

**CIVIL CODE  
OF  
THE STATE OF ERITREA**

**2015**

Published in 2015

Printed at Sabur Printing Services

## **CODIFICATION OF THE CIVIL CODE OF THE STATE OF ERITREA**

The Civil Code establishes the rights and duties of a person from the moment of birth to death. By judiciously governing the relationships between private parties, its provisions contribute to ensuring social justice, the acceleration of economic progress and development of the country, its peace and stability as well as enhancing the unity of the Eritrean societies.

From the inception of the drafting process up to this final form, relentless and continued efforts have been made to make it consistent with the values and principles of the Eritrean society, especially having regard to the fact that the relationships governed by the Civil Code are of interest to everyone. In tandem with the foregoing, every effort has been exerted to see that equality of citizens as has been gained through the struggle are not overlooked while new global developments in the field of civil law are duly reflected in this, the *Civil Code of the State of Eritrea*.

Fawzia Hashim  
Minister of Justice  
15 May 2015

## PRELUDE

The process of building a civilized nation strong in all its aspects where peace, justice and tranquility prevail requires the existence of laws appropriately defining the rights and duties of the members of the society. One such law is the Civil Code. Proclamation No. 2/1991 enacted the Transitional Civil Code of Eritrea on 15 September 1991 having made modest amendments, replacements and deletions to certain provisions of the Civil Code which was in force in Eritrea at the time when the country was fully liberated.

The need to modernize our laws to meet domestic as well as global developments became apparent at the time when the Transitional Codes remained in force. That the law should emanate from within, while at the same time take into account our unity in diversity, and that it should reflect our national values and norms is one of the lessons of our accumulated experience. Moreover, our experience required that our laws be written in a language easily understandable to the public so citizens can continue to be law-abiding as well as understand and exercise their rights and duties. Having due regard to the experience and lessons so far gained, this Civil Code of the State of Eritrea has attempted to accommodate the abovementioned interests and is now being presented to be operative after having passed through long process of drafting.

The primary objective of the Civil Code is to enable persons to clearly understand their rights and duties from the moment of birth to death and provide binding rules to all their important activities. Where damages result from failure to follow these binding rules, this Code aspires to take back the victims to the position where they were prior to the occurrence of the damage. Secondly, the Civil Code provides protection, unity and harmony to the natural and basic unit of the society - the family. Thirdly, by providing for simplified and reliable economic transactions, it protects interests of citizens thereby insuring national interest.

In general, this *Civil Code of the State of Eritrea* is expected to contribute to the establishment of order, stability, peace and justice in the society and also ensure its sustainability.



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## **PREAMBLE**

**WHEREAS** the exercise of rights and meeting of obligations in civil matters by humans from birth to death and by other legal persons must be provided for;

**WHEREAS** the determination of such rights and duties of persons in civil matters is imperative for the advancement of peace, order, stability and justice;

**WHEREAS** a systematic compilation of laws in a Civil Code ensures clarity, coherence and accessibility of the guiding rules in civil matters;

**WHEREAS** modernizing a Civil Code to meet national as well as global developments is vital to uphold the already accomplished progress and secure further development;

**NOW, THEREFORE**, it is issued as follows.

# **CIVIL CODE OF THE STATE OF ERITREA**

## **BOOK I - PERSONS**

### **TITLE I - NATURAL PERSONS**

#### **Chapter 1. - Personality and the Rights Inherent to Personality**

##### **Section 1. - Attribution of Personality**

###### **Art. 1. - Principle.**

Every human being is the subject of rights and duties from his birth to his death.

###### **Art. 2. - Child Merely Conceived.**

A child merely conceived shall, whenever his interests so demand, be considered to have been already born. The child who is still-born, shall be regarded as never having existed.

###### **Art. 3. - Date of Conception.**

- (1) A child shall be deemed to have been conceived on the three hundred and sixth day which precedes his birth.
- (2) No proof shall be admitted against this presumption.
- (3) Nothing in this Article shall affect the provisions of this code relating to the date of conceptions whenever it is necessary to establish who is the father of the child.

###### **Art. 4. - Proof of Life or Death of Person. - 1. *Burden of Proof.***

- (1) Whosoever, for the purpose of exercising a right, alleges that a particular person is or was alive on a certain day, or is dead, shall prove the allegation.
- (2) The proof that a person is or was alive shall be made by producing the person himself or by the evidence of three witnesses or any other reliable evidence.

- (3) The proof of death shall be made in accordance with the provisions of Chapter 3 of this Title.

**Art. 5. - 2. Persons Dead Simultaneously.**

Where several persons are dead, and it is not possible to prove that one of such persons survived another, all these persons shall be deemed to have died at the same time.

**Art. 6. - Proof of Identity.**

- (1) The identity of a person shall be proved by the documents issued to such persons by the administrative authorities.
- (2) Failing such documents, it shall be proved by the production of two witnesses.
- (3) The witnesses shall be liable to third parties for the damage which may be caused through the inaccuracy of their declarations or evidence.

**Section 2. - Rights of Personality**

**Paragraph 1. - General Provisions**

**Art. 7. - Effect of Personality.**

- (1) Every natural person shall enjoy the rights of personality and the liberties guaranteed by the Constitution.
- (2) In this respect, no regard shall be had to race, ethnic origin, language, color, gender, religion, disability, age, political belief or opinion, or social or economic status or any other improper factors.

**Art. 8. - Limitations upon Rights of Personality and Liberties.**

- (1) The rights of personality and the liberties guaranteed by the Constitution are *extra commercium*.

- (2) Any act or undertaking by which a person voluntarily limits his exercise of such rights and liberties shall be of no effect unless justified by a legitimate social interest.

**Art. 9. - Cessation of Unlawful Interference.**

Any unlawful interference with the rights of personality shall give to the person who suffers it the right to demand that it be stopped, without prejudice to the liability of the author of such interference.

**Art. 10. - Restriction on Freedom and Searches.**

No person may have his liberty restricted, or be subjected to a search, except as provided by law.

**Art. 11. - Freedom of Residence.**

- (1) Every person is free to establish his residence wherever it is suitable for him and to change the place of such residence.
- (2) The undertaking of a person to reside in a particular place shall be of no effect.
- (3) the undertaking of a person not to reside in or not to go to a particular place shall be of no effect unless such undertaking is justified by a legitimate interest.

**Art. 12. - Inviolability of Domicile.**

- (1) The domicile of a natural person is inviolable.
- (2) No one may enter the domicile of another against the will of such person, neither may a search be effected therein, except in the cases provided by law.

**Art. 13. - Freedom of Thought.**

- (1) Every person is free to think and to express his ideas.
- (2) The only restrictions which this liberty admits are those which are required in order to respect the rights of others, morality and the law.



#### **Art. 14. - Religion.**

There shall be no interference with the exercise, in accordance with the law, of the rites of any religion or creed by residents of Eritrea, provided that such rites are not utilized for political purposes and are not prejudicial to public order and morality.

#### **Art. 15. - Freedom of Action.**

- (1) Every person is free to exercise any activity which he deems proper in that which concerns his calling and his leisure.
- (2) The only restrictions which such freedom admits are the rights of others, morality and the law.
- (3) The act by which a person binds himself to exercise a given activity or binds himself not to exercise such activity shall be of no effect unless it is justified by a legitimate interest.

#### **Art. 16. - Right to Keep Silent.**

Any admission or manifestation of the will obtained by methods which unlawfully interfere with the right to personality shall be of no effect.

#### **Art. 17. - Marriage and Divorce.**

- (1) The undertaking of a person not to marry or not to remarry shall be of no effect under civil law.
- (2) The same shall apply to the undertaking of a person to divorce or not to divorce.

#### **Paragraph 2. - Integrity of the Person**

##### **A. - Integrity of the Human Body**

#### **Art. 18. - Integrity of Human Body.**

- (1) The act by which a person disposes of the whole or of a part of his body shall be of no effect under civil law where

such act is to be carried out before the death of the person thus disposing, if such act has the effect of causing a serious injury to the integrity of the human body.

- (2) The provisions of sub-Article (1) shall not apply where the act is justified by the rules of medical practice.

#### **Art. 19. - Revocability of Acts Relative Thereto.**

- (1) A person may at any time revoke the act by which he has disposed of the whole or a part of his body whether such act is to be carried out during the lifetime of the person by whom it was performed or after his death.
- (2) The person in whose favor such act has been made has the right to be indemnified for any expenses which he has incurred on the faith of such promise.

#### *B. - Medical Examinations*

#### **Art. 20. - Principle.**

- (1) A person may at any time refuse to submit himself to a medical or surgical examination or treatment.
- (2) Nothing in this Article shall affect the provisions of laws or regulations providing for a physical examination of persons or their compulsory vaccination or other similar measures in the public interest.
- (3) Nothing in this Article shall affect the power of a guardian of a minor or interdicted person to submit the incapacitated person of whom he is in charge to an examination or treatment beneficial to that person's health.

#### **Art. 21. - Restriction.**

Where the examination or treatment to which a person is required to submit himself does not involve any abnormal risk, such person, in case of refusal, forfeits the right to avail himself of the illness or infirmity which the treatment could have prevented, eliminated or lessened.

**Art. 22. - Refusal to Accept Examination.**

Where a person refuses to submit himself to a medical examination not involving any serious danger to the human body, the Court may consider as established the facts which the examination has the object of ascertaining.

**Art. 23. - Professional Secrecy.**

- (1) A person may not be compelled to reveal facts which have come to his knowledge by reason of his profession, if by revealing such facts he would betray or risk betraying the confidence which a third person has reposed in him by very reason of his profession.
- (2) The person who has confided or disclosed such facts may ensure that they be not revealed by the person in whom he has reposed his confidence.
- (3) Nothing in this Article shall affect the relevant provisions of the Penal Code.

*C. - Funerals*

**Art. 24. - Will of Deceased.**

- (1) Every person having the capacity to make a will may prescribe the conditions of his funeral.
- (2) He may appoint one or more persons to ensure that such provisions are carried out.
- (3) The person so appointed and, failing such, any other person who shows that he has a material or moral interest, may apply to the Court of the place of the death to enforce those provisions.

**Art. 25. - Will Not Expressed.**

- (1) Where the deceased has not expressed his will in the form mentioned in Article 24, the conditions of his funeral shall be fixed by his surviving spouse or by his nearest relatives.

- (2) In default of such spouse and of relatives present or known at the time of the death, such conditions shall be fixed by the persons who take the initiative regarding the funeral arrangements.
- (3) In case of dispute, the matter may be laid before the Court of the place of death by the most diligent party.

*D. - Image and Privacy*

**Art. 26. - Principle.**

The photograph or the image of a person may not be exhibited in a public place, nor reproduced, nor offered for sale without the consent of such person.

**Art. 27. - Exception.**

The consent of the person concerned shall not be required where the reproduction of his image is justified by the notoriety of such person or by the public office which he occupied or by the requirements of justice or of the police or by a scientific, cultural or didactic interest, or where the reproduction of the image is made in connection with facts, events or ceremonies of public interest or which have taken place in public.

**Art. 28. - Sanction.**

- (1) Where the image of a person is exhibited or offered for sale without the consent of such person, except in the cases referred to in Article 27, such person may demand that the exhibition or offer for sale of his image be stopped.
- (2) The Court may, if equity so demands, also award damages to such person. Such damages shall not exceed the enrichment derived by the person who made use of the image from its exhibition or offer for sale.
- (3) Damages for moral prejudice may be awarded if the exhibition or offer for sale does not cease immediately, when the cessation thereof is demanded.

### **Art. 29. - Rights of the Family.**

- (1) When the person whose image is exhibited or offered for sale is dead or not in a position to manifest his will, the right referred to in Article 28 shall vest in his relatives if the exhibition or offer for sale is of such a nature as to be prejudicial to the honor or reputation of the deceased person.
- (2) The only persons competent to represent the family for the purposes of the application of this Article are the spouse, or, in his default, the nearest descendant or, in default of a descendant, the nearest ascendant of the person concerned.
- (3) In case there are two or more persons of equal degrees, the eldest descendant or the oldest ascendant is the only person competent to represent the family.

### **Art. 30. - Inviolability of Correspondence.**

- (1) The addressee of a confidential letter may not divulge its contents without the consent of its author.
- (2) He may, however, produce it in judicial proceedings if he shows that he has a legitimate interest.

## **Chapter 2. - Name**

### **Art. 31. - Principle.**

- (1) Every person has a first name, a patronymic and a second patronymic.
- (2) Instead of a second patronymic he may have a family name.
- (3) He shall be designated in administrative documents by his first name, patronymic and second patronymic or family name.
- (4) A patronymic of a person is the first name of his father. A second patronymic is the first name of his paternal grandfather.

- (5) A family name is destined to remain the same in following generations.

**Art. 32. - Assumption of Name.**

- (1) If the father of the child has a second patronymic, the child will also have a second patronymic, unless the parents of the child, on the occasion of the declaration of birth, jointly make a choice for a family name. If the father of the child has a family name, the child will also have this family name, unless the parents of the child, on the occasion of the declaration of birth, jointly make a choice for a second patronymic.
- (2) Where no legal filiation link between child and father has been established, the child shall have a first name, the patronymic of his mother and the second patronymic of his mother or a family name. If the mother of the child has a second patronymic, the child will also have a second patronymic, unless the mother, on the occasion of the declaration of birth, makes a choice for a family name. If the mother of the child has a family name, the child will also have this family name, unless the mother, on the occasion of the declaration of birth, makes a choice for a second patronymic.
- (3) If a legal filiation link between child and father is established after the birth of the child, the patronymic and the second patronymic or family name of the child will change in accordance with sub-Article (1). A choice for a family name or for a second patronymic may be made before any civil status officer within a period of six months after the establishment of the legal filiation link. If the child has not reached the age of majority, this choice may be made by the parents of the child jointly. If the child has reached the age of majority, the child himself may make this choice.
- (4) All the common children of parents, or, where no legal filiation link between children and father has been established, all children of the mother shall have the same patronymic or family name.

**Art. 33. - Choice of First Name - 1. Principle**

- (1) The first name of the child shall be chosen by his parents jointly.
- (2) Where no legal filiation link between child and father has been established, the mother, or, in her default, the family of the mother, shall give the first name to the child.
- (3) If a legal filiation link between child and father is established after the birth of the child, but before the child reaches the age of majority, the parents of the child may modify the first name given in accordance with sub-Article (2) by making a joint declaration before any civil status officer within a period of six months after the establishment of the legal filiation link.

**Art. 34. - 2. Representative of the Family.**

- (1) The nearest ascendant and, in his default, the nearest relative in the collateral line is competent to represent the family for the purpose of Article 33.
- (2) In the case of equal degrees, the eldest ascendant or relative in the collateral line shall choose the name of the child.

**Art. 35. - Declaration to the Civil Status.**

- (1) The civil status officer of the commune where the child is born shall be informed of the first name of the child and of his patronymic and second patronymic or family name within three months following his birth, by the person who is bound to declare the birth of the child.
- (2) Before drawing up the record of birth the civil status officer shall require any of the parents or, in their absence, the guardian of the child, to state the first name which the child is to be given.
- (3) If he does not receive any reply or if the first name proposed is not acceptable in terms of the law, the civil

status officer shall himself choose the first name of the child.

**Art. 36. - Forbidden First Name.**

A child may not receive the first name of one of his brothers or sisters who are alive.

**Art. 37. - Unknown Filiation.**

- (1) A child whose father and mother are not known shall have the name which is given to him by the civil status officer in his record of birth.
- (2) The name shall be chosen from among the names common in the region.
- (3) Any person who shows that he has a material or moral interest may apply to the Court, before the child has reached the age of five years, to modify such name.

**Art. 38. - Name of Adopted Child.**

- (1) An adopted child shall receive the patronymic and second patronymic or family name of the adopter in accordance with Article 32.
- (2) He may, by virtue of the contract of adoption, receive a new first name.

**Art. 39. - Change of Name.**

- (1) The change of the patronymic and second patronymic or family name of a person may be authorized, for good cause, by the Court on the application of such person.
- (2) In deciding on the application; the Court shall ensure that the interests of third persons are not prejudiced by this change.
- (3) The change of a first name of a person may be authorized, for good cause, by the Court on the application of such person.



#### **Art. 40. - Agreements Relating to Name.**

- (1) Any agreement relating to the name shall be of no effect under civil law.
- (2) Nothing in this Article shall affect the rules relating to trade names.

#### **Art. 41. - Illegal Use of a Name.**

- (1) Whosoever bears a name may resist the illegal use of such name by another person whenever such use causes or is likely to cause material or moral damage.
- (2) After the death of a person or if a person is not in a position to manifest his will, the same right appertains to each of his descendants and to his spouse, even when they themselves do not bear such name.
- (3) Damages for moral prejudice may be awarded to the person demanding them if the illegal use of the name does not cease immediately, when such cessation has been demanded.

### **Chapter 3. - Proof of Civil Status**

#### **Art. 42. - Modes of Proof.**

- (1) Births, deaths and marriages shall be proved, in case of doubt or dispute, by means of the records of civil status.
- (2) They may also be proved, in the cases provided by law, by means of acts of notoriety or of possession of status.

