

Every fault which causes injury to another imposes an obligation to make reparation upon the person by whom it is committed.

Article 159

Every person even without possession of discretion is responsible to make reparation for the damage arising from his unlawful act.

Article 160

When several persons are responsible for an injury, they are jointly and severally liable to make reparation for the injury. The liability will be shared equally between them, unless the judge fixes their individual share in the damages due.

Article 161

(a) An injury caused by the person responsible for the unlawful act for which he shall make reparation shall be determined by the loss suffered and the loss of profit so long as this is the natural result of the unlawful act.

(b) A loss sustained or loss of profit shall be deemed as a natural result of an unlawful act unless it is possible to avoid them by making a reasonable effort as required by the circumstances from an ordinary person.

Article 162

(a) Damages for an unlawful act shall cover the damage even if it is of a moral nature.

(b) A moral damage shall include, in particular, the physical or psychological damages suffered as a result of prejudicing his life, liberty, integrity, honour, reputation, social or literary status or financial position. Such moral damage shall also include the feelings of grief and sadness felt by the person.

Article 163

The court shall not award damages for moral injury arising from except to the spouses and relatives up to the second degree of relationship.

Article 164

For transfer of the right to a compensation for a moral injury, it is essential that its value shall be fixed by law or by mutual agreement or if it has been claimed by the creditor in court.

Article 165

If a person proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or of a third party, he shall not be liable to make reparation unless there is a provision to the contrary.

Article 166

If the wrongful act of a person contributes with the fault of the aggrieved person in causing the injury, he shall, not be liable to make reparation except to the extent of the effect of his wrongdoing to the occurrence of the injury in proportion to the fault of the injured person.

Article 167

A person who causes an injury to another in the legitimate defence of his person, honour, property or third party's life, honour or property, is not responsible for making reparation, provided that he does not exceed the measures necessary for

defence, as otherwise he will be liable to damages assessed in accordance with the principles of equity.

Article 168

A person who is obliged to cause injury to another person, in order to avoid greater injury that threatens him or a third party or his honour or property without being directly involved in the occurrence of such threat, by resulting in damages to the property of another person that is lesser in amount than that which he deliberately sought to avoid, is not responsible for making restoration unless it is impossible to recover on the ground of unlawful enrichment at the expense of others. In this case, the person who caused the injury is only responsible for such damages as the judge deems equitable according to the circumstances of the case.

Article 169

A public official is not responsible for an act by which he causes injury to another person, if he acted in pursuance of an order received from a superior, which order he had to obey or thought he had to obey, and if he shows that he believed that the act he performed was lawful, that he had reasonable grounds for such belief and that he had acted with care and caution.

2. Liability arising from the acts of another

Article 170

(a) A person who is, by law or by agreement, entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The responsibility exists unless he proves

that he has exercised his supervision duty as he should or that the injury was inevitable even if he properly carried out this duty.

(b) A minor is deemed to require supervision until he has attained fifteen years or if, having attained that age, he is under the care of a person in charge of his upbringing.

(c) The supervision of a minor is the responsibility of his school teacher or of the person under whose supervision he works during the time he is under the case of such teacher or of such person under whom he works.

(d) The supervision of a wife who is a minor is the responsibility of her husband or of the person who is responsible for the supervision of the husband.

Article 171

(a) The responsibility of the state shall replace the teacher's responsibility. If the teacher is employed in a private school or institute, his responsibility shall be replaced by that of the proprietor of the school or institute.

(b) The state or school or institute proprietor shall not have recourse against the teacher for payment made to an injured person even though it is not feasible to recover it from the student's own property unless the fault is proved towards the teacher.

Article 172

(a) A master is liable towards an injured person for the damage caused by an unlawful act of his servant when the act was performed by the servant in the course, or as a result, of his employment.

(b) The relationship between master and servant exists even when the master has not been free to choose his servant, provided he has actual powers of supervision and control over his servant.

Article 173

A person responsible for an act of another person has a claim for redress against that other person to the extent that the other person is responsible for the reparation of the injury.

Article 174

Every person who occupies a property for a residential purpose or for some other purpose shall be liable towards an injured person for making reparation for any damage caused by him as a result of falling or thrown things unless he proves that the damage has been caused by a foreign reason beyond his control without prejudice to his right to have recourse in respect of payment made on behalf of the person whose fault caused the throwing or fall of the thing.

3. Liability arising from things

Article 175

(a) Whoever is in charge of a thing whose supervision requires special care for preventing injury, is liable for damage caused by such thing, unless he shows that the damage was due to a cause beyond his control due to a force majeure, sudden accident, act of the injured person or act of a third party.

(b) Things that require special care for preventing injury therefrom include vehicles, aircraft, ships, other craft, mechanically operated machines, weapons, wires, electrical equipment, animals, buildings and everything else which by its very nature or according to its status likely to cause danger.

(c) A person in charge of an animal, even if the animal strays or escapes, is liable for any harm done by the animal until such animal is controlled for his own account.

Article 176

(a) A person who is threatened by damages from a certain thing may request its owner or person in charge thereof to take the necessary measures for avoiding such threat.

(b) If the owner or person in charge of a thing fails to take the necessary measures for avoiding its threat at an appropriate time, the person under threat of such damage may obtain leave from the court to have such measures taken at the expense of the owner or person in charge thereof.

(c) In case of emergency, anyone who is threatened by a thing shall be empowered to take the necessary measures for deterring it at the expense of its owner or person in charge thereof without the need for permission from a judge.

Second

Payment of Damages for an Unlawful Act

Article 177

(a) If no agreement is reached on payment of damages for an unlawful act, they shall be determined by the judge.

(b) The judge shall assess the damages in money payment.

(c) Upon the demand of the victim, the judge may, in accordance with the circumstances, order that the damage be made good by the restoration of the original position, or by the performance of another method that has a connection with the unlawful act.

Article 178

(a) The judge shall decide, in accordance with the provisions of Articles 161, 162, 163 and 164 and in the light of the personal circumstances of the victim, the amount of damages that he feels will make good the injury done.

(b) If the judge is not in a position at the time of the judgement to fix definitely the extent of the damages, he may reserve for the victim the right to demand, within a period fixed by him, a reassessment of the damages.

Article 179

The judge shall decide the method of payment of damages in accordance with the circumstances. The damages may be paid by instalments, or in the form of a regular salary payment for a certain known period or for life. In any case, the debtor may be ordered to provide an adequate security, if this is relevant.

Article 180

(a) An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible. An action for damages is prescribed in any case after fifteen years from the date on which the unlawful act was committed whichever period expires first.

(b) However, when a claim of liability arise out of a penal offence created by the unlawful act, it shall not be barred from being heard so long as the penal action remains continuing even though the time limits set forth in the preceding paragraph have expired.

Article 181

Every agreement made before the creation of liability for an unlawful act shall be null and void where it is likely to partially or entirely result in exemption therefrom.

Section IV

Profitable Acts or Enrichment Without Just Cause

Article 182

A person, even one lacking discretion, who without just cause enriches himself to the detriment of another person, is liable, to the extent of his profit, to compensate such other person for the loss sustained by him. This obligation remains, even if the profit has disappeared at a later date.

Article 183

A claim for compensation for enrichment without just cause is prescribed after three years from the date on which the injured party knew of his right to be compensated or after fifteen years from the date that the right first arose, whichever the sooner.

First

Payment not due

Article 184

Whoever receives, by way of payment, which is not owing to him, is bound to return it. There is, however, no obligation to restitute when the payor knew that he was not under an obligation to pay, unless he was legally incapable or unless he paid under duress.

Article 185

A payment which was not due may be recovered, if it was made in the performance of an obligation whose cause had not materialised or had ceased to exist.

Article 186

Restitution may also be made of a payment effected in the performance of an obligation which had not at the time fallen due, if the payor was not aware that payment was not then due.

A creditor may, however, limit the restitution to the profit he has gained as a result of the premature payment to the extent of the loss suffered by the debtor.

Article 187

Restitution is not due of a payment effected by a person other than the debtor, if the creditor, acting in good faith, has in consequence of such payment given up his document of title, or his security or allowed his claim against the real debtor to be prescribed.

The real debtor must in such a case indemnify the third party who made the payment.

Article 188

When a person has received, in good faith, that which is not due to him, he is bound only to retribute that which he has received.

If he has received in bad faith, he is bound to retribute in addition the interest and profit that he has gained or that he has failed to gain by neglect on the thing unduly received, from the date of payment or from the date he became of bad faith.

In any case a person who has received that which is not due to him, is bound to retribute the proceeds thereof from the date of a claim in the Courts.

Article 189

When a person who has received that which was not due to him has not the legal capacity to enter into a contract, he is bound only to the extent of his profit.

Article 190

A claim for restitution of a payment unduly received is prescribed after three years from the day on which the payor knew of his right to claim restitution and in any case after fifteen years from the date upon which the right arose.

Second

Voluntary Agency

Article 191

1. There is a voluntary agency when one person of his own accord knowingly assumes the management of an urgent business of another person and on that person's behalf without being bound to do so.
2. Voluntary agency also exists even when a voluntary agent manages the affairs of another person whilst at the same time looking after his own business, because of a connection between the two businesses of such a kind that one of them cannot be managed separately from the other.

Article 192

The rules of mandate apply, if the person for whom the voluntary agent acts, ratifies his act.

Article 193

A voluntary agent must continue work he has commenced until the person for whom he acts is in a position to do so himself. He must also, as soon as he is able to do so, inform the person for whom he acts of his intervention.

Article 194

1. A voluntary agent must use in the management of the work he has undertaken all the care that one would expect from a reasonable person, otherwise he shall be

responsible for his mistakes. The judge may, however, reduce or exempt the amount of damages due as a result of such mistakes, if circumstances justify such a reduction or exemption.

2. When a voluntary agent delegates to a third party the whole or part of the work of which he has assumed the management, he shall be responsible for the acts of his delegate, without prejudice to the right of the person for whom he acts to his direct remedy against the delegate.

Article 195

When there are several voluntary agents doing the same work, they are all jointly and severally responsible.

Article 196

A voluntary agent is bound by the same obligations as a mandatory as regards the restitution of that which he received as a result of his management and as regard rendering accounts thereof.

Article 197

1. In the event of the death of a voluntary agent, his heirs are bound by the same obligations as those of a mandatory.

2. In the event of the death of the person for whom he acts, the voluntary agent is bound by the same obligations to the heirs as he was to the person of whom they were the successors in title.

Article 198

A voluntary agent is deemed to be a representative of the person for whom he has acted, if he has devoted to the management of the work the care of a reasonable person, even if the object in view has not been achieved. The person for whom the voluntary agent has acted will be bound to carry out the obligations entered into on

his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances and to indemnify him in respect of any loss he has suffered as a result of his management.

The voluntary agent is not entitled to any remuneration for his work, unless the work comes within the scope of his professional business.

Article 199

If a voluntary agent is not legally capable of entering into contracts, he will only be responsible for his management to the extent of his profit therefrom, provided that his liability does not result from an unlawful act.

The person for whom the voluntary agent acts remains, however, fully responsible, even if he himself is legally incapable of entering into a contract.

Article 200

A claim arising from voluntary agency is prescribed after three years from the day that each party had knowledge of his right and in any case after fifteen years from the day on which the right arose.

Chapter V

The Law

Article 201

Obligations arising from the law on acts other than contract, unilateral undertaking, injury act and profitable act shall be governed by the provisions of the law giving rise to such obligations.

Part II
The Effects of Obligations

Chapter I
Enforceable Obligation

Article 202

An obligation is enforceable against the debtor if he does not perform it voluntarily. The performance of a natural obligation, however, cannot be enforced.

Article 203

The judge shall decide, in the absence of any provision of the law, whether a natural obligation exists.

There cannot ever be a natural obligation that is contrary to public order.

Article 204

A debtor cannot claim restitution of that which he has voluntarily given to another with the object of discharging a natural obligation.

Article 205

A natural obligation may constitute a valid cause for a civil obligation.

First
Specific Performance

Article 206

1. A debtor shall be compelled upon being summoned do so specifically to perform his obligation, if such performance is possible.
2. When, however, specific performance is too onerous for the debtor, the Court may according to his request, limit performance to payment of money as indemnity, provided that this method of performance does not seriously prejudice the creditor.

Article 207

Subject to the rules with regard to transcription, an obligation to transfer ownership or any other real right transfers ipso facto that right, if the object of the obligation is specifically identified and is owned by the debtor without prejudice to the rules related to registration.

Article 208

When an obligation to transfer a real right has for its object a thing which is described only as regards its species, the right is not transferred, unless the object is identified as regards its individuality.

If, however, the debtor does not perform his obligation, the creditor may, upon an order of the judge, or in case of urgency even without such an order, acquire, at the expense of the debtor, an article of the same kind. He may also claim the value of the article without prejudice to his rights to damages, in either case.

Article 209

An obligation to transfer a real right includes that of the delivery of the article and of the preservation thereof up to the time of delivery.

Article 210

1. When a debtor is under an obligation to deliver something, he will be responsible if he fail to deliver the thing, after having been formally summoned to do so, for the

loss thereof, even if the risk of loss prior to the issue of the summons, was the liability of the creditor.

2. The risk of loss, however, does not pass to the debtor, even upon the issue of a formal summons, if he establishes that the thing would also have perished in the keeping of the creditor if it had been delivered to him, unless the debtor has accepted to take accidental loss at his own risk.

3. The risk of loss of a stolen thing, no matter how the thing perishes or is lost, is the responsibility of the thief.

Article 211

(a) In the case of non-performance by the debtor of an obligation to do something, the creditor may apply to the Court for an order to carry out the obligation at the cost of the debtor, if this is possible.

(b) In a case of urgency, the creditor may carry out the obligation at the cost of the debtor without an order from the Court.

Article 212

When the nature of the obligation so permits, a judgement may, in case of an obligation to do something, take the place of the performance of the contract.

Article 213

(a) When the contract or the nature of the obligation demands that the obligation to do something shall be performed by the debtor personally, the creditor may refuse the performance of the obligation by any person other than the debtor. He may also obtain a judgement ordering the debtor to perform the obligation, and to pay a penalty if he abstains from performing his obligation.

(b) If the court finds that the amount of the penalty is insufficient to make the debtor perform his obligation, it may increase the penalty each time that he considers that it is desirable to do so.

(c) After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation, the judge shall fix the amount of damages that the debtor shall pay, taking into account the prejudice suffered by the creditor and the intransigent attitude of the debtor.

Article 214

(a) Subject always to any provision of the law or agreement to the contrary in the case of an obligation to do something, a debtor who is required to preserve a thing, to manage it or to act with prudence in the performance of his obligation, satisfies his obligation, if he brings to the performance thereof the care of a reasonable person, even if the object in view is not achieved.

(b) The debtor always remains liable for fraud or gross negligence.

Article 215

When a debtor infringes an obligation to refrain from doing something the creditor may demand the suppression of that which he has done in contravention of his obligation. The creditor may apply to the Court for an order authorising him to proceed himself with such suppression at the cost of the debtor without prejudice to his right of compensation.

Second

Compensation in lieu of performance

Article 216

When specific performance by the debtor is impossible or he is late in the performance of the obligation, he will be condemned to pay a compensation for damages caused to the creditor for such failure, unless he establishes that the impossibility and late performance arose from a cause beyond his control.

Article 217

The court may reduce the amount of damages if the creditor by his own fault, has contributed with the debtor's failure to the cause of the loss.

Article 218

The debtor may by agreement accept liability for unforeseen events and for cases of force majeure or sudden accident.

Article 219

The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation or delay in the performance thereof, with the exception of liability arising from his fraud or gross negligence.

Article 220

Subject always to any provision of the law or agreement to the contrary, compensation shall not be due unless the debtor has been formally summoned.

Article 221

A debtor is formally summoned by a registered letter with acknowledgement slip without an envelope or by an official document instead or in any manner to be agreed upon.

Article 222

A formal summons to the debtor will not be necessary in the following cases:

- (a) If it is agreed that the debtor is considered to be violating his obligation merely by non-payment thereof upon maturity.
- (b) If the performance of the obligation becomes impossible or without interest by an act of the debtor.
- (c) If the object of the obligation is the payment of damages in respect of an unlawful act.
- (d) If the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him.
- (e) If the debtor declares in writing that he does not intend to perform his obligation.

Article 223

The court will fix the amount of damages, if it has not been fixed in the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, provided that they are the normal result of the failure to perform the obligation or of delay in such performance. These losses shall be considered to be normal result, if the creditor is not able to avoid them by making a reasonable effort.

When, however, the obligation arises from contract, a debtor who has not been guilty of fraud or gross negligence will not be held liable for damages greater than those which could have normally been foreseen at the time of entering into the contract.

Article 224

Damages include compensation for moral prejudice and the provisions of Articles 162, 163 and 164 are applicable in this respect.

Article 225

Unless the object of the obligation is a sum of money, the parties may fix in advance the amount of damages either in the contract or in a subsequent agreement.

Article 226

Damages fixed by agreement are not due, if the debtor establishes that the creditor has not suffered any loss.

The court may reduce the amount of these damages, if the debtor establishes that the amount fixed was grossly exaggerated or that the principal obligation has been partially performed.

An agreement contrary to the provisions of the two preceding paragraphs is void.

Article 227

When the loss exceeds the amount fixed by the contract, the creditor cannot claim an increased sum, unless he is able to prove that the debtor has been guilty of fraud or gross negligence.

Article 228

1. (a) Any agreement for interest in consideration of utilising a sum of money or against delay in settlement thereof shall be void.

(b) Any benefit or commission whatsoever stipulated by the creditor shall be considered as an interest if proved that no appropriate service has been actually performed by the creditor.

2. When the object of an obligation is the payment of a sum of money and the debtor fails to pay after he was formally summoned whilst he is able to do so, the Court may order the debtor to pay a compensation as required by the law if the creditor proves that the loss is caused to him due to such failure.

Chapter II

Means of Realising and Securing the Rights of Creditors

Article 229

- (a) The debts of a debtor are secured by all his property.
- (b) Subject to any right of preference acquired in accordance with law, all creditors are treated as regards this security on a footing of equality.

First

A creditor may exercise his debtor's rights (Indirect legal action)

Article 230

- (a) Every creditor, even if his claim has not fallen due, may exercise in the name of his debtor all his debtor's rights of action save only those that are purely personal or cannot be attached if he proves that the debtor has not exercised such rights and that his failure to exercise them may cause his insolvency or may increase such insolvency.
- (b) The creditor need not necessarily formally summon the debtor to exercise his rights but he must always join the debtor in the proceedings otherwise they shall not be admissible.

Article 231

A creditor, in the exercise of his debtor's right, is deemed to be the debtor's representative. The proceeds resulting from the exercise of such rights fall into the patrimonium of the debtor and serve as security to all his creditors.

Second
Action of Inadmissibility of Disposals

Article 232

Any creditor whose claim has fallen due and whose debtor has entered into an act of alienation prejudicial to him may demand that such an act be declared void so far as he is concerned, if such act has either diminished the debtor's rights or increased his obligations, and has in consequence resulted in, or increased, his insolvency, when the conditions provided for in the following two Articles are all present.

Article 233

(a) If the act by the debtor is for valuable consideration it can only be held invalid as against the creditor, if made by the debtor with the intent to defraud and if the other party to the contract was aware of the fraud.

It suffices for the act to be considered fraudulent, if the debtor knew, at the time that it was effected, that he was insolvent. The other party is deemed to have had knowledge of the fraud of the debtor, if he was aware of the debtor's state of insolvency.

(b) If, however, the act entered into by the debtor was gratuitous, it is not valid as against the creditor, even if the transferee acted in good faith.

Article 234

(a) If a transferee disposes of property transmitted to him by a debtor for valuable consideration, a creditor can only claim avoidance of the act by the debtor if it was made for valuable consideration and if the second as well as the first transferee both knew of the debtor's fraud.

(b) When the act by the debtor was gratuitous and the second transferee knew of the insolvency of the debtor at the time the debtor entered into the act in favour of the first transferee.

Article 235

A creditor who alleges the insolvency of his debtor has only to establish the amount of his debts.

It is for the debtor to prove that his assets are equal to or exceed his liabilities.

Article 236

Once an act has been declared void the benefits that result from the cancellation of the act shall benefit all the creditors to whose prejudice the act was made.

Article 237

When a person acquires a right from an insolvent debtor, he may escape the consequence of an action by depositing the value equivalent to the alienated property to the Court's Treasury.

Article 238

(a) Subject to the provisions of Articles 232 - 235, if an act of an insolvent debtor is giving a creditor an unjustifiable preference over another creditor, the other creditor may demand to make inadmissible such act so far as he is concerned.

(b) If an insolvent debtor pays off one of his creditors before the date originally fixed for payment, the payment is not valid as against the other creditors, neither is a payment made after the date fixed for payment, valid as against the other creditors if made as a result of a fraudulent arrangement between the debtor and the creditor so paid off.

Article 239

An action to set aside an act of alienation is prescribed after three years from the date on which the creditor has knowledge of the grounds for such an action. It is prescribed in any case after fifteen years from the date on which the contested alienation was effected.

Third

The Right of Retention

Article 240

(a) A person who is under an obligation to supply something, may refrain from performing his obligation so long as his creditor does not offer to perform an obligation incumbent on him arising out of the obligation of the debtor and connected therewith, or as long as the creditor does not supply adequate security to guarantee the performance of his obligation.

(b) However, a possessor or holder of a thing, if he has incurred expenditure on the thing, may, in such a case, refuse to return the thing until he has been repaid the amount due to him, unless the obligation of restitution results from an unlawful act.

Article 241

(a) A person who retains the thing must preserve it in accordance with rules as to pledge and must render an account of the fruits.

(b) If the thing retained is of a perishable nature or susceptible to deterioration, the person who retains the thing may obtain from the Court authority for its sale according to the manner to be determined by the Court. In case of urgency, he may sell the thing without the Court's authority. The right of retention will then be transferred to the price thereof.

Article 242

A mere right of retention does not imply a privilege upon the thing.

Article 243

If the retained thing is destroyed or damaged, the right of retention shall be transferred to another equivalent thing in consideration or compensation therefor.

The provisions in respect of lien shall be applicable to the transfer of right.

Article 244

(a) The right of retention is extinguished by the fact of the thing ceasing to be in the hands of the possessor or the holder.

(b) However, a person retaining the thing, who has lost possession thereof without his knowledge or in spite of his opposition, may claim restitution of the thing, if he makes his claim within a period of thirty days from the time he became aware of the loss of possession, provided that one year has not elapsed since the date of loss.

Part III

Kinds of Conditions Modifying the Effects of Obligation

Chapter I

Conditional Obligations and Time Clauses

First

Conditional Obligation

Article 245

An obligation is conditional when its existence or its extinction depends on a future and uncertain event.

Article 246

(a) An obligation is void when the condition upon which it depends is impossible, contrary to morality or to public order, if it is suspensive. If the condition is resolutive, the condition it is deemed to be inexistent.

(b) An obligation depending upon a resolutive condition, contrary morality or public order is, however, void if the condition was the determining factor for undertaking the obligation.

Article 247

An obligation is void when it is subject to a suspensive condition by which the existence of the obligation depends solely on the will of the person who undertook the obligation.

Article 248

(a) When an obligation depends on a suspensive condition it does not become executory until the condition is realised.

(b) Before realisation of the condition, the creditor may, however, take protective measures to safeguard his rights.

Article 249

(a) An obligation is extinguished when the resolutive condition is realised. The creditor must restitute that which he has received, if restitution is impossible by reason of a cause for which he is responsible, he will be liable for damages.

(b) Acts of management carried out by a creditor shall retain their validity notwithstanding the realisation of the condition.

Article 250

(a) The fulfilment of a condition, whether suspensive or resolutive, is effective retroactively to the day on which the obligation was contracted unless it appears from the will of the parties or by reason of the nature of the contract that the existence of the obligation or its extinction should take effect from the moment of the fulfilment of the condition.

(b) In any case, the condition will not have retroactive effect if the execution of the obligation becomes impossible before the fulfilment of the condition on account of a cause independent of the debtor and for which he is not responsible.

Second Time Clauses

Article 251

An obligation is for a term if its performance or extinction depends on a future certain event even if the time at which it should happen is unknown.

Article 252

(a) An obligation with a suspensive term only becomes due on the date of the expiration of the term.

(b) The creditor may, however, even before the end of the term, take measures to protect his rights and may, in particular, ask for security if he fears that the debtor may become bankrupt or insolvent, and has reasonable grounds for his fears.

Article 253

(a) It is presumed that a fixed term is in the interest of the debtor unless the law, contract or circumstances indicate that it is the interest of the creditor or in the interest or both parties.

(b) The party in whose interest is the term, may relinquish it.

Article 254

A debtor will forfeit the fixed term in the following cases:

(a) If he is declared bankrupt.

(b) If he has, by his own act, appreciably diminished the special security given to the creditor, even if this security was given by a subsequent contract or by virtue of the law, unless the creditor prefers to demand additional security. If the reduction of the security is due to a cause for which the debtor is not responsible, he will forfeit his rights to the term unless he provides adequate security.

(c) If he does not supply the creditor with the security promised in the contract.

Article 255

The deferred debt shall become due by death of the debtor unless it is guaranteed by a special security or the heirs offer sufficient guarantee.

Article 256

When it results from the obligation that the debtor shall only perform the obligation when he is able to do so or when he has the means to do so, the Court will fix a reasonable time for the term, taking into account the actual and future resources of the debtor and allowing for the diligence of a man anxious to perform his obligations.

Article 257

At the end of a resolutely term, the obligation is extinguished without such extinction having any retroactive effect.

Chapter II
Plurality of Objects of an Obligation

First
Alternative Obligation

Article 258

An obligation is alternative when its object includes numerous prestations and the debtor is entirely freed by the performance of one of them. The option, in the absence of any special provision in the law or of an agreement by the parties to the contrary, belongs to the debtor.

Article 259

- (a) A term shall be determined for the election option. If the option is left without a term, the Court shall determine the appropriate term at the request of either party.
- (b) If the option belongs to the debtor and he fails to elect, or if there are a number of debtors who do not agree amongst themselves, the creditor may apply to the Court to fix the object of the obligation.
- (c) If the option belongs to the creditor and he fails to elect, or if there are a number of creditors who do not agree amongst themselves, the option will pass to the debtor.

Article 260

- (a) If the option belongs to the debtor and one of two prestations in his possession is impossible to perform, he shall oblige the creditor by the second prestation. If both prestations are impossible to perform, the obligation shall cease.

(b) If the debtor is responsible for the impossibility of performance even as regards one only of the prestations, he shall be bound to pay the value of the last prestation that is impossible to perform.

Article 261

The option to elect shall be transferred to the heir.

Second Facultative Obligations

Article 262

(a) An obligation is facultative when its object consists of one prestation only but the debtor may free himself of the obligation by the performance of another prestation in its place.

(b) The original and not the facultative prestation is only subject to obligation .

Chapter III Plurality of Parties to an Obligation

First Joint and Several Obligations

Article 263

Solidarity between creditors or debtors is not presumed. It is created by agreement or by provision of the law.

1. Solidarity between creditors:

Article 264

- (a) When there is solidarity between creditors, the debtor may pay the debt to anyone of them unless one of them objects to such payment.
- (b) Solidarity does not prevent the debt being divided between the heirs of one of the joint and several creditors unless the debt itself is indivisible.

Article 265

- (a) Joint and several creditors may take proceedings jointly or severally against the debtor for the performance of the obligation. In so doing, the conditions modifying the effect of the obligation as between each creditor and the debtor should be taken into account.
- (b) A debtor cannot, if he is sued for payment by one of his joint and several creditors, set up as a defence against that creditor, defences that are personal as regards the other creditors, but he may set up defences which are personal to the creditor suing him and those which are common to all the creditors.

Article 266

- (a) If a debtor is released of his debt to one of his joint and several creditors for a reason other than performance, he shall be released as regards the other creditors only up to the amount of the share of the creditor to whom he is no longer liable.
- (b) No one of the joint and several creditors may act in such a way as to prejudice the rights of the other creditors.

Article 267

That which a joint and several creditor receives on account of the debt reverts to all the creditors and will be divided between them proportionally unless there is an agreement or provision of the law to the contrary.

2. Solidarity between debtors:

Article 268

(a) A creditor may take action against all his joint and several debtors jointly and severally. In so doing, the conditions modifying the effect of the obligations as between the creditor and each of the co-debtors should be taken into account. If a creditor sues a debtor for performance, he shall not be prevented from suing other co-debtors.

(b) A debtor who is sued by a creditor for performance cannot set up against that creditor defences that are personal to other co-debtors, but he may set up defences that are personal to himself as well as those common to all the co-debtors.

Article 269

(a) A joint and several debtor in kind or in consideration shall release himself and the remaining co-debtors.

(b) If a joint and several debtor is released by an assignment of debt, the other co-debtors shall also be released if they accepted the assignment.

Article 270

Novation of a debt between the creditor and one of the joint and several debtors, releases other co-debtors unless the creditor has reserved his rights against them.

Article 271

A joint and several debtor cannot set up compensation with regard to that which a creditor owes to one of the other co-debtors except in respect of the share of such co-debtor.

Article 272

Merger that occurs in the person of a creditor and of one of the joint and several debtors does not extinguish the debt as regards the other co-debtors except to the extent of the merged share of the co-debtor.

Article 273

(a) A release of debt granted by the creditor to one of the joint and several debtors does not release the other co-debtors unless the creditor expressly declares such to be the case.

(b) In the absence of such a declaration, the creditor may only claim from the other co-debtors the balance of the debt after deduction of the share of the co-debtor whom he has released, unless he has reserved his right against them for the whole of the debt. In such case, such debtors have a claim against the co-debtor who has been released for his share in the debt.

Article 274

If a creditor releases one of the joint and several debtors from the joint and several liabilities, his right to claim the whole of the debt from the other co-debtors remains unless otherwise agreed.

Article 275

(a) In all cases of the release of one of the joint and several debtors either from the debt or from the joint and several liability, the other co-debtors may in accordance with Article 282 claim from the co-debtor who has been released his contribution in the share of those co-debtors who are insolvent.

(b) If, however, the creditor has discharged the co-debtor to whom he has given a release from all liability in respect of the debt, the creditor will bear himself the contribution of such a co-debtor in the share of the insolvent co-debtors.

Article 276

(a) If the debt is extinguished by prescription as regards one of the joint and several debtors the other co-debtors will only benefit from this prescription to the extent of the contribution of that co-debtor.

(b) If the prescription is interrupted or suspended as regards one of the joint and several debtors, the creditor cannot claim interruption or suspension as regards the other co-debtors.

Article 277

(a) In the performance of an obligation, a joint and several debtor is only responsible for his own acts.

(b) A formal demand to one of the joint and several debtors or proceedings taken against one of them by the creditor will have no effect against the other co-debtors, but if one of the joint and several debtors issues a formal demand against the creditor, the other co-debtors will benefit from such demand.

Article 278

A settlement entered into between a creditor and one of the joint and several debtors will benefit the other co-debtors if it involves remission of the debt or the release of the liability in respect thereof in any other way. If such a transaction creates an obligation or increases the existing obligation, it will only be binding upon the other co-debtors if they consent thereto.

Article 279

(a) An acknowledgement of debt by one of the joint and several debtors does not bind the other co-debtors.

(b) If one of the joint and several debtors refuses to take an oath or if he tenders the oath to the creditor and the creditor takes the oath, the oath refused or tendered will not prejudice the other co-debtors.

(c) If the creditor tenders the oath to one of the joint and several debtors and this co-debtor takes the oath, the oath will benefit the other co-debtors.

Article 280

(a) A judgement given against one of the joint and several debtors will have no effect against the other co-debtors.

(b) If the judgement is given in favour of one of them, it will benefit the others, unless the judgement is based on a ground relating only to the co-debtor in favour of whom the judgement is rendered.

Article 281

(a) If one of the joint and several debtors pays the debt in full, pays more than his share therein or by any kind of settlement, he will only have a claim against each of the other co-debtors to the extent of his share, even if he exercises the right to action of the creditor by way of subrogation.

(b) The amount paid is divisible between all the co-debtors in equal parts in the absence of an agreement or a provision of the law to the contrary.

Article 282

If one of the joint and several debtors becomes insolvent, his share shall be borne by the co-debtor who has effected payment and by all the other co-debtors to the extent of their shares.

Article 283

When the debt concerns one only of the joint and several debtors, he will be liable for the whole debt to the other co-debtors.

Second Indivisibility

Article 284

An obligation cannot be divided:

- a. When it has for its object something which by its nature is not susceptible to division,
- b. If it is the intention of the parties or it follows from the purpose pursued by the parties that the performance of the obligation should not be divided.

Article 285

When there are several debtors in respect of an indivisible obligation, each debtor is liable for the debt in full. A debtor who has effected payment will have a remedy against each of the other co-debtors for his part, unless the contrary follows from the circumstances.

Article 286

When there are several creditors in respect of an indivisible obligation or several heirs of a creditor in respect of such an obligation, each of the creditors or heirs may demand the performance in its entirety of the indivisible obligation. If one of the creditors or the heirs contests such a demand, the debtor shall effect payment to all the creditors together or deposit the object of the obligation in Court.

Co-creditors will have remedies against a creditor who has received payment, each one for his share.

Part IV
Transmission of an Obligation

Chapter I
The Assignment of a Right

Article 287

A creditor may assign his right to a third party unless there is a provision in the law or an agreement between the parties that prohibits such assignment, or on account of its nature. The assignment is valid without the consent of the debtor.

Article 288

A right can only be assigned to the extent to which it can be attached.

Article 289

An assignment is not effective as against a debtor or third party unless it has been accepted by the debtor or notified to him. The acceptance by the debtor does not render the assignment valid as against third parties unless it has an established date.

Article 290

The creditor to whom the assignment is made may, prior to notification of the assignment or to its acceptance, take all precautionary measures to safeguard the right that has been transferred to him.

Article 291

The assignment of right shall be transferred to the assignee together with its warranties, annexes and securities.

Article 292

In the case of an assignment in consideration, the assignor, in the absence of an agreement to the contrary, only warrants the existence of the right assigned at the moment of the assignment.

When, however, the assignment is not in consideration, the assignor does not even warrant the existence of the right.

Article 293

An assignor does not warrant the solvency of the debtor unless such warranty is specifically stipulated.

If an assignor has warranted the solvency of the debtor, this warranty only applies, in the absence of agreement to the contrary, to the solvency of the debtor at the time of assignment.

Article 294

(a) When an assignor exercises his right of recourse in warranty against the assignor, in accordance with the two preceding Articles, the assignor is only liable to restitute that which he received together with expenses notwithstanding any agreement to the contrary.

(b) However, if the assignor is aware that the right does not exist, he shall be obliged to compensate the assignee in good faith for the damage caused to him.

Article 295

(a) The assignor shall pay a compensation to the assignee for damages caused to him by his personal acts even if the assignment is without consideration.

(b) Any condition contrary thereto shall be null and void.

Article 296

The assignor shall deliver the assigned right's document to the assignee, provide all means of its proof and the necessary statements to enable him to settle such right.

Article 297

A debtor of the right assigned may raise, as against the assignee, the defences that he was entitled to raise against the assignor at the moment that the assignment became effective against him. He may also raise defences arising from the contract of assignment.

Article 298

In the event of several assignments relating to the same right, preference is given to the assignment that is first effective as regards third parties.

Article 299

(a) When an attachment is served upon the debtor of the debt assigned, before the assignment has become effective as against third parties, the assignment is equivalent to an attachment vis-a-vis the distrainer.

(b) In this case, if another attachment is made after the assignment becomes effective as against third parties, the debt will be divided pro rata between the first distrainer, the assignee and the second distrainer, but the amount necessary to make up the amount of the sum assigned will be deducted from the share of the second distrainer and paid to the assignee.

SECTION II
Assignment of Debt

Article 300

1. An assignment of debt results in transferring the debt from the original debtor to a third party who undertakes to assume the debt in the place of the debtor.
2. An assignment shall be restricted if the performance thereof is restricted by a debt in kind or debt owed to the assignor by the assignee and shall be absolute if the performance thereof is not restricted by any of the above even if the debtor is owed by the assignee a debt or property in kind from which payment can be made.

Article 301

1. If an assignment deed is entered into between the principal debtor and assignee, it shall not be effective towards the creditor unless ratified by the creditor.
2. If the principal debtor or the assignee gives notice to the creditor and gives him a reasonable period of time to ratify the assignment, the assignment will be deemed to have been refused if the creditor does not give his consent before the expiration of such period.

Article 302

An assignment shall be valid with the mutual agreement of the creditor and assignee. However, if it is not ratified by the original debtor, the assignee shall not have the right to have recourse against him in accordance with the terms of the contract of assignment.

Article 303

If the assignee is party to the assignment contract or ratifies it, the principal debtor shall be discharged of liability for the debt.

Article 304

- (a) The debt assigned is transmitted to the assignee with all its warranties, attachments and securities.
- (b) However, the surety, whether real or personal, does not remain bound to the assignee unless he has agreed to the assignment.

Article 305

A debtor of the right assigned may raise, as against the assignee, the defences that he was entitled to raise against the assignor at the moment that the assignment became effective against him. He may also raise defences arising from the contract of assignment.

Article 306

- (a) If the debt subject to assignment is forfeited for any contingency after the effectiveness thereof shall not be affected by the drawing up of the assignment; and the assignee shall have recourse against the debtor for the payment made to the assignor.
- (b) If the debt subject to the assignment becomes invalid for a cause prior to making such assignment but not attributed to the assignee, the assignment shall become void.

Article 307

In all cases where the sold debt subject to the assignment in respect of its price becomes due, the assignee shall where he has paid the price have recourse against the debtor or the assignor who has received such price.

Article 308

If the debtor refers his creditor to the trustee having an assignment in respect of the property held therewith, then the deposited property prior to the settlement to the assignee without fault of the trustee in possession thereof, this shall result in the termination of the assignment. However, if the property held in trust becomes due to a third party, the assignment shall be null and void.

Article 309

If the debtor refers his creditor to the usurper by means of a restricted assignment in respect of the property held therewith, and the property is destroyed while being retained by the usurper before return thereof to the assignee, this shall not affect the existence of the assignment. If the property held in trust becomes due to a third party, the assignment shall be null and void.

Article 310

The assignee shall not have recourse against the assignee unless there is a clause in the assignment for having recourse in case of failure to recover the debt from the assignee or if the restricted assignment is terminated or invalidated by the expiry of the debt, destruction of the property or if it becomes due according to the provisions of Articles 306, 307, 308 and 309.

Article 311

If the original debtor makes an absolute assignment of his debt without having towards the assignee any debt or property, the assignee shall have recourse against him after payment of the debt to the extent of the amount of the assigned debt.

Article 312

If the original debtor makes an absolute assignment of his debt and where he is owed by the assignee a debt or property held in trust or usurped property, he shall have

after the assignment a right to claim the debt or property against the assignee until repayment is made by the assignor to the assignee. If the assignee makes payment to the debtor, the debt owed shall be forfeited by way of set-off to the extent of the payment made.

Article 313

If the assignment is made in respect of a debt or property, the original debtor shall not have a claim against the assignee. The assignee shall not have to make payment in respect of that to the debtor.

Part V

The extinction of obligations

Chapter I

Payment

Article 314

Payment may be made by the debtor, by his representative or by other interested party, subject to the provision of Article 213 First Paragraph.

Payment may also, subject to the above reservation, be made by a third party who is interested in such payment, even without the knowledge or against the wish of the debtor, but the creditor may refuse payment tendered by a third party if it is opposed by the debtor and the debtor has informed the creditor of his opposition.

Article 315

If third party pays off the debt, such third party shall have a remedy against the debtor up to the amount that he has paid.

The debtor, against whose knowledge and wish payment has been made, may contest the claim made against him by the person who has made the payment on his behalf as regards all or part of the payment made, if he proves that he had any interest in opposing the payment.

Article 316

Payment is only valid if the person who made payment is the owner of that with which he has paid the obligation and has the capacity of disposing of it.

When payment of that which is due is made by a person without the necessary legal capacity to dispose of the thing with which payment is effected, it extinguishes the obligation provided that it does not prejudice the person who has paid.

If a debtor makes payment of a debt owed to some creditors while on his deathbed but his funds are insufficient for repayment of all his debts and where the repayment of debts prejudices the remaining creditors, payment shall not be effective towards the said remaining creditors.

Article 317

When payment is made by a third party other than the debtor, such third party is subrogated in the rights of the creditor who is paid off in the following cases:

- (a) When such third party was liable for the debt jointly with the debtor or was under an obligation to pay the debt on his behalf;
- (b) When such third party, being himself a creditor, even an unsecured creditor, had paid another creditor ranking before him by reason of a real security;
- (c) When, having acquired an immovable, he has paid the price to creditors having a real security upon the immovable in question;
- (d) When the law expressly gives him the right of subrogation.

Article 318

A creditor who receives what is due to him from a third party may, by agreement with the party, subrogate such third party into his rights even if the debtor does not agree to the subrogation. The agreement must not be concluded by an instrument in writing with a specific date that is not after the time of payment.

Article 319

A debtor may also, when he has borrowed a sum with which he has paid the debt, subrogate the lender into the rights of the creditor who received the payment, even without the consent of the creditor, provided that in the contract of loan that has a fixed date, it is stated that the sum in question was borrowed for the purpose of effecting the payment, and that in the receipt in discharge, it is stated that the payment was made with the money lent by the new creditor. The original creditor may not refuse including such statement.

Article 320

A third party subrogated in law or by agreement in the rights of the creditor, is substituted for the creditor as regards the debt to the amount of the sums that he has himself paid with all the attributable accessories, securities and defences attached to the debt . Such subrogation shall be to the extent of the payment made by the person replacing the creditor.

Article 321

(a) In the absence of an agreement to the contrary, when a third party pays part of a debt to a creditor and is subrogated into the rights of the creditor as regards such part, the creditor shall not be prejudiced by such partial payment and may exercise his rights for that which remains due, in preference to the third party.

(b) When a further third party subrogated in the rights of the creditor, as regards the which remains due to this creditor, this further third party so subrogated, together

with the third party subrogated before him, will have a right to claim what is due to each of them pro rata.

Article 322

A third party holder of mortgaged property who has paid all the mortgage debt and has been subrogated into the rights of the creditors, shall only have the right, by reason of such subrogation, to claim from the holder in the debt proportional to the value of the immovable held by him.

Article 323

Payment shall be made to the creditor or to his representative. A person who produces to the debtor a receipt in discharge issued by the creditor is deemed to be qualified to receive payment unless it has been agreed that payment shall be made to the creditor in person.

Article 324

Payment to someone other than the creditor or his representative does not free the debtor of his obligation unless the payment is ratified by the creditor, or profits the creditor and then only to the extent of such profit, or unless the payment was made in good faith to a person holding the title to the debt.

Article 325

(a) When a creditor refuses, without good reason, to accept payment that is regularly offered to him, or to do such things without which payment cannot be made, or declares that he will not accept payment, he will be deemed to have been duly summoned to accept payment from the time that such refusal is recorded by summons notified to him by legal process.

(b) From the time that a summons has been served on a creditor he shall be responsible for the loss or the deterioration of the thing and interest on the debt ceases to run; the debtor shall then have the right to place the thing in safe keeping at the cost of the creditor and claim compensation for any damages he may have suffered.

Article 326

When the subject matter of the payment is a definite and specific thing which must be delivered at the place where it is situated, the debtor may, after having summoned the creditor to take delivery, obtain an order of the Court to place it in safe keeping. If the thing in question is an immovable or a thing intended to remain in place, the debtor may ask for it to be placed under judicial custody.

Article 327

The debtor may, by permission of the Court, sell, by public auction, things of a rapidly perishing nature or movables that necessitate an exorbitant expenditure for safekeeping or custody, and deposit the price in the Court Treasury.

When the thing has a known price on the market or is quoted on the stock exchange, it may only be sold by public auction if it is impossible to sell it by agreement at the market or quoted price.

Article 328

The actual tender of the thing due is equivalent to payment, in so far as the debtor is concerned, when it is followed by a deposit made in the manner prescribed in the Civil and Commercial Procedures Act, or by any other equivalent measure, provided that it is accepted by the creditor or recognised as valid by a final judgement.

Article 329

A debt shall be deemed discharged towards the debtor if he deposits the entire debt or takes an equivalent measure according to the Civil and Commercial Procedures Act in the following events:

- (a) If the debtor is unaware of the creditor's identity or his domicile.
- (b) If the creditor is legally disqualified or lacking in legal capacity and has no representative who can accept payment on his behalf.
- (c) If the debt is disputed among several persons.
- (d) If there are other serious grounds making it impossible to take the proper offer measures in respect of the debt before making the deposit or such alternative measure.

Article 330

- (a) A debtor who has made a tender of the debt followed by a deposit, or by an equivalent measure, may retract his tender so long as it has not been accepted by the creditor, or so long as it has not been recognised a valid by a final judgement, in which case the co-debtor and sureties will not be freed.
- (b) If a debtor retracts his tender after its acceptance by the creditor or after it has been declared valid by a judgement, and his withdrawal is accepted by the creditor, the creditor shall no longer have the right, to avail himself of the securities guaranteeing his right, and the co-debtors and the sureties shall in such case be released.

Article 331

Payment must be made with the very thing due. The creditor cannot be forced to accept anything else, even if the value of such other thing is equal or greater.

Article 332

(a) In the absence of an agreement or a legal provision to the contrary, the debtor cannot be force his creditor to accept a partial payment of his debt.

(b) If, in a case where part of the debt is contested, a creditor agrees to receive payment of that part of his claim which is admitted, the debtor cannot refuse to pay the part that is admitted.

Article 333

When a debtor is under an obligation to pay expenses together with a compensation for delay in payment, and makes a payment that does not cover the principal and all these accessories, the payment shall, unless otherwise agreed, be imputed, in the first instance, to expenses, then compensation for delay in payment, then to the principal.

Article 334

If a debtor owes the same creditor several debts of the same kind and if the payment made by him does not suffice to cover all the debts, he has the right to indicate, when effecting payment, the debt which he intends to discharge, provided that he is not prevented from so doing by law or by agreement.

Article 335

Failing any indication by the debtor as provided for in the preceding Article, the payment shall be imputed to the debt that has fallen due; in case where several have fallen due, to the most onerous debt; in case where the debts are equally onerous to the debt indicated by the creditor.

Article 336

(a) In the absence of an agreement or of a provision of the law to the contrary, payment must be made as soon as the obligation has been created as a liability of the debtor.

(b) However, the judge may in exceptional cases and in the absence of a provision of the law barring him to the contrary, consider granting to the debtor, when his position so requires, one or more reasonable delays for the performance of his obligation or allow payment by instalments, provided that no serious prejudice is thereby caused to the creditor.

Article 337

(a) If the debt is deferred, the debtor shall have the right to pay it prematurely if such postponement is solely in his interest; and the creditor shall not refuse such payment.

(b) If the debtor settles the debt before its due date, then the amount so received becomes due, the debt shall become deferred once more.

Article 338

(a) When the subject-matter of the obligation is a definite and ascertained thing, it should be delivered at the place it was situated at the time the obligation was created.

(b) In the case of other obligations, payment is due at the debtor's domicile at the time of payment or at his place of business if the obligation is considered with such business.

(c) The above shall be in the absence of an agreement or a provision of the law to the contrary.

Article 339

In the absence of an agreement or a provision of the law to the contrary, expenses in connection with payment are at the charge of the debtor.

Article 340

A person who pays part of a debt has the right to demand a receipt for the amount he has paid and a note showing the payment on the document of title of the debt.

He has also the right, at the time the debt is paid in full, to demand the restitution or the cancellation of the document of title. If this document has been lost, the debtor may demand a written declaration from the creditor that the document of title has been lost.

If the creditor refuses to comply with the conditions laid down in the preceding paragraph, the debtor may place the object due in judicial custody according to the law.

Chapter II

Methods of extinction of the obligation equivalent to performance.

First

Giving in payment

Article 341

When a creditor accepts in settlement of his right another prestation in place of that which is due, this giving in payment takes the place of payment.

Article 342

The provisions of the law relating to sale, especially those which relate to the legal capacity of the parties, warranty against eviction and hidden defects, apply to giving in payment in cases where it transfers the ownership of the thing given in place of the prestation due. The provisions of the law relating to payment, especially those which relate to the legal capacity of the contracting parties and to the extinction of warranties, are also applicable in so far as the giving in payment extinguishes the debt.

2. Novation and delegation

Article 343

There is novation of an obligation:

1. by a change of the debt when the two parties agree to substitute a new obligation for the original obligation, which new obligation differs from the original obligation regards its object or as regards its source;
2. by a change of the debtor, when a creditor and a third party agree that such third party shall take the place of the original debtor and that the original debtor shall be released of the debt without his consent being necessary, or when the debtor has a procured the consent of the creditor to substitute the debtor by a third party who consents to be the new debtor;
3. by a change of the creditor, when the creditor, the debtor and a third party agree that his third party shall be the new creditor.

Article 344

- (a) Novation can be effected if the two obligations, the original and the new obligation are free from any grounds of nullity.
- (b) If the original obligation results from a voidable contract, the novation is only valid if the new obligation has been assumed both with a view to confirming the contract and to replacing the original obligation.

Article 345

Novation is not presumed, it must be expressly agreed or result clearly from the circumstances.

In particular, novation does not result, in the absence of an agreement to the contrary, from the subscription of a promissory note in respect of pre-existing debt, from

changes that relate only to the date, place or mode of performance of prestation, or from modifications made to the obligation only as regards securities unless there is agreement to the contrary.

Article 346

- (a) The mere entry of the debt in a current account does not effect novation.
- (b) There is, however, novation when the balance of a current account has been fixed and agreed; if, however, the debt was guaranteed by means of special security, that security is maintained unless otherwise agreed.

Article 347

- (a) Novation has the effect of extinguishing the original obligation with its accessories and of substituting for it a new obligation.
- (b) Securities which guaranteed the performance of the original obligation, are not transferred to the new obligation, unless the law provides otherwise, or unless it appears from the agreement or the circumstances of the case that such is the intention of the parties.

Article 348

1. If the debtor has given real securities in guarantee of the original obligation, the following conditions will be observed in the agreement providing for the transfer of these securities to the new obligation:
 - (a) When the novation results from a change of the debt, the creditor and the debtor may agree that the securities shall be transferred to the new obligation.
 - b) When the novation results from a change of the debtor, the creditor and the new debtor may agree, without the consent of the original debtor that the real securities shall be maintained;

c) When the novation results from the change of the creditor, the contracting parties may agree that the securities shall be maintained.

2. If the real securities are provided by a third party, the parties to the novation may agree on maintaining the securities.

3. In all case, the agreement providing for the transfer of the real securities cannot be effective against third parties, unless it is made at the same time as the novation to the extent that it does not prejudice third parties, and the provisions as to the registration of real rights are complied with.

Article 349

Real and personal as well as joint and several suretyship is only transferred to the new obligation with the consent of the sureties and of the joint and several co-debtors.

Third Delegation in Payment

Article 350

(a) There is delegation when a debtor procures the acceptance by his creditor of a third party who undertakes to pay in his stead.

(b) Delegation does not necessarily infer the existence of a previous debt between the debtor and such third party.

Article 351

(a) When, in a case of delegation, the contracting parties agree to substitute a new obligation for the original obligation, such a delegation constitutes a novation by the change of the debtor. It results in the liberation of the original debtor from the

obligation to his creditor provided that the new obligation assumed by the new debtor is valid and that such new debtor is not insolvent at the time of the delegation.

(b) Novation is not assumed in a case of delegation; in the absence of an agreement providing for novation, the original obligation continues concurrently with the new obligation.

Article 352

In the absence of an agreement to the contrary, the obligation of the new debtor towards the creditor is valid even if his obligation towards the original debtor is void or liable to be contested, subject to the new debtor's right of recourse against the original debtor.

Fourth Set off

Article 353

(a) A debtor has a right to a set-off of that which he owes to his creditor against that which such creditor owes to him, even when the causes giving rise to the two debts are different, provided that they are both for a sum of money or fungibles of a like nature and quality, that they are not in dispute and that they are due and may be sued for.

(b) Postponement of payment by reason of delay granted by the Judge or by the creditor does not prevent a set-off.

Article 354

A debtor may avail himself of set-off even when the places of payment of the two debts are different, but he must, in such a case, make good any loss caused to the

creditor by reason of the fact that the creditor was not able, as result of the compensation, to obtain or to perform the prestation at the place fixed for this purpose.

Article 355

A set-off takes place, whatever may be the sources of the debts, except in the following cases:

- (a) where one of the two obligations consists of a thing of which the owner has been unjustly deprived, and is the object of a claim for restitution;
- (b) where one of the two debts consists of a thing that has been deposited or lent for use or is the object of a claim for restitution;
- (c) where one of the two debts is a right which is not liable to attachment.
- (d) where one of the two debts is payable in respect of alimony.

Article 356

- (a) Set-off only takes place when set up by the interested party. Set-off cannot be renounced before the right thereto has come into existence.
- (b) Set-off extinguishes the two debts to the extent of the amount of the smaller debt, from the moment they become subject to set-off. Imputation of the amount discharged in set-off takes place in the same way as in ordinary payment.
- (c) If the debtor owes several debts, determination of the set-off shall take place in the same manner as the determination upon the payment thereof.

Article 357

If the delay for prescription of a debt has expired when set-off is set up, set-off will nevertheless still take place if the delay for prescription has not expired when set-off became possible.

Article 358

- (a) Set-off cannot take place to the detriment of rights acquired by third parties.
- (b) If, after the seizure by a third party of the property held by the debtor for his creditor, such debtor becomes the creditor of his creditor, he cannot set up set-off to the prejudice of the attaching creditor.

Article 359

- (a) When a creditor has assigned his debt to a third party, the debtor who has consented to the assignment without reserve, cannot set up set-off against the assignee, which he had the right to set up before he consented to the assignment; he can only enforce his claim against the assignor.
- (b) But a debtor who has not accepted an assignment which has been notified to him, may, notwithstanding the assignment, set up compensation.

Article 360

A debtor who had the right to set up set-off but who nevertheless paid his debt, cannot avail himself, to the prejudice of third parties, of the securities guaranteeing his right unless he did not know of the existence of his right.

Fifth

Merger

Article 361

When the qualities of creditor and debtor in the same debt are united in the same person, the debt is extinguished to the extent of the merger.

When the cause which gave rise to the merger disappears and its disappearance is retroactive, the debt revives with its accessories as regards all interested parties and the merger is deemed never to have existed.

Chapter III

The Extinction of Obligations Without Payment

First

Release of the Obligation

Article 362

Obligations are extinguished by a voluntary release of a debtor by his creditor. The release is completed as soon as it comes to the knowledge of the debtor, but becomes void if refused by him.

If they become void, the obligation shall return with all its qualities and all the securities included as well all the defences made in respect thereof.

Article 363

The release of an obligation is subject to the basic rules that govern gifts. No special form is required for release even if it is the release of an obligation whose existence was conditional upon a special form required by law or by the agreement entered into by the parties.

Second

Impossibility of Performance

Article 364

An obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.

Article 365

The term of prescription for personal obligations is fifteen years with the exception of those cases for which a special provision is contained in the law and with the exception also of the following cases.

Article 366

(a) Unless there is a provision in the law to the contrary, the term of prescription for sums payable periodically at recurring intervals such as the rent of buildings and of agricultural land, salaries, wages and pensions, is five years, where the debt is not admitted by the debtor.

(b) The term of prescription for revenue due by a holder in bad faith and for revenue due by a custodian of a waqf to the beneficiaries is fifteen years.

Article 367

The term of prescription for sums due to physicians, chemists, lawyers, experts, receivers in bankruptcy, brokers, professors or teachers is five years, provided that the debts are due as remuneration for work coming within the scope of their professional work or in payment of expenses incurred by them.

Article 368

(a) The term of prescription for taxes and dues owing to the State is three years. The term of prescription for taxes and annual dues commences to run from the end of the year for which they were due: that for fees for legal documents from the date of

termination of the hearing of the case in respect of which such documents were prepared, or, if no hearing takes place, from the drawing up of such documents.

(b) The same provision shall be applicable if the claim relates to the repayment of taxes and dues unduly paid. This period runs from the date of notifying the taxpayer of the final settlement in respect of such taxes and dues.

(c) The preceding provisions shall not prejudice the provisions set forth in special laws.

Article 369

1. The term of prescription is one year for the following rights of action:

(a) The rights of action of merchants and manufacturers in respect of things supplied to persons who do not trade in these articles, as well as the rights of action of hotel and restaurant proprietors for the cost of accommodation and food and for expenses incurred by them on behalf of the clients.

(b) The rights of action of domestic servants and similar persons.

2. When a person invokes the non-admission of the law-suit indicated in the preceding paragraph, he must take the oath that he has actually paid the debt. If he is an heir of the debtor or a legal representative thereof or of his heirs, he shall take the oath that he does not know of the existence of the debt nor is he aware of his death. Then, the Court will of its own accord pass the oath.

Article 370

(a) The term of prescription in respect of rights referred to in Articles 367 and 369 runs from the time that the prestations were made by the creditors, even when the creditors continue to make further prestations.

(b) Once any of these rights has been established by a written document, it is only prescribed after fifteen years.

Article 371

Periods of prescription are calculated in days, not in hours; the first day does not count and prescription is completed when the last day is at an end.

Article 372

(a) Prescription runs, unless there is a special provision of the law to the contrary, only from the day on which the debt becomes due.

(b) When the date upon which the obligation becomes due depends upon the will of the creditor, prescription runs from the date on which the obligation is created.

Article 373

(a) Prescription does not run whenever there is a bar, even a moral one, which prevents the creditor from claiming his right. It does not run between principal and his representative.

(b) Prescription does not run as regards a creditor who is legally incapable, absent or convicted criminal if he is not legally represented.

Article 374

If there is a cause that interrupts the effective period of prescription towards some of the creditors' heirs, the prescription shall not be interrupted towards the remaining heirs.

Article 375

Prescription is interrupted by legal proceedings even if instituted in a court without jurisdiction, by a summons or by an attachment, by the application of a creditor for the admission of his claim in a bankruptcy or in a distribution, or by any act of a creditor to claim his right in the course of legal proceedings.

Article 376

(a) Prescription is interrupted by an express or tacit admission of the right of the creditor by the debtor.

(b) A debtor who leaves a pledge in the hands of his creditor as security for his debt is deemed to have tacitly acknowledged the debt even though the creditor retained it on the basis of his right to refuse returning it pending the settlement of the debt related thereto in pursuance of Article 240.

Article 377

1. When prescription is interrupted, a new prescription commences to run from the time that the effect of the act that gave rise to the interruption has ceased. The term of the new prescription will be of the same duration as that of the former one.

2. However, the term of the new prescription shall be fifteen years in the following events:

a) When the debt has been awarded by a final court judgement except where the judgement rules for granting renewable periodical obligations that shall be due after it has been handed down.

b) When the right in question shall not be admitted after the lapse of five years in accordance with Article 367 or upon the lapse of one year according to Article 369 and the prescription period was interrupted due to the debtor's admission.

Article 378

When a right is extinguished by prescription, the other accessories to the debt are also extinguished even if the term of the particular prescription applying to these accessories has not expired.

Article 379

(a) The Court of its own initiative cannot invoke prescription. Prescription must be invoked by the debtor, or by his creditors, or by any interested party, even if the debtor has failed to do so.

(b) Prescription may be invoked at any stage of the proceedings, even before the Court of Appeal.

Article 380

(a) A debtor cannot renounce the benefit of prescription before he has acquired the right to invoke it, nor can he agree to a term of prescription other than that fixed by law.

(b) A person, however, who is legally capable of disposing of his rights, may renounce, even tacitly, a right to prescription which he is in a position to invoke, but a renunciation made to the detriment of his creditors will have no effect against them.

BOOK TWO SPECIFIC CONTRACTS

PART I Contracts as Regards Ownership

Chapter One Sale

Section One Sale in General

Article 381

Sale is a contract whereby the vendor binds himself to transfer to the purchaser the ownership of a thing or any other propriety right in consideration of a price in money. The sale shall include all the attachments of the sold item according to the nature of the transaction, custom prevailing in the relevant place and intent of the contracting parties.

**First
Elements of Sale**

Article 382

- (a) The purchaser must have sufficient knowledge of the thing sold, otherwise he shall have the right to seek invalidation of the sale.
- (b) This knowledge shall be deemed sufficient if the contract contains the description of the thing sold and its essential qualities, so that it may be identified.
- (c) The statement in a deed of sale that the purchaser is familiar with the thing, deprives him of the right to claim annulment of the sale on the ground of want of knowledge of the thing, unless he proves fraud on the part of the vendor.
- (d) If the purchaser takes delivery of the sold item without making any objection thereto within a reasonable period of time, this shall be deemed as an acceptance thereof.