#### **Section 1. - Officers of Civil Status**

##### **Paragraph 1. - Appointment of Officers of Civil Status**

#### **Art. 43. - Appointment by Administration.**

- (1) The administration of the region shall appoint, in each urban or rural commune of the region, a person who shall carry out the duties of civil status officer.

- (2) He shall also appoint, in each commune, one or more assistants to such person.

**Art. 44. - Quarters or Sections of Communes.**

- (1) Where an urban commune is divided into several quarters, a different civil status officer may be appointed for each quarter by the administration.
- (2) Where a section of a rural commune is isolated or is far from the center of the commune, a different civil status officer may be appointed for such section of a commune by the administration.
- (3) In such cases one or more assistants to each civil status officer shall be appointed.

**Art. 45. - Assistants to Civil Status Officer.**

- (1) The assistant to the civil status officer shall replace him in case of any impediment on his part.
- (2) If the order in which the assistants are called upon to carry out their duties has not been fixed by the administration of the region or by the civil status officer, it shall be fixed having regard to their age, the eldest being called in the first place.
- (3) The records drawn up by any one of the assistants shall have the same effect as if they had been drawn up by the civil status officer himself.

**Art. 46. - Commencement of Duties.**

- (1) The duties of the civil status officer shall commence when he has accepted such duties and when his signature has been registered in the departmental office or in the registers of civil status.
- (2) The duties of the civil status officer shall also commence when the person appointed by the administration has in fact carried out such duties by drawing up a record or by

taking part, in the capacity of civil status officer, in the drawing up of such record.

- (3) The provisions of this Article shall also apply to the duties of assistants.

**Art. 47. - Termination of Duties.**

- (1) The duties of a civil status officer shall terminate on his death or when he is relieved of his duties or dismissed or when his resignation has been accepted by the administration.
- (2) The same shall apply to the duties of the assistants.

**Art. 48. - Death or Lasting Impediment.**

- (1) The civil status officer shall without delay inform the administration of the region of the death of his assistants, or of any circumstances which prevents in a lasting manner any one of them from carrying out his duties.
- (2) The assistants of the civil status officer shall without delay inform the administration of the region of the death of the civil status officer or of any circumstances which prevents him in a lasting manner from carrying out his duties.

**Art. 49. - Head of Commune.**

- (1) The head of the commune shall be the civil status officer in the territory of his commune, where the person appointed by the administration and his assistants are not in a position to carry out their duties.
- (2) He may, in such case, require to be helped or substituted in his duties of civil status officer, under his own responsibility, by one or more helpers.
- (3) He shall without delay inform the administration of the situation.

**Art. 50. - Departmental Office.**

- (1) The administration of the region shall appoint in each chief town of the departments of the region the personnel of the departmental office of civil status.
- (2) Such personnel shall include, besides a director responsible for the organization and supervision, officials in sufficient number to ensure the performance of the work incumbent on the office.

**Art. 51. - Consuls of Eritrea.**

The consuls of Eritrea shall, within their territorial limits and as regards Eritrean subjects, carry out the duties of officers of civil status.

**Art. 52. - Commanding Officers of Ships.**

The commanding officers of ships flying the Eritrean flag shall carry out the duties of officers of civil status as regards the births, deaths and marriages which take place on board their ship.

**Paragraph 2. - Duties of Officers of Civil Status**

**Art. 53. - Principle.**

- (1) The civil status officer shall ensure that the births, deaths and marriages taking place within his jurisdiction be entered in the register of civil status.
- (2) The civil status officer shall ensure that the following events be added to the birth records by way of a later annotation:
  - (a) acknowledgment of a child;
  - (b) adoption of a child;
  - (c) judicial establishment of paternity;
  - (d) contestation of paternity judicially declared well-founded;

- (e) annulment of an acknowledgment;
  - (f) revocation of an adoption; and
  - (g) change of name of a child.
- (3) The civil status officer shall ensure that the following events be added to the records of marriage by way of subsequent annotation:
- (a) divorce;
  - (b) dissolution of marriage by the Court;
  - (c) decision by the Court whether a divorce has been pronounced or not.
- (4) Subsequent annotations are part of the civil registers. Provisions regarding records shall apply *mutatis mutandis* to subsequent annotations.

*A. - Urban Communes*

**Art. 54. - Keeping and Conservation of Registers.**

- (1) The civil status officer shall himself keep the registers of civil status in those communes where such duty has been expressly imposed on him by the administration.
- (2) He shall ensure their custody and conservation and deliver to interested persons extracts from or copies of the records of such registers.

**Art. 55. - Drawing up of Records.**

- (1) The records of civil status shall be drawn up by the civil status officer on his own initiative whenever he has the particulars required for drawing up such records.
- (2) The civil status officer may, where he thinks fit, summon any interested party, with the object of completing the information which he requires and make them sign the record.

**Art. 56. - Periods.**

Records of civil status shall be drawn up within the following periods:

- (a) three months from the date of birth for records of birth;
- (b) one month from the date of death for records of death; or
- (c) one month from the date of marriage for records of marriage.

**Art. 57. - Records to be Drawn after Prescribed Periods.**

- (1) After the periods laid down in Article 56 have expired, records of civil status may only be drawn up when sanctioned by Court decision.
- (2) In such case as referred to in sub-Article (1), the record shall bear a reference to such judgment.

*B. - Rural Communes*

**Art. 58. - Declaration.**

- (1) In those communes in which such duty has not been expressly imposed on him by the administration, the civil status officer shall not be bound to keep the registers himself.
- (2) He shall communicate to the departmental office of civil status such information as is required for drawing up the records of civil status relating to births, deaths and marriages which have taken place in the commune.
- (3) The records of civil status shall be drawn up immediately, on the basis of such information, by the officials of the departmental office of civil status.

**Art. 59. - Regulations of Application.**

- (1) Regulations made by the administration shall prescribe in regard to each commune, under what conditions such information shall be gathered.

- (2) They shall prescribe in particular in which place and at what times such information is to be furnished.

**Art. 60. - Place Where Information is to be Furnished.**

- (1) Regulations may impose on the civil status officer the duty to go to the chief town of the department or to another center less distant from the commune in order to furnish there the information relating to civil status.
- (2) They may alternatively provide that such information shall be gathered by the officials of the departmental office of civil status in the same commune for which the registers are to be drawn up.
- (3) In the case mentioned in sub-Article (2), regulations shall prescribe whether the registers are to be kept in the commune or in the departmental office of civil status.

**Art. 61. - Time Within Which Information is to be Furnished.**

- (1) The information concerning civil status shall be gathered at least once a year in each commune.
- (2) In the case provided for in sub-Article (1) of Article 60, the duty to go to the chief town of the department or to another center may not be imposed on the civil status officer at intervals of less than three months.

**Art. 62. - Possibility of Declarations at Intervening Times.**

- (1) The civil status officer may, at any time, even on dates other than those prescribed by the administration, communicate to the departmental office of civil status information concerning the civil status of persons in his commune.
- (2) Such information shall be immediately recorded in the registers by the departmental office of civil status when the registers relating to the commune are kept in such office.

**Art. 63. - Drawing Up of Records by Civil Status Officer.**

- (1) The instructions may authorize the civil status officer to draw up the records of civil status himself.
- (2) Each record thus drawn up shall, in such case, be approved by the departmental office of civil status.
- (3) Mention of such approval shall be made in the record.

**Art. 64. - Late Declarations.**

- (1) If two years have lapsed after the event which has given occasion for drawing up records of civil status, the records may only be drawn up by virtue of a Court decision.
- (2) In such case the record shall bear a reference to such judgment.

*C. - Special Cases*

**Art. 65. - Consuls.**

- (1) Consuls of Eritrea in foreign countries shall draw up records only at the request of interested persons.
- (2) They shall themselves keep the registers of civil status shall ensure their custody and conservation and deliver to interested persons extracts from, or copies of, the records in such registers.

**Art. 66. - Commanding Officers of Ships.**

The commanding officers of Eritrean ships shall immediately declare, at the first Eritrean port, or at the first port in which a Consul of Eritrea resides, the events which give occasion to the drawing up of a record of civil status and which have taken place on board their ship.



### Paragraph 3. - Duty to Notify the Civil Status Officer

#### **Art. 67. - Judgments.**

- (1) After a judgment as referred to in sub-Article (2) of Article 53 has become final, the Court registrar is obliged to notify, without delay, the civil status officer who keeps the child's record of birth.
- (2) After a judgment as referred to in sub-Article (3) of Article 53 has become final, the Court registrar is obliged to notify, without delay, the civil status officer who keeps the record of marriage of the parties.

#### **Art. 68. - Acknowledgment of a Child.**

- (1) If the acknowledgment of a child takes place before a civil status officer who does not keep the child's birth record, that officer is obliged to notify, without delay, the civil status officer who keeps that record.
- (2) If the acknowledgment of a child takes place before a public notary or administrator of the commune, the public notary or administrator of the commune is obliged to notify, without delay, the civil status officer who keeps the child's birth record.

#### **Art. 69. - Change of Name.**

If a change of name is the result of a declaration before a civil status officer who does not keep the child's birth record, that officer is obliged to notify, without delay, the civil status officer who keeps the child's birth record.

#### **Art. 70. - Divorce.**

After pronouncing a divorce the family arbitrators are obliged to notify, without delay, the civil status officer who keeps the record of marriage of the parties.

## **Section 2. - Registers of Civil Status**

### **Art. 71. - Keeping of Registers.**

A register of births, a register of deaths and a register of marriages shall be kept for each commune and in each consulate.

### **Art. 72. - Supply of Registers.**

- (1) The registers shall be supplied free of charge to the officers of civil status by the administration of the region which receives them from the Ministry of Local Government.
- (2) They shall be supplied free of charge to the consulates by the Ministry of Foreign Affairs.
- (3) The persons having the duty to keep the registers shall, six months before the probable date on which a register will be terminated, apply for a new register to be supplied to them.

### **Art. 73. - Prohibition on Removal of Registers.**

The registers may not be removed from the place where they are kept, except in the cases where the law provides for or authorizes such removal.

### **Art. 74. - Compulsory Indications. - 1. Registers of Communes.**

- (1) Each register shall indicate the commune and where appropriate the quarter or section of the commune to which it refers, as well as the region in which such commune is situated.
- (2) Each register shall bear a reference number.
- (3) Such indications shall appear on the cover and on the edge of the register and be reproduced on each leaf of the register.

**Art. 75. - 2. Other Registers.**

The registers kept in the consulates shall bear the indication of the consulate in which they are drawn up.

**Art. 76. - Form of Registers.**

- (1) The registers shall commence with several pages on which shall be mentioned the persons authorized to keep the registers with the signature of such persons against such mention.
- (2) The registers shall additionally contain a series of numbered leaves each one of which shall serve for drawing up a record of civil status.
- (3) They shall end with several pages intended to contain the alphabetical index of the persons to whom the records of the registers refer.

**Art. 77. - Duplicate Registers.**

The civil status records shall be drawn up in duplicate.

**Art. 78. - Storage of the Registers.**

- (1) The registers shall be bound and stored in the place where they have been kept or in another place specified by regulations.
- (2) Subsequent annotations may be bound separately from the records, provided that reference is made to them on the records.

**Art. 79. - Storage of Duplicate Registers.**

- (1) When the registers are complete, the duplicates shall be deposited in the Court registry of the chief town of the region or in such other place as may be prescribed, being in any event not the same place as where the registers are stored.

- (2) The duplicates of the registers kept by the consuls shall be sent to the Ministry of Foreign Affairs to be stored there.
- (3) Upon receiving the duplicates the person who is constituted depositary thereof shall bind them.

**Art. 80. - Notice.**

- (1) As soon as the birth record is drawn up, the civil status officer shall give notice of it to the child's guardian.
- (2) As soon as the record of marriage is drawn up, the civil status officer shall give notice of it to the spouses.

**Art. 81. - No Unutilized Leaves.**

- (1) The civil status officer before drawing up a record shall verify the number of the leaf on which the last record appearing in the register has been entered.
- (2) He shall draw up the record on the leaf whose number immediately follows that of such last record.
- (3) He may in no case leave an unutilized leaf in the register.

**Art. 82. - Leaf Unutilized by Mistake.**

- (1) If, as a result of a mistake, a leaf has been left unutilized, the civil status officer, as soon as he notices such mistake, shall annul the leaf in question.
- (2) The unutilized leaf may in no case serve for writing thereon a record of civil status.

**Art. 83. - Index.**

- (1) When a register is complete, the civil status officer shall draw up, in the pages at the end of the register, the alphabetical list, according to their names, of all the persons to whom the records in the register refer.

- (2) He shall make a file of the duplicates, and send such file, together with a copy of the index drawn up by him, to the place prescribed by regulations.

**Art. 84. - Destruction of Register or Duplicate Registers.**

- (1) If a register in a commune is lost or destroyed, the civil status officer of the commune shall, using the information stored in the duplicate registers, initiate immediately the recompilation of the registers.
- (2) If the duplicates of a register are lost or destroyed, they shall immediately be reconstituted on the initiative of the depository of the duplicates lost or destroyed.

**Art. 85. - Destruction of Register and Duplicates.**

- (1) If a register and the duplicates are lost or destroyed, the civil status officer shall immediately give notice of such fact to the departmental office of civil status.
- (2) This office shall take the necessary measures for the recompilation of the register and duplicates.

**Art. 86. - Control of the Keeping of Registers.**

- (1) The departmental office of civil status shall supervise civil status officers and control the proper keeping of registers of civil status in the commune.
- (2) It shall organize their inspection and take action for the repression of any criminal infringements which it ascertains.
- (3) The Ministry of Foreign Affairs shall carry out the same duties as regards registers kept in consulates.

### **Section 3. - Records of Civil Status**

#### **Paragraph 1. - General Provisions**

##### **Art. 87. - Particulars to be Mentioned.**

- (1) The records of civil status shall be drawn up by filling in the blank spaces in the registers.
- (2) The records shall mention in all cases the day, the month and the year when they are received and shall bear the signature of the civil status officer who receives them.

##### **Art. 88. - Particulars Which May Not be Mentioned.**

No mention of particulars other than those required by law may be made in the registers.

##### **Art. 89. - Unknown or Uncertain Information.**

- (1) If one of the blank spaces left in a record of civil status cannot be filled in on account of lack of sufficiently accurate information given to the person who keeps the registers, such person shall fill in the blank space by inserting the word "unknown".
- (2) If the civil status officer knows approximately the particular to be entered, he shall enter such particular in the appropriate place adding the word "probably".

##### **Art. 90. - No Abbreviations.**

The particulars required in the record shall be written clearly and without any abbreviation.

##### **Art. 91- No Erasures or Words Written Over Others.**

The records shall contain no erasure or word written over another or addition.

##### **Art. 92. - Signature.**

If any of the persons whose signature is required on a record cannot or does not know how to sign, such person shall affix on the record his thumb mark instead of his signature.

**Art. 93. - Leaves Not Utilized.**

When, on account of erasures, or for any other cause, a record has to be reconstituted, the civil status officer shall annul the page in question.

**Art. 94. - Probative Force of Records.**

- (1) The records of civil status regularly entered in the registers shall, saving evidence to the contrary, be proof of the statements which they contain.
- (2) Evidence to the contrary may not be adduced except where it is authorized by the Court.
- (3) It may, in such case, be adduced in any manner.

**Art. 95. - Records Not Entered in Registers.**

- (1) Records which are not entered in the registers shall not have the probative value accorded to records which are registered.
- (2) They have only the value of mere information.

**Paragraph 2. - Records of Birth**

**Art. 96. - Particulars of Record.**

The record of birth shall show:

- (a) the day, month and year of the birth;
- (b) the sex of the child;
- (c) the name which is given to him;
- (d) the names, dates and places of birth of his father and mother;
- (e) where appropriate, the name, date and place of birth of the person making the declaration.

**Art. 97. - Declaration of Birth.**

- (1) The birth of a child may be declared to the civil status officer by any person.
- (2) The parents of the child, or, in their default, the guardian of the child, or, in default of a guardian, the person who has taken care of the child are obligated to declare the birth to the civil status officer.
- (3) The civil status officer shall draw up the record of his own motion if he is aware of the birth.

**Art. 98. - Foundlings.**

- (1) A record of birth shall be drawn up for every new born child found in the locality whose identity is unknown.
- (2) A detailed statement shall be drawn up stating the day upon which and the place where the child has been found, the apparent age of the child, his sex and the name which is given to him.
- (3) The record of birth, drawn up for the child, shall contain a reference to such statement.

**Paragraph 3. - Records of Death**

**Art. 99. - Particulars of Records of Death.**

The record of death shall show:

- (a) the day, month and year of the death;
- (b) the name, date and place of birth of the deceased;
- (c) the names, dates and places of birth of the father and mother of the deceased;
- (d) the name, date and place of birth of the spouse of the deceased if such spouse is still alive, and the date of the marriage; and



- (e) where appropriate, the name, date and place of birth of the person who makes the declaration of the death.

**Art. 100. - When Record Required.**

A declaration of death and the drawing up of a record of death are required whenever the deceased is a person in respect of whom a record of birth should have been drawn up.