Article 383

- (a) When the sale is made according to sample, the thing sold should conform to the sample.
- (b) If the sample deteriorates or perishes while in custody of one of the contracting parties, even if it was not his fault, it is incumbent upon that party, whether he is vendor or buyer to establish that the thing is or is not in conformity with the sample.

Article 384

In a sale upon trial or tasting within a known period of time, the purchaser has the option either to accept or to refuse the thing sold.

If the purchaser refuses the thing sold, he must give notice of his refusal within the time agreed or, in the absence of agreement, within a reasonable time to be fixed by the vendor. When this time has elapsed the silence of the purchaser who had the opportunity to try or taste the thing sold, is equivalent to acceptance.

A sale upon trial is deemed to have been made subject to a suspensive condition of acceptance of the thing sold, unless it appears from the agreement or from the circumstances that the sale was made subject to a resolutive condition.

Article 385

The method of establishing the price may be confined to the indication of the basis on which the price will be ultimately fixed. Fixing the price may be delegated to a third party but if he fails to fix it for any reason, the price shall be a similar price for a similar item.

Article 386

(a) When the contracting parties have not fixed a price for the thing sold, the sale shall not be void if the circumstances show that the parties intended to adopt the current market price or the price which they have usually applied in their dealings with one another.

(b) The market price at the time and place of the sale shall be recognised. If there is no market in the place of sale, the place where custom requires the prices thereof prevailing shall be recognised unless there is agreement to the contrary.

Article 387

If the price is estimated on the basis of weight, the net weight shall be recognised, unless the parties agree otherwise or there is custom to the contrary.

Article 388

(a) A sale may take place by way of take-over, participation, murabaha or on trust, if the price at which the vendor has purchased is known at the time of entering into the contract and if the amount of profit in murabaha and amount of loss in the item sold as is, are fixed.

(b) If it is established that the price at which the vendor has purchased is less than what he said, the purchaser may insist upon the actual price.

(c) The vendor's withholding of circumstances surrounding the purchase shall be deemed as deceit if this is likely to affect the purchaser's acceptance.

Second: The Effects of Sale

Article 389

A sale results in transferring ownership of the thing sold if it is a certain item and owned by the vendor. If the thing sold is only identified by its type, ownership shall not be transferred except by the release thereof unless the law or the agreement otherwise provides and without prejudice to the rules of registration.

Article 390

If it is an aleatory sale, ownership shall be transferred to the purchaser in the name manner of transfer of a specific item. A sale shall be aleatory even though the determination of the price is conditional upon an assessment of the thing sold.

Article 391

If the sale is for a deferred price, the vendor may require that transfer of ownership to the purchaser shall be conditional upon receiving the price in whole or in part even if the thing sold has been delivered.

If the price is paid by instalments, the contracting parties may agree on retention by the vendor of a part thereof as a compensation for cancelling the sale if all the instalments are not paid. Nevertheless, the judge may depending upon the circumstances reduce the mutually agreed compensation according to Paragraph two of Article 226.

If all the instalments have been paid, the purchaser's ownership shall be based upon the date of sale unless otherwise agreed upon.

The foregoing provisions shall be applicable even if the contracting parties call the sale a lease.

Article 392

The purchaser shall enjoy the fruits and growth of the thing sold and shall incur the costs thereof from the date of sale.

However, if the vendor has not received the price in full, the purchaser's enjoyment of the fruits shall only be to the extent of the payments made in respect of the price unless there is agreement or custom providing otherwise.

1. Obligations of the Vendor

Article 393

If the sale does not require transfer of ownership immediately upon the conclusion thereof, the vendor is bound to perform everything necessary to transfer the right to the thing sold, and to abstain from all acts that might render this transfer impossible or difficult.

Article 394

The vendor is bound to deliver the thing sold to the purchaser in the state in which it was at the time of the sale and to deliver thereto the relevant papers and documents.

Article 395

The vendor is bound to provide the purchaser with all the necessary information about the thing sold.

Article 396

If the contract specifies the quantity of the thing sold, the vendor shall guarantee any shortfall in such quantity according to the prevailing practice unless there is an agreement to the contrary. However, a purchaser may not seek revocation of the contract on ground of a shortfall in the thing sold unless he proves that such shortfall is so serious that he would not have executed the contract had he been aware thereof.

Article 397

(a) If the quantity of the thing sold exceeds that indicated in the contract, and if the price has been fixed by unit, the vendor shall, when the object of the sale can be divided, be entitled to the excess unless the purchaser decides to take it in consideration of the equivalent price but when the object of the purchase cannot be divided, the purchaser must pay for the excess unless it is great, in which case he may demand cancellation of the contract.

(b) If the price is estimated on a lump sum basis, the excess shall be for the purchaser unless it is very great so that the vendor would not have concluded the sale had he known the quantity of such excess. In this case, the purchaser shall have the option between increasing price to the extent of the excess in the thing sold and cancellation of the sale.

(c) All the above shall take place unless there is agreement or custom providing to the contrary.

Article 398

An action for termination of the contract, reduction or supplementing the price or refunding the increase because of deficiency or excess in the thing sold, shall not be heard upon the lapse of one year from the time of actual delivery of the thing sold.

Article 399

Delivery consists of placing the thing sold at the disposal of the purchaser in such a way that he can enjoy it without hindrance, even if he does not take effective delivery thereof, provided the vendor informs him that the thing is at his disposal.

Delivery is effected in accordance with the nature of the thing sold.

Delivery may be completed by the mere fact of agreement between the parties when the thing sold was in possession of the purchaser prior to the sale or if the vendor retains the thing sold in his possession after the sale by virtue of some reason other than that of ownership.

Article 400

If the contract does not specify a date for delivery of the thing sold, the vendor shall deliver it immediately upon execution of the contract.

If it is mutually agreed that delivery shall take place on the date fixed by the purchaser, the vendor shall ensure delivery on such date subject always to the dates required for the nature of the thing sold or as required by custom and usage.

Article 401

(a) The thing sold shall be delivered at the place where it is available at the time of concluding the contract unless otherwise agreed upon.

(b) If the thing sold is a movable item the location of which is not specified, it shall be delivered at the vendor's domicile.

Article 402

When the thing sold must be sent to a designated place, delivery will not be effective, subject to an agreement to the contrary, until the thing reaches him.

Article 403

The cost of delivery shall be incurred by the vendor unless the agreement or custom otherwise provides.

Article 404

If the thing sold perishes before delivery as a result of a cause beyond the control of one of the contracting parties, the sale shall be dissolved and the price refunded to the purchaser, unless he was summoned to take delivery before the loss.

Article 405

If the thing sold is partially destroyed or deteriorated before delivery for a reason beyond the control of the contracting parties, the purchaser shall have the right to reduce the price to the extent of the reduction in the value of the thing sold. If the destruction or damage is so great that the sale would not have taken place if the destruction or damage had happened before the contract was concluded, he will have the right to dissolve the sale. The above shall take place if the destruction or damage occurred before giving notice to the purchaser to take delivery of the thing sold.

Article 406

(a) If the thing is destroyed or damaged by an act of the purchaser, he shall remain liable for payment of the full price thereof.

(b) If the destruction or damage is attributed to the vendor, the purchaser shall have the option either to dissolve the sale or to reduce the price to the extent in the diminution of the value without prejudice to his right to claim a compensation if there are grounds therefor.

Article 407

The vendor warrants the purchaser against disturbance in his enjoyment of the thing sold both totally and partially even if there is an agreement to the contrary.

Article 408

The vendor warrants the purchaser against disturbance in his enjoyment of the thing sold both totally and partially if such disturbance is caused by the act of any third party claiming a right to the thing sold at the time of the sale enforceable against the purchaser. Further, the purchaser is bound by his warranty, even if the right of the third party has been established after the sale, provided that it was derived from the vendor himself or as a result of his act.

Article 409

(a) When an action of revendication in respect of the thing sold is brought against the purchaser, he shall take action to involve the vendor in such action.

(b) If the purchaser fails to notify the vendor of the action brought against him and a final judgement is handed down in favour of a third party, the vendor's warranty shall be forfeited if the vendor establishes that, had he joined in the action, he would have succeeded in obtaining the dismissal of the action for revendication.

Article 410

(a) In case of total dispossession, the purchaser may claim from the vendor and have recourse against him in respect of the value of the loss sustained and loss of profit because of the dispossession of the thing sold.

(b) However, the purchaser's right shall be limited to recovery of the price and all the expenses if the vendor proves that he was not aware of the dispossession at the time of sale.

Article 411

(a) In case of partial dispossession, or if the thing sold is encumbered with a charge or a lien in favour of a third party, the purchaser, if the loss is of such a nature that had he been aware thereof, he would not have entered into the contract, may return the thing sold and the benefit gained therefrom in addition to claiming from the vendor the amounts provided for in the preceding Article.

(b) If the purchaser prefers to retain the thing sold or when the loss sustained by him does not reach the degree of gravity defined in the first paragraph, he has only the right to apply for compensation in respect of the loss he has sustained as a result of dispossession according to the provisions of the preceding Article.

Article 412

The vendor shall not warrant a purchaser against a servitude if it was apparent or disclosed by him at the time of entering into the contract or if this right is an obvious easement or arising from a legal restriction on ownership.

Article 413

(a) The contracting parties may, by agreement, increase the warranty against dispossession, restrict it or stipulate that the sale is without warranty.

(b) A clause that the sale is with a reduced warranty or without warranty against dispossession shall be null and void if the vendor intentionally conceals the reason for dispossession or if the dispossession arises from his act.

Article 414

Notwithstanding a clause excluding warranty, a vendor remains liable for refunding the price and expenses unless he proves that the purchaser knew at the time of the sale of the ground of dispossession or that he purchased the thing with the risk of dispossession.

Article 415

The vendor shall be liable under his warranty according to the provisions of Article 411, when, at the time of delivery, the thing sold has defects diminishing its value or usefulness for the purpose for which it was intended as shown by the contract or resulting from the nature or the destined use of the thing. The vendor is answerable for these defects, even if he was ignorant of their existence.

Article 416

The vendor is not liable for defects which are customarily tolerated.

Article 417

The vendor is not answerable for the defect of which the purchaser was aware at the time of the sale or which he could have discovered himself had he examined the thing with the care of an ordinary person, unless the purchaser proves that the vendor has affirmed to him the absence of these defects or fraudulently concealed them from him.

Article 418

(a) When the purchaser has taken delivery of the thing sold, he shall ascertain its condition as soon as he is able to do so in accordance with common usage. If he discovers a defect for which the vendor is answerable, he must give a reasonable notice thereof to the vendor, failing which he will be deemed to have accepted the thing sold.

(b) In the case, however, of defects that cannot be discovered by means of normal inspection, the purchaser shall, upon the discovery of the defect, at once give notice thereof to the vendor, failing which he will forfeit his right to the warranty.

Article 419

When the purchaser has given notice to the vendor of the defect in the thing in due time, he will be entitled to bring an action on the warranty in accordance with Article 411.

Article 420

An action on a warranty exists even if the thing sold has perished, whatever may be the cause.

Article 421

If the purchaser becomes aware of the existence of the defect and then disposes of the thing sold as would an owner thereof, he shall not have recourse against the warranty.

Article 422

The contracting parties may, by specific agreement, increase, restrict or abolish the warranty. A clause abolishing or restricting the warranty is void if the vendor intentionally and fraudulently conceals the defects of the thing sold.

Article 423

- (a) An action on a warranty is prescribed in one year from the date of delivery of the thing sold, even if the purchaser discovers the defect after the expiration of this delay, unless the vendor agrees to be bound by the warranty for a longer period.
- (b) The vendor, however, shall not avail himself of the prescription of one year if it is proved that he has fraudulently concealed the defects from the purchaser.

Article 424

No warranty exists against defects in the case of a judicial sale or administrative sale by auction.

Article 425

If the thing sold does not have at the time of delivery the characteristics guaranteed by the vendor to the purchaser, the purchaser may demand cancellation of the sale in addition to compensation or retain the thing sold while claiming compensation for the damage sustained because of the lack of such characteristics.

Article 426

When a vendor has warranted the proper working of the thing sold for an agreed period of time, the purchaser, in the case of a defect subsequently appearing in the thing sold, shall, for fear of forfeiture of his right to the warranty and subject to any agreement to the contrary, give notice to the vendor within one month from the date of the appearance of the defect and commence an action within six months from the date of notification.

2. Obligations of the Purchaser

Article 427

- (a) Subject to a clause or custom to the contrary, the price is payable at the time when the delivery of the thing sold is made.
- (b) When the purchaser is disturbed in his enjoyment by a third party invoking a right existing prior to the sale or derived from the vendor, or if he is in danger of being dispossessed of the thing sold, he may, subject to an agreement to the contrary, retain the price until the disturbance in his enjoyment or the danger of dispossession has ceased. The vendor may, however, in such case, demand payment of the price upon his supplying security.
- (c) The provision of the preceding paragraph will apply if a defect is discovered in the thing sold.

Article 428

The price shall be payable at the place where the delivery of the thing sold is made. If the price is not payable at the time of delivery of the thing sold payment must be made at the domicile of the purchaser on due date unless there is an agreement or custom that provides otherwise.

Article 429

If the purchaser fails to pay the price when it becomes due or commits a breach of the other obligations arising from the sale contract, the vendor shall have the option between applying for compelling the purchaser to perform such obligations or seek termination of the sale contract.

Article 430

The vendor shall not be entitled to claim a compensation for delay in payment of the price unless he gives notice to the purchaser or delivers the thing sold that is likely

to produce other fruits or generate other earnings unless there is an agreement or custom that provides otherwise.

Article 431

When the whole or part of the price is payable immediately, the vendor, unless he grants the purchaser a delay for payment after the date of the sale, may retain the thing sold until he obtains payment of the amount due, even if the purchaser has offered a mortgage or security.

The vendor may also retain the thing sold, even if the agreed date of payment has not fallen due, if the purchaser loses the benefit of the term in accordance with Article 254.

Article 432

If the thing sold perishes while in possession of the vendor while exercising his right of retention, the purchaser is liable for the loss unless the thing sold perishes as a result of an act of the vendor.

Article 433

In the case of a sale of movables, when a term is agreed for payment of the price and for taking delivery, the vendor shall be entitled to consider the sale terminated without the need for notice if the purchaser fails to pay the amount payable of the price on due date unless there is agreement to the contrary or if the balance remaining of the price is modest.

Article 434

In the absence of agreement or usage indicating the place and time of delivery, the purchaser is bound to take delivery of the thing sold at the place where it was at the

time of the sale and to remove it without delay, subject to the time necessary for such removal.

Article 435

In the absence of an agreement or usage to the contrary, the costs of the sale contract, registration fees, costs of payment of the price, costs of delivering the thing sold and such other expenses shall be borne by the purchaser.

Section Two

Different Forms of Sale

First

Sale of a Thing Belonging to Another

Article 436

When a person sells a property owned by a third party, ownership shall not be transferred to the purchaser unless it has belonged to the vendor or unless the owner ratifies the sale.

Second

Sale of Litigious Rights

Article 437

(a) If a litigious right is sold, the person who is in dispute with the vendor shall recover it from its purchaser if he refunds thereto the price and expenses incurred.

(b) A right shall be deemed litigious if a case has been filed in respect of the issue thereof or the latter is subject to a serious dispute.

Article 438

The right to recovery provided for in the preceding paragraph shall lapse after thirty days from the date on which the recovering person becomes aware of the sale.

Article 439

The provisions of Article 437 shall not apply in the following cases:

- (a) when the litigious right forms part of a group of properties sold in bulk for a single price.
- (b) when the litigious right is indivisible amongst several heirs or co-owners and one sells his share to another.
- (c) when a debtor has assigned to his creditor the litigious right in payment of his debt.
- (d) when the litigious right is a right burdening a real property and such right is sold to a third party in possession of the real property.

Article 440

No judges, lawyers, Court clerks nor any officer the Courts may in the course of execution duties, under pain of nullity of the sale contract, purchase any litigious right either in their own names or under false names.

Article 441

Neither brokers nor experts may purchase, even under false names, the properties entrusted to them for sale, assessment of their price or acting as experts in respect thereof.

Article 442

The restriction provided for in the preceding two Articles shall be applicable to spouses, relatives and in-laws to the second degree of relationship.

Third

Sale of an Inheritance

Article 443

A person who sells an inheritance without giving particulars thereof, only warrants that he is an heir, unless otherwise agreed.

Article 444

In the sale of an inheritance or a share thereof without mentioning details of its contents, such sale shall have no effect as regards third parties, unless the purchaser fulfils the necessary formalities for the transfer of each of the rights comprised in the inheritance. If the law provides for specific formalities for the transfer of these rights between the parties, such formalities should also be fulfilled.

Article 445

If the vendor has received some of the rights belonging to the inheritance or sold any of the property forming part of the inheritance or consumed them, he must reimburse the purchaser up to the amount he has received or consumed unless there is an agreement between them to the contrary.

Article 446

The purchaser shall reimburse the vendor whatever he may have paid in respect of the debts of the inheritance and pay him anything that is due to him by the estate, subject to any agreement to the contrary.

Fourth
Sale Made During a Person's Last Illness

Article 447

1. A sale made by a patient during his last illness shall be subject to the provisions of Article 911.
2. However, these provisions shall not apply to the prejudice of a third party in good faith who has acquired for valid consideration right in kind to the property sold.

Chapter Two

Barter

Article 448

Barter is an exchange of property for some property but both of which shall be other than money.

Article 449

If the values of the two bartered items are different in the estimation of the contracting parties, the difference may be compensated by the payment of an equivalent sum of money.

Article 450

Barter shall be subject to the provisions of sale to the extent allowed by the nature of barter and each of the contracting parties shall be deemed as a vendor of the thing given by him in exchange and the purchaser of the thing received in exchange.

Article 451

In the absence of an agreement to the contrary, the expenses of a barter contract and incidental expenses shall be borne by the parties in equal shares.

Chapter Three

Gift

Article 452

A gift shall be subject to the provisions of Islamic Shariaa and laws enacted in respect thereof.

Chapter Four

Company

Article 453

A company is a contract by which two or more persons undertake to contribute jointly to an undertaking of a pecuniary nature by the provision of contributions of property or business, with the object of sharing in the profits or losses of the undertaking.

Article 454

Civil companies of a commercial nature shall, regardless of the objects thereof, be subject to all the provisions applicable to commercial companies.

Commercial companies shall be subject to the provisions of the Commercial Companies Law, Law of Commerce and the following provisions which do not conflict with the provisions governing them.

Article 455

A company is deemed, by the fact of its constitution, to be a juristic person.

Such juristic person shall not be effective unless a summary of the company's memorandum of association is published in the Official Gazette. third parties may, however, if the company has not completed the prescribed formalities of publication, avail themselves of the juristic personality of the company.

First

Elements of the Company

Article 456

A company's memorandum of association shall be in writing, otherwise it shall be deemed null and void. All amendments to the memorandum of association shall also be null and void unless they comply with the same form whereby the memorandum of association shall be drawn up.

However, such invalidity shall not be pleaded by the partners towards third parties and has no effect on the relationships between the partners themselves except from the date on which a partner files an application seeking the passing of a judgement of nullity.

In all cases, the terms of the memorandum of association shall be applicable to the liquidation of the company for which a nullity judgement is delivered and to the settlement of the partners' rights towards each other.

Article 457

In the absence of agreement or custom to the contrary, the contributions of the partners are presumed to be equal and to consist of the ownership of the property brought in and not merely of its enjoyment.

Article 458

The influence or the creditworthiness of a partner cannot alone constitute his contribution.

Article 459

A partner who has undertaken to contribute a sum of money and who does not pay this sum to the company shall be liable for payment of the value of his contribution on the fixed date; and in addition shall be liable for payment of compensation arising from such delay.

If the partners fix the value of compensation in advance, such advance shall be subject to the Court's discretion according to the provisions of Articles 226 and 227.

Article 460

If the contribution of a partner consists of a right of ownership, of an usufruct, or of any other real right, the provisions as to sale shall apply as regards warranties against loss, dispossession, hidden defects or deficiencies.

If, however, the contribution consists merely of the use of the property, the provisions as to lease shall apply as regards the above warranties.

Article 461

If the contribution of a partner consists of his services, he shall carry out the services he has undertaken to perform and render an account of the profits realised from the date of the formation of the company as a result of the services he has undertaken as his contribution.

In the absence of an agreement to the contrary, he shall not be bound, however, to contribute to the company patents which he has obtained.

Article 462

If the contribution of a partner consists of debts due by third parties, his obligation to the company shall only be extinguished by the recovery of these debts. He shall also be liable for damages if the debts are not paid when they fall due.

Article 463

If the share of each of the partners in the profits and losses of the company is not fixed in the memorandum of association, their respective shares shall be proportionate to their respective contributions to the capital of the company.

If the memorandum of association only fixes the share of each partner in the profits, the same proportion shall apply as regards the losses, and reciprocally if only the share in the losses is fixed in the memorandum of association.

If the contribution of one of the partners consists only of his services, his share in the profits and losses shall be estimated in accordance with the profits that the company realises as a result of his services. If, in addition to his services, a partner has made a contribution in money or in kind, he will be entitled to a share in respect of his services and another share in respect of the contribution he has made in addition to his services.

Article 464

If it is agreed that one of the partners shall not participate in the profits or losses of the company, the company's memorandum of association shall be null and void.

A partner who only contributes his services may be relieved by agreement from participation in the losses of the company, provided that no remuneration is allowed to him in respect of his services.

Second Company's Management

Article 465

A partner entrusted with the management by a special clause in the company's memorandum of association is entitled, notwithstanding objections by the other partners, to perform acts of management and acts of disposals coming within the objects of the company, provided that such acts of management and disposition are not tainted with fraud. Such partner may not, without legitimate cause, be discharged from his post as managing partner as long as the company remains in existence.

If the appointment of a managing partner is made subsequent to the company's memorandum of association, such an appointment may be revoked in the same manner as an ordinary mandate.

Managers who are not partners may be discharged at any time.

Article 466

When several partners are entrusted with the management of the company without their respective powers being defined and it is not provided that anyone of them cannot act alone, each partner may separately perform any act of management, subject to the right which each of the other managing partners has to object to such an act before it has been completed, and to the right of the majority of the managing

partners to override such an objection; in the case of equal voting by the managing partners, the right to override the objection shall belong to the majority of all the partners.

If it is provided that the resolutions of the managing partners shall be adopted unanimously or by a majority, such a provision cannot be departed from, except in the case of an urgent matter in which failure to take action would involve the partnership in serious and irreparable loss to the company.

Article 467

When a decision must be taken by the majority, it will, in the absence of an agreement to the contrary, be decided by the numerical majority.

Article 468

Partners who are not managing partners are excluded from the management. They are entitled, however, personally to examine the books and documents of the partnership. Any agreement to the contrary is void.

Article 469

In the absence of any special provisions as to the form, each partner is to have been authorised by the other partners to manage the partnership and may carry out the management without consulting the other partners, subject to the right of such other partners or of anyone of them to object to any act of management before it has been finally completed and to the right of the majority of the partners to override such objection.

Third Effects of the Company

Article 470

Each partner shall abstain from any activity prejudicial to the interests of the company or contrary to the object for which the company was formed.

He shall look after the interests of the company as if they were his own, unless he has been appointed a manager on remuneration, in which case he shall not exercise less care than would a prudent man.

Article 471

(a) A partner who takes or retains a sum of money belonging to the company shall be liable for refunding it and will also be liable for the payment of damages if necessary.

(b) A partner who advances money to the company from his private funds or incurs in good faith useful expenses for the benefit of the company, is entitled to be reimbursed by the company to the extent of the benefit gained by the company from such amount.

Article 472

If the assets of the company do not cover its debts, the partners shall, in the absence of an agreement providing for another division, be liable for these debts from their own property, each in proportion to his share in the losses of the partnership. Any agreement relieving a partner from liability in respect of the partnership's debts is void.

The creditors of the partnership have in all cases a claim against each of the partners to the extent of his share in the profits of the company.

Article 473

In the absence of an agreement to the contrary, the partners are not jointly and severally liable as regards their respective shares in the debts of the company.

If, however, one of the partners becomes insolvent, his share in the debts of the partnership is apportioned amongst all the others in proportion to their respective shares in the losses.

Article 474

Personal creditors of a partner cannot, during the continuance of a company, obtain payment of their claims out of such partner's share in the capital but only out of his share in the profits. Such creditors may, upon liquidation of the company, enforce their rights on their debtor's share in the company's assets after payment of the partnership debts, and may, before the liquidation of the partnership, make a precautionary attachment on his share.

Fourth

Ways of Dissolving a Company

Article 475

A company comes to an end upon the expiration of its term or by the achievement of the object for which it was formed.

If not withstanding the expiration of the term or the achievement of the object for which the company was formed, the partners continue to carry on business of the same nature as that for which the company was formed, the company's deed shall be extended from year to year on the same conditions.

A creditor of a partner may oppose this extension. His opposition will suspend the effect of the extension of the partnership so far as such creditor is concerned.

Article 476

A company comes to an end upon the total loss of its capital or upon its partial loss to such an extent as to render the continuation of the company useless. If one of the partners has undertaken to contribute by way of a definite and specific thing which perishes before it is brought into the company, the company shall be dissolved as regards all the partners.

Article 477

A company is terminated by the death, interdiction, insolvency or bankruptcy of one of the partners.

It may be agreed, however, that in the event of the death of one partner, the company will continue with his heirs, even if they are minors.

It may also be agreed that in case of death, interdiction, insolvency, bankruptcy or retirement of one of the partners in accordance with the provisions of the following article, the partnership will continue between the other partners. In such a case, such partner or his heirs will only be entitled to his share in the assets of the company. This share will be estimated in accordance with its value at the date of the event, which resulted in the partner ceasing to be a partner, and must be paid in cash money. Such partner will share in subsequent rights only to the extent that such rights arise from operations prior to the event, which resulted in his ceasing to be a partner.

Article 478

A company shall come to an end by the retirement of one of the partners when its duration has not been fixed, provided that such partner gives prior notice to his other co-partners of his intention to retire and that his retirement is free of fraudulent intent and not at an unsuitable time.

It shall also come to an end by the unanimous agreement of the partners.

Article 479

The Court may, on the demand of any one of the partners, order the dissolution of a partnership for non-performance by a partner of his obligations, or for any other reason not attributable to the partners. The judge shall decide whether such reason is sufficiently serious to justify the dissolution.

Any agreement to the contrary shall be void.

Article 480

Each partner may apply to the Court for the exclusion of any one of the partners whose presence in the partnership has given rise to objections to the extension of the duration of the partnership, or whose actions might be held to provide good grounds for the dissolution of the partnership, while the partnership continues between the other partners.

A partner may also, if the duration of the partnership is fixed, apply to the Court to authorise his retirement from the partnership if he gives adequate reasons for his application. In such a case, unless the other partners agree to continue the partnership, it will be dissolved.

Fifth

Liquidation and Partition of the Company's Assets

Article 481

The liquidation and partition of the company's assets shall take place in the manner laid down by the company's memorandum of association. When the company's memorandum of association is silent, the following provisions will be applied.

Article 482

The powers of the managers shall cease upon the dissolution of the company, but the juristic entity of the company shall continue, in so far as is necessary, for and up to the end of the liquidation.

Article 483

The liquidation shall be carried out either by all the partners or by one or more liquidators appointed by the majority of the partners, as the case may be.

If the partners do not agree on the appointment of a liquidator, such liquidator will, upon the application of one of the partners, be appointed by the judge.

In case of nullity of the partnership, the Court will appoint a liquidator and will decide upon the method of liquidation upon the application of any interested party.

Until a liquidator is appointed, the managing partners shall be deemed, as far as third parties are concerned, to be the liquidators.

Article 484

A liquidator may not undertake new business on behalf of the company, unless it is necessary for the purpose of completing the old business.

He may sell movables and immovables belonging to the company by auction or by private treaty, unless his powers in this respect have been restricted by the instrument by which he was appointed.

Article 485

The company's assets shall be divided between all the partners after payment of the creditors, deduction of amounts required to cover debts that have not fallen due or are subject to litigation and payment of disbursements or loans that may have been made by one of the partners for the benefit of the company.

Each partner shall take a sum equal to the value of his contribution to the capital of the company, as recorded in the company's memorandum of association, or if not

recorded in the company's memorandum of association, unless he has only contributed his services, the usufruct or the mere use of the thing that he has brought to the company.

The balance, if any, shall be distributed between the partners proportional each partner's share in the profits,

If the company's assets are not sufficient to cover the repayment of the partners' contributions, the loss shall be shared between the partners proportionately to each partner's share in the losses.

Article 486

The rules laid down with reference to the partition of property held in common, shall apply to partitions between the partners.

Chapter Five

Loans

Article 487

A loan is a contract by which the lender undertakes to transfer to the borrower the ownership of a sum of money or other fungible upon condition that the borrower returns a thing equal in amount, kind and quality.

Article 488

(a) The lender shall deliver to the borrower the thing, which is the object of the contract unless it is agreed that its delivery shall take place at another time.

(b) If the thing perishes before its delivery to the borrower, the loss shall fall on the lender.

Article 489

If the borrowed thing becomes due, the provisions relating to gratuitous loan shall be applicable.

Article 490

(a) If a defect appears in the borrowed thing and the borrower elects to keep it, he shall only be under obligation to repay the value of the defective thing.

(b) If the borrower deliberately conceals the defect, he shall be liable for the damage caused by the defect.

Article 491

(a) Lending shall take place free of interest and every condition providing for the contrary shall be null and void without prejudice to the loan agreement itself.

(b) Every benefit required by the lender shall be deemed as interest.

Article 492

(a) The borrower shall repay the valuable consideration when the agreed date falls or upon the lapse of the time limit.

(b) If no fixed date is agreed or if it is agreed that repayment shall take place when repayment is possible, the judge shall fix a suitable date of repayment according to the circumstances.

Article 493

If there is no agreement on a venue for repayment, the repayment shall take place at the borrower's domicile.

Article 494

(a) No consideration shall be given to the change in similar value at the time of repayment.

(b) If the borrowed thing is no longer available in the market, the lender will have the option to either wait until the thing becomes available in the market so that the borrower will be able to return it in a similar kind or to demand the borrower to pay the value of such thing at the time and place of the required return.

Article 495

The borrower shall incur the costs of the loan and repayment unless there is an agreement to the contrary.

Chapter Six Compromise

Article 496

Compromise is a contract by which two parties put an end to a dispute that has arisen between them, or prevent a dispute that is expected to arise by the mutual surrender of part of their respective claims.

First Elements of Compromise

Article 497

In order to effect a compromise, the parties shall have legal capacity to dispose for valuable consideration of the rights, which are the subject of the compromise.

Article 498

A compromise cannot be made on any question touching the personal status of individuals or public order, but a compromise may be made with regard to financial interests arising out of the personal status of individuals or out of an offence.

Article 499

A compromise can only be established by a written document or by an official process-verbal.

Second

Effects of Compromise

Article 500

- (a) Compromise terminates the disputes in respect of which the compromise is made.
- (b) It extinguishes the rights and claims, which either of the parties have finally renounced.

Article 501

- (a) Compromise has a declaratory effect as regards the rights in respect of which the compromise is made. This effect is limited to litigious rights.
- (b) The wording of the renunciation contained in the compromise shall be strictly interpreted.

Article 502

- (a) A compromise shall only create a benefit or damage to the parties thereto even though it involves an indivisible property.

(b) However, joint parties whether creditors or debtors shall be entitled to invoke a compromise made by one of them if they find a benefit therein.

Third
Nullity of Compromise

Article 503

(a) A compromise is indivisible. The nullity of one part of a compromise involves the nullity of the whole contract.

(b) This rule does not apply, however, when it follows, from the wording of the contract or from the circumstances, that the parties agreed that the various parts of the compromise are separate and independent the one of the other.

Article 504

A compromise cannot be impugned on the ground of a mistake in law.

PART II
Contracts Relating to the Use of a Thing

Chapter One
Leases

Section One - Leases Generally

Article 505

A lease is a contract by which the lessor undertakes to enable the lessee to enjoy a specific thing for a certain time in return for a fixed rent.

First
Elements of a Lease

Article 506

In the absence of a provision of the law to the contrary, a person who has only a right of management cannot, without the consent of the competent authority, enter into a lease for a term exceeding three years. If the lease is granted for a longer term, it will be reduced to three years.

Article 507

A lease granted by a usufructuary, unless ratified by the bare owner, ends when the usufruct is extinguished, subject to the delay provided for giving notice of evacuation and the time required to gather and transport the annual crop.

Article 508

Rent may consist either of money or of any other financial consideration.

Article 509

If the parties have not agreed the amount of the rent or the manner in which the rent shall be fixed, or if the amount of the rent cannot be established, it shall be based on the current rent for other similar properties.

Article 510

If the parties do not fix a date for commencement of the lease, the date of the lease agreement shall be the effective date.

Article 511

(a) If a lease agreement is concluded without any agreement as to term, or for an undetermined period, or if the term cannot be established, it shall be deemed to have been made for the term fixed for payment of the rent.

(b) The lease shall expire at the end of the term in question, at the request of one of the parties, subject to notice being given by him to the other by a registered letter for vacating the property before the end of the latter part of the lease term. The notice period shall not be more than three months.

Second: Effects of a Lease

1. Lessor's Obligations

Article 512

The lessor is bound to deliver to the lessee the leased property and its accessories in a condition suitable for the purpose for which it is intended, in accordance with the agreement between the parties or with the nature of the property.

Article 513

(a) If the leased property is delivered to the lessee in such a condition that it is unfit for the use for which it is leased, or if its usefulness is appreciably diminished, the lessee may demand either the cancellation of the lease agreement or a reduction of the rent equivalent to the loss of use; in both cases he is entitled to claim compensation, if compensation is due without prejudice to his right to oblige the lessor to carry out the necessary repairs to enable him to get the intended benefit.

(b) If the leased property is in such a condition that it constitutes a serious threat to the health of the lessee, or those who live with him, or his employees or workmen, the lessee may demand revocation of the lease agreement, even if he has renounced the right to do so beforehand.

Article 514

The rules laid down as regards the obligation of delivery of the thing sold, especially as to time and place of delivery, as to the extent, deficiency or excess thereof unless there is a provision in the law that provides to the contrary.

Article 515

The lessor is bound to maintain the leased property to keep it in a condition allowing making use of the intended benefit. He shall make, during the continuance of the lease, all repairs which may become necessary according to the prevailing practice unless there is agreement to the contrary.

Article 516

(a) If the lessor having been summoned, delays the performance of the repair obligations mentioned in Articles 513 and 515, the lessee may without prejudice to his right to claim revocation of the lease or a reduction of rent, obtain authority of the Court to carry them out by himself without prejudice to his right to seek revocation or reduction of the rent as provided for in the law.

(b) The Court authority shall not be necessary if the repair are of an urgent nature or can be carried out at a modest cost.

Article 517

- (a) The Lessor shall carry out all the urgent repairs that are necessary for the preservation of the leased property even in spite of the lessee's objection, provided that the latter shall be given a reasonable notice of the intention to carry them out.
- (b) If such repairs result in total or partial breach of enjoying the intended benefit, the lessee may demand termination of the lease agreement or reduction of the rent.
- (c) However, if the lessee remains in the leased property until completion of the repairs, his right to demand termination of the agreement shall be forfeited.

Article 518

- (a) If, during the course of the lease, the leased property is totally destroyed for a cause beyond the control of either of the contracting parties, the lease is ipso facto determined.
- (b) If, as a result of a cause not imputable to the lessee, the leased property is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which it was leased, or if such a use is appreciably diminished, the lessee may, if the lessor, does not restore the leased property to its original condition within a reasonable time, claim according to the circumstances either a reduction of the rent or revocation of the lease agreement without prejudice to his right to carry out the repairs by himself and restore the leased property to its original condition in accordance with the provisions of Article 516 unless this is burdensome to the lessor.

Article 519

The lessor shall abstain from doing anything which may disturb the lessee in his enjoyment of the leased property, and shall not make any alterations to the property or to its accessories that diminish such enjoyment.

The lessor not only warrants the lessee against his own acts and against those of his servants but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor.

Article 520

(a) If a third party claims to have rights incompatible with those derived by the lessee from the lease agreement, the lessee shall forthwith give notice to the lessor of such a claim.

(b) If, as a result of such a claim, the lessee is effectively deprived of the enjoyment to which he is entitled in accordance with the lease agreement, he may in accordance with the circumstances, claim revocation of the lease agreement or a reduction of rent together with payment of damages if damages are due.

Article 521

(a) A lessor does not warrant the lessee against trespass by a third party who does not claim a right over the leased property; this shall not, however, affect the right of the lessee to take action in his name against such third party for damages and to take all other possessory actions.

(b) If, however, the trespass is not in any way attributed to the lessee and is sufficiently serious to deprive him of the enjoyment of the leased property, the lessee may, in accordance with the circumstances, claim revocation of the lease or a reduction of the rent.

Article 522

When there are several lessees of the same property, the lessee who, without fraud, first entered into possession will have preference. If a lessee of a leased property has, in good faith, effected transcription of his lease, before another lessee has entered into possession or before the renewal of his lease, such lessee will have preference.

Article 523

If, as a result of an act lawfully done by a public authority, the enjoyment of the property leased is appreciably diminished, the lessee may claim revocation of the lease or a reduction of rent unless the act of the public authority is for a cause for which he is liable.

If the grounds for the act of such public authority are the result of an act attributed to the lessor, the lessee may claim payment of damages.

All the above shall apply unless there is agreement to the contrary.

Article 524

Subject to any agreement to the contrary, the lessor warrants the lessee against all defects which prevent or appreciably diminish enjoyment of the property; but not against those defects that are customarily tolerated, and is responsible for the lack of qualities which he specifically warranted to exist or which are essential to the intended use of the property.

The lessor, however, does not warrant the lessee against defects of which the lessee was informed or of which he was aware at the time of the conclusion of the contract or could be aware thereof had he inspected the property with the care normally exercised by a normal person unless the lessee proves that the lessor has confirmed thereto that the leased property had no such defects or deliberately concealed them as an act of fraud.

Article 525

If the leased property is found to have a defect against which the lessee has been warranted by the lessor, the lessee may, in this case ask for repair of defect at the expense of the lessor where such repair is not excessive thereto without prejudice to the right of the lessee to claim revocation of the lease or reduction of the rent in addition to damages where there are grounds therefor.

Article 526

Any agreement excluding or limiting the warranty against disturbance or defects is void if the lessor has fraudulently hidden the cause of such warranty.

2. Lessee's Obligations:

Article 527

The lessee shall use the leased property in the manner agreed. In the absence of any agreement, he shall use the property in accordance with the purpose for which it is designed subject to compliance with the prevailing practice.

Article 528

The lessee may not, without the permission of the lessor, make any alteration to the leased property unless no damage is thereby occasioned to the lessor.

If the lessee makes alterations to the leased property in excess of the limits prescribed in the preceding paragraph, he may be compelled to reinstate the property to its original condition and to pay compensation if compensation is due.

Article 529

(a) The lessee may install in the leased property, unless the lessor can prove that the installations endanger the safety of the building or diminish the value thereof, airconditioning, water, electrical lighting, gas, telephone, television, radio and other like installations, provided that the manner in which such installations are made is not contrary to general practice.

(b) If the intervention of the lessor is necessary for the completion of any of these installations, the lessee may call upon the lessor to intervene, on condition that he undertakes to pay the expenses incurred by the lessor in this connection.

Article 530

- (a) The lessee shall exercise due care in the use and preservation of the leased property with the care exercised by a reasonable person.
- (b) The lessee shall be responsible for any deterioration of or loss to the leased property during his enjoyment thereof which are not the result of normal use.

Article 531

The lessee shall be responsible for damage to the leased property by fire, unless he can establish that the cause thereof was not imputable to him.

When the property is occupied by several lessees, all such lessees, including the landlord if he lives on the premises, are responsible for the fire, each in proportion to the part he occupies, unless it is proved that the fire started in the part occupied by one of them, in which case that one alone shall be responsible.

Article 532

The lessee shall forthwith notify the lessor of all matters that require his intervention, such as urgent repairs, the discovery of defects, encroachments and disturbances or damage by third parties to the leased property.

Article 533

The lessee shall be bound to carry out the minor repairs required by the normal use of the leased property.

Article 534

- (a) The lessee shall pay the rent at the agreed times and, in the absence of agreement, at times established by custom and usage.
- (b) In the absence of an agreement or local custom to the contrary, the rent will be paid at the domicile of the lessee.

Article 535

The payment of a term's rent establishes in favour of the payee a presumption, subject to proof to the contrary, that former terms have been paid.

Article 536

(a) The lessor has, as warranty for all amounts due to him under the lease agreement, a lien on all the attachable movables kept in the leased property, while they are subject to the lessor's right of privilege, even when they do not belong to the lessee. The lessor has the right to object to their removal and, if they are removed notwithstanding his objections or without his knowledge, to claim their recovery from their possessor even in good faith, subject always to the rights of such possessor thereon.

(b) The lessor shall not exercise his rights of retention or of recovery when the movables have been removed to meet the professional requirements of the lessee or in accordance with customary requirements of daily life, or if the movables remaining on the leased property or already recovered are sufficient fully to cover the rent.

Article 537

The lessee shall be bound, upon the expiration of the lease, to reconstitute the leased property. If he retains it unlawfully, he must pay compensation to the lessor on the basis of the rental value of the property and of the damage suffered by the lessor.

Article 538

1. The lessee shall be bound to reconstitute the leased property in the condition in which it was at the time he took delivery thereof, subject to loss or deterioration due to a cause not attributed to him.

2. If no proces-verbal setting out particulars of the property was drawn up at the time of delivery, the lessee is presumed, subject to proof to the contrary to have received the property in good condition.

Article 539

The costs of restitution of the leased property shall be incurred by the lessee unless the agreement or prevailing custom otherwise provides.

Article 540

(a) If the lessee has erected buildings, planted trees or made other improvements which have increased the value of the property, he shall have the right upon the expiry of the lease to leave them unremoved or to remove them at his expense unless this causes damage to the leased property.

(b) If the lessee fails to remove such improvements, the lessor may claim their removal or may ask for them to be kept at the actual value thereof when removed without prejudice to his right to claim a compensation for the damages caused by such removal if such improvements have been caused if the improvements were made without permission of the lessor.

(c) All the above shall take place unless there is agreement providing to the contrary.

Third

Assignment of Lease and Sub-lease

Article 541

The lessee may not, in the absence of an agreement to the contrary, assign his lease or sublet the whole or any part of the leased property.

Article 542

When, in the case of a lease of a real property in which an industrial or commercial establishment has been created, circumstances have compelled the lessee to sell such industrial or commercial establishment, the Court may decide to maintain the lease in force if the purchaser furnishes adequate security and the lessor suffers no real prejudice thereby.

Article 543

When a lease is assigned, the principal lessee remains guarantor for the performance of all the assignee's rights and obligations arising from the lease agreement.

Article 544

(a) In the case of sub-lease, the relationship between the original lessee and lessor shall be subject to the provisions of the lease agreement concluded between them. As for the relationship between the original lessee and sub-lessee, it shall be subject to the provisions of the sub-lease agreement.

(b) However, a sub-lessee is answerable directly to the lessor for the amounts that he, the sub-lessee, owes to the original lessee as from the time is served on him by registered mail by the lessor. A sub-lessee cannot set up against the lessor payments made by him in advance to the principal lessee, unless they were made before the summons, in accordance with a formal agreement showing the date prior to the time of sub-lease.

Article 545

A lessee ceases to be answerable to the lessor, either as guarantor of the assignee in case of the assignment of the lease agreement, or as regards his obligations arising from the principal lease agreement in the case of a sub-lease if the lessor has expressly or implicitly agreed to the assignment of lease or to the sub-lease. The

lessor's receipt of the rent directly from the assignee or sub-lessee shall be deemed as an implicit acceptance without making any reservations with respect to his rights towards the original lessee.

Fourth

The End of Lease Agreement

Article 546

A lease ends upon the expiry of the agreed term without it being necessary to give notice of evacuation unless there is agreement to extending the lease for a further fixed or unspecified term in case no notice is given for evacuation on a certain date.

Article 547

(a) If, after the lease has expired, the lessee continues to enjoy the leased property to the knowledge of and without objection on the part of the lessor, the lease is deemed to be renewed upon the same conditions but for an indefinite duration. The lease renewed in this manner shall be governed by the provisions of Article 511.

(b) Subject to the rules of registration applicable to real property, the real securities supplied by the lessee in guarantee of the old lease shall be transferred to the new lease. The securities provided by third parties shall not be transferred to the new lease unless the surety consents thereto.

Article 548

(a) When notice of evacuation has been given by one party to the other and the lessee, notwithstanding the notice, continues to enjoy the property after the expiry of the lease, the lease will not, subject to proof to the contrary, be deemed to have been renewed.

(b) However, if the lessor gives notice to the lessee by a registered letter without cover of non-renewal of the lease except for a specific rent or under certain other conditions for which the lessee remains silent, his silence shall be deemed as a renewal of the lease at the rent or conditions notified thereto by the lessor.

Article 549

(a) If title to the leased property is transferred to a special successor, the rent shall not be effective towards him except with his consent unless he proves that he was aware thereof or has an established date prior to the cause that resulted in transfer of title thereto.

(b) However, the person to whom title has been transferred may invoke the lease agreement as though such agreement is not effective towards him.

Article 550

A person acquiring title to the leased property, who is not bound by the lease, can only evict the lessee by giving him notice as provided for in Article 511.

In the absence of an agreement to the contrary, the lessor shall, if notice of eviction is given before the end of the lease, compensate the lessee. The lessee cannot be evicted before he receives compensation either from the lessor or from the new owner paying on behalf of the lessor, or until he has obtained an adequate security for the payment of such compensation.

Article 551

(a) If the lease becomes effective towards a person acquiring title to the property, the latter shall replace the lessor in respect of all rights and obligations created by the lease agreement.

(b) However, the lessee may not set up rent paid in advance against a new owner, if the new owner proves at the time of payment that the lessee knew or should

necessarily have known of the transfer of ownership. Failing proof thereof, the new owner has only a recourse against the lessor.

Article 552

When a lease is made for a fixed period, either of the contracting parties may, if serious and unforeseen circumstances arise of such nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiry, provided he gives notice in accordance with the time limits provided for in Article 511 and pays equitable compensation to the other party.

If it is the lessor who demands termination of the lease, the lessee will not be compelled to hand back the leased property before he has been compensated or obtained adequate guarantee.

Article 553

A lease agreement is not terminated either by the death of the lessor or of the lessee. In the event of the death of the lessee, however, his heirs may claim the termination of the lease if they establish that, as a result of the death of the person whose estate they inherited, the burden of the lease has become too heavy for their resources or that the lease exceeds their needs. In such event, the periods of notice of evacuation laid down in Article 511 shall be observed and the claim for termination of the lease made within one year at the most from the date of the lessee's death.

Article 554

If the lease has been granted to the lessee solely on account of his occupation or of other considerations relating to his person, his heirs or the lessee may, on his death, claim termination of the lease subject to compliance with the evacuation time limits provided for in Article 511.

Article 555

If the lease agreement is entered into to enable the lessee to engage in a certain occupation in the leased premises and then the lessee engages in another occupation not as agreed upon in the lease agreement, the lessor may terminate the lease subject to compliance with the evacuation time limits provided for in Article 511.

Article 556

if the lessee's employment obliges him to change his place of residence, he may claim termination of the lease of his residence, provided that the notice of evacuation provided for in Article 511 shall be complied with. Any agreement to the contrary shall be void.

Section Two

Certain Kinds of Leases

First

Leases of Agricultural Land

Article 557

The provisions of leases shall be applicable to leases of agricultural land subject to compliance with the provisions of the following articles unless there is agreement or custom to the contrary.

Article 558

(a) A lease of agricultural land shall not include cattle and agricultural implements kept therein unless there is a specific provision to this effect in the lease.

(b) When cattle and agricultural implements belonging to the lessor are handed over to the lessee, the lessee is under the obligation to take proper care of them and to maintain them in the manner required for their customary use.

Article 559

An agricultural land shall be exploited in the mutually agreed manner, failing which the lessee shall exploit the land according to the nature thereof and the prevailing agricultural custom. In particular, he shall ensure that it remains fit for production.

Article 560

(a) The lessee is bound to carry out the repairs necessary for the normal enjoyment of the leased land. In is responsible in particular for the normal maintenance duties for the water wells, drains and buildings intended for residential purposes or other kinds of enjoyment.

(b) The repairs vital for ensuring the intended enjoyment of the property shall be the responsibility of the lessor.

(c) All the above shall be effective unless the agreement or custom provides otherwise.

Article 561

If the lease term expires before the crop yields its result for a reason beyond the lessee's control, it will be extended for a similar rent until the harvest thereof.

Article 562

A lessee shall do nothing of a nature to diminish or retard the enjoyment of the land by an incoming lessee. He is bound, in particular, just before vacating the land, to allow the incoming lessee to prepare the land and to sow, if he does not sustain any injury thereby.

Second
Lease of Waqf Property

Article 563

- (a) A Nazir has the right to lease Waqf property.
- (b) A beneficiary, even if he is the sole beneficiary, cannot grant a lease unless the right to do so has been given to him by the constituent of the will or unless he is authorised to do so by a person who has power to grant a lease, whether he be the Nazir or concerned Waqf Council.

Article 564

The Nazir is the entitled to receive the rent, and payment must not be made to the beneficiary with the consent of the Nazir.

Article 565

The Nazir is not entitled to take the Waqf property on lease nor may he lease the said property to his spouse nor to one of his offsprings or bye-laws.

Article 566

- (a) A lease of Waqf property is not valid if the rent is grossly inadequate, unless the lessor is the sole beneficiary with power to administer the Waqf. In such a case, the lease, notwithstanding the gross inadequacy of the rent, will bind the lessor, but will not bind beneficiaries who succeed him.
- (b) If the Nazir leases the Waqf at a grossly inadequate rent, the lessee is bound, under penalty of revocation of the contract, to make up the rent to the rent for similar properties.

Article 567

In cases of lease of Waqf property, the estimation of the current rent for similar properties will be made at the time of the conclusion of the lease agreement; any changes taking place after that date shall not be taken into account.

Article 568

(a) If the maker of the Waqf fixes a lease term, he shall comply with the provisions thereof and the Nazir shall not oppose it unless he is authorised to grant a lease for achieving a better benefit for the Waqf.

(b) If there is no one to take a lease of the Waqf property for the period fixed by the founder of the Waqf or if the lease for more than that period is more beneficial to the Waqf, the Nazir may after seeking the permission of the concerned Waqf Council, grant a lease for a longer period.

Article 569

(a) The Nazir cannot, without the authority of the concerned Waqf Council, lease the Waqf property for a period exceeding three years, even by successive contracts. Any lease entered into for a longer period shall be reduced to three years.

(b) If, however, the Nazir is also either the founder or the sole beneficiary, he may, without it being necessary to obtain the authority of the concerned Waqf Council, lease the Waqf property for more than three years, subject to the right of the Nazir succeeding him to claim the reduction of the period to three years.

Article 570

The lease of a Waqf property shall not be terminated upon the Nazir's death or dismissal.

Article 571

The provisions relating to lease apply to the lease of Waqf property, insofar as they are not incompatible with the preceding provisions.

Chapter Two

Loan For Use

Article 572

A loan for use is a contract by which the lender undertakes to hand over to the borrower without valuable consideration, a non-consumable thing for his use during a specific time or for a specific purpose, which thing the borrower undertakes to retribute after having used it.

First

Effects of Loan for Use

1. Obligations of the Lender

Article 573

The lender is bound to hand over to the borrower the thing lent in a good condition and fit for use and shall leave it with the borrower during the period of the contract.

Article 574

If, during the period of the loan, the borrower is obliged to incur expenses necessary for the preservation of the thing, the lender shall reimburse him for his expenses.

In the case of monies usefully spent, the provisions with regard to expenses incurred by a possessor in bad faith will be applicable.

Article 575

(a) The lender shall not warrant against dispossession of the thing loaned unless there has been an agreement for such warranty or the lender has deliberately concealed the cause of dispossession.

(b) Similarly, the lender does not warrant against hidden defects. If, however, he has deliberately concealed such defects, or has warranted that the thing is free from defects, he is bound to compensate the borrower for any loss he has suffered as a result thereof.

2. Obligations of the Borrower

Article 576

(a) If the thing lent is restricted in its use by a time, place or type of use, the borrower may only use the thing lent at the designated time and place nor shall he act contrary to the permitted use so as to cause damage thereto.

(b) However, if the thing lent is not subject to any restriction, the borrower may use the thing lent at any time and place and for any type of use he wishes, provided that the use shall be according to the nature of the thing or in accordance with custom.

(c) In both cases, the borrower is not responsible for changes to, damage or deterioration of the thing lent resulting from its use in accordance with the lending contract.

Article 577

A borrower may not lease the thing lent nor shall he lend it to another person except with the permission of the lender.

Article 578

The borrower shall incur the costs of the normal use and maintenance of the thing lent as well as the costs of its delivery and return.

The borrower may remove any additions that he has made to the thing lent, provided that he reinstates the thing in its original condition.

Article 579

The borrower is bound to take such care for the preservation of the thing as he would take for the preservation of his own property; provided that the care he takes is not less than that which a reasonable person would take.

The borrower is, in any event, responsible for the loss of the thing lent arising from a fortuitous event or force majeure if it was possible for him to avoid such loss by using his own property, or if he could only preserve his own property or the thing lent and he preferred to preserve his own property.

Article 580

The borrower must, at the end of the loan, restitute the thing received in its state at that time, without prejudice to his responsibility for loss or deterioration.

In the absence of an agreement to the contrary, the borrower must restitute the thing at the place that he received it.

Second

Termination of the Loan for Use

Article 581

(a) The loan for use comes to an end upon the expiration of the term agreed and, in default of such a term being fixed, when the thing has served the purpose for which it was lent.

(b) If there is no way by which the term of the loan for use can be fixed, the lender may demand its termination at any time.

(c) The borrower may, in all cases, restitute the thing lent before the end of the loan. If, however, such restitution is detrimental to the lender, he cannot be compelled to accept the thing.

First

Leases of Agricultural Land

Article 582

The lender may request putting an end to a loan for use at any time if he has suddenly an urgent and unforeseen need of the thing; or if the borrower uses the thing improperly or neglects to take the necessary precautions for its preservation.

Article 583

In the absence of an agreement to the contrary, a loan for use ends with the death of the borrower.

PART III

CONTRACTS FOR HIRE OF SERVICES

Chapter One
Contracts for Work

Section I
General Rules of Contracts for Work

Article 584

By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service in consideration of remuneration which the other party undertakes to pay without being affiliated thereto or acting as a deputy thereof.

First
Providing Materials of Work

Article 585

- (a) the contractor may undertake to supply his work only and the employer must be responsible for the supply of materials, which the contractor uses in the performance of his work.
- (b) The contractor may also undertake to supply all or some of the materials as well as his work.

Article 586

- (a) When the contractor undertakes to supply the whole or part of the materials to be used in the work, he shall ensure that such materials conform with the agreed specifications, but if such specifications are not included in the contract, such materials shall fulfill the intended purpose.

(b) The contractor shall guarantee the inherent defects in such materials that cannot be revealed upon handing over the work in accordance with the provisions of defect warranty for sold items.

Article 587

(a) Where the materials are supplied by the employer, the contractor is bound to care for their preservation in the manner expected from an ordinary person, to use them with technical skill, to account to the employer for their use in the work and to return to him any such materials that remain.

(b) If all or part of the materials becomes unfit for use owing to the contractor's negligence or lack of professional skill, the contractor is bound to refund to the employer the value thereof together with payment of a compensation if necessary.

Article 588

(a) If, in the course of execution, it is established that there are defects in the materials supplied by the employers or if there are other factors that are conducive to delaying the execution of the work in convenient conditions, the contractor shall give an immediate notice to the employer to this effect.

(b) If he fails to give the required notice, he shall be liable for all the results arising from his negligence.

Second

Contractor's Obligations

Article 589

(a) The contractor shall perform the work according to the conditions set forth in the contract agreement and for the agreed period of time. If there are no such conditions

or if there is no agreement on the period of completion, he shall perform the work according to the recognised practices and within the reasonable period required by the nature of the work subject always to the prevailing professional practices.

(b) He shall bring at his expense all the items required for completion of the work including labour, materials and supplies unless the agreement or professional practices otherwise require.

Article 590

(a) If, in the course of execution, it is established that the contractor is performing the work in a manner that is defective or contrary to the agreement, the employer may formally give him notice by registered mail to alter, within a reasonable period fixed by him, the manner in which he is performing the work. If after the expiration of such a period the contractor fails to adopt the proper manner of working, the employer may either demand revocation of the contract or the hand-over of the works to another contractor at the cost of the first contractor if the nature of the work so requires.

(b) Immediate revocation of the contract may be demanded without it being necessary to grant any delay, when rectification of the defective manner of performance is impossible.

(c) In all cases, a judge may reject the demand for revocation if the defect in execution or violation of the contract is not likely to undermine to a great extent the value of the work or its fitness for the intended use without prejudice to the right to compensation if there are grounds therefor.

Article 591

If the contractor delays in proceeding with the execution of the work or completion thereof so as to render impossible to properly execute it as required within the agreed period of time or if he pursues an avenue indicating his intention not to perform his

obligation or does any act that is likely to make impossible the performance of such obligation, the employer may request the revocation of the contract without waiting for the date of actual hand-over.

Article 592

If an item is destroyed or damaged because of a sudden accident or force majeure before its hand over to the employer, the contractor shall not demand the agreed consideration nor the refund of the costs thereof unless the employers commits at the time of destruction or damage a breach of his obligation to be handed over the work.

Article 593

(a) If the materials are supplied by the employer and the item or property is destroyed or damaged because of a sudden accident or force majeure, he shall not be entitled to demand the contractor to pay the value thereof unless the contractor has committed at the time of destruction or damage a breach of his obligation to hand over the work and has not proved that the item could have been damaged if he has effected the hand over without breach of his obligation.

(b) The work materials shall be deemed to have been supplied by the employer if he has paid to the contractor the value thereof or made a payment on account covering such value.

Third

Obligations of the Employers

Article 594

(a) Where the execution of the work requires the employer to do a certain act but he fails to do it at the appropriate time, the contractor may instruct him to do it within a reasonable time limit which he shall prescribe.

(b) If the time limit expires without the employer's performance of his obligation, the contractor may request termination of the contract without prejudice to his right to compensation if there are grounds therefor.

Article 595

When the contractor completes the works and places them at the employer's disposal, the employer shall, as soon as possible, take delivery in accordance with prevailing custom. When the employer, in spite of being formally summoned, fails without reasonable cause, to take delivery of the works, the works will be deemed to have been delivered to him.

Article 596

(a) Subject to the provision of Article 614, an employer may refuse to take delivery if the defective in the works or violation of the mutually agreed conditions exceed such an extent that they would not serve the intended purpose.

(b) If the defect or violation are not of such seriousness, the employer shall only be empowered to reduce the consideration in proportion to the significance of the defect or shall oblige the contractor to rectify the defect within a reasonable time limit to be fixed by him if such rectification is feasible and does not involve exorbitant costs.

(c) In all cases, the contractor may carry out such rectification within a reasonable period of time, if this is possible and does not cause substantial damages to the employer.

Article 597

An employer shall not invoke the rights set forth in the preceding Article where he is responsible for causing the defect whether this is by issuing orders contrary to the contractor's view or in any other manner.

Article 598

(a) Subject to Article 615, if the works have been delivered, the contractor's liability shall rise above the apparent defects in such works or violation of the terms of the contract.

(b) If the defects or violations are latent and are discovered by the employer after taking delivery, he shall give notice thereof to the contractor, otherwise he shall be deemed to have accepted the works.

If notice is given to the contractor, the provisions of Article 596 shall be applicable.

Article 599

In the absence of a custom or an agreement to the contrary, the price is payable upon the contractor's delivery of the works.

Article 600

(a) When the works consist of several parts or if the consideration is fixed on a unit price basis, the contractor may be paid for the amount of work actually completed after the inspection and acceptance thereof, provided that the completed part shall be a substantial part or adequately significant part of the entire works unless otherwise agreed upon.

(b) Upon payment of the consideration, it shall be presumed that the completed part has been inspected and accepted unless he proves that the payment is made on account of or if the custom otherwise provides.

Article 601

When the price has not been fixed in advance, it must be calculated according to the value of the work and the expenses of the contractor.

Article 602

Without prejudice to the provisions of Article 130, an increase or reduction of the costs of the works shall not have any effect on the obligations arising from the contract.

Fourth

Assignment of Contract and Sub-contracts:

Article 603

- (a) Neither party to the contract shall assign the contract without the approval of the other party unless there is a condition in the contract that provides otherwise.
- (b) If an assignment takes place, the assignee shall replace the assignor in respect of his rights and obligations.
- (c) An assignment shall not be effective towards third parties unless it is notified to the other contracting party or if his approval of the assignment is of a certain date.