**Art. 101. - Persons Obligated to Declare Death.**

- (1) Where a person dies, the persons who live with him are obligated to declare his death.
- (2) In default of such persons, such obligation shall devolve on the relatives by consanguinity or affinity, if they live in the same commune, and, in the absence of such relatives, on the nearest neighbors of the deceased.

**Art. 102. - Death in Another Person's House.**

If the deceased dies outside his home, the person in whose house the death has occurred is obligated to declare the death.

**Art. 103. - Hospitals, Schools, Hotels and Prisons.**

- (1) If a death occurs in a hospital, a school, a hotel or a prison, the death shall be declared by the person who is in charge of the establishment in question.
- (2) The death of persons executed by virtue of a criminal sentence passed on them shall be declared by the director of the prison where, at the time of his execution, the condemned person was in custody.

**Art. 104. - Soldiers on Active Service.**

Deaths of soldiers on active service shall be declared by the commanding officer of the unit to which they belong, unless the soldier is living with his family or his death occurs during a period of leave granted to him or in a place where his unit is not stationed.

**Art. 105. - Finding of Corpse.**

- (1) If the corpse of a person is found outside a dwelling place, the person who found the corpse is obligated to declare the death.
- (2) If the identity of the deceased person is unknown, a detailed statement shall be drawn up indicating the day on which and the place where the corpse has been found, the apparent age and the sex of the dead person, and the probable date of the death.
- (3) The record of death shall contain a reference to such statement.

**Art. 106. - Corpse Not Found. - 1. Judgment Declaring Death.**

- (1) Where a person has disappeared in such circumstances that his death is certain, although his corpse has not been found, any interested person may apply to the Court to give a judgment declaring the death of such person.
- (2) The judgment declaring the death shall take the place of a record of death.
- (3) After the judgment has become final declaring that there has been a death, the Court registrar is obliged to notify the civil status officer of the place where the event which brought about the death has occurred and the civil status officer of the place of the principal residence of the deceased at the time of his death. These civil status officers shall transcribe the dispositions of the judgment onto their registers of deaths.

**Art. 107. - 2. Court Having Jurisdiction.**

- (1) The Court having jurisdiction shall be that of the place where the person whose death is at issue had his principal residence at the time of his death.
- (2) The Court may waive its jurisdiction in favor of the Court of the place where the event which brought about the

death has occurred or in favor of the Court of another place.

- (3) The delegation of jurisdiction thus made is binding on the Court in whose favor it is made.

**Art. 108. - Disasters. - 1. Collective Judgment.**

- (1) If death is due to an event, such as a shipwreck, an air disaster, an earthquake, a land-slide, as a consequence of which there is reason to believe that several persons have perished, the death of such persons may be declared by a collective judgment.
- (2) The Court having jurisdiction in such case shall be that of the place where the event occurred.
- (3) However in the case of disappearance of a ship or of an aircraft, the Court having jurisdiction shall be that of the home port of the ship or aircraft.

**Art. 109. - 2. Individual Extracts.**

- (1) Individual extracts from a collective judgment may be obtained by interested persons.
- (2) They shall take the place of a record of death.
- (3) After the collective judgment has become final, the Court registrar is obliged to notify the civil status officer of the place where the event which brought about the death has occurred and the civil status officers of the places of the principal residences of each one of the deceased persons at the time of their death. These civil status officers shall transcribe the dispositions of the judgment onto their registers of deaths.

**Art. 110. - Date of Death.**

- (1) When the Court delivers a judgment declaring death, it shall fix in the judgment the presumed date of the death or deaths having regard to the presumptions drawn from the circumstances of the case.

- (2) The date thus fixed may not be rectified except where it is proved that the date has been fixed as a result of fraud.
- (3) Any application having as its object the rectification of the date shall be dismissed when three years have elapsed from the date of the judgment.

#### **Art. 111. - Annulment of Judgment Declaring Death.**

- (1) If the person whose death has been judicially declared reappears after the judgment declaring death, the judgment shall be annulled, at his request or at the request of the public prosecutor, by the Court which gave it.
- (2) After the annulment has become final, the Court registrar is obliged to notify the civil status officers who have transcribed the judgment declaring death. These civil status officers shall also transcribe the annulment onto their registers of deaths.

#### **Paragraph 4. - Records of Marriage**

#### **Art. 112. - Particulars of Records of Marriage.**

The records of marriage shall show:

- (a) the names, dates and places of birth of the husband and of the wife;
- (b) the names, dates and places of birth of the witnesses of the husband and of the wife; and
- (c) the date on which the marriage has been celebrated.

#### **Art. 113. - When Record Required.**

A declaration of marriage and the drawing up of the record of marriage shall be required in all cases, irrespective of the form according to which the marriage is celebrated.

**Art. 114. - Duty to Declare Marriage.**

- (1) The obligation to declare the marriage shall lie with the authority who has celebrated the marriage.
- (2) It shall also lie with the spouses and with their witnesses.

**Art. 115. - Drawing up *Ex Officio* of Record.**

- (1) The civil status officer shall draw up the act of marriage of his own motion whenever he is aware of the marriage.
- (2) In such case, he shall summon the interested persons to make them sign the record of marriage.

**Section 4. - Correction of the Civil Status Records and Additions to the Registers**

**Art. 116. - Principle.**

- (1) The records of civil status may not be corrected except by virtue of an order or judgment given by the Court.
- (2) The Court may also order the drawing up of a civil status record. On the record reference shall be made to the judgment which has ordered its drawing up.
- (3) After the order or judgment to correct a record or to draw up a record has become final, the Court registrar is obliged to notify the civil status officer who keeps the record which has to be corrected or the civil status officer who has to draw up the record.

**Art. 117. - Application for Correction.**

An application for the correction of a record of civil status may be made to the Court by the public prosecutor or by the departmental office of the civil status or any interested person.

**Art. 118. - Clerical Mistakes.**

Where the application has as its object the correction of a clerical mistake committed in the drawing up of a record of civil status, the president of the Court shall decide on the application by order.

**Art. 119. - Other Cases.**

- (1) In all other cases decision on the application shall be given by a judgment delivered by the Court.
- (2) The Court, before deciding, shall give the person or persons to whom the record refers and all interested persons the opportunity of making their submissions.

**Art. 120. - Manner in Which the Record is Corrected.**

A correction which is ordered shall take place by means of a subsequent annotation.

**Art. 121. - Drawing Up of New Record.**

- (1) The Court may, where it thinks fit, order the annulment of the record which is to be corrected and the drawing up of a new record in its place.
- (2) The annulment of the record shall take place by means of a subsequent annotation.
- (3) On the new record reference shall be made to the judgment which has ordered its drawing up.

**Art. 122. - Authority of Judicial Decision.**

The judicial decision which orders the correction of a record of civil status is effective against everybody, under the same conditions as the record corrected by it.

**Section 5. - Copies and Extracts of Records of Civil Status**

**Art. 123. - Record of Birth.**

- (1) The depositaries of the registers in the communes or consulates shall issue to any person making an application to this effect extracts from the record of birth showing, without any other particulars, the date and the place of birth, the sex and the name of the child as they appear from the particulars of the record of birth.

- (2) copies of the record of birth may only be issued to the child, his parents, a person who has demonstrated a genuine interest in obtaining a copy, or to public administrative bodies or to another person with the authorization of the Court.

**Art. 124. - Record of Death.**

The depositaries of the registers in the communes or consulates shall issue a copy of the record of death to any person making an application to this effect.

**Art. 125. - Records of Marriage.**

The depositaries of the registers in the communes or consulates shall issue a copy of the record of marriage to any person making an application to this effect.

**Art. 126. - Depositaries of Duplicates.**

The depositaries of duplicates of the registers shall have the same obligations when:

- (a) the corresponding register of the commune has been destroyed or lost;
- (b) in such register, kept in the commune, a record is missing which is recorded in the file of duplicates;
- (c) the record entered in the register kept in the commune does not correspond with that recorded in the file of duplicates;
- (d) it is a case of records drawn up by a consulate of Eritrea in a foreign country; or
- (e) such obligation is, in a particular case, imposed on them by the Court.

**Art. 127. - Corrected Records.**

Where a record has been corrected in accordance with the law, the extract or copy of the record issued to the interested persons shall take such correction into account.

**Art. 128. - Form and Cost.**

- (1) Copies or extracts shall be signed by the civil status officer who delivers them and shall bear the seal of the administrative department to which he belongs.
- (2) The prescribed fee shall be charged on their delivery, as well as, where appropriate, the postal expenses for the sending of the copy or of the extract.

**Art. 129. - Probative Force.**

Extracts or copies of the records of civil status, issued by the depositaries of the registers, shall have the same probative force as the records of the registers themselves.

**Art. 130. - Verification.**

The Court may, where it thinks fit, order that the extracts or copies be collated with the original.

**Section 6. - Sanction of the Rules Relating to Civil Status**

**Art. 131. - Civil Liability of Officials.**

Any violation, by the officials charged with keeping or with conserving the registers, of the provisions of this Chapter or of the provisions of the regulations made for their application, shall render them liable to all persons who suffer prejudice from such fact.

**Art. 132. - Refusal to Draw up Record.**

- (1) Where the civil status officer or the official charged with keeping the registers refuses to draw up a record corresponding with the declarations which are made to him, any interested person may apply to the Court against such refusal.
- (2) The provisions of sub-Article (1) shall apply where the civil status officer fails to supply to the office of civil status the information relating to an event in respect of which a record of civil status is to be drawn.



- (3) The same shall apply also if a depository of the register refuses to deliver a copy or an extract of a record of such registers.

**Art. 133. - Liability of Witnesses and Declarants.**

- (1) The declarants and the witnesses shall be liable for the accuracy of the facts which they attest or corroborate in the records of civil status.
- (2) Where they acted in good faith they may sue the persons who led them into error.

**Section 7. - Acts of Notoriety**

**Art. 134. - Principle.**

- (1) Acts of notoriety are drawn up by officers of civil status or by notaries.
- (2) They shall be authorized and approved by the Court.

**Art. 135. - Authorization.**

Proof by means of acts of notoriety may only be authorized by the Court where:

- (a) it is proved that the registers of civil status have not been kept or not been kept regularly or that they contain gaps;
- (b) it is proved that such registers have been lost or torn;
- (c) it is impossible or very difficult to obtain a copy of a record in such registers;
- (d) the person who refers to a record does not know in which place such record has been made, and such ignorance is excusable; or
- (e) the law so provides.

**Art. 136. - Who Draws up the Act.**

- (1) When the Court authorizes the proof by means of an act of notoriety, it shall specify in which place the act of notoriety shall be drawn up.
- (2) The Court shall give the civil status officer or the notary required to draw up the act all the appropriate instructions, for the purpose of provoking opposition and of ensuring the genuineness of the act.

**Art. 137. - Particulars of the Act.**

Acts of notoriety shall contain the same particulars as the record of civil status the default or irregularity of which they correct.

**Art. 138. - Report Annexed Thereto.**

- (1) The civil status officer or the notary who has drawn up an act of notoriety shall annex thereto a report to the Court on the circumstances in which he has performed his task.
- (2) He shall mention in particular whether the act of notoriety is in conflict with a record of civil status or with another act of notoriety previously drawn up.

**Art. 139. - Probative Value.**

- (1) The Court shall determine freely the value attached to acts of notoriety taking into consideration the date and the circumstances in which they have been drawn up. The Court may take such steps as are necessary to verify the particulars contained in the act.
- (2) An act of notoriety approved by the Court, shall have the same effect as a record of civil status.

**Art. 140. - Liability of Witnesses.**

- (1) The declarants and the witnesses shall be liable for the accuracy of the facts which they attest or corroborate in the act of notoriety.

- (2) Where they acted in good faith, they may sue the person who led them into error.

## Chapter 4. - Absence

### Section 1. - Declaration of Absence

#### **Art. 141. - Application.**

- (1) Where a person has disappeared and has given no news of himself for two years, any interested party may apply to the Court requesting a declaration of absence.
- (2) The Court having jurisdiction shall be the Court of the place in which the absentee last had his principal residence.

#### **Art. 142. - Publication of Application.**

The application shall be published in the manner prescribed by the Court, in the place of the last principal residence of the absentee and in any other place where the Court considers such publication to be useful.

#### **Art. 143. - Inquiry.**

The Court may order that an inquiry be made, with the assistance of the public prosecutor, in all places where it considers it useful, and in particular in the place of the last principal residence of the absentee and in the place where his presence has been noticed for the last time.

#### **Art. 144. - Principle of Decision.**

- (1) The Court shall declare the absence where the death of the absentee appears to it to be probable.
- (2) In making its decision, it shall have regard to all the circumstances of the case.
- (3) It shall in particular take into consideration whether the person whose absence is invoked has or has not appointed an attorney to administer his property and the causes which may have impeded receipt of news of him.

#### **Art. 145. - Postponement of Judgment.**

The Court may postpone its judgment for a year or decide that the judgment declaring the absence will only have effect a year after its delivery.

#### **Art. 146. - Duty to Declare Absence.**

The Court shall declare the absence a year after the date of the application where the absentee has disappeared for five years prior to the date of such application and he has not been heard from following the publicity prescribed by the Court upon the application having been made.

#### **Art. 147. - Day of Last News.**

The Court shall establish in its judgment the day when the last news of the absentee was received.

#### **Art. 148. - Judgment Declaring Death.**

If the evidence collected by the Court establishes circumstances in which it may be considered certain that the absentee is dead, the Court to which the application for the declaration was made, may deliver a judgment declaring the death of the absentee.

#### **Art. 149. - Costs of Proceedings.**

- (1) The costs of the proceedings by which the absence is declared shall be chargeable to the absentee.
- (2) They shall be borne by the person making the application, if the application is dismissed.

### **Section 2. - Effects of Absence**

#### **Art. 150. - Marriage.**

- (1) The marriage of the absentee shall be dissolved on the day on which the judgment declaring the absence has become final.

- (2) The marriage contracted by the spouse after the day on which the last news of the absentee was received may be impugned only by the absentee.
- (3) Notwithstanding the provisions of sub-Article (2), it may also be impugned by the public prosecutor if he proves in an indisputable manner that the absentee is alive on the day on which the action is instituted.

**Art. 151. - Succession Devolving on Absentee.**

- (1) Where, after the date of the last news of the absentee, a succession opens to which the absentee would have been called if he were alive, such succession shall devolve without taking into account the portion which might have been assigned to the absentee.
- (2) The heirs or legatees may be obliged by the Court to furnish a surety or other security for safeguarding the rights of the absentee.

**Art. 152. - Rights Depending on Death of Absentee.**

- (1) The persons who have rights dependent on the death of the absentee may enforce them after the judgment declaring the absence has become final as though the absentee were dead.
- (2) Such persons may be obliged by the Court to give, before commencing to enjoy the rights which appertain to them, a surety or other security for the items which may become subject to a claim in restitution.

**Art. 153. - Obligations Depending on Life of Absentee.**

- (1) The persons who have obligations depending on the condition that the absentee is alive shall no longer be bound to fulfill such obligations.
- (2) Such persons may be obliged by the Court to furnish a surety or other security, in case the absentee should still be alive.

**Art. 154. - Property of Absentee.**

- (1) The will of the absentee, if any, shall be opened at the request of any interested party. The persons who would have been called to succeed to the property of the absentee in case he had died on the day of the last news may be placed in possession and the property be partitioned.
- (2) The heir or legatee shall enjoy the property as a good "paterfamilias". He may be obliged by the Court to give, before commencing his enjoyment, a surety or other security for the items which may become subject to a claim in restitution.
- (3) He shall invest the sums received by him within three months from the day on which he received them. He may not transfer the property by a gratuitous title, except for the purpose of establishing the children of the absentee.

**Section 3. - Termination of Absence**

**Art. 155. - Principle.**

The declaration of absence shall cease to have effect when:

- (a) the absentee reappears;
- (b) it is proved that he was alive on a date subsequent to that of the judgment declaring the absence; or
- (c) it is proved that he died on a date different from that established in such judgment as being the date of the last news.

**Art. 156. - Return of Absentee.**

- (1) When the absentee reappears he shall recover his property in the condition in which it is, as well as the proceeds of such part of it as has been transferred and the property acquired through the investment of his capital.

- (2) The income deriving from the property of the absentee shall remain the property of the heirs or legatees who have received such income.
- (3) The absentee shall retain the right to claim damages from the heirs or legatees and their sureties, where they failed to comply with their legal obligations or committed a fraud.

#### **Art. 157. - Presumption of Death**

- (1) When ten years have elapsed since the date of the last news of the absentee, established by the judgment of declaration of absence, the proof that the absentee did not die on the day of the last news may no longer be made except by the absentee himself or by his special attorney appointed after the date of the judgment declaring the absence.
- (2) The persons who have been placed in possession of the property of the absentee may henceforth act as having the right which has justified their being placed in possession.
- (3) The sureties or securities furnished in case the absentee should return shall be extinguished.

### **Chapter 5. - Residence and Domicile**

#### **Section 1. - Residence**

##### **Art. 158. - Definition.**

The residence of the person is the place where he normally resides.

##### **Art. 159. - Mere Sojourn in a Place.**

- (1) The mere fact that a person is for a time in a certain place shall not be sufficient to constitute for him a residence in such a place.