Article 604

- (a) A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract or unless the nature of the work presupposes reliance on his personal skill.
- (b) In such case, the sub-contract shall not affect the contractor's original obligations towards the employer and shall be answerable towards him for the sub-contract works.

Article 605

(a) A sub-contractor and workmen working for a contractor in the execution of a contract have a direct right of action against the employer but only to the extent of such sums as are due by the employer to the main contractor on the date that action is commenced.

(b) Workmen of a sub-contractor likewise have the same right of action against the main contractor and the employer to the extent of the claims in question.

Article 606

The rights of a sub-contractor and workmen provided for in the preceding Article have priority over those of a person to whom the main contractor has assigned sums due to him by the employer. In case of plurality, they shall recover their rights in proportion to the debt owed to each of them.

Fifth

Termination of a Contract for Work

Article 607

If the contract requires that the contractor undertakes the maintenance of a certain item or to carry out such renewable duties during a fixed period of time, the contract shall be terminated upon the expiry of such period.

Article 608

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes impossible for any reason beyond the control of either party. Then, the contractor shall have the right to claim against the employer any amounts incurred by him or the wages owed thereto to the extent of the benefit gained by the employer.

Article 609

- (a) A contract for work is dissolved by the death of the contractor if his personal skill was taken into account when the contract was concluded.
- (b) If the contractor's personal skill or his capabilities were not taken into account when he dies, the contract is not ipso facto dissolved but the employer may terminate it if the heirs of the contractors do not offer sufficient guarantees for the due performance of the work.

Article 610

- (a) When the contract is dissolved by the death of the contractor, the employer is bound to pay to the contractor's estate the value of the remaining materials at the work site upon the contractor's death if they are suitable for use upon completion of the works.
- (b) The employer may, on the other hand, demand delivery, against payment of a fair price, of the materials prepared and plans whose execution has been commenced.
- (c) These provisions shall also apply when the contractor who has commenced the work becomes unable to complete it owing to a cause beyond his control.

Article 611

- (a) An employer may terminate the contract and stop the work at any time before the completion of the works, provided that he compensates the contractor for all expenses he has incurred, for the work that he has done and the profit that he would have made if he had completed the work.
- (b) The Court may, however, reduce the compensation due to the contractor for loss of profit if the circumstances justify such reduction.

Section Two

Provisions Relating to Building and Construction Contracts

Article 612

(a) When a contract is concluded in accordance with an estimate drawn up on a unit price basis and it becomes apparent, during the course of the work, that it will be necessary, in order to complete the works, to considerably exceed the estimated price, the contractor is bound to notify the employer thereof forthwith and to inform him of the anticipated increase in price; if he fails to do so he forfeits his right to recover the expenses incurred in excess of the estimate.

(b) In this case, the employer may rescind the contract and stop the work, provided that he does so without delay and pays the contractor for the cost of work done by him, estimated in accordance with the terms of the contract, without being liable to compensate the contractor for the profit he would have realised if he had completed the works.

Article 613

When a contract is concluded on a lump sum basis according to a plan agreed with the employer, the contractor has no claim to an increase of price, even if modifications and additions are made to the plan, unless such modifications or additions are due to the fault of the employer or have been authorised by the employer.

Article 614

If a building or installation is erected on land owned by the employer and if such building is seriously defective to the extent provided for in Article 596 (1) and the removal thereof will result in considerable damages, the employer shall only be entitled to demand reduction of the consideration or obliging the contractor to repair

the works according to the second paragraph of the aforesaid Article without prejudice to his right to a compensation, if necessary.

Article 615

(a) The architect and contractor are jointly and severally responsible for the total or partial demolition of constructions or other permanent works erected by them for a period of five years from the date of completing the building or construction subject always to the following articles.

(b) However, if it is proved that the intent of the contracting parties that the buildings or constructions shall last for less than five years, the warranty shall be for the period during which they are intended to last.

(c) The warranty shall extend to the collapse of buildings even though it arises from a defect in the land or if the employer has authorised the erection of the defective buildings or constructions. It shall also extend to the defects in buildings and constructions which endanger the strength and safety of the works.

Article 616

(a) If the architect's work is limited to producing the design of the building or construction or a part thereof, he shall be responsible for the defects attributed to the design prepared by him but not for the defects due to the execution method.

(b) If the employer entrusts him with supervising the execution or a part thereof, he shall also be responsible for the defects attributed to the method of execution the supervision of which is entrusted to him.

Article 617

(a) The contractor shall only be responsible for the defects in execution but not for the defects in design unless such defects are obvious.

(b) However, the contractor shall be liable for the defects due to the design if the architect who prepared the design is an employee thereof.

Article 618

If the architect and contractor are responsible for defects in the work, they shall be jointly liable.

Article 619

Actions on the warranties against the architect or contractor shall not be heard three years after the date of the destruction of the works or the discovery of the defect.

Article 620

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void.

Chapter Two

Contracts of Service

Article 621

A contract of service is one whereby one of the contracting parties undertakes to work in the service and under the supervision or control of the other contracting party in consideration of a remuneration which such other party undertakes to pay.

The provisions contained in this Chapter apply only to the service contracts and relationships to which the Labour Law does not apply or where there is no relevant provision therein to the extent that does not conflict with its provisions.

Meanwhile, these provisions shall not apply to civil servants and employees of public organisations and institutions.

First
Elements of a Service Contract

Article 622

In the absence of provisions to the contrary in law or in administrative regulations, a contract of service is not required to be in any special form.

Article 623

A contract of service may be concluded either for a specific service or for a fixed period; it may also be entered into for an indefinite duration.

If a contract of service is entered into for the lifetime of the worker or the employer or for a period longer than five years, the worker, after the expiration of five years, may terminate the contract without being liable to pay compensation, provided that he gives six months prior notice to the employer.

Article 624

When a contract of service is entered into for a fixed period, it, ipso facto, comes to an end at the expiration of the term.

If the parties continue to carry out the contract after the expiration of the term, the contract will be deemed to have been renewed for an indefinite duration.

Article 625

When a contract is entered into for the performance of a specific work, it comes to an end when the agreed work has been completed.

When the work is, by its nature, capable of being renewed and the contract is continued after the completion of the work agreed, the contract will be deemed to have been implicitly renewed for the period necessary for the execution of the same work a second time.

Article 626

The performance of services is presumed to be made for remuneration, if it is not customary for such services to be performed gratuitously or if such services come within the scope of the profession of the person who performs them.

Article 627

When a contract of services does not specify the salary payable, the salary will be fixed in accordance with the rates, if any, applicable to work of a similar nature according to the professional practice and custom followed by the place where the service is performed. If no custom and practice exist, the judge will fix the salary in accordance with equity.

The same rules will apply to determine the nature and extent of the work to be performed by the employee.

Second

Provisions of a Service Contract

Obligations of the Worker

Article 628

The worker must:

- (a) himself perform the work and in so doing exercise the care of a reasonable person.
- (b) obey the orders of the employer relating to the performance of the agreed work and coming within the duties of the worker, if such orders are not contrary to the contract, to law or to morality, and if obedience thereto does not entail danger.
- (c) preserve with care things entrusted to him for the performance of his work.

(d) safeguard the industrial or commercial secrets of the work, even after the end of the contract.

Article 629

When the work entrusted to the worker enables him to know the clients of the employer or to learn the secrets of his business, the parties may agree that the worker will not be entitled, after the termination of the contract, to compete with the employer or participate in a competitive venture.

In order, however, that any such agreement be valid, it is necessary:-

(a) that the worker has attained his majority at the time the contract is entered into.

(b) that the restriction be limited as to time, place and kind of work to the extent necessary for the protection of the legitimate interests of the employer.

The employer cannot avail himself of such an agreement if he revokes the contract or refuses to renew it, without the worker giving him adequate grounds for such action; nor can the employer avail himself of such agreement if he himself has given the worker adequate grounds to revoke the contract.

Article 630

When the contract contains a penalty clause applicable in the event of the breach of a condition in restraint of competition, and such a clause is so onerous as to be tantamount to pressure on the worker to compel him to remain in the service of the employer for a longer time than that agreed, both the penalty clause and the condition in restraint of competition will be void.

Article 631

When a worker discovers a new invention while in the service of the employer, the employer will have no rights in respect of the invention, even if the worker has

discovered the invention by reason of the work performed in the service of the employer.

An invention discovered by a worker in the course of his work belongs, however, to the employer, if the nature of the work that the worker has undertaken to carry on requires him to give his time to invention or if the employer has expressly stipulated in the contract that he will have the right to inventions discovered by the worker.

If the invention is of a significant economic importance, the worker may, in cases falling within the preceding paragraph, demand a special remuneration to be fixed in accordance with the principles of equity, taking into account in the assessment of such remuneration the extent of help given by the employer and the use the worker has made of the employer's installations for the purpose of the invention.

2. Obligations of the Employer

Article 632

The employer must pay the worker his salary at the time and place agreed upon in the contract or established by custom and usage, subject to the provisions in this connection contained in special laws.

Article 633

When a contract provides that the worker will be entitled, in addition to or in lieu of the agreed salary, to a share of the employer's profits or to a percentage of the gross receipts or of the amount of the production or of the value of the savings effected, or to other remuneration of a like nature, the employer is bound to render to the worker, after each balance sheet, an account of the amount payable to him in this respect.

The employer shall, in addition, supply the worker, or a trustworthy person to verify the accuracy of such account and allow him to have access to his books for this purpose.

Article 634

When a worker comes to perform a day's work as stipulated in his contract of service, or declares his readiness to perform a day's work and is only prevented from so doing by a cause attributable to the employer, he is entitled to his salary for the day.

Third

Termination of Contracts of Service

Article 635

Without prejudice to the provisions of Articles 623 and 624, a contract of service ends upon the expiration of the term fixed or upon the completion of the work in respect of which the contract was entered into. When the duration of the contract is not fixed either by the agreement or by the nature of the work or by its object, each of the contracting parties may terminate his relationship with the other party; the exercise of this right must be preceded by a thirty-day notice to be given by a registered letter with a note of delivery before leaving the work or termination of the contract.

Article 636

When a contract entered into for an indefinite period is terminated by one of the parties without observing the delay required for notice or before the end of such time limit, he is bound to compensate the other party for the whole period of the notice or for the portion thereof still to run. Subject to the provisions of special laws on the

subject, such compensation will include, in addition to the fixed salary due for this period, all additional remuneration, provided the amount of such remuneration is fixed and defined.

When the contract is terminated vexatiously by one of the contracting parties, the other party may, in addition to the compensation due owing to failure to observe the time limit required for notice, claim for the damage resulting from the unjustified termination of the contract.

Article 637

Compensation on dismissal may be granted, even though the employer has not himself dismissed the worker, if the employer, by his own actions and especially by vexatious treatment or by a breach of the conditions of the contract, has obliged the worker to appear to have terminated the contract himself.

The transfer of a worker, without fault on his part, to a less profitable or less suitable post than that which he is occupying, is not deemed to be an indirect vexatious act if such transfer is necessary in the interests of the work. The transfer will, however, be deemed a vexatious act if it is made with the object of injuring the worker.

Article 638

A contract of service is not dissolved by the death of the employer, unless the personality of the employer was a factor taken into consideration in concluding the contract. The contract, however, is dissolved by the death of the worker or prolonged illness of the worker or of any other cause constituting a force majeure which prevents the worker from continuing his work.

Article 639

Actions arising out of a contract of service are prescribed after one year from the date of the termination of the contract; but in the case of actions arising out of profit-

sharing and percentage of gross receipts, the period of prescription only begins from the time when the employer hands to the worker a statement of what is due to him according to the last balance sheet.

Actions in connection with the disclosure of trade secrets or the enforcement of conditions of the contract as to the protection of such secrets are not subject to the special limitation provided for in the preceding paragraph.

Chapter Three

Mandate

Article 640

A mandate is a contract whereby a mandatary binds himself to perform a legal act on behalf of a mandator.

First

The Elements of Mandate

Article 641

For a mandate to be valid, a mandator must be legally qualified to perform the act in respect of which he gives a mandate to a third party.

Article 642

In the absence of any provision of the law to the contrary, a mandate must be executed in the same form as that required for the execution of the legal act in respect of which the mandate is given.

Article 643

(a) A mandate given in general terms, which does not specify the nature of the legal act in respect of which it is given, only confers on the mandatary the power to perform acts of management.

(b) Granting of leases of not more than three years duration, acts of preservation and of maintenance, the recovery of rights and discharge of debts, are deemed acts of management. All acts of disposition necessary for management, as the sale of crops, goods or movables, and the purchase of things necessary for the preservation and exploitation of the thing constituting the object of the mandate are deemed to be acts of management.

Article 644

(a) A special mandate, in respect of any act which is not an act of management, is required, and in particular for a sale, a mortgage, an admission, an arbitration, the tendering of an oath and representation before the Courts.

(b) A special mandate to carry out a certain category of legal acts is valid, save as regards gratuitous acts, even though the object of such acts is not specified.

Article 645

A special mandate only confers on the mandatary a power to act in matters specified therein and in matters necessarily incidental thereto in accordance with the nature of each matter and prevailing custom as well as the intended will of the contracting parties.

Second

Effects of a Mandate

1. Mandatary's Obligations

Article 646

(a) The mandatary is bound to perform the mandate without exceeding the limits fixed therein.

(b) He may, however, exceed these limits if he finds himself unable to notify the mandator thereof beforehand and if the circumstances are such that it can be assumed that the mandator could not have failed to approve the act. In such a case, the mandatary is bound to inform the mandator immediately that he has exceeded the limits of the mandate.

Article 647

(a) If the mandate is gratuitous, the mandatary must exercise in its performance the degree of care that he gives to his own affairs, without, however, being bound to exercise more diligence than that shown by a normal person.

(b) If the mandate is given for remuneration, the mandatary must always exercise in its performance the diligence of a normal person.

Article 648

A mandatary shall give to his mandator all necessary information in connection with the execution of his mandate and render him an account thereof unless the nature of the transaction or circumstances otherwise require.

Article 649

The mandatary may not use the property of the mandator for his own benefit without permission, otherwise he shall be liable to pay the mandator a fair compensation to be determined by the judge taking into account the circumstances of the case.

Article 650

(a) When several mandataries are appointed by a separate contract, each of them shall be empowered to act unless the mandator requires him to act jointly with the others.

(b) When they are appointed by the same contract without one of them being authorised to act on his own, they must act jointly except in cases where an exchange of views is not essential.

Article 651

(a) When several mandataries are appointed, they are jointly and severally liable if the mandate is indivisible or if the damage sustained by the mandator is the result of their common fault.

(b) Mandataries, however, even if joint and several, are not responsible for the acts done by one of their co-mandataries in excess of the limits of the mandate or by a wrongful use of the mandate.

Article 652

(a) A mandatary shall not be empowered to appoint a substitute for execution of the mandate unless he is authorised in this respect by the mandator or is permitted by law in this connection.

(b) If the mandator authorises the mandatary to nominate a substitute to perform his mandate without naming his person, the mandatary shall only be responsible for the act of nominating the substitute or for his fault in respect of the instructions given thereto. In such case, the mandator and the mandatary's substitute have a direct right of action against each other.

2. Mandator's Obligations

Article 653

- (a) A mandate is deemed to be gratuitous in the absence of agreement which may be express or result by implication from the position of the mandatary.
- (b) If the remuneration is agreed, it is still subject to the assessment of the judge unless it has been voluntarily paid after the performance of the mandate.

Article 654

- (a) Whatever result the mandatary may have achieved in the performance of the mandate, the mandator must repay to the mandatary any expenses incurred by him for the normal performance of the mandate.
- (b) The mandator must provide the mandatary with the necessary sums for spending on the execution of the mandate unless they agree otherwise.

Article 655

The mandator is responsible for injury sustained by the mandatary, without fault on his part, in the normal performance of the mandate.

Article 656

When several persons appoint a sole mandatary for a common purpose, they are, in the absence of agreement to the contrary, jointly and severally liable to the mandatary as regards the consequence of the performance of the mandate.

Article 657

Article 61 to 67 with regard to representation shall apply to the relationship of a mandator with third parties dealing with the mandatary.

Third
End of a Mandate

Article 658

The mandate comes to an end by the completion of the work, impossibility of execution thereof or by the expiration of the period for which it was given and by the death of the mandator or of the mandatary or by the disqualification of either.

Article 659

(a) The mandator may, at any time and notwithstanding any agreement to the contrary, remove the mandatary or restrict the mandate.

(b) When, however, the mandator has been given in the interests of a mandatary or of a third party, the mandator is not entitled to revoke or restrict the mandate without the consent of the person in whose interest the mandate was granted.

(c) In any case, the mandator shall indemnify the mandatary for any damage suffered by the latter as a result of his removal at an inopportune time or without a justifiable excuse.

Article 660

(a) The mandatary may, at any time and notwithstanding an agreement to the contrary, renounce his mandate even though there is agreement to the contrary. In this case, the mandatary must indemnify the mandator for the damage resulting from the renunciation at an inopportune time or without an acceptable excuse.

(b) However, the mandatary shall not have the right to renounce a mandate given in the interests of a third party, unless there are serious reasons justifying such renunciation and unless he notifies the third party and gives him enough time to take such action as may be necessary to safeguard his interests.

Article 661

(a) If the mandate is terminated before completing the work subject to mandate, the mandatory shall bring the work commenced to a stage where there is no fear of causing damage to the mandator.

(b) When the mandate is extinguished by the death of the mandatory, his heirs, if they have the necessary legal capacity and knowledge of the mandate, are bound to inform the mandator immediately of the death of the mandatory and to take such steps as circumstances demand in the mandator's interests.

Chapter IV

Deposit

Article 662

Deposit is a contract whereby one person agrees to take delivery from another person of a thing which he undertakes to keep in safe custody and return in kind.

First

Obligations of the Depository

Article 663

The depository is bound to take delivery of the thing deposited. He is not entitled to make use of the thing deposited without the express or implied authority of the depositor.

Article 664

(a) When the deposit is gratuitous, the depository is bound to exercise, in the custody of the thing, the care which he employs in his own affairs, without, however, being bound to exercise a degree of diligence exceeding that of a normal person.

(b) When the deposit is for remuneration, the depository must exercise in the custody of the thing deposited the diligence of a normal person. .

(c) All the above shall take place unless there is agreement to the contrary.

Article 665

The depository may not, without the express authority of the depositor, appoint a substitute to take over the custody of the thing deposited, unless he is compelled to do so by reason of urgent and absolute necessity.

Article 666

The depository is bound to return the thing deposited as soon as he is required so to do by the depositor. If it appears from the contract that the time limit has been fixed in the interest of the depository, he shall be entitled to remuneration for the remaining term in addition to a compensation if there is ground therefor.

The depository may, at any time, compel the depositor to take back the thing deposited, unless it follows from the contract that the term of the deposit was fixed in the interests of the depositor.

Article 667

(a) The depository is bound to return to the depositor the thing deposited as soon as the deposit contract is terminated together with the yields thereof.

(b) The deposit shall be returned at the place where it should have been kept and the costs of such return shall be incurred by the depositor.

(c) All the above shall take effect unless there is agreement to the contrary.

Article 668

(a) When the heir of a depository sells the thing deposited in good faith, he is only liable to refund to the owner the price which he has received or to assign to the owner his rights against the purchaser.

(b) If the disposal was gratuitous, he is liable to pay the value of the thing deposited at the time of disposal.

Second

Obligations of the Depositor

Article 669

A deposit is deemed to be gratuitous. When, however, remuneration is stipulated, the depositor, in the absence of agreement to the contrary, is bound to pay such remuneration at the time the deposit ends unless there is agreement or custom to the contrary.

Article 670

The depositor must repay the depository any expenses incurred for the preservation of the thing deposited and indemnify him against any loss he may incur as a result of the deposit.

Third

End of the Deposit

Article 671

A deposit contract shall end upon the expiry of the agreed term. If the term is not agreed explicitly or implicitly, either of the contracting parties may terminate the deposit after giving a reasonable notice to the other party.

Article 672

If the deposit is gratuitous and the depository is unable to continue keeping the deposit for reasons of emergency, he may request ending the deposit before the agreed time limit, provided that he shall give notice to the depositor to take delivery of the deposit at an appropriate time.

Article 673

The deposit shall end upon the death of the depository unless otherwise agreed upon.

Fourth

Certain kinds of deposits

Article 674

When the object of the deposit is a sum of money or another thing of a consumable nature and the depository has been authorised to make use of it, the contract is deemed to be a loan contract.

Article 675

(a) Operators of hotels or other similar establishments are responsible, in the performance of their obligation to keep safely the effects brought in by guests, for the acts of casual frequenters of their establishments.

(b) They are, however, liable, as regards sums of money, securities and articles of value, only up to a limit of BD2,000, unless they have caused the damage by their gross negligence or by one of their employees while being aware of their value, or unless they have undertaken to keep them in custody or refused, without just cause, to take them in their charge.

Article 676

(a) A guest must, as soon as he has knowledge of the theft, loss of, or damage to the thing, inform the operator of the hotel. Where reporting the loss is delayed without reasonable cause, the hotel's operator or similar officer shall not be liable if he proved that had he been given notice at the appropriate time, the damage could have been avoided.

(b) A guest's right of action against the hotel operator is prescribed after six months from the date of his leaving the hotel or similar establishment.

Article 677

Every condition exempting the hotel operator or similar officer from liability or diminishing it shall be null and void.

Chapter Five

Judicial custody

Article 678

Judicial custody is a contract whereby the parties entrust to a third party trustee a property which is the subject of litigation and where it is feared to be threatened by the person holding it and where such third party undertakes to safeguard, manage and return to the person whose right thereto be established.

Further, such custody may be agreed upon and the Court may order it.

Article 679

The appointment of a receiver must be made with the unanimous consent of all the interested parties. Failing such consent, the receiver will be appointed by the Judge.

Article 680

Judicial custody shall be subject to the provisions of deposit and mandate to the extent where they do not conflict with the provisions of the following Articles unless the agreement or Judge's verdict determines the receiver's rights and obligations in a different manner.

Article 681

- (a) A receiver is bound to ensure the preservation and administration of the property entrusted to him with the diligence of a normal person.
- (b) A receiver may not appoint one of the interested parties in his place to carry out all or part of his duties, without the consent of the other parties.

Article 682

Apart from administrative duties, a receiver must not act without the consent of all interested parties or authority of the Court.

Article 683

- (a) A receiver must keep regular books of accounts.
- (b) He is bound to render to the interested parties, at least once in every year, an account of the receipts and expenditure with supporting documents. If the receiver is appointed by the Court, he must also deposit a copy of his account at the said Court.

Article 684

- (a) A receiver may be remunerated unless he has renounced all remuneration.
- (b) He may be reimbursed for the expenses incurred towards the preservation and management of the property entrusted to him.

Article 685

(a) Custody shall come to an end either by agreement of all the interested parties or by a decision of the Court. It shall also end upon the expiry of its term if it is for a definite term.

(b) The receiver must then forthwith reconstitute the property entrusted to him to the person chosen by the interested parties or designated by the Judge.

Part Four
Insurance and Surety

Chapter One
Insurance

Article 686

(a) Insurance is a contract whereby the insured undertakes to pay to the insured or the beneficiary a sum of money or a salary or any other financial consideration in case of the occurrence of an accident or realisation of the risk indicated in the contract. Such contract shall be made against payment of a cash consideration by the insured to the insurer.

(b) The consideration for insurance may be in the form of premiums or by a single payment.

Article 687

(a) An insured means the person who undertakes to perform the counter obligations to those of the insurer. The beneficiary means the person or persons to whom the insurer pays what it has committed to pay in case of the occurrence of the accident or realisation of the risk indicated in the contract.

(b) The insured shall be considered as the beneficiary unless another beneficiary is specified in the contract.

Article 688

The provisions relating to the insurance contract that are not dealt with in this Law shall be regulated by special laws.

First

Concluding the Insurance Contract

Article 689

(a) If the insurance contract is concluded without authority from the insured, the contract shall be to his benefit if it is approved by him even after the realisation of the insured risk.

(b) If the risk is realised and the insured has not approved the contract during three years from the realisation of the risk, the premiums paid shall belong exclusively to the insurer.

Article 690

An insurance against damages shall become null and void unless it is based upon a legitimate economic interest.

Article 691

An insurance shall be invalid if it is found that the insured risk no longer exists or if it was realised before concluding the contract.

Article 692

In all cases where the insurer re-insures with third parties the insured risks, the insurer shall remain solely liable towards the insured or the beneficiary.

Article 693

(a) The insurance application shall not be solely binding upon the insurer nor the insured and the contract shall not be concluded unless the insurer signs the insurance policy. If the contract is concluded, the insurance application and its contents of particulars and declarations shall be deemed as an integral part of the contract.

(b) Meanwhile, the contract shall be entered into even before signing the policy if the insurer delivers in response to the insured's request a temporary cover note containing the basic conditions and requirements of this contract.

(c) However, if the insured produces a receipt confirming payment of a part of the insurance premium, he shall be empowered by all means of proof that the contract has been concluded even though he has not received a temporary cover note.

Article 694

If the conditions indicated in the policy do not conform with what has been agreed upon, the insured shall have the right to ask for correcting such conditions within thirty days from the date of receiving the policy, failing which he shall be deemed to have accepted the conditions stated therein.

Article 695

(a) Without prejudice to the provisions relating to life insurance, the insurance policy may be in the form of a policy in favour of a particular person or policy to order or policy to the bearer. If it is a policy to order, it shall be transferred by endorsement even though in blank.

(b) The insurer may invoke against the policyholder or the person who holds it with all the pleas that he may invoke against the insured.

Article 696

The conditions relating to invalidity, forfeiture or arbitration may not be invoked against the insured unless they are prominently highlighted by printing them in block letters or by a big print.

Article 697

The condition stipulating the forfeiture of the insured's right by reason of delaying the reporting of the accident by the insured to the authorities or in the submission of the document where it is proved by the circumstances that the delay is attributed to an acceptable excuse.

Article 698

Any of the following conditions included in the policy shall be deemed null and void:

- (a) The condition which excludes from the scope of insurance the business activities that contravene the laws and regulations unless the exclusion is specific.
- (b) Every arbitrary condition that is found that its breach has had no effect upon the realisation of the insured risk.

Article 699

The term of insurance shall be clearly written in the policy.

Article 700

- (a) The term of insurance shall commence from the first day following the conclusion of the contract and shall expire at the end of the last day thereof.
- (b) If it is agreed that the effectiveness of insurance shall commence on a certain day, it shall come into effect from the beginning of this day.
- (c) The above shall be applicable unless there is an agreement to the contrary.

Article 701

Save for life insurance contracts, both the insurer and insured may where the insurance term is more than five years request the termination of the contract upon the expiry of every five years of its term if a notice is given to this effect to the other party at least six months prior to the expiry of such term. This particular provision shall be stated in the insurance policy.

Article 702

(a) Save for life insurance contracts, a special clause appearing in the policy may provide for agreeing on the extension of the insurance contract automatically if the insured fails at least thirty days prior to the expiry of its term to give notice by a registered letter to the insurer expressing his desire not to extend the contract.

(b) Such extension shall only apply from year to year and every agreement for extending the insurance for a longer period shall be deemed null and void.

Article 703

(a) A request sent by the insured by a registered letter with note of delivery to the insurer for the extension, amendment of the contract or rendering it effective after ceasing to be valid, shall be deemed accepted if the insurer does not reject such request within twenty days from the date of the arrival of the letter thereto.

(b) However, if the insurer's decision is dependent upon a medical check-up or if the request relates to increasing the insured amount, the insurer's actual approval shall be the decisive factor in this respect.

Second

Insured's Obligations

Article 704

The insured shall undertake the following:

- (a) To clearly mention at the time of concluding the contract all the circumstances of which he is aware and which are useful for the insurer to know to enable the latter to assess the risks assumed. Of particular significance shall be the facts which the insurer makes subject to specific written questions.
- (b) To notify the insurer of any circumstances occurring during the continuance of the contract so as to result in increasing the risks when he becomes aware thereof.
- (c) To pay the insurance premiums on the due date.
- (d) To proceed with notifying the insurer of every incident that is likely to render the insurer liable.

The provisions of Clause (b) shall not be applicable to life insurance.

Article 705

(a) An insurance contract shall be voidable in favour of the insurer if the insured remains silent in respect of a certain matter or submits an improper statement that is likely to change the issue of the risk or its significance is undermined in the insurer's opinion.

(b) If the truth is revealed before realisation of the risk, the insurer may request the invalidation of the contract ten days after the date of giving notice to the insured by a registered letter unless the latter accepts an increase of the premium proportionate to the increase in risk.

In such case, invalidation of the contract shall result in the insurer's refund of the insurance consideration or the proportion thereof for which no risk has been assumed.

(c) However, if the truth is revealed after realisation of the risk, the insured amount shall be reduced pro rata the premiums which have actually been paid to the level of

premiums which must have been paid had the risks been properly declared to the insurer.

Article 706

The insurance contract shall remain effective without any increase in the consideration thereof if the risk is realised or if there is an increased risk of its occurrence:

- (a) as a result of an action intended to protect the insured's interest.
- (b) or as a result of acts done for a humanitarian duty or for realising the public interest.

Article 707

If the determination of the insurance consideration takes into account such considerations as the increase in the insured risk, then such considerations ceased to exist or their significance is reduced during the continuance of the contract, the insured shall have the right notwithstanding every agreement to the contrary to request the termination of the contract without claiming any compensation or to request a reduction of the agreed insurance consideration for the subsequent period to the extent of the elimination of such considerations according to the applicable insurance tariff on the date of concluding the contract.

Article 708

- (a) The first insurance premium shall be payable at the time of concluding the contract unless otherwise agreed upon.
- (b) The insured who has delivered the insurance policy before payment of the first premium may not invoke what is stated in this policy with respect to postponing the effectiveness of the contract to a date subsequent to the payment of such premium.

(c) Each of the subsequent premiums shall become due at the beginning of each of the insurance periods unless otherwise agreed upon. An insurance period means the period for which the premium is calculated. In case of doubt, an insurance period shall be deemed as one year.

Article 709

(a) Insurance premiums, except for the first premium, shall be paid at the insured's domicile.

(b) However, the premium shall be payable at the insured's domicile if the insured delays payment thereof after giving him notice to this effect.

(c) The above shall be applicable unless otherwise agreed upon.

Article 710

(a) If one of the premiums is not paid on its due date, the insurer may give notice to the insured requiring payment of the premium and informing him of the consequences arising from delay in payment.

(b) The notice given shall result in interrupting the prescribed period of prescription of the claim for premium payment.

Article 711

(a) Save for the provisions relating to life insurance, if the insured fails to pay the premium despite having been given notice to this effect, the insurance contract shall cease to be effective after the expiry of thirty days from the date of notice.

(b) The insured may after the expiry of thirty days from the date of cessation request the passing of a judgement for implementing or terminating the contract.

(c) If the outstanding premiums and any due expenses are paid before termination, the contract shall become effective from the beginning of the day following the date of payment.

(d) Every agreement exempting the insurer from giving notice to the insurer or reducing the time limits provided for in the above Paragraphs 1 and 2, shall be null and void.

Third

Insurer's Obligations

Article 712

Upon realisation of the insured risk or if the date fixed in the contract falls due, the insurer shall pay the payable insured amount within 30 days from the date on which the entitled person submits the necessary details and documents confirming his right.

Article 713

In insurance against damages, the insurer shall compensate the insured against damages arising from the realisation of the insured risk, provided that such compensation shall not exceed the insured amount.

Article 714

(a) Every person who insures a single item or a single interest for a particular risk with more than one insurer shall within no more than ten days give notice to each by virtue of a registered letter with a note of delivery concerning the other insurances indicating therein the names of other insurers and the amount of each of these insurance covers.

(b) If the insured deliberately fails to give such notice or if he concludes such insurances with a view to acquiring an illegal profit, the insurance shall be null and void.

(c) If the insurer is unaware of the invalidity of the contract at the time of concluding it, it shall be entitled to receive the insurance premiums to the end of the period during which it was aware of such invalidity.

Article 715

(a) If there are several insurance contracts in respect of a single item or a single interest without any intent of fraud, whether they take place on a single date or on different dates, at amounts the total of which are in excess of the value of the insured item or interest, each insurer shall be liable to pay a part of the compensation equivalent to the proportion of the insured amount to the total amount of the insurances but the total amount reinsured shall not exceed the value of the damages suffered by him.

(b) If one of the insurers is declared insolvent, the others shall assume his share each pro rata the insurance amount assumed, provided that the total payments to be made by them shall not exceed the amount for which he took the insurance.

(c) These provisions may be violated by a special condition to be indicated in the policy stipulating the division of the liability between the insurers on the basis of priority of dates.

Article 716

(a) In insurance against damages, the insurer shall on the ground of compensation paid for the claims that the insured may have legally replaced the person who is legally liable for the insured damages unless the person responsible for such damage is a relative or an in-law of the insured sharing with him the same household or a person for whose acts the insured is liable.

(b) The insurer shall be discharged of liability towards the insured for all or some of the insured amount if its novation becomes impossible due to a reason attributed to the insured.

Fourth
Transfer and Lapse of Rights
and Obligations Arising from An Insurance Contract

Article 717

(a) Rights and obligations arising from an insurance contract shall be transferred to whoever acquires title to the insured property upon disposal thereof. In case of the insured's death, such rights and obligations shall be transferred to his heirs subject to complying with the inheritance provisions.

(b) However, the insurer and the persons to whom title has been transferred or have acquired title by way of inheritance may unilaterally terminate the contract. Then, the insurer shall have the right to exercise its right of termination within 30 days from the date on which it is notified of the action causing the transfer of ownership or the death of the insured.

Article 718

Every condition whereby the insurer becomes entitled to a compensation if the person to whom title or ownership of the insured property is transferred opts for termination of the contract, shall be null and void.

Article 719

If ownership of the insured property is transferred, the person to whom title has been transferred shall remain liable for payment of the due instalments and shall be discharged from liability for future premiums with effect from the date on which the insurer is notified by a registered letter of the occurrence of the action resulting in transfer of such ownership.

Article 720

If there are several heirs or assignees and the insurance contract becomes applicable to them, they shall be jointly liable for payment of the premiums.

Article 721

(a) If the insured is declared bankrupt before the expiry of the contract term, the insurance shall remain valid in favour of the group of creditors which becomes directly indebted to the insurer for the total premiums that become due from the date of handing down the judgement for declaration of bankruptcy.

Each of the two sides shall have the right to terminate the contract within a three-month period commencing from such date. In case of termination, the insurer shall refund to the group of creditors that part of the premium in respect of which no risk has been assumed.

(b) If the insurer is declared bankrupt, the contract shall cease to be effective from the date of handing down the judgement for adjudication of bankruptcy. The insured shall have the right to a refund of the part of the premium that he may have paid for the period of the contract's cessation without prejudice to the provisions relating to life insurance.

Article 722

Cases arising from the insurance contract shall not be heard upon the lapse of three years from the occurrence of the incident from which such cases arise unless the law otherwise provides. However, this time limit shall not be applicable:

(a) In case of withholding information relating to the insured risk or providing untrue or inaccurate details about such risk except from the date on which the insurer becomes aware thereof.

(b) In case of the occurrence of the insured accident except from the date on which the concerned persons became aware of its occurrence.

(c) When insured's cause of action against the insurer arises from recourse by third parties except from the date of filing the legal action by such third party against the insured or from the date on which the third party receives a compensation from the insured.

Article 723

(a) No agreement may be entered into with respect to the non-applicability of the provisions set forth in this Chapter or the alteration thereof unless that is in the interest of the insured or the beneficiary.

(b) However, no agreement may be concluded on extending the prescribed time limit for non-hearing of the cases indicated in the preceding Article or reducing them even if this is in the interest of the insured or the beneficiary.

Fifth

Certain Types of Insurance

Life Insurance

Article 724

Amounts which the insurer is obliged to pay to the insured or beneficiary for life insurance upon the occurrence of the accident covered by the insurance or when the date fixed in the insurance policy falls due, shall be payable from the time of the occurrence of the accident or at the time when the due date falls without the need for proving damage sustained by the insured or the beneficiary.

Article 725

Life insurance for third parties shall be deemed null and void unless such third party gives his acceptance in writing prior to entering into the contract. If the said third party is not legally qualified, the contract shall not be valid except with the approval of his legal representative.

Such approval shall be necessary for validity of a transfer of right to benefitting from the insurance or validity of mortgaging such right.

Article 726

The insurer shall be discharged from liability for payment of the insured amount if the insured person commits suicide. However, the insurer shall be liable to pay to the entitled persons an amount equivalent to the insurance reserve.

If the cause of suicide is an illness which has made the patient lose his will, the insurer's liability shall remain in its entirety. Then, the insurer shall prove that the insured person died because of committing suicide and the beneficiary shall prove that the insured lost his will at the time of suicide.

If the insurance policy contains a condition providing for obliging the insured to pay the insured amount, even if the person's suicide takes place as a result of free will and understanding, such condition shall not be applicable unless the suicide takes place two years after the date of the contract.

Article 727

(a) If the insurance is for the life of a person other than the insured, the insurer shall be released of liability for its obligations once the insured deliberately causes the death of that person or if the death takes place as a result of his instigation.

(b) If life insurance is in favour of a person other than the insured, such person shall not benefit from the insurance if he wilfully causes the death of the person whose life is covered by insurance or if the death takes place as a result of his instigation.

If what has happened to this person is merely an attempt to cause the death, the insured shall be entitled to replace the beneficiary by another person, even if the beneficiary has accepted the insurance conditions laid down in his favour.

Article 728

In life insurance, agreement may be made on payment of the insured amount either to certain persons or to persons to be subsequently designated by the insured.

Insurance may be deemed taken for the benefit of certain beneficiaries if the insured states in the policy that the insurance is made in favour of his spouse or children or their offspring's and their unborn children or in favour of his heirs without indicating their names. If the insurance is in favour of the heirs without indicating their names, they shall have the right to the insured amount pro rata their shares in the estate. This right shall be established in their favour even if they relinquish their in.

A spouse shall be such person whose capacity is proved at the time of the insured's death and the children shall mean the offspring's who prove to have the right to inheritance at the said time.

Article 729

In life insurance, the insurer who has committed to pay regular premiums may release himself from the contract by giving notice to the insurer by a registered letter before the expiry of the current period. In such case, he shall be discharged of liability for payment of subsequent premiums.

Article 730

(a) In contracts concluded for life without requiring the survival of the insured for a certain period of time and in all contracts stipulating the payment of the insured amount after a certain number of years, the insured may if he has paid at least three annual premiums substitute the original policy by a paid policy in consideration of

reducing the insured amount even though an agreement has been made to the contrary, subject to the proviso that the occurrence of the insured accident shall be certain.

(b) If life insurance is temporary, it shall not be reducible.

Article 731

If insurance is reduced, it may not be reduced below the following levels:

(a) In contracts concluded for life, the reduced insured amount may not be less than the amount to which the insured is entitled had he paid the equivalent of the insurance reserve on the reduction date less 1% of the original insured amount considering that this amount is the consideration for insurance that must be paid in one lump sum in an insurance of that kind and according to the insurance tariff applicable to the original insurance contract.

(b) In contracts whereby it is agreed to pay the insured amount after a certain number of years, the reduced insured amount may not be less than a part of the original insured amount that is proportionate to the premiums actually paid.

Article 732

(a) Further, where the insured has paid at least three annual premiums he may liquidate the insurance, provided that the occurrence of the incident covered by the insurance will certainly take place.

(b) Where life insurance is of a temporary nature, it may not be liquidated.

Article 733

The reduction and liquidation conditions shall be deemed as a part of the general insurance conditions and shall be included in the insurance policy.

Article 734

Wrong details nor a mistake in the age of the person for whom a life insurance contract is made shall not render the insurance null and void unless the insured's real age is in excess of the certain limit provided for in the insurance tariff.

In other cases, if wrong or mistaken details cause the agreed premium to be less than that which must be paid, the insured amount shall be reduced to be equivalent to the proportion between the mutually agreed premium and that which must be paid on the basis of the actual age.

However, if the premium agreed to be paid is more than what shall be paid on the basis of the insured's real age, the insured shall refund the excess obtained or the subsequent premiums shall be reduced to the level proportionate to the insured's actual age.

Article 735

In life insurance, the insurer who has paid the insured amount shall not have the right to replace the insured or beneficiary with respect to his rights towards whoever caused the accident covered by the insurance or towards the person responsible for such accident.

Fire Insurance

Article 736

In fire insurance, the insurer shall be responsible for all damages arising from the fire or from the start of a fire that can become a complete fire or for a fire risk that can materialise.

Its liability shall not be limited to the damages arising directly from the fire but also covers the damages that arise as an inevitable result thereof, particularly the damages caused to insured property by reason of using methods of rescue or of prevention of

the extension of fire. It shall also be liable for loss or disappearance of insured items during the fire unless it proves that this has taken place as a result of a theft even if there is an agreement to the contrary.

Article 737

The insurer shall ensure providing compensation for the damages arising from the fire even if such fire arises from a defect in the insured property.

Article 738

The insurer shall be liable for damages arising from an inadvertent fault of the insured and shall also be liable for damages arising from a sudden accident or a force majeure.

As for losses and damages caused by the insured deliberately or fraudulently, the insured shall not be liable therefor even if there is an agreement to the contrary.

Article 739

The insurer shall be liable for damages caused by persons for whom the insured is liable irrespective of the nature or extent of their fault.

Article 740

If the insured property is encumbered by a mortgage, hypothecation or any other pledge, such rights shall be transferred to the compensation payable to the debtor pursuant to the insurance contract.

If such rights are registered or declared to the insurer even by virtue of a registered letter, it may not pay the amount owed to the insured except with the creditors' consent.

If an attachment is placed upon the insured property or if it is seized, the insured shall not where a declaration is made thereto as indicated in the preceding paragraph pay anything owed to the insured.

Article 741

The insurer shall, on account of a compensation paid in respect of a fire in the claims the insured has, legally replace the insured towards the person who has caused the damages giving rise to the insurer's liability unless the person who has caused the said damages is the insured's relative or in-law living with him in the same household or is a person for whose acts the insured is liable.

Chapter Two

Surety

Article 742

A surety is a contract whereby a person becomes jointly liable with the debtor for performance of an obligation by undertaking to make payment to the creditor where the debtor fails to make such payment.

First

Surety Requirements

Article 743

A surety cannot be presumed. The surety's consent shall be explicit and a surety shall only be confirmed in writing even though it is permitted to confirm the original obligation by another method.

Article 744

(a) If a person undertakes to provide a surety, he shall provide a solvent surety whose domicile shall be situated in the State of Bahrain, failing which he shall be required to provide a sufficient security in kind.

(b) If the surety becomes insolvent after giving the surety or no longer has a domicile in the State of Bahrain, another solvent surety or a sufficient security in kind must be provided.

Article 745

A debtor may become a surety without his knowledge and such surety may also be provided in spite of his objection.

Article 746

(a) A future obligation may be guaranteed, if the extent of the surety's obligation is determined in advance. In addition, a conditional obligation may be suretyd.

(b) If the surety does not fix a period for his surety, he shall be empowered to revoke it at any time so long as the suretyd obligation has not arisen, provided that he shall notify the creditor of his revocation at an appropriate time.

Article 747

(a) A surety shall not be valid unless the suretyd obligation is valid.

(b) If the surety is provided owing to the lack of the debtor's liability so that his obligation is rendered null and void, the surety shall be liable towards the creditor for payment of the suretyd obligation in his capacity as a principal debtor.

Article 748

(a) A surety may not be provided in respect of a larger amount than that owed by the debtor nor at severer conditions than these of the suretyd debt.

(b) However, a surety may be provided for a lesser amount and at easier terms.

Article 749

A surety shall include the guaranteed obligation and its related elements. It shall also include the expenses of the first claim and whatever other costs arising after giving notice to the surety unless there is agreement to the contrary.

Second Effects of Suretyship

1. Relationship between the Surety and the Creditor:

Article 750

(a) A surety is discharged simultaneously with the debtor, and is entitled to avail himself of all the defences that are open to the debtor.

(b) When, however, the defence raised by the debtor is based on his lack of legal capacity, the surety who was cognisant thereof at the time the contract was entered into is not entitled to invoke this defence.

Article 751

When the creditor has accepted a thing of another kind in payment of the debt, the surety is discharged, even if the thing given in payment is revendicated unless the creditor has maintained the right of recourse against the surety.

Article 752

(a) A surety is discharged to the extent of the value of any warranties which the creditor has lost by his own fault.

(b) The warranties referred to in this Article are the securities assigned to guarantee the debt, even if they were provided after the suretyship was entered into; also any securities provided in accordance with the Law.

Article 753

(a) A surety is not discharged merely by reason of the creditor's failure in taking proceedings or of the creditor's delay in taking proceedings.

(b) However, if the surety gives notice to the creditor by a registered letter for taking proceedings against the debtor, the surety may request a discharge if the creditor does not take proceedings against the debtor within six months from the date of the summons served on him by the surety, unless the debtor himself provides an adequate guarantee to the surety.

(c) A surety may invoke his discharge if the creditor gives a grace period to the debtor without the surety's consent.

Article 754

When a debtor becomes bankrupt but the creditor fails to prove his debt, he shall forfeit his right of recourse against the surety to the extent of what he could have recovered should he have provided proof of his debt.

Article 755

(a) When there are several sureties for the same debt and the same debtor by one contract and it does not provide for their joint and several liability, the debt is apportioned between them unless the contract determines his share in the suretyship.

(b) If several sureties have undertaken to guarantee the same debt by successive contracts, each surety is liable for the whole debt, unless he has reserved the right to apportion the liability amongst the co-sureties.

Article 756

(a) A creditor shall not have the right to take proceedings against the surety alone, unless he has first taken proceedings against the debtor. He may only levy execution on the property of the surety after he has distrained all the property of the debtor unless the surety is jointly liable with the debtor.

(b) In both cases, it is for the surety to claim this right.

Article 757

(a) When a surety demands that the debtor's property be first distrained, he must at his own expense provide guidance to the creditor as to property of the debtor sufficient to satisfy the whole debt.

(b) Property so indicated by the surety will not be taken into account if it is situated outside the territory of the State of Bahrain or if it is subject to a dispute.

Article 758

In all the cases where the surety has indicated property belonging to the debtor, the surety will be discharged of liability to the extent of the debt that the creditor has been unable to recover from the debtor for failure to take the necessary proceedings in due time.

Article 759

When a real security is assigned as guarantee of a debt, and suretyship is also entered into subsequently or at the same time, without a stipulation that the surety is jointly and severally liable with the debtor, the surety's property can only be seized after the real security assigned as guarantee has been realised.

Article 760

(a) A creditor is bound to hand over to the surety at the time of discharge of the debt, all documents that are necessary to enable him to exercise his right of action.

(b) When the debt is secured by a pledge of a movable or by a right of retention on a movable, the creditor must surrender such securities to the surety or to a justice officer if the debtor objects to the surrender thereof.

(c) However, when the debt is secured by a charge on real property, the creditor must comply with the formalities required for the transfer of such security. The expenses of such transfer shall be borne by the surety, subject to the right of action against the debtor.

Article 761

A surety who may be guaranteed by another surety shall be deemed towards the debtor as a surety of the surety and in his relationship with the debtor he shall be deemed as a principal debtor towards him. In such a case, the creditor may not call upon the principal surety's guarantee until he has taken action against the principal surety, unless the two sureties are themselves jointly and severally liable.

Article 762

Judicial and legal sureties are always jointly and severally liable with the debtor.

Article 763

A surety who has jointly and severally guaranteed the debtor may avail himself of all the defences which a surety who is not jointly and severally liable may invoke with regard to the debt.

Article 764

When there are several sureties jointly and severally liable or they have undertaken to guarantee the same debt by successive contracts, a surety who has paid the whole debt on maturity may call upon each of the other sureties, to pay his share of the debt as well as a proportionate part in the share of any joint and several surety who is insolvent.

2. The Relationship between the Surety and the Debtor:

Article 765

A surety shall give the debtor notice before paying the debt. However, if action is brought against him by the creditor, he must involve the debtor as a litigant in the case. If he fails to give notice to the debtor before payment of the debt or if he does not seek to involve him as a litigant in the case, he will forfeit his right of action against the debtor if the latter has himself paid the debt or had grounds for having the debt declared void or extinguished.

Article 766

A surety who has paid the debt has the right of action against the debtor to claim the principal amount of the debt, costs of the first claim and expenses incurred from the date of giving notice to the debtor in respect of the action against him.

Article 767

A surety who has paid the debt is subrogated to all the rights of the creditor against the debtor. If, however, he pays only part of the debt, the surety can only exercise such rights in respect of that part he has paid after the creditor has recovered from the debtor the whole of the debt due.

Article 768

When there are several debtors jointly and severally liable for one and the same debt, a surety who has guaranteed them all, has a remedy against each of them for all that he has paid in respect of the debt.

Second Part

Real Rights

Book One
The Principal Real Rights

Part I
The Right of Ownership

Section One
Scope of the Right of Ownership

Article 769

The owner of a thing has alone, within the limits of the law, the right to use, to enjoy and to dispose of it.

Article 770

In the absence of a provision of the law or of an agreement to the contrary, ownership carries with it the right to all fruits, products and accessories of the thing owned.

Article 771

The ownership of land includes that which is above and below, as far as it can be usefully enjoyed in height or depth unless there is a provision of the law or legal action to the contrary.

Article 772

No one can be deprived of his property except in the cases and in the manner provided for by law and upon payment of fair compensation.

Article 773

A landlord shall not have access to his neighbour's property except within the limits prescribed by law.

Article 774

If the legal disposal contains a clause stipulating the inalienability of a property, such a clause will only be valid if based on a legitimate reason and limited to a reasonable duration.

Article 775

(a) When the clause as to inalienability in the contract is valid and where the person subject to such clause acts violation thereof, the person laying down the condition and the person in whose favour it is made may act with a view to invalidating such disposal.

(b) However, a disposal that is contrary to the clause shall be valid if it is ratified by the person introducing it unless the clause is introduced in favour of a third party.

Article 776

(a) An inalienability or restrictive clause shall not be invoked towards third parties unless they were aware thereof at the time of disposal or could have been aware thereof.

(b) If the thing is a real property and the disposal in respect of which the clause is made is chartered, such third party shall be deemed aware of the said clause at the time of such chartering.

Section Two

Joint Ownership

First
Joint Ownership

Article 777

(a) When two or more persons are owners of the same thing but their respective shares are not divided, they are co-owners and, in the absence of proof to the contrary, their shares are deemed to be equal.

(b) The following provisions shall be applicable to common ownership and shall also apply to other common rights in kind unless they conflict with the nature of right or as shall be determined by the law.

Article 778

(a) Every co-owner in common has the right to use the property owned jointly and to exploit to the extent of his share provided he does not injure the rights of the other co-owners.

(b) He is entitled to alienate his share of the common property.

Article 779

In the absence of an agreement or a provision of the law to the contrary, the management of a property held in common belongs jointly to all the owners in common.

Article 780

(a) The majority of co-owners shall, on the basis of the value of their shares, shall have the right to undertake ordinary acts of management. Such majority shall be entitled to appoint from amongst the Partners or others a manager who shall undertake the management. They shall also draw up the rules governing such management.

(b) The decisions adopted by the majority shall be applicable upon all the Partners including their successors in title whether such successors in title are universal or particular.

Article 781

If the majority provided for in the preceding Article is not available, the Court may upon the request of any partner take the necessary measures deemed necessary or in the general interest. If required, it may appoint a manager of the jointly owned property.

Article 782

A co-owner who conducts the management of the joint property, without any objection being raised by the other co-owners, is considered to be their mandatory. If the majority raise an objection, such acts of management shall not be effective towards the remaining co-owners.

Article 783

(a) Co-owners who possess at least three quarters of the property in common may decide, with a view to obtaining greater enjoyment of the property, to make essential modifications or changes in the use for which the property was intended, which exceed the normal scope of management, provided that these decisions are notified to other co-owners by a registered letter with note of delivery. Dissenting co-owners have a right of action in the Courts within 30 days from the date of notification.

(b) The Court before which such an action is brought may, if it approved the decision taken by the majority, also order measures of expediency. The Court may, in particular, order that security be given to the dissenting co-owner so as to guarantee any compensations that may become due to him.

Article 784

Every co-owner may also, even without the consent of the other co-owners, take measures necessary for the preservation of the property in common.

Article 785

In the absence of any provision of the law to the contrary, the cost of the management of a property held in common, as well as the cost of its preservation, the taxes payable thereon, and all other charges resulting from the common holding or connected with the property held in common, shall be borne by all the co-owners each proportionally to his share.

Article 786

Co-owners who possess three quarters at least of the property held in common may decide to alienate the property, provided that their decision is founded on serious grounds and that the decision is notified to the other co-owners. They shall give notice by a registered letter with a note of delivery to the remaining co-owners. A dissenting co-owner has right of action before the Court within a sixty days from the date of notification. The Court will decide in accordance with the circumstances, in case where the partition of the property held in common is contrary to the interests of the co-owners, whether or not the alienation of the property should be carried out.

Article 787

In the cases where the law provides for the right of the majority to assume the extraordinary acts of management or alienation, a majority shall not be represented by one co-owner regardless of the amount of the share he owns in the property.

Article 788

If a co-owner disposes of a divided part of the common property, such disposal shall not be effective as regards the transfer of ownership or creation of other rights in

kind unless such part shall upon partition belong to the share of the aforesaid co-owner.

Article 789

(a) A co-owner of a movable or of a property consisting of movables and immovable may, before partition, repurchase an undivided share which has been sold by another co-owner to a third person. Such repurchase must be sold by another co-owner to a third person. Such repurchase must be made within thirty days from the day on which he had knowledge of sale or from the day on which the sale was notified to him. The right of repurchase is exercised by means of a summons notified by a registered letter with a note of delivery to both the vendor and the purchaser. The co-owner who has repurchased the share sold will be subrogated into all the rights and obligations of the purchaser if he compensates him for all that he has spent.

(b) If several co-owners exercise their right to repurchase, each of them shall have the right to repurchase a part proportional to his share.

Second

Cessation of Joint Ownership by Partition

Article 790

(a) Every co-owner may demand the partition of property held in common, unless he is bound to remain a co-owner in common by reason of a provision of the law or of an agreement. It is not permitted, by a legal disposal, to prohibit partition for a period exceeding five years. When the period stipulated does not exceed five years the agreement shall bind a co-owner and his successors in title.

(b) However, the Court may upon an application from one of the co-owners order that the joint ownership be maintained for a subsequent term after the conditional

duration once it is felt that the urgent partition is detrimental to the co-owners' interests. Further, it shall be empowered to order partition prior to the expiry of the conditional duration if it finds a strong reason justifying such action.

Article 791

(a) Unless there is a provision of the law to the contrary, co-owners may, if they are all in agreement, divide the property held in common in whatever manner they deem fit.

(b) If one of them is subject to legal incapacity, absent or missing, the formalities laid down by law in this respect will have to be observed.

Article 792

(a) Partition by agreement may be rescinded if one of the co-practitioners succeeds in proving that he has been injured to the extent of more than one-fifth of his share, on the basis of the value of the property at the time of the partition.

(b) The action for rescission must be commenced within the year following the partition.

(c) The defendant can stop the action and prevent the new partition, by giving the plaintiff the amount by which his share is short in money or in kind.

Article 793

An action in respect of partition may be brought before the Lower Civil Court. The Court shall delegate if need be, one or more experts to proceed with the valuation of the property held in common and to divide into separate parts if the property can be divided into separate parts in kind without materially decreasing its value.

Article 794

(a) The partition shall be on the basis of the smallest share, even where the partition is only a partial one.

(b) Each co-owner shall be allotted his share if the co-owners so agree or if the partition cannot be effected on the basis of the smallest share. If one of the co-owners cannot obtain all his share in kind, he shall be compensated by the person who obtains the biggest share by making payment equal to the shortage in his share.

Article 795

(a) The Lower Civil Court will decide upon any disputes relating to the composition of the separate parts and any other disputes coming within its competence.

(b) In the case of disputes which the said Court has no competence to settle, the Court will refer the parties to the High Civil Court and will fix a date at which they must appear. The proceeding for partition will be held up until such disputes have been finally settled.

Article 796

(a) Upon the disputes being disposed of and the separate lots allotted directly, the Lower Civil Court will give judgement allocating to each owner the divided part which devolves on him.

(b) If there has been no direct allotment of the separate lots, the partition of the property will be effected by drawing lots. The Court will draw up a process-verbal thereof and give judgement allocating to each co-owner his divided part.

Article 797

(a) When a property cannot be divided in kind or when such partition involves a serious diminution in the value of the property, the Court shall order the sale thereof by auction in the manner laid down by the Civil and Commercial Procedures Act.

(b) The Court may order that the sale by auction will be restricted to the co-owners in common if they ask for it unanimously.

Article 798

(a) The co-owners shall, whether the partition is determined by the Court or by mutual agreement, involve the creditors whose rights are recognised before bringing the legal action or before the agreement on the amicable partition, otherwise the partition shall not be effective towards them.

(b) The personal creditors of every co-owner may oppose a partition by a court order without their intervention in the proceeding. Such opposition must be notified by a registered letter with a note of delivery to all the co-owners and has the effect of compelling the co-owners to join the opposing creditors in every stage of the proceedings, otherwise the partition will be without effect as regards such opposing creditors.

Article 799

Each co-partitioner is deemed to have been owner of the part of the property that falls to him.

His ownership shall be free of every right created by the other co-owners unless such right is established by the unanimous or majority decision of the co-owners according to the law.

Article 800

If a co-owner's part is encumbered prior to the partition by a right in kind, the partition shall result in encumbering the co-owner's part with such right or a part thereof in proportion to the value of the part that was encumbered with the said right. The Court shall determine such part in case of disagreement among the concerned parties.

Article 801

(a) The co-partitioners warrant each other against interference or eviction due to a cause that existed previous to the partition.

(b) If the share of the co-partitioner becomes due in whole or in part, he shall be entitled to demand rescinding the partition and carrying out a new partition if possible without prejudicing the other co-practitioners or third parties. If he does not demand such rescission or if a new partition is not feasible, the person entitled to indemnity shall have recourse against the other co-partitioners to the extent of the reduction in his share on the basis of the value of the partitioned property on the due date.

Each one of them is liable in proportion in his share, to indemnify a co-partitioner entitled to such indemnity. If one of the co-partitioners happens to be insolvent, the share falling on him will be borne by the co-partitioner entitled to the indemnity and all the solvent co-partitioners.

Article 802

A co-partitioner shall warrant to other co-partitioners any intervention or creation of a cause of action arising prior to the partition. He shall indemnify the holder of the security for any reduction of his share as estimated on the due date and every agreement to the contrary shall be deemed null and void.

Article 803

Without prejudice to the preceding Article, no such warranty exists when there is an express agreement waiving the warranty in the particular case which would have given rise to the warranty. The warranty also ceases to be binding if it arises is due to a fault of the co-partitioner himself.

Third Provisional Partition

Article 804

(a) By a provisional partition, co-owners agree to allot to each other the enjoyment of a divided part of the property equal to each of their shares in the property held in common in consideration of a renunciation in favour of each other of the right of enjoyment of the other parts. Such an agreement cannot be entered into for a duration of more than five years, Such duration can only be renewed by another independent agreement.

(b) If no duration has been fixed, or the agreed period has expired and no new agreement has been entered into, the period of the provisional partition will be for a year renewable, unless one of the co-owners gives a notice of termination to his co-owners three months before the end of the current year.

(c) If such a provisional partition remains in force for fifteen years it is converted into a final partition, unless otherwise agreed by the co-owners. If one of the co-owners remains in possession of a divided share for fifteen years, such possession is presumed to have taken place as a result of a provisional partition.

Article 805

A provisional partition also takes place when the co-owners agree that each of them shall, the one after the other, enjoy all of the property held in common for a period corresponding to his share.

Article 806

The co-owners may agree, during the process of a final partition, to enter into a provisional partition. Such provisional partition will remain in force until the conclusion of the final partition. If the co-owners cannot reach an agreement for a provisional partition, such a partition may upon the application of one of the co-owners, be ordered by the Court.

Article 807

A provisional partition is governed, as regards its validity as against third parties, the capacity of co-partitioners, their rights and obligations, and means of proof, by the provisions of the law relating to contracts of lease, in so far as they are not incompatible with the nature of such a partition.

Fourth

Obligatory Joint Ownership

Article 808

The co-owners of a property held in common cannot demand its partition if it follows, from the use to which the property is intended, that it should always remain in common. Likewise, he may not dispose of his share in a manner that is contrary to the object thereof.

Fifth

Family Joint Ownership

Article 809

The members of the same family who have a common occupation or interest may agree in writing to create a family joint ownership. This joint ownership consists either of an inheritance which the members of a family agree to leave wholly or partly in joint ownership or of any other property belonging to them which they agree to place in family joint ownership.