- (2) Notwithstanding the provisions of sub-Article (1), a residence is acquired whenever the sojourn is to last, or has lasted, in fact, more than three months.

**Art. 160. - Persons Without Proved Residence.**

The place where a person is shall be deemed to be his residence, unless it is proved that such person has his residence in another place.

**Art. 161. - Several Residences.**

- (1) A person may have several residences.
- (2) One of such residences may have the character of principal residence, and the other residences that of secondary residences.

**Art. 162. - Minors and Interdicted Persons.**

Minors and interdicted persons may have a residence of their own.

**Art. 163. - Public Officials.**

Public officials shall be deemed to have a residence in the place where they exercise their functions.

**Art. 164. - Traders.**

The place where a person carries on trade shall be deemed to be a residence of such person.

**Art. 165. - Residence Stipulated.**

- (1) A person may validly stipulate that, in his relations with another person, or as regards a specific business or activity, a given place shall be deemed to be his residence.
- (2) Unless otherwise expressly agreed, the person in whose favor such a stipulation is made shall not be bound by it.
- (3) He may, at his option, consider as being the residence of the other contracting party either the actual residence of the latter or the residence which has been stipulated.



## **Section 2. - Domicile**

### **Art. 166. - Definition.**

The domicile of a person is the place where such person has established the principal place of his business and of his interests, with the intention of living there permanently.

### **Art. 167. - Presumed Intention.**

- (1) Where a person has his principal residence in a place, he shall be deemed to have the intention of residing permanently in such place.
- (2) An intention to the contrary expressed by such person shall not be taken into consideration unless it is sufficiently precise, and it is to take effect on the happening of an event which will normally happen according to the ordinary course of things.

### **Art. 168. - Professional and Family Life.**

Where a person performs the work of his calling in a place, and passes his family or social life in another place, he shall in case of doubt be deemed to have his domicile in the latter place.

### **Art. 169. - Unity of Domicile.**

No person may have his domicile in several places at the same time.

### **Art. 170. - Change of Domicile.**

A person shall retain his domicile in the locality where it was established, so long as he has not established such domicile in another place.

### **Art. 171. - Unknown Domicile.**

- (1) Where it cannot be established where a person has or had his last domicile, the place of his principal residence shall be deemed to be the place of his domicile.

- (2) In default of a principal residence, regard shall be had to the secondary residence first established.
- (3) In default of residence, regard shall be had to the place where the interested person is.

**Art. 172. - Minor.**

An un-emancipated minor shall have the domicile of his guardian.

**Art. 173. - Interdicted Person.**

An interdicted person shall retain his domicile at the place where it was established at the time of his interdiction.

## **TITLE II. - CAPACITY OF PERSONS .**

### **Chapter 1. - General Principles**

#### **Art. 174. - Rule of Capacity.**

Every natural person is capable of performing all the acts of civil life unless he is declared incapable by the law.

#### **Art. 175. - General Disabilities.**

General disabilities depend on the age or mental condition of persons or on sentences passed upon them.

#### **Art. 176. - Special Disabilities.**

- (1) Special disabilities may be prescribed by reason of the nationality of persons or of the functions exercised by them.
- (2) Foreigners may own immovable property other than land as may be provided by special laws.

#### **Art. 177. - Voluntary Restrictions.**

- (1) No person may renounce, even partially, the enjoyment or the exercise of his civil rights.
- (2) Any voluntary restriction imposed on the enjoyment or on the exercise of such rights shall be of no effect unless it is justified by a lawful interest.

#### **Art. 178. - Proof of Disability.**

- (1) Capacity is presumed.
- (2) Any person who alleges the disability of a natural person shall prove that such person is under a disability.

#### **Art. 179. - Bodies Corporate and Property with a Specific Destination.**

The capacity of bodies corporate and property with a specific destination shall be regulated, according to their nature, by the provisions applicable to them.

## **Chapter 2. - Minors**

### **Section 1. - General Provisions**

#### **Paragraph 1. - Age of Majority and Disability of the Minor**

##### **Art. 180. - Definition.**

A minor is a person of either sex who has not attained the full age of eighteen years.

##### **Art. 181. - Disability of Minors.**

- (1) A minor, as regards the proper care of his person, shall be placed under the authority of a guardian, whom he shall obey.
- (2) In matters concerning his pecuniary interests and the administration of his property, a minor shall be represented by his guardian.
- (3) The minor may not perform juridical acts except in the cases provided by law.

#### **Paragraph 2. - Proof of Age**

##### **Art. 182. - Principle.**

- (1) The age of a person shall be established by his record of birth.
- (2) In the absence of a record of birth, the age may be established by producing an act of notoriety signed by reliable witnesses.

##### **Art. 183. - Proof to the Contrary.**

- (1) The Court may authorize the proof against the particulars in the record of birth where there are serious indications which put in doubt the accuracy of the particulars in the record.

- (2) Appeal shall lie against a decision of a Court which disallowed the proof against the particulars of the record of birth.
- (3) The act of notoriety may be freely challenged by producing reliable witnesses.

**Art. 184. - Proof of Judicial Decision.**

- (1) Where an act of notoriety is challenged or the proof against the particulars in the record of birth is authorized, the Court shall for the solution of the controversy which is submitted to it, determine the age of the person.
- (2) For this purpose, it may order that all the measures required for determining the age of the person in question be taken.

**Art. 185. - Appeal.**

- (1) An appeal shall lie against a decision of a Court of first instance, ordering or refusing to order in this regard a measure to elucidate the case.
- (2) The same shall apply to a decision of a Court which determines the age of the person.

**Paragraph 3. - Fundamental Principles of Protection of a Minor**

**Art. 186. - Best Interests of the Minor**

The best interests of a minor shall be a primary consideration in all actions concerning minors.

**Art. 187. - Respect for Views of the Minor**

- (1) A minor who is capable of forming his or her own views shall have the right to express those views freely in all matters affecting the minor.
- (2) The views of the minor shall be given due weight in accordance with the age and maturity of the minor.

## **Section 2. - Organs of Protection of Minors**

### **Paragraph 1. - Guardian**

#### **Art. 188. - Authority of Parents.**

The father and the mother are, during their marriage, joint guardians of their minor children.

#### **Art. 189. - Default of One of the Parents.**

- (1) In case of death, disability, unworthiness or removal of one of the parents, the other parent shall alone exercise such function.
- (2) The mother shall exercise such function where no legal filiation link between minor child and father has been established.
- (3) After a legal filiation link between minor child and father is established, the father may request that the order is made that he and the mother be joint guardians forthwith. Art. 195 is applicable *mutatis mutandis*.

#### **Art. 190. - Divorce of Parents.**

- (1) In case of divorce of the father and mother, they shall remain joint guardians of their minor child, unless the family arbitrators or the Court decide in the interest of the minor that the father or the mother alone shall be guardian.
- (2) The surviving father or mother who is not guardian, shall as of right acquire the exercise of such function where his or her divorced spouse who is guardian, dies, unless the family council or the Court decide in the interest of the minor that the mother or father shall not be guardian. Article 195 is applicable *mutatis mutandis*.

#### **Art. 191. - Testamentary Guardian. - 1. Principle.**

- (1) The surviving father or mother of a minor may, by a last will, stipulate who shall be guardian of the child after his or her death.

- (2) The surviving spouse may restrict the powers of the guardian or subject the exercise of such powers to specified conditions.
- (3) He may stipulate that one or more specified persons may not be appointed as guardian of the child.

**Art. 192. - 2. Condition for Appointment.**

The right referred to in Article 191 shall appertain to the father or mother of the minor only when he or she exercised during his or her lifetime the function of guardian of the child, or where he or she had been relieved of such function at his or her request.

**Art. 193. - 3. Application to the Court.**

The restrictions or conditions imposed by the father or the mother on the powers of the guardian may, where the interest of the minor so requires, be revoked or modified by the Court.

**Art. 194. - Relatives Called upon to Exercise Such Function.**

*- 1. Order to be Followed.*

Where the child no longer has his father and mother, and no valid appointment has been made by the survivor, the function of guardian of the child shall devolve, by virtue of the law, upon the following persons:

- (a) the eldest grandfather or grandmother of the child;
- (b) in their default, the eldest uncle or aunt of the child; or
- (c) in their default, the eldest great-uncle or great-aunt of the child.

**Art. 195. - 2. Possible Modification of Such Order.**

- (1) Any relative of the child by consanguinity or by affinity may request that the function of guardian of the child be accorded to him and not to the person who should perform such function by virtue of Article 194.
- (2) Such requests shall be made to the family council, if the interested persons are in agreement, or, in other cases, to

the Court, within two months from the day on which the legal guardian has been vested with his function.

- (3) The application shall be allowed or dismissed having regard solely to the interest of the minor and after the interested parties have been heard and the opinion of the family council has been obtained, where appropriate.

**Art. 196. - When There is No Relative Enabled in Terms of Law.**

- (1) Where by applying the preceding Articles, a child remains without a guardian, the function devolves on such person as shall be appointed by the Court.
- (2) The Court may take cognizance of the matter of its own motion or on the application of any interested party whether he be a relative of the minor or not.
- (3) The authority who has such obligation by virtue of the law shall lay the matter before the Court.

**Art. 197. - Appointment by the Court. - 1. *Relative of the Minor by Consanguinity or Affinity.***

The Court shall appoint, as far as possible, as guardian a near relative, by consanguinity or by affinity, of the child, fit and willing to perform such function.

**Art. 198. - 2. *Institution of Assistance.***

- (1) The function of guardian may, where necessary, be entrusted by the Court to an institution of assistance.
- (2) The management of the institution shall in such case delegate one of its members to exercise such function.

**Art. 199. - Assimilated Cases.**

- (1) For the purposes of the preceding Articles, a person shall be deemed to be dead when, for any legal or material reason, he is not in a position to exercise the function of guardian.



- (2) The family of origin of a child who has been adopted shall not be taken into consideration.

**Art. 200. - Co-Guardian.**

- (1) The administration of certain property of the minor may be entrusted to a co-guardian appointed by the Court.
- (2) Where property is donated or bequeathed to the minor, the donor or testator may appoint a co-guardian who shall be entrusted with the administration of such property during the minority of the donee or legatee.
- (3) The same right may be exercised by the father or mother or other ascendants of the child in regard to the property which the minor shall receive from their succession.

**Art. 201. - Guardian *ad hoc*. - 1. Conflict of Interests between Guardian and Minor.**

- (1) Where there is a conflict of interests between the guardian and the minor, the Court shall appoint a guardian *ad hoc* to safeguard the interests of the minor.
- (2) The appointment of a guardian *ad hoc* shall be made on the application of the guardian or any member of the family council. The child may ask the Court to appoint a guardian *ad hoc* of its own motion.
- (3) The assistant guardian, if any, shall be vested by virtue of the law, with the function of guardian *ad hoc*.

**Art. 202. - 2. Conflict of Interest of Several Minors.**

- (1) The provisions of Article 201 shall apply where there is a conflict between the interests of several minors of whom the guardian is the common representative.
- (2) The conflicting interests shall in such cases be settled between the guardian and the guardian *ad hoc*.

**Art. 203. - Commencement of Function.**

- (1) The function of guardian shall commence from the appointment of the guardian by virtue of the law or by the Court.
- (2) No liability shall be incurred by the guardian so long as he is not aware of the circumstances under which such function devolves on him.

**Art. 204. - Compulsory Nature of Function.**

The function of guardian of the minor is compulsory for the person who is vested with it.

**Art. 205. - Application for Exemption.**

- (1) A person may apply to the Court to be exempted from such function if the performance thereof entails for him particular difficulties or inconveniences.
- (2) The guardian may on the same conditions apply to be relieved of the function assumed by him.

**Art. 206. - Legal Exemptions.**

The following persons shall be exempt from the function of guardian, upon a mere declaration on their part, except as regards their own children:

- (a) any person who has completed his sixty-fifth year;
- (b) any person who has four minor children;
- (c) soldiers in active service; and
- (d) public officials who have to live abroad by reason of their office.

**Art. 207. - Obligation to Exercise such Function Provisionally.**

- (1) The guardian who puts forward an objection or a case of exemption shall exercise his function until a new guardian has been appointed.

- (2) The same shall apply to the guardian whose appointment is impugned.

**Art. 208. - Termination of Function.**

- (1) The function of guardian shall cease where the child dies or attains his majority.
- (2) They shall cease where the guardian dies or becomes incapable or unworthy or is removed.
- (3) They shall cease where a new guardian is appointed.

**Art. 209. - Incapacities. 1. Minor.**

A minor is incapable of exercising the function of guardian except as regards his own children.

**Art. 210. - 2. Judicially Interdicted Persons.**

- (1) A person is incapable of being guardian of a minor if he is under a judicial interdiction.
- (2) Where a person during the exercise of such function is judicially interdicted, his guardian shall without delay inform the person who, by virtue of the law, is to replace the interdicted person in that function.
- (3) In default of such person, he shall apply to the Court for another person to be appointed in place of the interdicted person.

**Art. 211. - Unworthiness.**

- (1) A person may be declared by the Court unworthy of exercising the function of guardian, where he is sentenced for a criminal offence to a punishment restrictive of personal liberty or to capital punishment.
- (2) The Court may, in passing such sentence, declare the unworthiness of the convicted person to the extent which it thinks fit, having regard to the circumstances.

**Art. 212. - 1. Removal of Guardian. Improper Care.**

- (1) The guardian of a minor may be removed by the Court where the minor does not receive the care which his condition requires, a morally sound education or an instruction which accords with his disposition.
- (2) For this purpose, regard shall be had to the environment in which the guardian lives and all the circumstances of the case.
- (3) The guardian may in particular be removed by the Court when the minor has committed a criminal offence and it appears that his behavior is due to bad education or to lack of education on the part of his guardian.

**Art. 213. - 2. Removal of Guardian. Improper Administration.**

The guardian may also be removed by the Court when it appears that he administers the property of the minor badly, or when he does not comply with the directions validly given to him by the father or the mother of the child or by the family council, or where his insolvency has been judicially established.

**Art. 214. - 3. Removal of Ascendants.**

- (1) The Court shall declare only with extreme caution the removal of the mother or of the father or of the other ascendants as guardians of their children or descendants.
- (2) The Court may at any time vary its decision on the application of the person who has been removed.

**Art. 215. - 4. Procedure.**

- (1) An application for the removal of the guardian may be made by anyone related to the minor by consanguinity or by affinity or by the public prosecutor.
- (2) Before declaring the removal of the guardian, the Court shall enable the latter to give his reasons whenever this is possible without causing serious danger to the person or property of the minor.

- (3) Whenever the Court removes the guardian it shall proceed to appoint another in his place.

**Art. 216. - Duties and Powers of the Court.**

- (1) Where the Court is to appoint or to remove a person as guardian of a minor it shall, before making its decisions, consult, insofar as it is possible, the family council of such minor.
- (2) The Court shall hear the minor himself if the minor is capable of forming and expressing his own views, those views being given due weight in accordance with the age and maturity of the minor.
- (3) The Court shall decide having regard solely to the interest of the minor and without being bound by the information which it has obtained.

**Art. 217. - Guardian May be Remunerated.**

- (1) The function of guardian constitutes a gratuitous office.
- (2) An annual compensation may be granted to the guardian where the administration of the property of the minor takes a considerable part of his time or he is not related to the minor either by consanguinity or by affinity.
- (3) Such compensation may only be taken from the income of the minor and may not exceed one fourth of such income.

**Art. 218. - Personal Nature of Function.**

- (1) The function of guardian constitutes a personal office which does not pass to the heirs of the guardian.
- (2) The latter shall be liable only for the management of the person whom they succeed, within the limits specified in the Book of this Code relating to Succession.

**Art. 219. - Duties of Heirs.**

- (1) The heirs of the guardian shall, without delay, inform of the guardian's death the person who is by virtue of Article 194 to replace the guardian in such function.
- (2) In default of such person they shall apply to the Court to appoint a new guardian.
- (3) Until they have fulfilled their obligation under sub-Articles (1) and (2) they shall remain liable to the minor and third parties.

**Art. 220. - Proof of Capacity of Guardian.**

- (1) The guardian may apply to the Court to be given a document enabling him to prove his capacity where necessary.
- (2) Such document may be given to the guardian by a notary, if any.

**Art. 221. - Analogy with the Guardian.**

The provisions of this Title relating to guardians shall apply to co-guardians and to guardians *ad hoc*.

**Paragraph 2. - Family Council and Assistant Guardian**

*A. - Composition of Family Council*

**Art. 222. - Principle.**

- (1) The family council of the minor shall consist of the ascendants of the minor and of his brothers and sisters who are of age.
- (2) Where a contract of adoption has been concluded in respect of the minor, only the members of his adoptive family shall be members of the family council.

**Art. 223. - Where There Are No Ascendants.**

Where a minor has no direct ascendant, the oldest uncle or aunt, or in their default the eldest granduncle or grandaunt of the minor shall be members of the family council.

**Art. 224. - Divorce of Father and Mother.**

Where the father and mother of the minor are divorced, the family council shall comprise, in addition to the persons mentioned in Articles 222 and 223, the family arbitrators who have declared the divorce.