Article 810

A family joint ownership may be created by agreement for a period not exceeding fifteen years. Each one of the co-owners may however, if there are serious grounds to do so, apply to the Court for authority to withdraw his share of the joint property before the end of the agreed term.

When no period is fixed for such joint ownership, each one of the co-owners may withdraw his share after six months from the day he gives notice to this effect to the other co-owners.

Article 811

Co-owners cannot demand partition so long as the family joint ownership continues, and no co-owner can dispose of his share in favour of a person who is not a member of the family without the consent of all the co-owners.

If a person who is not a member of the family acquires, as a result of a voluntary or forced alienation, the share of one of the co-owners, he only becomes a partner in the family joint ownership if he and the other co-owners consent thereto.

Article 812

Co-owners who own the majority in value of the shares, may appoint amongst themselves one or more managers. Subject to any agreement to the contrary, the manager may introduce such changes in the intended use of the property held in common as may ensure a better enjoyment of the property.

A manager may be discharged in the same manner as he was appointed, notwithstanding any agreement to the contrary. The Court may also, upon the demand of any owner, discharge him if there are serious grounds to do so.

Article 813

Subject to the preceding provisions, family joint ownership will be governed by the provisions of the law relating to mandate and to the estate of family ownership.

Sixth

Ownership of Storeys in Buildings

Article 814

As repealed by Law No. (27) of 2017

Article 815

As repealed by Law No. (27) of 2017

Article 816

As repealed by Law No. (27) of 2017

Article 817

As repealed by Law No. (27) of 2017

Article 818

As repealed by Law No. (27) of 2017

Article 819

As repealed by Law No. (27) of 2017

Article 820

As repealed by Law No. (27) of 2017

Article 821

As repealed by Law No. (27) of 2017

Article 822

As repealed by Law No. (27) of 2017

Article 823

As repealed by Law No. (27) of 2017

Article 824

As repealed by Law No. (27) of 2017

Article 825

As repealed by Law No. (27) of 2017

Article 826

As repealed by Law No. (27) of 2017

Article 827

As repealed by Law No. (27) of 2017

Article 828

As repealed by Law No. (27) of 2017

Article 829

As repealed by Law No. (27) of 2017

Article 830

As repealed by Law No. (27) of 2017

Article 831

As repealed by Law No. (27) of 2017

Article 832

As repealed by Law No. (27) of 2017

Article 833

As repealed by Law No. (27) of 2017

Article 834

As repealed by Law No. (27) of 2017

Article 835

As repealed by Law No. (27) of 2017

Article 836

As repealed by Law No. (27) of 2017

Article 837

As repealed by Law No. (27) of 2017

Article 838

As repealed by Law No. (27) of 2017

Article 839

As repealed by Law No. (27) of 2017

Article 840

As repealed by Law No. (27) of 2017

Article 841

As repealed by Law No. (27) of 2017

Article 842

As repealed by Law No. (27) of 2017

Article 843

As repealed by Law No. (27) of 2017

Chapter Two

Acquisition of ownership

Section One

Acquisition by Appropriation

Article 844

Whoever takes possession of a movable which has no owner, with the intention of its appropriation, acquires the ownership thereof.

Article 845

(a) A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing the ownership thereto.

(b) Animals, other than domestic animals, are deemed to have no owner as long as they are at liberty. If one of such animals, after losing its liberty, regains its freedom, it becomes without an owner if the owner does not seek for it immediately or ceases to seek for it. An animal that has become tame and is accustomed to return to the same place becomes again without an owner if it loses this habit.

(c) Animals that have been tamed and have the habit of returning to their habitual place but later lose this habit shall become stray animals so long as they are at liberty and its owner does not seek for it.

Article 846

Buried or hidden treasure to which no one can establish ownership belongs at the rate of one fifth thereof to the person who has found it and the remainder shall belong to the bare owner of the property on which it is discovered or to the person who established the waqf or his heirs if the property in question is subject to a waqf subject always to the provisions of Article 848.

Article 847

Every property that has no owner shall be owned by the State.

Article 848

Rights of fishing and hunting and rights to things found and to antiquities are governed by special legislation.

Section Two

Acquisition of Ownership Among Living Persons

First Right of Accession

Article 849

All buildings, plantations and other works existing above or below the ground are deemed to have been carried out by the owner of the land at his own expense and belong to him unless proved otherwise.

Article 850

(a) Constructions, plantations and other works carried out with materials belonging to another, shall become the exclusive property of the owner of the land when the removal of these materials is not possible without seriously damaging the works, or even when it is possible to do so but proceedings to recover the property are not commenced within a year from the date on which the owner of the materials knew of their incorporation in the works.

(b) When the owner of the land acquires the property of the materials, he must pay their value at the time of their incorporation into the land but if their owner recovers such materials, their removal shall be at the expense of the owner of the land. In both cases, the owner of the land shall be entitled to indemnity if there are valid grounds therefor.

Article 851

When a third party carries out works with his own materials on land which he knows is not his own property, without the consent of the owner of the land, the owner of the land may, within a year from the day on which he learns of the execution of the works, demand either their removal at the cost of the third party who erected them, together with an indemnity, if indemnity is due, or their retention against payment

of their break-up value or of a sum equal to the increased value they have given to the land.

Article 852

(a) If a third party carries out building works, plantations or other construction works with his own materials, with the permission of the owner of the land or had reason to believe in good faith that he has the right to carry them out, the owner of the land cannot, in the absence of an agreement with regard to these works, demand their removal. The owner of the land must pay to the third party, if the third party does not himself ask for their removal, either the value of the materials and manpower charges or pay the value of the increase in the value of the land by reason of the development introduced therein unless such action causes damage to the land.

(b) If, however, the works are so extensive that the payment of the amount due in respect thereof is onerous for the owner of the land, he may claim the conveyance of the ownership of the land to the third party against payment of adequate compensation.

Article 853

The Court may, upon an application by whoever is liable to pay a consideration or compensation according to Articles 851 and 852, decide what it deems fit for amount of the judgement. In particular, it may award that payment be made by regular instalments provided that adequate securities shall be given.

Article 854

If during the construction of a building on his own land, an owner encroaches in good faith on part of an adjoining land, the Court may, within its discretion, compel the owner of the adjoining land to transfer to his neighbour the ownership of that part which is occupied by the building, against payment of adequate compensation.

Article 855

(a) If a third party carries out building works, plantation or construction works with materials belonging to another party, the owner of the materials can claim a compensation against the third party, and also against the owner of the land up to the amount remaining due by him in respect of the value of the works.

(b) If the works of building, plantation or construction are carried out by the said third party in good faith, the owner of the materials may demand the removal thereof without causing any damage to the land.

Article 856

If movables belonging to different owners are attached so as the removal thereof cannot take place without causing damage and if there is no agreement between the owners, the Court shall rule in respect of this matter taking into account the damage that occurred, condition of the parties and good or bad faith thereof.

Second Legal Acquisition

Article 857

The ownership of movables and immovables, as in the case of other real rights, are transferred when the contract refers to an item belonging to the person disposing thereof subject always to the provisions of the following two articles.

Article 858

If the subject of transfer is a particular movable, title thereto shall be transferred or created immediately upon concluding the conveyance.

Article 859

If the item subject to the disposal is a real property, real rights shall not be transferred except in accordance with the provisions of the Land Registration Law.

Third Pre-emption

Article 860

Pre-emption is defined as the right to substitute the purchaser upon the sale of the property in the cases and according to the conditions laid down in the following articles.

Article 861

- (a) The right of pre-emption belongs to the co-owner in the case of a sale to a third party of a part of the property held in common.
- (b) In case several persons pre-empt, the entitlement of each to pre-emption shall be proportionate to his share.

Article 862

1. Pre-emption cannot be exercised:
 - (a) if the sale is made by public auction in accordance with the procedure prescribed by law.
 - (b) if the sale is made between ascendants and descendants, between spouses or between relatives to the second degree.
 - (c) if the person exercising pre-emption exercises his will expressly or implicitly that he does not wish to buy under the terms of the sale.
 - (d) if the property sold is destined for religious purposes, or to be annexed to property already used for such purposes.
2. A waqf cannot exercise the right of pre-emption.

Article 863

If a person acquires a property which may be subject to pre-emption and sells it prior to any notification of an intention to pre-empt or prior to the transcription of such notification in accordance with Article 866, pre-emption can only be exercised against the second purchaser and subject to the conditions upon which he has purchased the property.

Article 864

A person cannot take part of the sold property except when there are several buyers. He shall be entitled to take the share of some and to leave the remaining shares.

Article 865

1. Either the seller or buyer of a part of a common property shall notify the remaining partners by a registered letter with a note of delivery notifying them of the sale.
2. The letter shall contain the following details otherwise it shall be null and void:
 - a) the names, surnames and domiciles of the seller and buyer.
 - b) an adequate description of the sold property.
 - c) price amount and sale conditions.
3. This letter shall be deemed conclusive evidence of the knowledge of the sale.

Article 866

- (a) Whoever desires to exercise the right of pre-emption must, on pain of forfeiture of his right, notify both the vendor and the purchaser of his intention within a period of forty five days from the date of a formal summons served on him notifying him of the sale.
- (b) If the applicant for pre-emption does not receive the approval of the vendor and purchaser within 30 days from the date of receiving the said summons, he shall bring legal action against both the vendor and purchaser within 45 days from the end of

the aforesaid time limit after depositing in the Court Treasury the entire actual price for which the sale took place, otherwise he shall forfeit his right.

(c) Notification of intention to exercise the right of pre-emption is not valid as against third parties unless it is transcribed. An entry of declaring the intention in the property's journal according to Article 867 shall be deemed as conclusive evidence towards third parties.

Article 867

An entry declaring the desire to exercise the right of pre-emption shall be recorded in the Land Registry.

This shall have the effect that if it is decided to create the right of pre-emption by means of an entry in the property's journal, it shall constitute evidence towards those for whom real rights are established from the date of the aforesaid entry.

Article 868

Without prejudice to the rules with regard to registration, the judgement which finally establishes the right to pre-emption will constitute ground for the title of ownership of the pre-emptor.

Article 869

(a) The pre-emptor is, vis-à-vis the vendor, substituted for the purchaser in all his rights and obligations.

(b) The pre-emptor is not, however, entitled to benefit from the delay granted to the purchaser for payment of the price unless he obtains the consent of the vendor.

(c) If, after pre-emption, the property is claimed by a third party, the pre-emptor will only have a right of action against the vendor.

Article 870

(a) If, before the notification of pre-emption, the purchaser has built or planted on the property pre-empted, the pre-emptor is bound, at the option of the purchaser, to pay to the purchaser either the amount spent by him or the amount of the increase in value of the property as a result of such constructions or plantations.

(b) When, however, such constructions or plantations have been made by the purchaser after the notification of pre-emption, the pre-emptor may claim their removal. If he prefers to retain them, he is only bound to pay the value of the materials incurred by the purchaser or the increase in value of the pre-emption by reason thereof.

Article 871

(a) Any disposal by the purchaser resulting in transfer of ownership or creation of any other real right shall not be effective towards the pre-emptor if it is made after the date on which the letter of notifying the intention becomes evidence towards third parties according to Article 866.

(b) The creditors whose rights are restricted shall have priority in respect of the price that has devolved upon the purchaser.

Article 872

The right of pre-emption is forfeited in the following cases:

(a) if the pre-emptor renounces his right to the pre-emption explicitly or implicitly.

(b) if four months have elapsed since the date of registration of the deed of sale.

(c) in all other cases prescribed by law.

Article 873

The right to pre-emption shall not be forfeited upon the death of the pre-emptor but shall be transferred to his heirs.

Fourth Possession

1. Definition and Elements of Possession

Article 874

Possession is defined as the control by one person, personally or through another person, of a material thing giving the impression that he is the owner or holder of another right in kind to as to do the acts normally done by the holder of title thereto.

Article 875

Possession does not result from acts that are done by permission or merely tolerated.

Article 876

Possession may be exercised by an intermediary, provided that he exercises it in the name of the possessor.

Article 877

A legally disqualified person or lacking discretion may acquire possession by the intervention of his legal representative.

Article 878

No one can set up prescription contrary to his title: that is to say that no one may by himself and in his own interests change the cause and origin of his possession. A person may, however, acquire a title by prescription if the nature of his possession is changed either by act of a third party or if such person sets up an adverse claim against the owner; but in such case prescription only runs from the date of such change.

Article 879

Possession obtained by acts of violence, secretly or in a dubious manner, has effect, as regards the person against whom the violence, secrecy or dubious means were exercised only from the time that such unlawful means have ceased.

2. Proof of Possession

Article 880

Present possession, whose existence can be proved to have existed at an ascertained previous time, is presumed to have existed during the intervening time unless the contrary is proved.

Article 881

When several persons claim possession of the same right, the person who has actual possession is presumed to be provisionally the possessor unless it is established that he acquired possession in a wrongful manner. The possessor of a right is presumed, until the contrary is proved, to be the rightful owner.

3. Good and Bad Faith of a Possessor

Article 882

(a) The possessor of a right who is unaware that he infringes the right of another is presumed to be of good faith, unless his ignorance was the result of a serious mistake.

(b) If the possessor is a juristic person, it is the good or bad faith of its representative that will be taken into account.

(c) Unless the law provides to the contrary, good faith is always presumed in the absence of proof to the contrary.

Article 883

(a) The good faith of a possessor ceases only from such time as he becomes aware that his possession infringes the rights of another. Good faith ceases as soon as the defects of the possession have been notified to the possessor in the writ by which legal proceedings are commenced.

(b) A person who has usurped the possession of another by coercion is deemed to have acted in bad faith.

Article 884

Subject to proof to the contrary, possession continues to have the same character that it had at the time it was acquired.

4. Transfer of Possession

Article 885

Possession is transmitted with all its features to a universal successor in title. When the original possessor was of bad faith, his successor in title may, however, if he establishes his good faith, avail himself thereof.

Article 886

Possession is transmitted by a possessor to another person by mutual agreement, without actual delivery of the thing which is the object of possession being made, provided the person to whom the possession has been transmitted is able to assume control of the right over the thing forming the object of possession.

Article 887

Possession may be transmitted without actual delivery if the possessor continues the possession on behalf of his successor in title or if the successor in title continues the possession for his own account.

Article 888

(a) Possession may be transmitted if the successor takes actual delivery of the thing in question.

(b) In particular, the handing over of documents issued in respect of goods entrusted to a carrier or deposited in store, is equivalent to the handing over of goods themselves. If, however, the documents are handed over to one person and the goods to another, both being of good faith, the person who receives the goods has the preference.

Article 889

A successor in title holding under a special title may add to his possession that of the original possessor for the legal effect of possession.

5. Loss of Possession

Article 890

(a) Possession ceases when the possessor abandons his actual control over the right or when he loses it in any other way.

(b) However, possession does not cease if a temporary obstacle prevents the possessor from exercising his actual control over the right.

A person who is in possession of an immovable and who loses possession thereof may, during two years following his loss of possession, claim to be reinstated in possession.

6. Effects of Possession

Article 891

A person who has possession of a movable or immovable without being its owner, or of a real right over a movable or immovable without being its owner, or of a real right over a movable or immovable without a just title thereto, may acquire the ownership of the thing or the title to the real thing unless there is proof to the contrary.

Article 892

(a) A possessor of a real property who loses possession may claim its recovery within the following two years after its loss. If possession is secret, the two year period shall commence from the date of revealing such secret.

(b) A person who has possession in favour of another person may demand the recovery of possession.

Article 893

(a) A person losing possession after having been in possession for less than two years, can only claim to be reinstated if the person dispossessing him has not a better possession than his own. The possession is better if founded on a legal title. If neither possessor has a title or both possessors have titles of equal value, the better possession is that which commenced first.

(b) If the loss of possession takes place by violence, the possessor may always claim restitution within two years following the loss of possession.

Article 894

A person who has been dispossessed may take proceedings for recovery of possession against the person who has possession of the property of which he was dispossessed, even if such person acted in good faith.

Article 895

A person who remains in possession of an immovable for two years may, if he is disturbed in his possession, take proceedings during the two years which follow the disturbance for the continuation of the disturbance.

Article 896

(a) A person who remains in possession of an immovable for two years may, if he has good grounds to fear disturbance as a result of new works which threaten his possession, file proceedings within the following two years, to order the suspension of such works, provided that they have not been finished.

(b) The Court may either stop or authorise the continuance of the works. In both cases it may order the provision of an adequate guarantee to cover compensation for damage caused by the suspension.

Article 897

(a) A possessor acquires all fruits collected so long as he is of good faith.

(b) Natural or industrial fruits are deemed to be collected from the moment that they are separated. Legal fruits are deemed collected day by day. Obtaining the benefit is deemed tantamount to receiving the legal fruits.

Article 898

A possessor in bad faith is responsible for all the fruits that he has collected or that he has failed to collect, from the moment he became of bad faith. He may, however, claim refund of his expenses in connection with the production of the fruits.

Article 899

(a) The owner to whom the property is restituted must pay to the possessor all expenditure of a necessary kind that he has incurred.

(b) The provisions of Articles 851 and 852 shall apply as regards expenditure of an advantageous kind.

(c) If the expenditure is of a luxurious nature, the possessor cannot claim repayment of any of such expenditure. He may, however, remove works he has made, provided he restores the property to its original condition without causing damage to the property, unless the owner prefers to keep the works upon payment of their break-up value.

Article 900

The owner to whom the property is restituted must refund to the possessor who took possession from a previous possessor, the expenditure incurred by such possessor within the limit that the owner is obliged to pay according to the preceding Article.

Article 901

The Court may, at the request of the owner, decide the method it deems appropriate for the repayment of the expenses referred to in the preceding two Articles. It may also order repayment by periodical instalments, provided that the necessary securities are supplied.

Article 902

(a) A possessor in good faith who has enjoyed the thing in accordance with his presumed rights, is not liable to pay any compensation on this account to the person to whom he must restitute the thing.

(b) A possessor in bad faith is liable for the loss or deterioration of the thing, even fortuitous, unless he proves that such loss or deterioration would have occurred even if the thing had been in the possession of the person claiming restitution.

Article 903

A person who has possession of an immovable property, may acquire the ownership of the property if his possession continues uninterrupted for sixty years and fifteen years in respect of the real right other than ownership.

This provision is not applicable to the ownership of property and any other real right registered in the Land Registry.

Article 904

Subject to the following provisions, the rules as to extinctive prescription, in so far as they are not compatible with the nature of acquisitive prescription, are applicable as regards the calculation of the period of prescription, its suspension or interruption, claims as regards prescription in Court, the renunciation of prescription and any agreement as to modification of the period.

Article 905

Acquisitive prescription is interrupted if the possessor abandons or loses possession even by the act of a third party.

Prescription is not, however, interrupted by loss of possession if the possessor recovers possession within two years or takes proceedings for the recovery of possession within that period.

Article 906

(a) A person in possession of a movable, of a real right over a movable or of a bearer warrant by virtue of a just title becomes the owner thereof if he was of good faith at the moment he acquired possession.

(b) If he enters into possession in good faith and by virtue of a just title, in the belief that the thing is free of charges and encumbrances, he acquires the thing free of such charges and encumbrances.

Article 907

Subject to proof to the contrary, mere possession is a presumption of a just title and good faith.

Article 908

(a) A person who has lost or has been robbed of a movable or a bearer warrant, can, within three years from the date of the loss or the theft, bring an action to recover it from a third party in possession, even if such third party is of a just title and good faith.

(b) When the thing lost or stolen is found in possession of a third party who bought it on the market, at a public sale or from a merchant selling similar articles, such third party is entitled to recover from the person claiming restitution the price he paid for the thing.

Part Three

Acquisition by Death

First

Inheritance

Article 909

The determination of the heirs, their hereditary shares and devolution of the property of the estate on them are governed by the provisions of Islamic Shariaa.

Second

Will

Article 910

Wills are governed by the provisions of Islamic Shariaa.

Article 911

(a) Every legal disposition made by a person during an illness immediately preceding his death, with the object of making a gift, is deemed to be a testamentary disposition and must be governed by the rules applicable to wills.

(b) The heirs of the person who has made such a legal disposition are the persons on whom falls the onus of proving that it was made by the deceased during an illness immediately preceding his death. This proof may be tendered in any way.

(c) If the heirs establish that the legal disposition was made by the deceased during an illness immediately preceding his death, the act is deemed to be a gift, unless the beneficiary proves that the contrary was the case.

Article 912

In the absence of any evidence to the contrary, when a person disposes of a property in favour of one of his heirs, reserving at the same time in some manner the possession and the enjoyment of the property so disposed of during his lifetime, the disposition is deemed to be a testamentary disposition and must be governed by the rules applicable to wills.

Chapter II

Rights Derived From The Right Of Ownership

Section I

Right to Usufruct, Right of User and Right of Occupation

First

Right to Usufruct

Article 913

The right to usufruct may be acquired by a legal disposition or prescription.

Article 914

The rights and obligations of a usufructuary are governed by the conditions imposed by the deed by which the usufruct is created and by the provisions contained in the following Articles.

Article 915

The fruits of the property which is subject to the usufruct revert to the usufructuary, in proportion to the period of his usufruct, subject to the provisions contained in Paragraph 2 of Article 921.

Article 916

- (a) The usufructuary must use the property in the state in which he has received it and according to the object for which it was intended. He must observe the rules of good management.
- (b) The owner may object to any use of the property that is unlawful or unsuitable to the nature of the property. If the owner proves that his rights are endangered, he may demand security and if the usufructuary does not provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to its nature, the Judge may take the property from him and entrust it to a third party for its management. The Judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

Article 917

(a) The usufructuary is liable, during the continuance of his enjoyment, for all normal charges in respect of the property subject to the usufruct and all expenses for repairs incidental to its maintenance.

(b) The owner is not obliged to pay abnormal expenses and cost of major repairs even though do not arise from any fault on the part of the usufructuary unless the right to usufruct is with consideration or otherwise.

Article 918

(a) The usufructuary must preserve the thing with the usual diligence of a normal person.

(b) He is responsible for the loss of the property even through no fault on his part, if he fails, after given a notice, to restitute the property to its owner upon termination of the usufruct, unless he proves that such loss would have occurred even if the thing had been in the possession of the owner.

Article 919

The usufructuary must give notice to the owner without delay if the property perishes, deteriorates, requires major repairs or if it is necessary to take protective measures against an unforeseen danger. The usufructuary must also advise the owner if a third party claims to have a right over the property.

Article 920

When the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof. If no security is given, the Judge may pass an order to place the property in the hands of a trustee to administer it for the usufructuary's account.

A usufructuary who has given security may use such things as are consumable provided that he replaces them when his usufruct comes to an end. The usufructuary

is entitled to the natural increase of cattle and herds, after replacing them from such animals as have perished accidentally.

Article 921

(a) The usufruct terminates at the end of the time for which it was fixed. If no time is fixed, it is deemed to have been created for the lifetime of the usufructuary. It ceases in any case upon the death of the usufructuary.

(b) When there are standing crops on the land which is subject to usufruct, at the end of the time fixed for the usufruct or upon the death of the usufructuary, such land shall be left in possession of the usufructuary or of his heirs until the crops are ripe for harvesting, but the usufructuary or heirs shall pay rent for that period.

Article 922

Usufruct is extinguished by the loss of the property, but the usufruct is transmitted to any property obtained in lieu of the property destroyed.

If the loss is not due to the fault of the owner, he is not bound to restore the property to its original condition, but if he restores the property, the usufruct is recreated in favour of the usufructuary if the loss was not imputable to him.

Article 923

(a) The right of usufruct is extinguished by non-user during a period of fifteen years.

(b) The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favour of the other co-owners. In the same way, the suspension of prescription in favour of one of these co-owners, suspends prescription in favour of the others.

Second

Rights of User and Occupation

Article 924

Subject to the conditions laid down in the deed by which the right is created, the extent of the right of user and of the right of occupation is determined by the personal requirements of the beneficiary and of his family.

Article 925

The right of user and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for serious reasons.

Article 926

Subject to the preceding provisions, the rules as regards the right of usufruct apply to the right of user and to the right of occupation, if they are not incompatible with the nature of these two rights.

Section Two Servitudes

Article 927

A servitude is a right which limits the enjoyment of a property for the benefit of another property belonging to another owner.

A servitude may be imposed on a public property in so far as it is not incompatible with the use for which such property is intended.

Article 928

The right to a servitude is acquired by a legal disposition or by inheritance. Only apparent servitudes, including rights of way, can be acquired by prescription.

Article 929

Apparent servitudes may also be created by the intention of the original owner.

An intention of the original owner is deemed to exist when it is established by any means of proof that the owner of two separate properties has made between the two properties an apparent distinction, thereby creating a relationship of subordination between them which would indicate the existence of a servitude if the two properties belonged to different owners. If, in such a case, the two properties pass into the hands of different owners without any change in their condition, a servitude is deemed, in the absence of a clear condition to the contrary, to have been constituted to the benefit of or as a burden on the two properties respectively.

Article 930

In the absence of an agreement to the contrary, if specific restrictions have been imposed limiting the right of the owner of a property to build freely thereon, such as the prohibition to build above a certain height or on an area in excess of a specific area, such restrictions constitute servitudes which are burdens on the property concerned in favour of properties to whose benefit these restrictions have been imposed.

Any breach of these servitudes gives rise to a claim for material redress. The Court may, however, only grant damages if it considers that there are reasons for so doing.

Article 931

Servitudes are governed by rules laid down in the deed by which they are created, by local custom and by the following provisions.

Article 932

The owner of the dominant tenement is entitled to carry out any works necessary to use and preserve his right of servitude. He must use his right in the least harmful manner possible.

Article 933

In case of new requirements of the dominant tenement which entail any increase in the burden of the servitude, the Judge may after weighing between the interests of both parties, order amendment of the servitude as required by such increase in consideration of a fair compensation.

Article 934

(a) In the absence of an agreement to the contrary, the cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.

(b) If the owner of the servient tenement is responsible for carrying out these works at his own cost, he has always the right to free himself of this burden by abandoning the servient tenement wholly or in part to the owner of the dominant property.

(c) If the works also benefit the owner of the servient tenement, the cost of upkeep falls on the two parties in proportion to the profit derived by each of them.

Article 935

(a) The owner of the servient tenement has no right to do anything which will tend to diminish the use made of the servitude or to make it more inconvenient.

(b) When, however, the place originally fixed has become such as to increase the burden of the servitude or to cause the servitude to hinder the owner of the servient tenement making improvements to the servient tenement, he may demand that the servitude be transferred to another part of the property or to another property belonging to him or to a third party who consents thereto, provided that the owner of the dominant tenement is able to exercise his rights of servitude in these new conditions as easily as he was able to do before the change.

Article 936

(a) If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property is not increased.

(b) If, however, the servitude only benefits one of the divided parts of the dominant tenement, the owner of the servient tenement may demand that it ceases as regards the other parts.

Article 937

(a) If the servient tenement is divided, the servitude continues to subsist in respect of each part thereof.

(b) If, however, the servitude is not actually used and cannot be used on certain of these divided parts, the owner of each of them may demand that it ceases as regards the part belonging to him.

Article 938

Rights to a servitude cease to exist by the expiration of the period for which they were created, by the total loss of the servient tenement or of the dominant tenement and by the acquisition of the two properties by the same owner. The rights to the servitude are, however, revived if the two properties cease to be held jointly by the same owner.

Article 939

(a) The right to a servitude are extinguished by non user for a period of fifteen years.

(b) The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favour of the other co-owners. In the same way, the suspension of prescription in favour of one of these co-owners, suspends prescription in favour of the others.

Article 940

The servitude ceases to exist if conditions so change that the right can no longer be used. The servitude is revived if conditions are re-established in such a way that the right can again be used.

Article 941

The owner of a servient tenement may free himself wholly or partially if the servitude has lost all its utility for the dominant tenement or if its actual utility has been reduced out of proportion to the burden imposed on the servient tenement.

Book Two

Accessory Real Rights

Real Security

Part One

Mortgages

Chapter One

Constitution of Mortgage

Article 942

Mortgage is a contract by which a creditor acquires, over an immovable appropriated to the payment of his debt, a real right by which he obtains preference over ordinary creditors and creditors following him in rank, for the repayment of his claim out of the price of the immovable, no matter into whose hands the immovable has passed.

Article 943

- (a) A mortgage can only be constituted by an official document.
- (b) The costs of this official document are, in the absence of an agreement to the contrary, borne by the mortgagor.

Article 944

The mortgagor may be the debtor himself or a third party who consents to mortgage his property in the interest of the debtor.

Article 945

If the mortgagor is not the owner of the mortgaged property, the contract becomes valid if ratified by the true owner of the property by an official deed. In the absence of ratification, the mortgage is only effective from the time that the immovable becomes the property of the mortgagor.

Article 946

A mortgage constituted by an owner whose title to the property is subsequently annulled, resiliated, abolished or ceases to exist for any other reason, remains a valid mortgage in favour of the mortgagee creditor if he has acted in good faith at the time of the conclusion of the mortgage.

Article 947

- (a) In the absence of any provision of the law to the contrary, a mortgage can only be constituted on immovable property.
- (b) The mortgaged property must be marketable and capable of being sold by public auction. It must be specifically and precisely described both as regards its nature and location, and such description must be contained either in the deed constituting the mortgage or in a subsequent authentic document, otherwise the mortgage is void.

Article 948

(a) A mortgage extends to the accessories of the mortgaged property which are considered to be immovable accessories..

(b) In the absence of an agreement to the contrary and without prejudice to the privileges of sums due to contractors or architects, a mortgage includes particularly, buildings and trees that exist in the mortgaged property at the time of the mortgage or erected thereafter, servitudes and properties created by allotment, all the improvements and other constructions in the mortgaged property.

Article 949

The owner of constructions erected on land belonging to a third party may grant a mortgage on these constructions. In such a case, the mortgagee shall have a preferential claim for recovery of his debt on the price of the break up value of the constructions if they are demolished, and on the compensation paid by the owner of the land if he keeps the constructions.

Article 950

A mortgage granted by all the co-owners of an immovable held in common remains effective whatever may be the ultimate result of a partition of the immovable or of its sale owing to impossibility of partition.

Article 951

(a) If one of the owners grants a mortgage on his undivided share or part thereof, the mortgage will be transferred to a portion of this property equivalent in value to that of the mortgaged portion after partition. This portion will, upon petition, be fixed by an order of the Court.

(b) The mortgage shall maintain its rank if a new registration is made for it within sixty days of the notification made to the mortgagee creditor by any interested party to register the partition.