**Art. 225. - Additional Members.**

The father and the mother may, by a last will, stipulate that one or two specified persons shall be members of the family council of his or her minor child.

**Art. 226. - Exclusion of Members.**

The father or the mother of a minor may, by a last will, stipulate that one or more of their own children shall not be members of the family council of their brother or sister who is a minor.

**Art. 227. - Appointment of Additional Members.**

- (1) Where the family council of the minor, composed as provided in the preceding Articles, does not comprise four members, it shall be completed by calling such persons as take an interest in the minor, whether they be his relatives or not.
- (2) Such persons shall be appointed by the members of the family council where these are at least two in number.
- (3) In other cases, or in default of unanimous agreement between the members of the family council, such persons shall be appointed by the head of the commune where the minor resides, without prejudice to an application to the Court by any interested party.

*B. - Meetings of Family Council*

**Art. 228. - Meetings by Virtue of the Law.**

The family council shall meet forty days after the death of the surviving father or mother of the minor, unless it has met before such date.

**Art. 229. - Convocation of Council.**

- (1) The family council shall meet whenever it is convened by the guardian of the minor or by the Court.
- (2) It may also be convened by the assistant guardian.
- (3) Where no assistant guardian has been appointed, any member of the family council may convene it.

**Art. 230. - Time.**

A reasonable time shall be granted to enable the members of the family council to take part in the meeting.

**Art. 231. - Order of the Day.**

- (1) The convocation of the family council shall be accompanied by an order of the day, showing the matters on which a decision and a vote of the council are required.
- (2) The first family council which meets after the death of the surviving father or mother of the minor shall examine in a general manner the condition of the minor and take in accordance with the provisions of the following Articles such measures falling within its jurisdiction as it thinks fit.

**Art. 232. - Meeting Place.**

- (1) The family council shall meet at the place where the minor had his principal residence at the time of the death of his surviving father or mother.



- (2) The Court may on the application of the guardian of the child authorize, for good cause, the convocation of the family council in another place.

**Art. 233. - Expenses.**

All expenses arising from the convocation and meeting of the family council shall be borne by the members of such council.

**Art. 234. - Consultation by Letter.**

The guardian may, without convening the family council, seek by letter the advice of each of the members of such council on a particular matter whenever it thinks fit.

**Art. 235. - No Representation of Members.**

- (1) Members of the family council who are prevented from attending the meeting may express their opinions or may vote in writing.
- (2) They may not send a representative to the meeting of the council.

**Art. 236. - Majority Required.**

- (1) The decisions of the family council shall be taken by an absolute majority of votes of the members of the council, whether these are present or not at the meeting.
- (2) They shall be recorded in a minute signed by the members of the family council.
- (3) For the validity of a decision it suffices that the minute be signed by the majority who approves it.

**Art. 237. - Position of Guardian.**

- (1) The guardian of the minor shall be present at the deliberations of the family council, even if he is not a member thereof.
- (2) In the latter case, he may only tender his advice during the deliberations of the council.

**Art. 238. - Position of Minor.**

- (1) Unless otherwise decided by the family council, the minor shall not attend the deliberations of the family council.
- (2) However, the family council shall assure that the minor who is capable of forming his own views is given the opportunity to express those views, the views being given due weight in accordance with the age and maturity of the minor.

**Art. 239. - Substitution of Court for Council. - 1. Failure to Reach Majority.**

- (1) Where no majority can be reached in the council, owing to the absence or disagreement of its members, the decision which the council could not take shall be taken by the Court.
- (2) The matter may be laid before the Court by the guardian of the minor.
- (3) The matter may also be laid before the Court by the assistant guardian or, in default of an assistant guardian, by any member of the family council.

**Art. 240. - 2. Urgency.**

The Court may, on the application of the same persons, take a decision instead of the family council, where it is difficult to hold a meeting of the latter, and there is urgent need of a decision.

**Art. 241. - Appeal.**

- (1) An appeal shall lie to the Court from a decision of the family council, within thirty days after the decision has been made.
- (2) The appeal may be lodged by the guardian or the assistant guardian of the child, or by any member of the family council.

*C. - Assistant Guardian*

**Art. 242. - Appointment.**

In matters concerning the pecuniary interests of the minor and the administration of his property, the family council may appoint one of its members, or a third party, to exercise the function of assistant guardian.

**Art. 243. - Supervision of Guardian.**

- (1) The assistant guardian shall receive the accounts of the guardian in place of the family council.
- (2) He shall assist the guardian in the performance of the acts specified by the family council.
- (3) He shall convene the family council whenever he thinks fit.

**Art. 244. - Replacement of, or Assistance to, Guardian.**

- (1) The assistant guardian shall replace the guardian, at the request of the latter, where the guardian in a particular matter has interests conflicting with those of the minor.
- (2) He shall assist the guardian, at the request of the latter, where there is a conflict between the interests of several minors of whom the guardian is the common representative.

*D. - Common Provisions*

**Art. 245. - Nature of Office.**

- (1) The office of member of the family council and of assistant guardian are compulsory, under the same reservations as those relating to the office of guardian.
- (2) Such offices are gratuitous.
- (3) The provisions relating to the disability and to the unworthiness of the guardian shall apply to the members of the family council and to the assistant guardian.

## **Section 3. - Powers of the Guardian**

### **Paragraph 1. - Care of the Person of the Minor**

#### **Art. 246. - Residence of Minor.**

- (1) The guardian shall fix the place where the minor is to reside.
- (2) The minor may not abandon such place without the authorization of the guardian.
- (3) If he goes away from such place without authorization, the guardian may compel him to return thereto.

#### **Art. 247. - Health of Minor.**

- (1) The guardian shall watch over the health of the minor.
- (2) In case of sickness of the latter, the guardian shall take the necessary measures for his recovery.

#### **Art. 248. - Social Contacts and Correspondence.**

- (1) The guardian shall supervise the social contacts of the minor.
- (2) The guardian may not, except for good cause, prohibit the child from seeing his ascendants or from corresponding with them.

#### **Art. 249. - General and Professional Education.**

- (1) The guardian shall direct the education of the minor, and ensure that he is given as much instruction in a calling as is suitable to his abilities.
- (2) He shall conclude the contracts necessary for such education and authorize the minor to pursue a calling.

#### **Art. 250. - Income of Minors. - 1. General Case.**

- (1) The guardian shall receive the income of the minor and use it in the interest of the latter.

- (2) He shall not be bound to render an account of such use.

**Art. 251. - 2. Considerable Income.**

- (1) Where the income of the minor is considerable and the guardian is neither the father nor the mother of the minor, the provisions of sub-Article (1) of Article 250 may be set aside by the family council.
- (2) In such case, the family council shall fix a lump sum, which shall be given each year to the guardian out of the income of the minor, for the normal expenses of the maintenance and education of the latter.
- (3) The balance of the income of the minor shall remain in the hands of the guardian to be invested by the latter in the interests of the minor.

**Art. 252. - 3. Work of a Minor.**

- (1) From the age of fifteen years onwards, the minor himself shall receive the income deriving from his work.
- (2) He may freely dispose of such income but shall contribute to his own maintenance.

**Art. 253. - 4. Property Donated or Bequeathed.**

- (1) The person who donates, bequeaths or leaves property to a minor, may order that the income from such property shall not during the minority of the child be received by his guardian.
- (2) The provisions laid down in the contract of gift or in the will concerning the administration and the use of such income shall be complied with.

**Art. 254. - 5. Assignment or Attachment of Income.**

- (1) The income of the minor which is not yet due may not be assigned by the guardian nor may it form the subject of an obligation undertaken by the latter.

- (2) It may not be attached by the creditors of the latter.

**Art. 255. - Exercise of Authority of Father and Mother. - 1. Principle.**

- (1) Where the father and the mother of the child are both vested with the function of guardian, they shall exercise such function jointly.
- (2) Each parent may act independently of the other, unless and until the other parent has indicated objection.

**Art. 256. - 2. Disputes.**

- (1) The father or mother of the child may apply to the family arbitrators or the Court, if a dispute regarding the care of the person of the child arises between them.
- (2) No person other than the father or mother may lay such dispute before the family arbitrators or the Court.

**Art. 257. - Appeal to the Family Council. - 1. Principle.**

- (1) Any ascendant of the child may appeal the decision taken by the guardian of the child before the family council.
- (2) In default of ascendants, the appeal may be made by any member of the family council.

**Art. 258. - 2. Where the Guardian is the Father or Mother.**

No appeal shall lie against the decision of the guardian where he is the father or the mother of the child, unless:

- (a) the father and mother of the child are divorced from each other;
- (b) the father and mother who are not married to each other and are or were jointly guardians, do not live together; or
- (c) the father or the mother who exercises authority over the child has remarried or has lived together with another person as if they were married for more than three years.

Paragraph 2. - Administration of the Property of the Minor

**Art. 259. - Principle.**

- (1) The guardian shall represent the minor in all civil matters.
- (2) He shall take care of the pecuniary interests of the minor and administers his property as a reasonable and prudent person.

**Art. 260. - Inventory and Valuation of Property. - 1. *After the Guardian Assumes his Function.***

- (1) Within forty days from the assumption of his function, the guardian shall proceed to draw up an inventory of and value the property of the minor in the presence of reliable witnesses chosen, if possible, from among the members of the family council.
- (2) Where the minor owes the guardian anything the latter shall state the debt in the inventory on pain of losing his right thereto.

**Art. 261. - 2. *Succession Devolving on the Minor.***

- (1) Where a succession devolves on the minor, the guardian, before accepting such succession on behalf of the minor, shall cause an inventory thereof to be prepared in the presence of reliable witnesses chosen, if possible, from among the members of the family council, which inventory shall specify the value of the succession.
- (2) Where anything is due to the guardian from such succession, he shall state it in the inventory, on pain of losing his right thereto.
- (3) The guardian shall be liable to the minor for any damage arising from the absence of an inventory.

**Art. 262. - Property of Guardian Mixed with that of the Minor.**

- (1) The guardian shall ensure that the property of the minor be not mixed with his own property.

- (2) In particular, he may not deposit or cause to be deposited in his personal bank account monies belonging to the minor.

**Art. 263. - Securities and Articles of Value to be Deposited in a Safe Place.**

Securities, articles of value, important documents and other similar things shall be deposited by the guardian in a safe place, if no inconvenience for the administration of the property of the minor results from such deposit.

**Art. 264. - Convening Family Council.**

- (1) A guardian, who is not the father or the mother, shall at the beginning of his management, convene the family council and explain to it the financial position of the minor.
- (2) Until that time, the guardian shall confine himself to performing such acts of administration as are of an urgent nature.

**Art. 265. - Instructions by the Family Council.**

- (1) The family council may give to a guardian, who is not the father or mother, instructions concerning the management of the property of the minor.
- (2) It may prohibit the guardian from performing certain acts or it may subject the performance thereof to some condition or authorization.

**Art. 266. - Property Donated, Bequeathed or Devolving on Minor.**

- (1) A person who donates or bequeaths property to a minor or a person from whose succession a minor inherits property, may order that, for the administration of such property, the guardian shall conform to certain conditions.
- (2) Where it subsequently appears that the observance of such conditions is impossible or prejudicial to the minor, the guardian may apply to the Court to vary them.



**Art. 267. - Commercial or Other Enterprises.**

- (1) Where commercial, industrial or other enterprises form part of the patrimony of the minor, the family council shall instruct a guardian, who is not the father or the mother of the child, whether he should liquidate such enterprises or keep them going.
- (2) For this purpose, it shall have regard to the time for which the guardianship is to continue and the abilities and potential of the guardian as well as the interests of the minor.

**Art. 268. - Alienation of Certain Property.**

- (1) The guardian may alienate movable property, stocks and securities belonging to the minor.
- (2) The family council may give to a guardian, who is not the father or mother of the child, instructions concerning such sale or prohibit him from effecting it.

**Art. 269. - Securities to Bearer.**

- (1) A guardian, who is not the father or the mother of the child, shall alienate securities to bearer, or convert them in registered securities, within a period of three months after they devolve on the minor.
- (2) The family council may exempt him from such duty.

**Art. 270. - Debts and Claims.**

- (1) The guardian shall pay the debts which are due by the minor.
- (2) He shall receive the capital and income devolving on the minor and give receipt therefor to the person effecting payment.

**Art. 271. - Investment of Capitals. - 1. Duty of Guardian.**

- (1) The guardian shall invest capital belonging to the minor where such capital exceeds the sum of one thousand Nakfas.
- (2) The family council may vary the amount specified in sub-Article (1).

**Art. 272. - 2. Time.**

- (1) Capital-monies shall be invested within three months from the time when they are at the disposal of the guardian.
- (2) The family council may vary such period.

**Art. 273. - 3. Nature of Property to be Acquired.**

The family council may determine beforehand the kind of property which a guardian, who is not the father or mother of the child, may acquire on behalf of the minor.

**Art. 274. - 4. Sanction.**

- (1) The guardian shall be liable to pay to the minor legal interest on the monies which he has failed to invest.
- (2) He may be condemned to pay damages, where appropriate.

**Art. 275. - Leases.**

Leases made by the guardian shall be binding on the minor for not more than three years after he attains majority, unless the leases were entered into with the authorization of the family council.

**Art. 276. - Successions.**

- (1) The guardian shall accept on behalf of the minor the successions devolving on the latter.

- (2) He may not renounce a succession devolving on the minor except with the authorization of the family council, unless such succession is notoriously insolvent.

**Art. 277. - Gift or Bequest.**

- (1) The guardian may not refuse a gift or bequest of more than one thousand Nakfas offered to the minor except with the authorization of the family council.
- (2) He may not make any gift on behalf of the minor, other than small presents which may be required by custom.

**Art. 278. - Contracting Suretyship.**

The guardian may in no case stand surety for the debt of another person on behalf of the minor.

**Art. 279. - Compromise.**

A guardian may not enter into a compromise agreement concerning the interests of the minor except with the authorization of the family council, unless the interest in dispute is less than six hundred Nakfas.

**Art. 280. - Contracts between Guardian and Minor.**

- (1) A guardian may not buy or take on lease the property of the minor nor may he conclude any other contract with the minor, except with the authorization of the family council.
- (2) He may not accept the transfer of any right or claim against the minor except with the authorization of the family council.

**Art. 281. - Loans.**

The guardian may not contract any loan on behalf of the minor except with the authorization of the family council.

**Art. 282. - Consultation of Minor.**

- (1) Where a minor is capable of discernment and at least fifteen years old, he shall as far as possible be consulted in all the important matters concerning him.

- (2) The consent of the minor shall not relieve the guardian of his liability.

**Art. 283. - Authorization to Conclude Transactions Given to the Minor. - 1. Principle.**

- (1) The guardian may authorize the minor to conclude alone those transactions which, considering his age and his financial position, are to be regarded as everyday transactions.
- (2) Such authorization may be tacit.

**Art. 284. - 2. Everyday Transactions.**

- (1) A transaction may in no case be regarded as an everyday transaction where for its conclusion the law requires the authorization of the family council.
- (2) Nor may a transaction ever be regarded as a transaction of everyday if it imposes on the minor an expense or obligations the value of which exceeds two hundred Nakfas.

**Art. 285. - 3. Effect with Regard to the Guardian.**

The guardian shall stand surety, in favor of third parties, for the obligations which the minor has assumed with his authorization.

**Art. 286. - Will.**

- (1) The guardian may not make a will on behalf of the minor.
- (2) A minor may make a will alone when he attains the age of fifteen years.
- (3) The will made before he has attained such age shall be of no effect, notwithstanding that the minor has not revoked it after having attained the age of fifteen years.

**Art. 287. - Marriage.**

- (1) The consent of the minor and of the guardian shall be required for the marriage of a minor.

- (2) The consent of the guardian can be substituted by the Court.

**Art. 288. - Expenses of Management.**

The guardian has the right to the refund of the expenses which he incurs in connection with the management of the interests of the minor.

**Art. 289. - Rendering of Accounts of Management.**

- (1) In the course of the guardianship, the guardian shall render account of his management to the family council on such conditions and at such times as shall be fixed by the latter.
- (2) The father and the mother of the minor are exempt from such obligation when they exercise the function of guardian.
- (3) They may exempt therefrom the guardian appointed by them.

**Art. 290. - Reference.**

The provisions of Article. 256-258 of this Code shall apply to guardianship and to appeals against the decisions of the guardian.

**Section 4. - Sanction of the Rules for the Protection of the Minor**

**Paragraph 1. - Acts of the Minor**

**Art. 291. - Principle.**

- (1) Juridical acts performed by the minor in excess of his powers may be annulled.
- (2) A unilateral juridical act however is null and void if it is not addressed to one or more specifically determined persons.

**Art. 292. - Annulment.**

- (1) Juridical acts may be annulled only by the minor, his representative or his heirs.

- (2) Without prejudice to the provisions of the following Articles, the rules relating to the annulment of contracts on the ground that the consent has been given by mistake shall apply to such cases.

**Art. 293. - Good Faith of Person Contracting with Minor.**

Contracts entered into by a minor shall be valid if in the circumstances it was reasonable for the other contracting party to believe, and he did in good faith so believe, that the minor had received the authorization to conclude them, and he has not taken advantage of the inexperience of the minor.

**Art. 294. - Payments.**

- (1) Where it is proved that the minor has benefited from the transaction, payments made to a minor shall be valid to the extent of the enrichment which remains to his benefit on the day when the action of nullity is instituted.
- (2) In other cases, such payments shall be null but the minor is not bound to make repayment.

**Art. 295. - Non-Contractual Obligations**

- (1) The provisions of the Title relating to non-contractual obligations shall apply to the extra-contractual liability of the minor and to any unlawful enrichment he may have derived.
- (2) The mere statement made by a minor that he has attained majority shall not deprive him of the right of availing himself of his minority.
- (3) Such statement shall not amount to a fault with respect to his extra-contractual liability.

**Paragraph 2. - Acts of the Guardian**

**Art. 296. - Acts Regularly Performed.**

- (1) Acts performed by the guardian, within the limits of his powers, or with the necessary authorizations, may not be

impugned by alleging that they have not been performed for the benefit of a minor.

- (2) They shall be binding on the minor as though he, having attained majority, had performed them himself.
- (3) They shall not be binding on the guardian personally, saving an explicit undertaking on his part or in the cases provided by law.

**Art. 297. - Violation of Legal Provisions.**

- (1) Acts performed by the guardian in violation of legal provisions shall be subject to the rules governing mandate in the case in which, a representative has exceeded his powers.
- (2) The same shall apply to acts which the guardian has performed without the authorization of the family council, where such authorization is required by law.
- (3) The same shall apply also to acts performed by the guardian with the authorization of a family council irregularly composed or which has deliberated irregularly.

**Art. 298. - Violation of Instructions Not Laid Down by Law.**

- (1) The fact that the guardian has acted contrary to the instructions of the family council may not be set up against third parties unless such third parties knew or should have known, in due time, the limitations imposed by the family council on the powers of the guardian.
- (2) The same shall apply to those conditions imposed on the powers of the guardian by a person who has donated, bequeathed or left property to the minor.
- (3) The burden of proof of the bad faith of third parties shall lie with the person invoking the nullity of the act.

**Art. 299. - Co-Guardian and Guardian *ad hoc*.**

The provisions of the preceding articles shall apply to the co-guardian and to the guardian *ad hoc*.

**Paragraph 3. - Liabilities Which May be Incurred**

**Art. 300. - Guardians.**

- (1) The guardian shall be liable for the damage which may be caused to the minor through his negligence, mismanagement or the fact that he has not obeyed the instructions given to him by the family council or the fact that he has acted in a case in which his interests were in conflict with those of the minor.
- (2) Except in the case of fraud, he shall not be liable where he has acted in conformity with the instructions given to him by the family council.
- (3) The provisions of this Article shall apply to the co-guardian and to the guardian *ad hoc*.

**Art. 301. - Assistant Guardian.**

When judgment is obtained against the guardian, the assistant guardian shall be jointly and severally liable with the guardian, unless the assistant guardian can show that he has committed no fault.

**Art. 302. - Acting Guardian.**

- (1) Any person who, without being a guardian, performs the function of guardian, shall be liable for his management of affairs.
- (2) The guardian shall be jointly and severally liable in respect of any judgment obtained against such person.

**Art. 303. - Members of Family Council.**

- (1) Members of the family council shall incur no liability by reason of their function, except in the case of fraud.



- (2) However, by signing the minute of the meeting of the family council, they guarantee that the meeting has been convened and that the deliberations have taken place in conformity with the law.

## **Section 5. - Cessation of the Disability of the Minor**

### **Art. 304. - Causes.**

The disability of the minor shall cease on his attaining majority or being emancipated.

#### Paragraph 1. - Emancipation

### **Art. 305. - Marriage.**

A minor shall be emancipated as of right by marriage.

### **Art. 306. - Explicit Emancipation. - 1. Conditions.**

- (1) A minor may be emancipated when he has attained the age of fifteen years.
- (2) A decision of the family council shall be required for this purpose.

### **Art. 307. - 2. Application.**

The decision of the family council by which the minor is emancipated may be taken on the application of the minor himself or of one of his ascendants or of his guardian.

### **Art. 308. - 3. Inadmissibility of Application.**

The family council may not grant the emancipation where the minor has his father and mother, unless at least one of them expressly agrees to the emancipation.

### **Art. 309. - Effects.**

An emancipated minor shall be deemed under the law to have attained majority in all that concerns the care of his person and the management of his pecuniary interests.

**Art. 310. - Irrevocability.**

- (1) Emancipation may not be revoked.
- (2) Emancipation resulting from marriage shall retain its effects notwithstanding that the marriage is dissolved.
- (3) The Court may give a decision to the contrary, where it pronounces the dissolution of the marriage on the ground that one of the spouses has not attained the age prescribed by law for marriage.

**Paragraph 2. - Rendering of Accounts of Guardianship**

**Art. 311. - Principle.**

- (1) Where his function terminates, the guardian shall render an account of his administration to his ex-ward or to the heirs of the latter.
- (2) He shall hand over to him the property which belongs to him and prepare for him a statement showing the rights which pertain to him and the debts by which he is bound.

**Art. 312. - Where there is No Inventory.**

- (1) Where the guardian has failed to draw up an inventory when he assumed his function or when a succession has devolved on the minor, the minor may prove, by any means, of which property his patrimony or such succession consists.
- (2) Unless the contrary is proved, property shall be deemed to have pertained to the minor where reliable witnesses make an attestation to this effect.

**Art. 313. - Approval of Accounts.**

- (1) The approval of the accounts of the guardianship given by the ward may be revoked by him within one year after it has taken place, so long as the ward has not attained the age of eighteen years.

- (2) The same shall apply to the exemption from rendering accounts granted by the ward to the guardian.
- (3) The provisions of sub-Articles (1) and (2) may not be invoked by the heirs of the minor who have attained majority when they themselves have approved the accounts of the guardian or exempted the guardian from rendering accounts.

**Art. 314. - Limitation.**

- (1) Any action of the minor, his representatives or his heirs against the guardian, based on the liability of the latter and relating to acts by the guardian carried out in his capacity as guardian during the guardianship, shall be barred if it is not instituted within five years following the cessation of the function of the guardian.
- (2) Upon the expiry of the above period, the minor shall retain the right to claim the restitution of his property or to institute an action based on unlawful enrichment.

**Chapter 3. - Insane Persons and Infirm Persons**

**Art. 315. - Definition.**

- (1) An insane person is one who, as a consequence of his being insufficiently developed or as a consequence of a mental disease or of his senility, "is not capable of understanding the significance or effect of his actions.
- (2) Persons who are feeble-minded, drunkard or habitually intoxicated, and persons who are prodigals shall in appropriate cases be assimilated to insane persons.

**Art. 316. - Infirm Persons.**

Deaf-mute, blind persons, and other persons who, as a consequence of a permanent infirmity are not capable of taking care of themselves or of administering their property may invoke in their favor the provisions of the law which afford protection to those who are insane.

## **Section 1. - Insane Persons and Infirm Persons Who Are Not Interdicted**

### **Art. 317. - Mental Impairment.**

- (1) Where a person who is permanently or temporarily insane makes a declaration, the intention corresponding to that declaration is deemed to be lacking if the impairment of his mental capacities prevented a reasonable appraisal of the interests involved or if the declaration was made under influence of that impairment.
- (2) A declaration is presumed to have been made under the influence of the impairment, if the juridical act was prejudicial to the insane person, unless the prejudice was not reasonably foreseeable at the time of the juridical act.

### **Art. 318. - Consequences.**

- (1) A juridical act without such intention may be annulled.
- (2) A unilateral juridical act however is null and void where it is not addressed to one or more specifically determined persons.

### **Art. 319. - Annulment.**

- (1) Juridical acts may be annulled only by the person who performed them, his representative or his heirs.
- (2) The rules relating to the annulment of contracts on the ground that consent has been given by mistake shall apply to such cases.

### **Art. 320. - Protection of Third Parties.**

The absence of intention cannot be invoked against persons who in good faith have acted on the basis of that intention.

## **Section 2. - Judicial Interdiction.**

### **Art. 321. - Judgment of Interdiction.**

- (1) The Court may pronounce the interdiction of an insane person where his health and his interest so require.
- (2) The interdiction may also be pronounced in the interest of the presumptive heirs of the insane person.
- (3) It may also be pronounced in the case of a person who is unable through permanent disability to control himself or to administer his property.

### **Art. 322. - Application for Interdiction.**

- (1) An application for interdiction may be made by the insane or infirm person himself, or by his spouse, or by any of his relatives by consanguinity or affinity, or by the public prosecutor.
- (2) The judgment of interdiction may be given before the person whose interdiction is applied for attains his majority.
- (3) It may not be given after the death of the person whose interdiction is applied for.

### **Art. 323. - Procedure for Interdiction.**

- (1) Before pronouncing the interdiction of a person, the Court shall be convinced that such measure is necessary.
- (2) It may not pronounce the interdiction without having seen the person in respect of whom the interdiction is sought.
- (3) Where the personal appearance of such person is not possible, the Court shall proceed to examine the person, either by delegating one of its members or by appointing an expert.

**Art. 324. - Appeal.**

The insane or infirm person himself, his spouse, any of his relatives by consanguinity or affinity, or the public prosecutor may enter an appeal against a judgment of interdiction.

**Art. 325. - Register of Judicially Interdicted Persons.**

- (1) A special register kept in the registry of each regional Court shall contain the list of every person, residing within the jurisdiction of the Court, whose interdiction has been judicially declared.
- (2) The register shall contain only such details as are necessary to identify such persons and to identify the judgment or judgments relating to the interdiction.
- (3) It may be perused by any interested person.

**Art. 326. - Notice of Judgment.**

- (1) The guardian of the interdicted person shall ensure that the judgment of interdiction be brought to the notice of the Court registry of the region or regions where the interdicted person resides or is called upon to reside.
- (2) The same shall apply to any judgment modifying the effects of the interdiction.

**Art. 327. - Protection of Interdicted Person.**

Without prejudice to the provisions of the following Articles, a person who has been judicially interdicted shall be subject in respect of his person and of his property to the same rules of protection as a minor.

**Art. 328. - Guardian.**

- (1) The guardian of an interdicted person shall in all cases be appointed by the Court.
- (2) No person, other than the spouse, the ascendants and descendants of the interdicted person, shall be bound to

retain the function of guardian of an interdicted person for more than five years.

**Art. 329. - Family Council. - 1. Constitution.**

- (1) The provisions of this Title relating to the constitution of the family council of a minor shall not apply to an interdicted person.
- (2) The family council of an interdicted person shall consist of his ascendants, his brothers and sisters who are of age, his spouse and his descendants who have attained majority.
- (3) Where the number of the members of the family council thus composed is less than four, the Court shall make up that number by calling on one or more persons, whether related to the interdicted person or not, who take interest in his condition.

**Art. 330. - 2. Meeting Place.**

- (1) The family council shall meet in such place as may be fixed by the Court.
- (2) In default of such place, it shall meet in the place where the interdicted person had his principal residence on the day the interdiction has been pronounced.

**Art. 331. - Residence of Interdicted Person.**

- (1) The guardian of the interdicted person shall ensure that the interdicted person lives in the place where his disability has been given the publicity required by law.
- (2) Where the interdicted person changes his residence, his guardian shall ensure that the publicity required by law be made in the place of the new residence.

**Art. 332. - Income of Interdicted Person.**

- (1) The income of the interdicted person shall not become the property of his guardian.

- (2) It shall be used for the maintenance and care of the interdicted person.
- (3) The guardian shall render an account of its use.

**Art. 333. - Appeal against Decisions of the Guardian.**

Any member of the family council may in all cases appeal to such council against the decisions taken by the guardian of the interdicted person.

**Art. 334. - Father and Mother of Interdicted Person.**

The provisions which place the guardian of a minor in a privileged position when such guardian is the father or the mother of the minor, shall not apply to the guardian of an interdicted person.

**Art. 335. - Leases.**

Leases granted by a guardian shall not be binding on the interdicted person for more than three years after the termination of his disability, unless they have been entered into with the authorization of the family council.

**Art. 336. - Gifts.**

- (1) Gifts may be made by the guardian of an interdicted person on behalf of the latter, to the descendants of the interdicted person.
- (2) Such gifts shall be of no effect unless they have been authorized by the family council.

**Art. 337. - Will.**

- (1) An interdicted person may not make a will after his interdiction has been declared, unless he is authorized for that purpose by the Court.
- (2) Any will made by him prior to being interdicted shall be valid.
- (3) The Court may invalidate in whole or in part the will made by an interdicted person prior to being interdicted



where it is of opinion that the provisions contained in such will are contrary to equity or have been affected by the state of health of the testator.

**Art. 338. - Marriage.**

- (1) A person who has been judicially interdicted may not contract marriage unless he is authorized for that purpose by the Court.
- (2) An application to this effect may be made by the interdicted person himself or by his guardian.
- (3) Any interested party may apply to the Court to declare the nullity of a marriage which an interdicted person has contracted without having obtained the authorization of the Court.

**Art. 339. - Divorce.**

- (1) The personal consent of the interdicted person as well as that of his guardian shall be required for the bringing of proceedings requesting a divorce.
- (2) If the guardian refuses to consent, the interdicted person may ask the Court to give permission to bring proceedings requesting a divorce.

**Art. 340. - Paternity.**

- (1) An interdicted man may not acknowledge a child born out of wedlock unless he is authorized for that purpose by the Court.
- (2) Rebuttal of the presumption that an interdicted man is the father of a child born to his spouse, annulment of an acknowledgment made by an interdicted man or judicial establishment of the fact that an interdicted man is the biological father of a child, may take place on the conditions laid down in the Book of this Code relating to Family Relationships.

**Art. 341. - Limitation of Effects of Interdiction. - 1. Principle.**

- (1) The Court may, when pronouncing the interdiction or subsequent to such decision, limit the effects of the interdiction.
- (2) It may authorize the interdicted person to perform certain acts himself.
- (3) It may also decide that the guardian of the interdicted person may not perform certain acts without the concurrence of the interdicted person.

**Art. 342. - 2. Effect.**

- (1) The limitations imposed by the Court on the powers of the guardian of the interdicted person in accordance with Article 341 may not be set up against third parties in good faith who have had dealings with the guardian.
- (2) Saving proof to the contrary, the good faith of third parties shall be presumed.

**Art. 343. - Nullity of the Acts of an Interdicted Person.**

- (1) Acts performed by an interdicted person in excess of his powers may be impugned in the same circumstances as if they had been performed by a minor.
- (2) The Court may not uphold the effect of such acts on the ground that they could have been performed by the insane person during a lucid interval.

**Art. 344. - Liability of Guardian of Interdicted Person. - 1. Principle.**

Where the interdicted person enters into a contract with a third party who, in good faith, is not aware of his disability, the guardian of the interdicted person shall be liable to such third party for the prejudice which the nullity of the act causes to the latter.

**Art. 345. - 2. Good Faith.**

A person shall never be deemed to be in good faith where he has contracted with the interdicted person within a region where his interdiction has been given publicity as provided by the law.

**Art. 346. - Liability of Registrar.**

- (1) The registrar of the Court shall be liable in lieu of the guardian of the interdicted person where the registrar, having received notice of the judgment of the interdiction, has failed to enter the name of the interdicted person in the special register kept for this purpose.
- (2) The same shall apply where the registrar has refused to make the register accessible to a third person who has had, or intends to have, dealings with the interdicted person.

**Art. 347. - Withdrawal of Interdiction. - 1. Application.**

- (1) The disability of the interdicted person shall cease when the withdrawal of the interdiction is pronounced.
- (2) The withdrawal of the interdiction may at any time be applied for to the Court by the persons who may apply for pronouncement of the interdiction.
- (3) It may also be applied for by the guardian of the interdicted person.

**Art. 348. - 2. Pronouncement.**

The withdrawal of the interdiction shall be pronounced by the Court where it appears that the causes of the interdiction have ceased and that the interdicted person is in a position to conduct himself and to administer his property by himself.

**Art. 349. - 3. Effects.**

Withdrawal of the interdiction shall have the same effects as the emancipation of a minor.

## **TITLE III. BODIES CORPORATE AND PROPERTY with A SPECIFIC DESTINATION**

### **Chapter 1. - Administrative Bodies and Religious Institutions**

#### **Art. 350. - The State.**

The State is a legal person. It can have, through its organs, all the rights and duties which are consistent with its nature.

#### **Art. 351. - Territorial Subdivisions of the State.**

- (1) Region, sub-region and district and urban and rural communes are also legal persons, and are the subjects of rights and duties.
- (2) They can have, through their organs, all the rights and duties which are vested in them by the administrative laws.

#### **Art. 352. - Ministries.**

- (1) The Ministries of the central government are legal persons and are the subjects of rights and duties.
- (2) They can have, through their organs, all the rights and duties which are vested in them by the administrative laws.

#### **Art. 353. - Public Administrative Authorities and Establishments.**

All public administrative authorities, offices or establishments to which personality has been expressly given by the administrative laws are likewise legal persons and are the subjects of rights and duties.

#### **Art. 354. - Religious Institutions and Religious Communities.**

Religious institutions and religious communities recognized by the State are legal persons and are governed by their own constitutions, insofar as this is not contrary to the law.