The mortgage so transferred shall not have any prejudicial effect on a mortgage already granted by all the co-owners or on the privileges of co-partitioners.

Article 952

A mortgage may be granted to secure a conditional, future or contingent debt. It may also be granted to secure an open credit or the opening of a current account, provided that the amount of the debt secured or the maximum amount which such debt may attain, is fixed in the mortgage deed.

Article 953

In the absence of a provision of the law or of an agreement to the contrary, every part of the mortgaged immovable or immovables shall secure the whole of the debt and each part of the debt is secured by the whole of the mortgaged immovable or immovables.

Article 954

(a) In the absence of a provision of the law to the contrary, the mortgage cannot be separated from the debt that it secures as regards its validity and extinction.

(b) If the mortgagor is a person other than the debtor, he may, in addition to the defences that are personal to him, avail himself of those which belong to the debtor as regards the debt and he keeps this right notwithstanding the renunciation of the debtor.

Chapter Two

Effects of a Mortgage

Section One

Effects of a Mortgage as Between the Parties

First

As regards the Mortgagor

Article 955

A mortgagor may dispose of the mortgaged property, but any disposal of the property by him does not affect the right of the mortgagee creditor.

Article 956

A mortgagor has the right to carry on the management of the mortgaged property, collect the fruits and yields until making an entry of attachment over the property's registration.

Article 957

(a) A lease agreement entered into by a mortgagor cannot have any effect against a mortgagee unless such lease has been given a specific date before making an attachment entry over the property's registration. A lease that has not a specific date in such a way or that has been entered into after placing an attachment entry over the property's registration without payment of rent having been made in advance, will not be effective unless it falls within the category of acts of good management.

(b) If the duration of the lease entered into before placing an attachment entry over the property's registration exceeds ten years, the lease has effect against the mortgagee only for ten years unless it has been registered in the Land Registry before registration of the mortgage.

Article 958

(a) A receipt or an assignment of rent in advance for a period not exceeding three years is not valid against a mortgagee unless it has a specific date prior to placing attachment entry over the property's registration.

(b) If the payment or assignment of rent is made for a period exceeding years, it will not be valid against a mortgagee unless it is registered in the Land Registry before registration of the mortgage. In default of such transcription, the period will be reduced to three years, subject to the provisions of the preceding paragraph.

Article 959

A mortgagor is the guarantor of the effectiveness of the mortgage. The mortgagee may oppose any act or mission that appreciably diminishes his security, and, in case of emergency, take all necessary preservative measures and claim from the mortgagor the expenses incurred in this respect.

Article 960

(a) If the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim adequate security or immediate payment of the debt.

(b) If the loss or deterioration is not imputable to the mortgagor and the mortgagee does not agree to leave his claim without security, the debtor may either furnish adequate security or pay the debt in full before it falls due.

(c) In all cases, if acts are done which may result in the damage of or deterioration to the mortgaged property, or which may render the mortgaged property insufficient to secure the debt, the mortgagee may apply to the Court to order the cessation of such acts and the adoption of the necessary measures to avoid the occurrence of the damage.

Article 961

In the event of damage of or deterioration to the mortgaged property for any reason whatsoever, the mortgage is transferred in its order of rank to any right obtained as a result of such loss or deterioration, such as compensation, monies paid on account of insurance or payments on account of expropriation for public utility.

Second

As regards the Mortgagee

Article 962

The mortgagee may recover his debt from the mortgaged property according to the prescribed procedures.

Article 963

- (a) If the mortgagor is a person other than the debtor, only the mortgaged property, to the exclusion of his other property, may be executed against and the mortgagor. He shall have no right to demand expropriation unless there is an agreement to the contrary.
- (b) Such mortgagor may avoid any proceedings against him by abandoning the mortgaged property according to the procedure and the rules laid down for the abandonment of an immovable by a third party possessor.

Article 964

Any agreement, even if entered into after the constitution of the mortgage, which authorises the creditor in case of non-payment of the debt on maturity to acquire the mortgaged property in payment of the debt or at any price whatsoever, or to sell the mortgaged property without observing the formalities prescribed by law, is void.

It may, however, be agreed, after the debt or one of the instalments of the debt has fallen due, that the debtor transfers to the property in payment of the debt.

Section Two
Effects of Mortgage as Regards Third Parties

Article 965

(a) Subject to the provisions laid down for bankruptcy, a mortgage shall be effective as against third parties only if it has been inscribed before third parties have acquired real rights on the property.

(b) The assignment of a right secured by an inscription, the right resulting from the legal or contractual subrogation into that right and the assignment of priority in rank of an inscription in favour of another creditor, are only enforceable as against third parties if they are inscribed in the margin of the original inscription.

Article 966

Effects of inscription shall be restricted to the amount indicated in the application of inscription or the amount secured by mortgage whichever is lesser.

Article 967

Inscription shall not be struck off except by a final judgement or by the consent of the creditor according to a written document.

Article 968

If the striking off is cancelled, the original rank shall return to the inscription, however, its cancellation shall have no retroactive effect on the inscriptions and registrations made during the period between the striking off and cancellation.

Article 969

In the absence of an agreement to the contrary, the mortgagor shall bear the costs of inscription and its striking off.

First
The Right of Preference

Article 970

Mortgagees will be paid before unsecured creditors out of the proceeds of sale of the mortgaged property, or out of any monies obtained in substitution thereof, in the order of the rank of their inscriptions, even when their inscriptions are entered on the same day.

Article 971

A mortgage ranks from the date of its inscription, even if it secures a conditional, future or contingent debt.

Article 972

A mortgage inscription shall result in including costs of the deed and inscription in the distribution and in the mortgage rank itself.

Article 973

A mortgagee may, within the limits of his secured debt, assign his rank in favour of another creditor having a mortgage inscribed on the same property. The defences available against the first creditor, with the exception of those connected with the extinction of his claim when that extinction occurs after the assignment of the rank, can be raised against the second creditor.

Second
Right of Tracing

Article 974

(a) A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property against a third party holder, unless this third party holder chooses to pay the debt, redeem the mortgage or abandon the property.

(b) Any person is deemed to be a third party holder who acquires the property or any other real right over the property by any way other than inheritance capable of being mortgaged, without being personally responsible for the debt secured by the mortgage.

Article 975

(a) The third party holder who has transcribed his title deed and who was not a party to the proceedings in which judgement was given against the debtor to pay the debt may, if the judgement was subsequent to the transcription of his title, raise the defences which could have been raised by the debtor.

(b) He may, in any case, raise the defences which the debtor still has the right to raise after the judgement.

Article 976

A third party holder may, upon maturity of the debt secured by the mortgage, pay the debt and its accessories including the costs of proceedings from the date of the formal summons, and will retain this right up to the date of the sale by public auction. In such a case, he has a claim for all he has paid against the debtor and against the former owner of the mortgaged property. He may also be subrogated into the rights of the creditor who has been paid in full, with the exception of those rights relative to guarantees furnished by a person other than the debtor.

Article 977

A third party holder must maintain the inscription of the mortgage which he is subrogated to the creditor until striking off the inscriptions that existed at the time of the transcription of his title to the property in the Land Registry.

Article 978

(a) If, by reason of his acquisition of the mortgaged property, the third party holder is a debtor of a sum due immediately for payment and sufficient to satisfy all the creditors whose rights are inscribed on the property, each one of the creditors may compel him to pay his claim.

(b) If the debt owed by the third party holder is not yet due for payment, or is less than the debts due to the creditors, or different from them, the creditors may, if they are all agreed, claim from the third party holder payment of what he owes up to the amount due to them, and payment will be effected in accordance with the conditions on which he has agreed to pay in his original undertaking, and at the time agreed upon for payment.

3. In neither case can the third party holder avoid payment to the creditors by abandoning the property, but when payment has been made to the creditors the property is deemed to be free of all mortgages and the third party holder has the right to call for striking off the inscriptions existing on the property.

Article 979

(a) The third party holder who has transcribed his title to the property may purge the property of any mortgage inscribed before the transcription of his title in the Land Registry.

(b) The third party holder can exercise this right even before the mortgagees have served upon him a formal summons to pay. Such right may exist until placing the attachment entry over the property's registration at the request of the mortgagee.

Article 980

If the third party holder decides to proceed with the purge of the property, he must serve upon the inscribed creditors a letter by registered mail together with an acknowledgement slip, containing the following particulars:

(a) An extract of his title deed, setting out the particulars, nature and date of the act of disposition, full and precise description of the property and particulars of its previous owner. If the disposal is a sale, the price and its attachments should be indicated.

(b) The date and number of the transcription of his title in the Land Registry.

(c) A list of rights inscribed on the property before transcription of his title. This list shall contain the date of the inscriptions, the amount of the inscribed debts and the names of the creditors.

(d) The sum at which he values the property. This sum must not in any case be less than the sum remaining to be paid by the third party holder on the price of the property if the act of disposition was a sale.

Article 981

The third party holder must, by the registered letter accompanied by an acknowledgement slip referred to in the preceding Article that he is prepared to pay off the inscribed debts up to the amount at which he has valued the property. His offer need not be accompanied by a cash amount, but must be an offer showing his willingness of settlement by an amount payable immediately whatever may be the date of which the inscribed debts accrue due.

Article 982

(a) Every inscribed creditor and every surety of an inscribed debt has the right to apply for the sale of the property which the third party holder wishes to purge,

provided that his application is made within thirty days of the date of the last registered letter accompanied by an acknowledgement slip.

(b) The application shall be made by a registered letter accompanied by an acknowledgement slip to the third party holder and to the former owner. The applicant must deposit in the Court Treasury a sum which is sufficient to cover the cost of the sale by auction, but he shall have no right to a refund of expenses advanced by him if no higher price than that offered by the third party holder is obtained as a result of the auction. The failure to comply with any one of these conditions entails the nullity of the application.

(c) The applicant may not renounce his application without the consent of all the inscribed creditors and all the sureties.

Article 983

When an application is made for the sale of a property, the formalities laid down for compulsory expropriation must be followed. The sale shall take place at the request of either the applicant or of the third party holder, whoever shall have more interest in expediting the sale. The applicant must mention in the notices of sale the price at which he has valued the property.

Article 984

If the sale of the property is not applied for within the period and in accordance with the procedure laid down, the ownership, or if the sale is applied for but no higher price than that offered by the third party holder, the ownership of the property shall be vested finally in the third party holder if he deposits the sum at which he has valued the property in the Court's Treasury.

Article 985

(a) The abandonment of the mortgaged property is made by a declaration submitted to the Execution Judge by the third party holder. He must, within five days from the date of the declaration, notify the abandonment to the creditor who is conducting the proceedings of expropriation by a registered letter accompanied by an acknowledgement slip.

(b) The party who has most interest to expedite the sale may apply to the Judge of the Summary Court for the nomination of a receiver against whom the proceedings of expropriation may be taken. The third party holder, if he applies, will be appointed receiver.

Article 986

If the third party holder does not opt for payment of the inscribed debts, the purge of the property or the abandonment of the property, the mortgagee can only take expropriation proceedings against him after he has summoned him to pay the debt accrued due or to abandon the property. This summons shall be after or at the same time of notifying the debtor with a photocopy of the application of the expropriation according to the Civil and Commercial Procedures Act.

Article 987

The third party holder may take part in the auction on condition that he does not offer a price lower than the sum that he still owes on the price of the property which is being sold.

Article 988

If the mortgaged property is expropriated, even after proceedings for purge or abandonment have been taken and the third party holder acquires the property at the auction, he will be deemed to be the owner of the property by virtue of his original

title deed and the property will be purged of all inscriptions if he pays the price for which he acquired the property at the auction.

Article 989

If, in the preceding cases, a person other than the third party holder acquires the property at the auction, he will hold his right by virtue of the judgement of adjudication from the third party holder.

Article 990

If the price at which the property is sold by auction exceeds the total of the sums due to the inscribed creditors, the difference in excess belongs to the third party holder, and the mortgagee creditors of the third party holder may be paid out of this excess.

Article 991

Servitudes and other real rights that the third party holder had on the property before he acquired the property are re-vested in him.

Article 992

The third party holder is liable to restitute the fruits of the mortgaged property from the date he has been summoned either to pay or to abandon the property. If legal proceedings are abandoned within three years, he has only to account for the fruits as from the day that a new summons is served on him.

Article 993

(a) The third party holder has, against his preceding owner, a right of action for warranty to the extent that a successor in title has against the person from whom he has acquired the property.

(b) The third party holder has also a right of action against the debtor for payment of any sums paid to him, for any reason whatsoever, in excess of the amount due by him in accordance with his title deed. He is subrogated into the rights of the creditors discharged by him, particularly into the guarantees furnished by the debtor, but not into those furnished by a party other than the debtor.

Article 994

The third party holder is personally liable towards creditors for any deterioration caused to the immovable by his fault.

Chapter Three

Extinguishment of the Mortgage

Article 995

The mortgage is extinguished when the secured debt is extinguished. It is revived together with the debt if the cause by reason of which it was extinguished disappears without prejudice, however, to the rights acquired by a third party in good faith in the interval between the extinguishment of the right and its revival.

Article 996

When the formalities of a purge are carried out, the mortgage is definitely extinguished even if the ownership of the third party holder who proceeded with the purge disappears for any cause whatsoever.

Article 997

When the mortgaged property is sold by public auction as a result of compulsory expropriation proceedings taken against either the owner, the third party or the

receiver to whom the abandoned property was delivered, the mortgage rights encumbering the property are extinguished by the deposit of the purchase price or by payment thereof to the inscribed creditors who, by virtue of their rank, are entitled to receive payment of their claims out of that price.

Part Two

Pledge

Chapter One

Elements of a Pledge

Article 998

Pledge is a contract by which a person undertakes, as security for his debt or that of a third party, to hand over to the creditor or to a third person chosen by the parties, a thing over which he constitutes, in favour of the creditor, a real right, and by which the creditor is allowed to retain the thing pledged until repayment of the debt and to obtain payment of his claim out of the price of such thing, no matter in whose hands it may be, in preference to unsecured creditors and to creditors following him in rank.

Article 999

Only movables or immovables which can be sold independently by public auction may be the object of a pledge.

Article 1000

The provisions of Articles 943 Paragraph 2, 945, 946, 949, 952, 953 and 954 relating to mortgage are applicable to pledge.

Article 1001

Common property may be pledged and the provisions of Articles 950 and 951 are applicable to such pledge.

Article 1002

A pledge extends to the accessories of the pledged property.

Article 1003

A thing may be pledged to secure several debts if the person who holds the thing accepts to possess it for the account of the creditors even if he is one of them.

Chapter Two

Effects of the Pledge

Section One

Between the Contracting Parties

First

Obligations of the Pledgor

Article 1004

(a) The Pledgor shall deliver the thing pledged to the creditor or to the third person chosen by the contracting parties to hold the thing.

(b) Provisions relating to the obligation as to delivery of a thing sold apply to the obligation as to delivery of a thing pledged.

Article 1005

The pledge is extinguished if the thing pledged returns into the hands of the Pledgor, unless the Pledgee proves that the return took place for a reason that was not intended to extinguish the pledge, subject always to the rights of third parties in good faith.

Article 1006

The Pledgor guarantees the pledge and its enforceability. He must not do anything which diminishes the value of the thing pledged or prevents the creditor exercising his rights derived from the contract. The Pledgee may, in case of urgency, take at the cost of the Pledgor all necessary measures for the preservation of the thing pledged.

Article 1007

The provisions of Articles 960 and 961 shall apply to the loss or deterioration of the thing pledged.

Second

Obligations of the Pledgee

Article 1008

If the Pledgee takes delivery of the thing pledged, he must use for its preservation and maintenance the care expected from a reasonable person. He shall be answerable for its loss or destruction unless he can prove that they were due to a cause not imputable to him.

Article 1009

(a) The Pledgee may not derive any gratuitous advantage from the thing pledged.

(b) He must, in the absence of an agreement to the contrary, make the thing pledged render all the fruits that it is capable of producing.

(c) The net revenue and the benefit that he obtains from the use of the thing pledged, must be applied in reduction of the debt, even before it falls due. Such revenue or benefit shall be imputed in the first place to expenses he has incurred for the preservation and repairs to the thing pledged, then to expenses and compensations due and then to the capital amount of the debt.

Article 1010

(a) The Pledgee shall manage the thing pledged and shall use in such management the care expected from a reasonable person. He may not, without the consent of the Pledgor, change the method of exploitation of the thing pledged and is bound to advise the Pledgor immediately of any matter that requires his intervention.

(b) If the Pledgee misuses this right or is guilty of bad management or gross negligence, the Pledgor shall have the right to demand that the thing pledged be placed in judicial deposit or to claim restitution of the thing against payment of his debt.

Article 1011

A Pledgee must, upon receipt of his debt and the accessories, expenses and compensation for losses attached thereto, restitute the thing pledged to the Pledgor.

Article 1012

The provisions of Article 963 Paragraph 1 and Article 964 shall apply to the pledge.

Section Two

As Regards Third Parties

Article 1013

The thing pledged must be held by the Pledgee or by the third party chosen by the parties to make the pledge valid as against third parties.

Article 1014

(a) A pledge confers upon the Pledgee the right to retain the thing pledged against any other person, subject to the rights of third parties which have been preserved in accordance with the law.

(b) If a Pledgee loses possession of the thing unknowingly or against his will, he has the right to reclaim the thing from any other person in accordance with the provisions of the law as to possession.

Article 1015

A contract of pledge secures not only the capital of the debt, but also and in the same rank:

(a) Expenses of a necessary kind incurred for the preservation of the thing pledged without prejudice to the privileges of possession expenses.

(b) Compensation for losses resulting from defects in the thing pledged.

(c) The costs of the debt contract, contract of pledge, its inscription, if any, and the costs incurred for the enforcement of the pledge.

Chapter Three

Extinguishment of a Pledge

Article 1016

A right of pledge is extinguished as a result of the extinguishment of the secured debt. It is revived with the debt if the cause of the extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquire the interval between the extinguishment and the revival of the right of pledge.

Article 1017

A right of pledge is also extinguished by one of the following causes:

- (a) The renunciation of the right by the Pledgee if he has the legal capacity to liberate the debtor of the debt. The renunciation may result tacitly if the creditor voluntarily gives up the thing pledged or if he agrees without reserve to its alienation. If, however, the thing pledged is charged with a right in favour of a third party, the renunciation of the Pledgee is only valid as regards such third party if such third party consents.
- (b) The union of the right of pledge and that of ownership of the thing pledged in one and the same person.
- (c) The loss of the thing pledged or the extinguishment of the right given in pledge.

Article 1018

The Pledgor may, in case of a profitable sale transaction offered for the thing pledged, may apply to the Court for permission to sell the thing, even before the debt falls due. The Court may, upon balancing between the interest of each party, decide to permit the sale and determine the sale conditions and settle the matter of depositing the price.

Chapter Four

Certain Kinds of Pledge

Section One
Pledge of an Immovable

Article 1019

A pledge of an immovable is only valid as against third parties if, in addition to delivery of the pledged immovable to the Pledgee, the contract of pledge is inscribed. The provisions governing the inscription of a mortgage apply to the inscription of pledge of an immovable.

Article 1020

(a) A Pledgee of an immovable may lease the immovable to the Pledgor without the contract of pledge being less valid as against third parties.

(b) If the lease is agreed to in the contract of pledge, it must be mentioned in the inscription of the pledge, but if the lease is agreed to after the pledge, it must be noted in the margin of that inscription. Notation is not necessary if the lease is tacitly renewed.

Section Two
Pledge of a Movable

Article 1021

A pledge of a movable is only valid against third parties if, in addition to the delivery of the movable pledged, it is constituted by a written contract adequately setting out the amount of the secured debt and the object of the pledge and having an established date. The rank of the secured creditor will be fixed in accordance with such established date.

Article 1022

The rules relating to the effects of possession of material movables and of bearer securities apply to the pledge of a movable.

A Pledgee in good faith may, in particular, avail himself of his right of pledge even if the Pledgor was not qualified to dispose of the thing pledged. On the other hand, a third party holder in good faith, even after the date of the pledge, may avail himself of the right he has acquired over the thing pledged.

Article 1023

(a) If the thing pledged appears to be in danger of perishing, destruction or diminishing in value, to such an extent that there is a danger that it will not suffice to secure the claim of the Pledgee, and the Pledgor does not apply for the restitution of the thing in exchange for another thing, either the Pledgee or the Pledgor may apply to the Judge for authority to sell the thing pledged by public auction or at its value on the market.

(b) The Judge shall, when authorising the sale, make an order as to the deposit of the price, in such a case the right of the creditor is transferred from the thing pledged to the price thereof.

Article 1024

The Pledgee may, upon failure of payment of the debt, apply to the Judge for authority to sell the thing pledged by public auction or at its value on the market. The Pledgee may also apply to the Judge for an order authorising him to appropriate the thing pledged in payment of the debt, the value thereof being charged against him in accordance with an estimate by experts.

Section Three
Pledge of Debts

Article 1025

(a) A pledge of a debt is only valid as regards the debtor upon notification to or acceptance by the debtor of the pledge pursuant to the rules of assignment.

(b) The pledge is only valid as against third parties if the Pledgee or the person agreed upon by the parties, holds the title of the pledged debt. The debtor shall be notified of the pledge by a letter by registered mail with acknowledgement slip or the date establishing acceptance of the pledge. The rank of the pledge is fixed as at the established date of the notification or of the acceptance of the pledge.

Article 1026

Bonds payable to order may be pledged in accordance with the procedures prescribed by law.

Article 1027

A debt that cannot be assigned or attached, cannot be pledged.

Article 1028

In the absence of an agreement to the contrary, the Pledgee has the right to collect periodical payments appertaining the pledged debt upon condition that he sets off the amounts so collected by him first against expenses, then against the capital of the debt secured by the pledge.

A Pledgee shall be bound to look to the protection of the pledged debt. If he has the right to collect any part of the debt without the intervention of the Pledgor, he is bound to collect such part of the debt at the time and place fixed for payment and immediately inform the Pledgor thereof.

Article 1029

Payment, renewal, set off, joint liability or discharge of the pledged debt shall not be effective against the Pledgee except with his approval. Amendment of the debt that may cause damage to him shall not be effective against him unless he accepts it.

Article 1030

The debtor of a debt given in pledge may set up against the Pledgee the defences relative to the validity of the debt secured by the pledge as well as those defences he may have against his own creditor, to the extent that an assigned debtor may set up defences against the assignee in the case of an assignment of debt.

Article 1031

- (a) If a pledged debt falls due for payment before the actual debt secured by the Pledgee, the debtor must discharge his debt to the Pledgee and the Pledgor jointly. The Pledgee and the Pledgor may each demand the debtor to deposit the amount paid by him, in which case the pledge is transferred to the amount so deposited.
- (b) If the Pledgor and the Pledgee fail to agree on the investment method of the amount paid by the debtor, the Court shall pass a decision that benefit the Pledgor without causing any damage to the Pledgee.

Article 1032

If the pledged debt and the secured debt fall due, the Pledgee may collect the debt pledged up to the amount due to him and demand that the debt be sold or be allocated to him in accordance Article 1024.

Part Three
Privileged Rights

Chapter One
General Provisions

Article 1033

No right is privileged except by virtue of a provision of the law.

Article 1034

(a) The rank of a privilege is fixed by law. In the absence of a formal provision of the law fixing the preferential rank of a privileged right, it ranks after any other privilege.

(b) In the absence of a provision of the law to the contrary, privileged rights of the same rank will be paid rateably.

Article 1035

General privileges extend to all movable and immovable property of the debtor. Special privileges are limited to a specific movable or immovable only.

Article 1036

(a) General privileges, however, even over immovable are not subject to publication. Privileges over immovable securing sums due to the Public Treasury are also not subject to publication.

(b) All these privileges rank prior to any other privilege over immovable or mortgages, whatever may be the date of their inscription. As between each other, the privilege securing sums due to the Public Treasury ranks prior to general privileges.

Article 1037

General privileges shall not be subject to the right to commence proceedings subject to the provisions of the law with respect to the privilege over sums of money due to the Public Treasury.

Article 1038

Provisions of the law relating to mortgages are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights. The provisions relating purge, to make an inscription and the effects of inscription, are in particular applicable to prove immovables.

Article 1039

- (a) A privilege cannot be set up against the holder in good faith of a movable.
- (b) A lessor of an immovable and an hotel operator are deemed, in so far as this article applies, to be holders of furniture used in the leased premises and of effects brought into the hotels by travellers respectively.
- (c) If a creditor has reasonable grounds to apprehend that movables charged with a privilege in his favour will be misappropriated, he may apply for them to be placed in judicial custody.

Article 1040

Provisions applying to loss or destruction of mortgaged property shall also apply to privileges.

Article 1041

In the absence of a provision of the law to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a mortgage or a pledge to the extent that such rules do not conflict with the nature of a privilege.

Chapter Two
Kinds of Privileges

Article 1042

In addition to the privileges established by special provisions of the law, the rights enumerated in the following articles are privileged.

Section One
General Privileges And Special Privileges Over Movables

Article 1043

- (a) Costs of legal proceedings incurred, in the common interest of all the creditors, for the preservation and sale of the property of the debtor, have a privilege over the price of such property.
- (b) Such costs are payable in priority to any other claim, whether privileged or secured by mortgage.
- (c) Costs incurred for the sale of the property are payable in priority to the costs of the procedure of distribution.

Article 1044

- (a) Sums due to the Public Treasury for taxes, duties and other dues of any kind are privileged in accordance with the conditions laid down by laws and regulations issued in this connection.

(b) Such sums shall be paid out of the proceeds of sale of the property charged with this privilege, in whosoever's hands it may be, and before all other rights, whether privileged or secured by a mortgage, except costs of legal proceedings.

Article 1045

(a) Sums incurred for the preservation of, and repairs of a necessary kind to, a movable are secured by a privilege over the movable as a whole.

(b) Such sums shall be paid out of the proceeds of sale of the property so charged, and rank immediately after the costs of legal proceedings and sums due to the Public Treasury. As between them such expenses will rank in the inverse order of the dates on which they were incurred.

Article 1046

1. The following claims are secured by a privilege over all the debtor's property, whether movable or immovable:

(a) sums due to servants, workers and other wage earners for wages and emoluments of any kind due to them.

(b) sums due for foodstuffs and clothes supplied to the debtor and to persons depending on him.

(c) alimony due by the debtor to his dependents.

2. These claims rank immediately after the costs of legal proceedings, sums due to the Public Treasury and expenses for the preservation of and repair to the property. As between them such claims are paid rateably.

Article 1047

(a) Sums disbursed for seeds, manure and other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent: they will have the same rank.

(b) Such sums are payable out of the proceeds of sale of the crop, immediately after the claims with respect to the court proceedings, sums due to the Public Treasury, expenses for the preservation of and repair to the property and sums secured by a general privilege.

Article 1048

(a) Building and agricultural rents for two years, or for the duration of the lease if less than two years, and all sums due to the lessor by virtue of the lease agreement, are all secured by a privilege over all attachable movables and crops existing on the leased property and belonging to the lessee.

(b) Subject to the provisions relating to stolen or lost property, this privilege is enforceable even when the movables belong to the wife of the lessee or to a third party, as long as it is not established that the lessor had knowledge, at the time the movables were brought onto the leased property, of the existence of a third party's rights.

(c) The privilege is also enforceable over movables and crops belonging to a sub-lessee, if the lessor had expressly prohibited sub-letting. If sub-letting was not prohibited, the privilege will only be enforceable up to the amounts due by such sub-lessee to the principal lessee on the date a formal summons is served by the lessor for non-payment of these sums.

(d) If movables and crops so charged are removed from the leased property, notwithstanding the objection of the lessor or without his knowledge, and the movables remaining on the property are not sufficient to secure the privileged claims, the privilege is enforceable on the movables and crops by third parties in good faith. The privilege shall remain in force for three years from the date of the removal, even to the detriment of a third party's rights, if the lessor effects within the prescribed time limit an attachment on the movables and crops removed. If, however, the movables and crops are sold to a purchaser in good faith in the market

by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

(e) These privileged claims are payable out of the proceeds of sale of such movables and crops subject to such privilege, immediately after the claims above-mentioned with the exception of claims in respect of which the privilege does not operate against the lessor in as much as he is a third party holder in good faith.

Article 1049

(a) Sums due to a hotel operator by a hotel guest for accommodation, food and expenses incurred for his account, are secured by a privilege over the effects brought by the guest to the hotel or its annexes.

(b) Unless it can be proved that the hotel operator knew of the existence of a third party's rights over these effects at the time they were brought on to the premises, this privilege may be enforced on these effects, even if they do not belong to the guest, provided that they are not lost or stolen property. An hotel operator may, if he has not been paid in full, object to the removal of these effects, and if they are removed notwithstanding his objection or without his knowledge, the privilege continues to be enforceable on them, subject to the rights acquired by third parties in good faith in the manner described in Article 1048 with respect to the privilege enjoyed by the lessor.

(c) An hotel operator's privilege has the same rank as a lessor's privilege. Should the effects in question be subject to both claims, the first in date will have priority, unless it is enforceable as against the other.

Article 1050

(a) Sums due to the vendor of a movable for the price and accessories are secured by a privilege over the movable sold. This privilege is enforceable as long as the

movable sold preserves its identity subject to the rights acquired in good faith by third parties and subject to the special provisions applicable in commercial matters.

(b) This privilege follows in rank privileges referred to in the preceding Articles. It operates, however, as against the lessor and hotel operator, if it can be proved that they had knowledge of such privilege at the time the thing sold was brought onto the leased property or into the hotel.

Article 1051

Co-owners who have partitioned a movable have a privilege over this movable in respect of their remedies against each other resulting from the partition, and for payment of any difference reverting to them in the partition.

The privilege of a co-partitioner has the same rank as a vendor's privilege. Should the movable in question be subject to both rights, the first in date will have priority.

Section Two: Special Rights over Immovable

Article 1052

(a) The price and accessories due to the vendor of an immovable secured by a privilege over the immovable sold.

(b) Such privilege must be inscribed, notwithstanding the transcription of the sale, and its rank is fixed by the date of inscription.

Article 1053

(a) Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works, have a privilege over such works but only in respect of the increase in value resulting from such works as at the time of the sale of the immovable.

(b) Such a privilege must be inscribed: its rank is fixed by the date of its inscription.

Article 1054

(a) Co-owners who have partitioned an immovable have a privilege over this immovable in respect of their respective remedies against each other resulting from the partition, including their right to claim payment of any difference reverting to them in the partition.

(b) Such a privilege must be inscribed: its rank is fixed from the date of its inscription.