**Art. 355. - Limitations.**

Special legislation may determine the limits in the exercise of specific rights of personality by religious institutions and religious communities.

**Art. 356. - Powers and Organs.**

- (1) The powers of the bodies referred to in the preceding articles as well as the organs which are authorized to represent such bodies shall be prescribed by administrative law.
- (2) They may impose on such organs the observance of specified conditions or formalities for the exercise of certain rights.

**Art. 357. - Failure to Comply with Legal Requirements.**

- (1) Acts performed by the bodies referred to in this Chapter in excess of the powers given to them by law or which fail to comply with the conditions or formalities required by law shall be of no effect.
- (2) The provisions of sub-Article (1) shall apply notwithstanding that nullity is not expressly provided by law in such circumstances.

**Art. 358. - Nullity.**

- (1) The nullity provided for in Article 357 may be invoked by any interested party.
- (2) It may no longer be invoked after ten years have elapsed from the date when the act was performed.

**Art. 359. - Extra-Contractual Liability.**

- (1) The bodies referred to in this Chapter shall be liable for any damage arising from the fault or act of their organs or employees in accordance with the provisions of the Title of this Code relating to Non-contractual obligations.

- (2) They shall, in accordance with the provisions of the same Title, pay back any unlawful enrichment which they have derived.

## **Chapter 2. - Associations**

### **Art. 360. - Definition.**

An association is a grouping formed between five or more persons with a view to obtaining a result other than the securing or sharing of profits.

### **Art. 361. - Grouping to Secure or Share Profits**

- (1) Groupings formed with a view to securing or sharing profits shall be subject to the provisions of the Commercial Code.
- (2) The same shall apply to cooperative and other groupings which tend to satisfy the financial interests of their members by placing them in a position to save money.

### **Art. 362. - Trade Unions.**

- (1) Groupings formed with a view to defending the financial interests of their members or to representing a particular calling shall be subject to the special laws concerning trade unions.
- (2) In the absence of special laws, they shall be subject to the provisions of this Chapter.

## **Section 1. - Memorandum of Association and Statutes**

### **Art. 363. - Memorandum of Association.**

- (1) Associations shall be governed by a memorandum of association agreed to by their founders.
- (2) The provisions of such memorandum shall be supplemented or superseded by those of this Chapter, whenever the memorandum is silent or any of its provisions is contrary to the law.

**Art. 364. - Obligation to Draw up Statutes.**

- (1) Notwithstanding any agreement to the contrary, associations shall be provided with statutes whenever any of the associates so requires.
- (2) Statutes for the association may also be made by the office of associations of the region where the association carries out its activity.
- (3) An association may be dissolved by the office of associations where it is not provided with statutes within three months after a request to this effect has been made.

**Art. 365. - Purpose of Statutes.**

- (1) The memorandum of association shall lapse when the association is provided with statutes.
- (2) The association shall thereupon be governed by its statutes.
- (3) The provisions of the statutes shall be supplemented or superseded by those of the Chapter, whenever the statutes are silent or any of these provisions is contrary to the law.

**Art. 366. - Contents and Form of Statutes.**

- (1) The statutes of the association shall be of no effect unless they mention the name of the association, its object, the place where the association has its head office and the date when they are made.
- (2) They shall be signed by not less than five associates, who shall be known as the founders of the association.

**Art. 367. - Adoption of Model Statutes.**

- (1) Statutes which conform to a standard model approved by the Ministry of Local Government need not be signed.

- (2) In such cases it shall be sufficient that a special juridical act be prepared, making reference to such statutes and signed by not less than five associates.
- (3) Such juridical act shall be of no effect unless it mentions the name of the association, its object, the place where the association has its head office and the date when it is made.

**Art. 368. - Deposit of Statutes.**

The statutes of the association, or the special act making reference to those statutes, shall be deposited within thirty days with the office of associations of the region where the association has its head office.

**Art. 369. - Communication of Statutes.**

- (1) The statutes of the association shall be served without delay on any interested party upon a request addressed to the president of the association.
- (2) The date on which the statutes are served shall be entered on the copy served.
- (3) The prescribed fee may be charged by the association, in addition to the postal expenses arising from service of the statutes, where appropriate.

**Section 2. - Associates**

**Art. 370. - Associates.**

The association consists of its founders and of the members who have joined the association.

**Art. 371. - New Members.**

Unless otherwise provided, the association may receive new members.

**Art. 372. - Promise to Join an Association.**

A promise to join an association shall be of no effect.



**Art. 373. - Equality of Associates.**

Unless otherwise provided in the memorandum of association or in the statutes, all associates shall have equal rights.

**Art. 374. - Personal Nature of Membership.**

- (1) The membership of an associate is inalienable.
- (2) Membership shall not pass to the heirs of the associate.
- (3) The provisions of this Article shall apply notwithstanding any provision to the contrary in the memorandum of association or the statutes.

**Art. 375. - Exercise of the Rights of an Associate.**

- (1) Unless otherwise provided in the memorandum of association or in the statutes, an associate may not exercise his rights as an associate through a third person.
- (2) An associate may not exercise his rights as an associate unless he has previously paid the subscriptions which he owes to the association.

**Art. 376. - Subscriptions.**

- (1) Unless otherwise provided, the membership subscription shall be paid during the first quarter of each year.
- (2) An action may only be brought against an associate for the payment of his subscription for the current year and preceding year.

**Art. 377. - Right to Withdraw from the Association.**

- (1) An associate may at any time withdraw from the association, notwithstanding that the association has been constituted for a definite period of time and notwithstanding any provision to the contrary.

- (2) An associate who withdraws from the association shall pay the subscriptions which have fallen due and the subscriptions of the current year.

**Art. 378. - Expulsion of an Associate.**

- (1) An associate may be expelled from the association in the cases and in the manner provided for in the memorandum of association or in the statutes.
- (2) In addition to those cases, he may also be expelled from the association for good cause by the general meeting.
- (3) The associate who has been expelled may, within three months after he has been informed of his expulsion, appeal to the Court against such decision on the ground that the expulsion is not justified.

**Art. 379. - The Association Does Not Represent the Associates.**

The associates shall not be liable to third parties as a consequence of the activities of the association.

**Section 3. - Management**

**Art. 380. - Appointment of Directors.**

- (1) The association shall be managed by one or more directors, appointed in conformity with the memorandum of association or the statutes.
- (2) Unless otherwise provided, they shall be appointed by the general meeting.

**Art. 381. - Directors Must be Members.**

Unless otherwise provided, the directors shall be appointed from among the members of the association.

**Art. 382. - Board of Management.**

- (1) When there are several directors, they shall form a board of management.

- (2) Unless otherwise provided, the decisions concerning the association shall be taken by the board which shall decide by a majority of its members present or represented.
- (3) Those who do not agree with the decision taken by the majority may require that their dissenting opinion be recorded in a minute.

**Art. 383. - Powers of Directors. - 1. Law.**

- (1) The directors of an association shall perform all the acts necessary for the management of the association.
- (2) They shall represent the association in judicial and extra-judicial matters.

**Art. 384. - 2. Statutes.**

- (1) The statutes may limit the powers of the directors or regulate the manner in which such powers are to be exercised.
- (2) Their provisions may not be set up against third parties unless the statutes have been deposited in the office of associations or it is proved that the third parties were actually aware of such provisions.

**Art. 385. - 3. Memorandum of Association or General Meeting.**

- (1) The provisions of the memorandum of association or the general meeting of the association which limit the powers of the directors, or regulate the manner in which such powers are to be exercised, may not be set up against third parties unless it is proved that such third persons were actually aware of those provisions.
- (2) They have as their only sanction the responsibility, in relation to the association, of the director or directors who have contravened them.

**Art. 386. - Provisional Director.**

If the persons authorized to act on behalf of the association are not available or are impeded, a provisional director shall be appointed by the Court on the application of any interested party.

**Art. 387. - Proof of Capacity.**

- (1) The persons authorized to act on behalf of the association may require that a document showing their capacity and powers be delivered to them by the office of associations.
- (2) Such document shall specify, where appropriate, the period for which the powers have been given.

**Art. 388. - Liability of Directors.**

The directors of an association shall be liable to the association in accordance with the rules relating to Mandate.

**Art. 389. - Exclusion from Right to Vote.**

Notwithstanding any agreement to the contrary, directors may not vote in a general meeting called to approve their accounts or to decide on liabilities incurred by them.

**Section 4. - General Meeting**

**Art. 390. - Character of Supreme Organ.**

- (1) The general meeting of the associates is the supreme organ of the association.
- (2) It shall decide on all matters concerning the association which do not fall within the jurisdiction of another organ.

**Art. 391. - Appointment and Control of Directors.**

- (1) Unless otherwise provided, the general meeting shall appoint the directors, control their activity and approve their accounts.

- (2) It may give directions regarding the management of the association.

**Art. 392. - Dismissal of Directors.**

- (1) The general meeting may at any time dismiss the directors without prejudice to their right to any remuneration which has been agreed upon.
- (2) This right of dismissal may neither be restricted nor excluded where the directors are dismissed for good cause, in particular where they have committed a serious breach of duties or are unable to manage properly the affairs of the association.

**Art. 393. - Admission and Expulsion of Members.**

- (1) The general meeting shall decide on the admission of new members, or on the expulsion of members of the association.
- (2) The power to admit or to expel members may not be entrusted to the organs of management except under reservation of ratification by the general meeting.

**Art. 394. - Amendment of Statutes. - 1. Principle.**

- (1) Unless otherwise provided, the general meeting may amend the memorandum of association or the statutes of the association.
- (2) The power to amend the memorandum of association or the statutes may not be conferred on any other person or organ.

**Art. 395. - 2. Restriction.**

- (1) The unanimous consent of the associates shall be required where the decision to be taken aims at modifying the object of the association or at giving unequal rights to the associates.
- (2) Privileged rights may not be withdrawn from associates except with the consent of such associates.

**Art. 396. - Convocation. - 1. Principle.**

A general meeting shall be convened by the directors in the cases provided for in the memorandum of association or in the statutes and, in cases of urgency, whenever it is in the interest of the association to do so.

**Art. 397. - 2. Right of Associates.**

- (1) A general meeting shall be convened whenever such number of associates as is fixed by the statutes asks for its convocation.
- (2) If the statutes are silent in this regard, a general meeting shall be convened if one-fifth of the associates so require in writing and specify the purpose of the meeting.

**Art. 398. - 3. Convocation by the Court.**

- (1) Where the board of management fails to convene the general meeting whenever it is bound to do so, the general meeting shall be convened by the Court on the application of one or more associates.
- (2) In such a case, the Court shall make the necessary provisions for the chairmanship of the meeting.

**Art. 399. - 4. Procedure and Time.**

- (1) The procedure and time of the convocation of a general meeting shall be as provided by the memorandum of association or the statutes.
- (2) Unless otherwise provided, they shall be fixed by the directors in a reasonable manner.

**Art. 400. - Voting at Meetings.**

- (1) Decisions of the general meeting shall be taken by a majority of members who are present or represented.
- (2) A decision relating to a point not mentioned in the agenda shall be of no effect.

**Art. 301. - Equivalence.**

A proposal which has been agreed to in writing by all the associates shall be deemed to amount to a decision of a general meeting.

**Art. 402. - Nullity of Decisions of a General Meeting. - 1. Action.**

- (1) Notwithstanding any agreement to the contrary, every associate may appeal to the Court against decisions of a general meeting to which he has not adhered and which are contrary to the law or the memorandum of association or the statutes.
- (2) The right to appeal to the Court shall be barred if not exercised within thirty days from the day on which the associate knew of the decision.
- (3) An associate shall be deemed to know the decisions taken by a general meeting, where it has been convened without fraud and in accordance with the provisions of the memorandum of association, the statutes or the law.

**Art. 403. - 2. Authority of the Judgment.**

A judgment which declares the nullity of a decision of a general meeting shall have effect with respect to all persons.

**Art. 404. - Suspension of Decisions.**

The Court may, on the application of one of the directors of the association or of the office of associations, stay the execution of a decision the annulment of which is demanded.

**Section 5. - Rights and Obligations of the Association**

**Art. 405. - Principle.**

- (1) An association is an entity distinct from the persons of whom it is composed.
- (2) The rights and obligations of the association are not rights and obligations of its members.

- (3) The rights and obligations of the members of the association are not rights and obligations of the association.

**Art. 406. - Name.**

- (1) The name of an association is protected in the same manner as that of a natural person.
- (2) Such protection shall not be granted by the law unless the statutes of the association have been deposited in the office of associations or the person who has violated the rights of the association has done so knowing what he was doing and in bad faith.

**Art. 407. - Residence.**

- (1) The association shall have its principal residence at the place where its head office is situated, in accordance with the memorandum of association or the statutes.
- (2) It has secondary residences in any place where it has or occupies premises permanently.

**Art. 408 - Capacity.**

- (1) An association may perform all civil acts which are consistent with its objects. It shall perform such acts through its organs of management.
- (2) An association may sue or be sued. For this purpose, it shall be represented by such person or persons as are so authorized by the memorandum of association or the statutes.
- (3) Correspondence may be addressed to and notices may be served on the association or its president without it being necessary to specify the organs qualified for receiving such correspondence or notices.

**Art. 409. - Gifts and Legacies.**

- (1) The office of associations may demand to be informed of any gift or legacy made to an association where such gift



or legacy exceeds the amount set by the office of associations.

- (2) In such a case, the association shall inform the office of associations within six months from the day on which it received the gift or legacy.

**Art. 410. - Extra-Contractual Liability of the Association.**

- (1) An association shall be liable for the acts and omissions of its directors and employees, whenever such acts and omissions have taken place in the execution of the functions which it is their duty to perform and which entail liability.
- (2) An association shall be liable whenever it enriches itself unlawfully.
- (3) The provisions of the Title of this Code relating to Non-contractual obligations shall apply in this regard.

**Art. 411. - Surety for the Debts of the Association.**

A director who has acted on behalf of an association shall stand joint and several surety for the association, by virtue of the law, whenever the association does not function in conformity with the statutes deposited in the office of associations.

**Section 6. - Dissolution and Liquidation of the Association**

**Art. 412. - Dissolution. - 1. Statutes.**

An association shall be dissolved in such cases as are provided for in the memorandum of association or the statutes:

**Art. 413. - 2. General Meeting.**

Notwithstanding any agreement to the contrary, the general meeting may at any time decide to dissolve the association.

**Art. 414. - 3. Court.**

An association shall be dissolved by the Court on the application of its board of management, or of one-fifth of the associates, or of the office of associations where:

- (a) as a result of the reduction of the number of associates or for any other cause, it is no longer possible to appoint the members of the board of management or to make the association function in conformity with the memorandum of association or the statutes;
- (b) the object of the association has been attained or it has become impossible to attain it, or a period of long inactivity shows that the association has ceased to pursue that object;
- (c) the association pursues an object which is different from that which is determined by the memorandum of association or the statutes;
- (d) the association has become insolvent.

**Art. 415. - 4. Administrative Decision.**

- (1) An association shall be dissolved by the office of associations where its object or activities are unlawful or contrary to morality.
- (2) An appeal from such decision may be made to the Court by any of the directors of the association within thirty days after it has been made known to the association.
- (3) The Court may, pending the decision on the appeal, stay the execution of the decision dissolving the association.

**Art. 416. - State of Liquidation.**

- (1) An association shall be in a state of liquidation where it is dissolved in conformity with the law.
- (2) It continues to be deemed to have a personality until the end and for the requirements of such liquidation.

**Art. 417. - Liquidators. - 1. Appointment.**

- (1) Unless otherwise provided by the memorandum of association or the statutes or ordered by the Court, an association shall be liquidated by such persons as have been entrusted with its management.
- (2) In default of such persons, the association shall be liquidated by one or more liquidators, appointed by the Court.

**Art. 418. - 2. Powers.**

- (1) The liquidator has the powers which appertain to the board of management.
- (2) He may not exercise his powers except for the requirements of the liquidation.
- (3) He may not undertake any new transaction.

**Art. 419. - 3. Liability.**

- (1) The liquidator shall be liable to the association and to the creditors of the association for the damage which he causes to them through any mistake which he may make in the exercise of his functions.
- (2) The question of his liability to the association may be raised by any of the associates who has exercised the functions of director of the association during the five years preceding the institution of the action.

**Art. 420. - Devolution of Property.**

- (1) The property of an association which has been dissolved may in no case be partitioned among the associates.
- (2) In default of a provision in the memorandum of association or in the statutes, and unless the general meeting validly destined it for another purpose, such property shall become the property of the State.

- (3) The general meeting may not decide on the destination of the property if the association is dissolved by the office of associations.

### **Section 7. - Control of Associations**

#### **Art. 421. - Office of Associations.**

- (1) An office of associations shall be established in the capital of each region in connection with the administration of such region.
- (2) The office shall exercise supervision over all associations acting within the region.

#### **Art. 422. - Deposit of Statutes.**

The office of associations shall call upon the founders or the persons managing associations, where appropriate, to draw up and to deposit statutes for the association.

#### **Art. 423. - Register of Declared Associations.**

- (1) The office of associations shall keep in alphabetical order a register of the associations established in the region which have been declared to it.
- (2) Where the office of associations refuses to register an association within three months after the declaration made to it, the directors of the association may appeal to the Court within sixty days against such refusal.

#### **Art. 424. - Progressive Number.**

- (1) Every association entered in the register shall be given a progressive number which refers to the file which the office opens for the association.
- (2) Such progressive number shall appear on the statutes and on all the documents comprising the correspondence of the association with third parties.

**Art. 425. - File of the Association.**

The file of each association entered in the register shall contain:

- (a) the name of the association together with its progressive number;
- (b) the statutes of the association, and the amendments made to such statutes, together with the date of such statutes or amendments;
- (c) the name of the directors of the association, or of the persons empowered to represent it;
- (d) an indication of the secondary residences which the association may have; and
- (e) the decision taken to dissolve the association and the names of the liquidators, where appropriate.

**Art. 426. - General Meetings. - 1. Convocation.**

- (1) The office of associations shall be informed in due time whenever a general meeting of an association is held.
- (2) It may be represented by an observer at such general meeting.
- (3) It may prescribe any measure it thinks fit to ensure the good functioning of the general meeting as regards in particular the manner and times of convocation, the order of the day and the holding of the meeting.

**Art. 427. - 2. Decisions.**

The office of associations shall be informed within thirty days the holding of the general meeting of all the decisions taken by such meeting which are to be entered in the file of the association kept by the office.

**Art. 428. - 3. Annulment of Decisions.**

- (1) The office of associations may impugn before the Court such decisions of the general meeting as are contrary to the law or to the statutes.
- (2) The right to institute such action shall be barred where the action is not instituted within a month from the day when the office of associations has been informed of the decision taken.

**Art. 429. - Amendments of Statutes.**

- (1) Where statutes have been amended, a copy of the amended statutes shall be deposited with the office of associations, within thirty days the approval of the amendment by the general meeting.
- (2) Such copy shall bear on the cover the words "Text as amended on ...".
- (3) Amendments of the statutes may not be set up against third parties so long as such amendments have not been declared to the office of associations, unless it is proved that the third parties were aware of the amendments.

**Art. 430. - Directors of the Association.**

- (1) The name of the members of the board of management and of the persons empowered to represent the association shall be communicated to the office of associations within the month which follows the appointment of such persons.
- (2) Every modification made to such list shall be communicated within the same period.

**Art. 431. - Balance Sheet.**

- (1) The association shall communicate every year to the office of associations its financial statements as approved by the general meeting.

- (2) The Ministry of Local Government may prescribe such rules as it thinks fit with a view to ensuring a good presentation and the truthfulness of such balance sheet.

**Art. 432. - Ministry of Local Government.**

- (1) The Ministry of Local Government may prescribe, within the framework of the existing laws, any other measure it thinks fit with a view to placing the offices of associations in a position to exercise an efficient control on the associations.
- (2) Such measures may differ according to the object, the importance and the duration of the association.
- (3) Particular measures may also be prescribed for the associations which have their head office in a foreign country, or which carry on an activity in a foreign country or the majority of whose members are foreigners, or which have a board of management in which one or more members are foreigners.

**Chapter 3. - Property with a Specific Destination**

**Section 1. - Endowments**

**Art. 433. - Definition.**

- (1) An act of endowment is an act whereby a person, the author of the act, destines certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits.
- (2) The author of the act is the founder of the endowment.

**Art. 434. - Forms.**

- (1) An endowment may be constituted either by a gift or by a will.
- (2) Its constitution shall be subject, as regards its form and its substance, to the rules relating to gifts or wills.

**Art. 435. - Administrative Approval Necessary.**

- (1) An endowment shall not be definitively constituted unless it has been approved by the Ministry of Local Government.
- (2) Before making its decision, the Ministry of Local Government may take where appropriate the advice of other ministries which have an interest in the endowment.

**Art. 436. - Application of Approval. - 1. During Lifetime of Founder.**

The approval of the act of endowment may not be sought during the lifetime of the founder, except by the founder himself or his representative.

**Art. 437. - 2. After his Death.**

- (1) After the death of the founder, it shall be sought by the person to whom the founder has entrusted such task and who has accepted it.
- (2) In default of such person, it shall be sought by those persons who have drawn up the act of endowment or who have been witnesses to it or who hold that act in deposit.
- (3) Where the persons who are bound to seek the approval of the act of endowment fail to do so, the approval of the act may be sought, three months after the death of its author, by the public prosecutor or by any interested party.

**Art. 438. - Revocation of Act of Endowment.**

- (1) The author of an act of endowment may revoke it freely so long as he has not obtained the approval of such act by the Ministry of Local Government.
- (2) The heirs of the founder may only exercise such right of revocation where the endowment has not been approved by the Ministry of Local Government within two years from an application having been made to such Ministry with a view to obtaining its approval.



**Art. 439. - Retroactivity of Approval.**

- (1) The administrative decision approving the endowment shall have retroactive effect from the day of the application for the approval if such application has been made by the founder.
- (2) It shall have retroactive effect from the day of the death of the founder if the approval has been sought after the death of the founder.
- (3) Such retroactivity may not, however, be prejudicial to those persons who, in good faith, have acquired rights to the property of the endowment before such endowment has been approved.

**Art. 440. - Protection and Control of Endowment.**

- (1) The act by which the endowment is approved shall determine the organ which is to be responsible for the protection and control of the endowment.
- (2) If no organ is designated for this purpose in that act, the protection and control of the endowment shall be ensured by the office of associations of the region where the endowment has its principal place of business.

**Art. 441. - Statutes of Endowment.**

- (1) An endowment shall be governed by statutes, in conformity with which it shall be organized and administered. The statutes shall mention in particular the name of the endowment, its object and the place where it has its principal place of business.
- (2) The statutes of an endowment may be drawn up by the founder.
- (3) Failing such, they shall be drawn up by the Ministry of Local Government, or by the organ for protection and control designated for the endowment by such Ministry.

- (4) Any interested party may within three years apply to the Court to amend the statutes, if these are contrary to the act of endowment.

**Art. 442. - Management.**

- (1) The endowment shall be managed in conformity with its statutes by one or more directors.
- (2) The provisions of this Title relating to the directors of associations shall apply to the directors of endowments.

**Art. 443. - Committee of Management.**

- (1) A committee of management constituted in terms of the statutes of the endowment is the supreme organ of the endowment.
- (2) The organ for the protection and control of the endowment shall be represented on such committee of management.

**Art. 444. - Functions of Committee of Management.**

- (1) The committee of management shall decide on all the affairs of the endowment which do not fall within the sphere of another organ.
- (2) In particular, it shall appoint and dismiss the directors, control their activity and approve their accounts.

**Art. 445. - Amendments of Statutes. - 1. Principle.**

Amendments of the statutes of the endowment, decided upon by the committee of management, shall be of no effect until they have been approved by the organ for the protection and control of the endowment.

**Art. 446. - 2. Prohibition by Founder.**

- (1) The author of the act of endowment may, by an explicit provision, prohibit certain amendments of the statutes of the endowment.

- (2) The person appointed by him or the heirs of the founder may apply to the Court to declare that the endowment has lapsed, if the statutes are amended against the will of the founder thus expressed.
- (3) The right provided in sub-Article (2) may no longer be exercised if three years have elapsed since the date of the amendments of the statutes or thirty years since the death of the founder.

**Art. 447. - Meetings of Committee.**

- (1) The committee of management shall meet on such dates as are fixed by the statutes.
- (2) It is convened by the directors in urgent cases whenever the interest of the endowment requires.

**Art. 448. - Decisions of Committee.**

- (1) The decisions of the committee of management shall be taken by an absolute majority.
- (2) The organ for the protection and control of the endowment may apply to the Court to declare the annulment of such decisions or to stay their execution.

**Art. 449. - Rights and Obligations of Endowment.**

- (1) The provisions of this Title relating to the name, residence and capacity of associations shall apply to endowments.
- (2) An endowment may accept, with the authorization of the organ for its protection and control, gifts or legacies.

**Art. 450. - Rights of Beneficiaries of Endowment.**

- (1) The persons in whose favor the endowment is constituted may take legal action to enforce their rights against the endowment.

- (2) If the persons interested are not sufficiently determined by the statutes, the directors of the endowment shall determine them according to their equitable discretion.

**Art. 451. - Termination of Endowment.**

- (1) The endowment shall terminate in such cases as are determined by the statutes.
- (2) The endowment is declared terminated by the Court on the application of the organ for its protection and control or the public prosecutor where:
  - (a) its object has been attained or it has become impossible to be attained;
  - (b) such object has become illicit or contrary to morality;
  - (c) the endowment pursues an object which is different from that determined by the statutes; or
  - (d) the endowment has become insolvent.

**Art. 452. - Amalgamation of Several Endowments.**

- (1) The Court may, on the application of the Ministry of Local Government, authorize the amalgamation of two or more endowments with a view to coordinating their activities, if such amalgamation is desirable in the general interest.
- (2) The application to this effect may be made to the Court by the organ for the protection and control, if such organ is common to the interested endowments.
- (3) New statutes shall be given to the new endowment which is thus formed.

**Art. 453. - Liquidation and Control.**

- (1) The provisions of this Title relating to the liquidation of associations shall apply to the liquidation of endowments.

- (2) The functions exercised by the office of associations shall be exercised by the organ for the protection and control of the endowment where such an organ has been established.

## **Section 2. - Committees**

### **Art. 454. - Need of Authorization.**

Committees having the object of collecting money or other property in aid of public collections, fairs or activities of the same nature, in favor of a specific philanthropic work or work of general interest, may not carry out their activity unless they have been authorized to do so, where such activity is to be carried out on a national scale, by the Ministry of Local Government or, where such activity is to be carried out on a regional or local scale, by the administration of the region concerned.

### **Art. 455. - Organization of Committee.**

- (1) The decision granting the authorization shall specify the persons who constitute the committee.
- (2) It shall specify the purpose and the principal place of business of the committee and the time within which it is to achieve its purpose.
- (3) It shall determine where appropriate the manner in which the action of the committee may be exercised and prescribe such measures as are necessary to control the amount and the use of the monies collected by the committee.

### **Art. 456. - Gifts and Subscriptions.**

- (1) The committee may receive gifts and subscriptions.
- (2) The president of the committee may take action against subscribers for the purpose of attaining the fulfillment of their promises.

**Art. 457. - Liability of Members.**

- (1) The members of a committee shall be personally and jointly and severally liable for its activities and its management.
- (2) Any donor or subscriber or the public prosecutor may raise the question of their liability.

**Art. 458. - Termination of Committee.**

A committee shall cease to exist upon the expiry of the prescribed time or when it has achieved its purpose or when it has itself decided to dissolve.

**Art. 459. - Dissolution of Committee.**

A committee may be dissolved by the authority which authorized it to carry out its activities where:

- (1) the committee deviates from its purpose; or
- (2) the achievement of the intended purpose has become impossible or it has become clear that it has been abandoned.

**Art. 460. - Liquidation. - 1. *Insufficient Property.***

- (1) Where the property collected by the committee is insufficient to attain the object which the committee proposed to achieve, or where that object appears to be impossible, such property shall have the destination prescribed by the decision which has authorized the committee.
- (2) In default of a provision to that effect, the property shall be placed at the disposal of the Ministry of Local Government or the administration of the region concerned which shall destine it for some work of charity.
- (3) The persons who have donated property to the committee may not take it back unless, at the time of giving, they have expressly reserved the right to do so.

**Art. 461. - 2. Balance.**

- (1) Where the property collected by the committee amounts to more than is necessary for the attainment of the proposed purpose, the balance shall have the destination prescribed by the decision authorizing the committee.
- (2) In default of a provision to that effect, it shall be placed at the disposal of the Ministry of Local Government or the administration of the region concerned which shall destine it for some work of charity.
- (3) The persons who have donated property to the committee may not take it back unless, at the time of giving, they have expressly reserved the right to do so.

**Art. 462. - Change into an Endowment.**

- (1) Where under the statutes the property collected by the committee is to be applied to a specific lasting object, an endowment shall be constituted for the attainment of such object.
- (2) The rules relating to endowments shall apply in such case.

**Section 3. - Trusts**

**Art. 463. - Definition.**

A trust is an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust, the settlor.

**Art. 464. - Form.**

- (1) A trust may be constituted by a gift or by will.
- (2) Its constitution shall be subject, as regards the form and substance, to the rules relating to gifts or wills.

- (3) An express provision in the gift or will is necessary for the constitution of a trust.

**Art. 465. - Beneficiary of Trust.**

A trust may be constituted for the benefit of any person, action or idea, provided that it does not offend public order or morals.

**Art. 466. - Number of Trustees.**

- (1) The trust may be administered by one or more trustees, but the number of trustees may not exceed four.
- (2) Where more than four trustees have been appointed, the first four designated shall alone exercise such functions.
- (3) The other persons designated as trustees shall replace in the order in which they are designated the trustees, where they refuse to exercise their functions, die, or are incapacitated.

**Art. 467. - Appointment of Trustee.**

- (1) The trustee may be appointed by the settlor, or by the person designated by the settlor, or, in default of such person, by the Court.
- (2) Where the trustee so appointed refuses his office, dies or is incapacitated, a new trustee shall be appointed by the person on whom such power has been conferred by the settlor, or in default of any such person, by the Court.

**Art. 468. - Resignation of Trustee.**

- (1) A trustee may resign his office if he has a good reason to do so, or if he has exercised his functions for ten years.
- (2) He shall remain liable for the administration of the trust until such liability passes to another trustee appointed either before or after his resignation.



**Art. 469. - Dismissal of Trustee.**

The Court may, on the application of the settlor or of a person designated by him or of one of the trustees or of a beneficiary of the trust, revoke the appointment of a trustee, if there is just cause for so doing, and replace such trustee by a new trustee whom it shall appoint.

**Art. 470. - Proof of Trusteeship.**

- (1). A trustee may obtain from the Court a document showing his capacity and his powers.
- (2) Such document shall specify, where appropriate, the period for which the powers have been granted to him.

**Art. 471. - Several Trustees.**

- (1) Unless otherwise provided, where there are several trustees, the decisions relating to the administration of the trust shall be taken by agreement between them.
- (2) In case of disagreement, the opinion of the majority shall prevail.
- (3) Those who are not in favor of a decision taken by the majority may require that their dissenting opinion be recorded in a minute.

**Art. 472. - Administration of Trust.**

- (1) The trustee shall administer the trust as a reasonable and prudent person.
- (2) He shall not mix the property forming the object of the trust with his own property.

**Art. 473. - Judicial Representation of Trust.**

- (1) The trustee shall represent the trust in judicial proceedings.
- (2) He is sued in his capacity as trustee by those persons who claim to have an interest in the property held in trust.

**Art. 474. - Powers of Trustee.**

- (1) The powers of the trustee regarding the property which is the object of the trust are those of an owner.
- (2) He may not, however, alienate immovable property or encumber immovable property with hypothec or another limited right except with the authorization of the Court, unless otherwise provided in the act of constitution of the trust.
- (3) In no circumstances may the trustee alienate the property or encumber it with a limited right by a gratuitous title.

**Art. 475. - Directions of Settlor. - 1. Principle.**

- (1) The trustee shall conform with the express instructions which he has received from the settlor.
- (2) Where the interest of the beneficiary of the trust so requires, the trustee may and shall obtain an authorization from the Court to depart from such instructions.

**Art. 476. - 2. Sanctions.**

- (1) The provisions whereby the act of constitution of a trust limits the powers of the trustee, or regulates the manner in which such powers must be exercised, may not be set up against third parties unless it is proved that such third parties were or should have been aware of such provisions.
- (2) The trustees shall be liable to any persons interested in the endowment for any infringement of the provisions of the act of endowment.
- (3) The Court may relieve in whole or in part the trustee from such liability where it is of the opinion that the trustee has acted in good faith or believed that he was acting in the interest of the trust and that such belief was reasonable.

**Art. 477. - Replacement of Property.**

The property acquired by the trustee in substitution for property alienated by him or with the income of the property which forms the object of the trust shall replace or form an addition to the latter property.

**Art. 478. - No Personal Benefit.**

The trustee may not draw any personal benefits from the trust, apart from the advantages which are expressly granted to him by the act of constitution of the trust.

**Art. 479. - Indemnity.**

The trustee is entitled to be indemnified for all the expenses and obligations arising out of the administration of the trust.

**Art. 480. - Liability of Trustee.**

The trustee shall be liable for the good management of the trust, in accordance with the provisions relating to mandate, to the beneficiaries of the trust and to the persons who are to receive the property at the termination of the trust.

**Art. 481. - Rendering of Accounts. - 1. To Whom it is Made.**

- (1) The trustee shall render an account of his administration and of the actual state of the property forming the object of the trust, to the person appointed in the act of constitution of the trust.
- (2) In default of such person, he shall render an account to any person who has an interest therein in accordance with the act of constitution of the trust or to the person who replaces him in the office of trustee.

**Art. 482. - 2. When.**

- (1) Unless otherwise prescribed by the act of constitution of the trust, such rendering of accounts shall take place every year during the month determined by the trustee at the beginning of his management.

- (2) The Court may for good cause authorize an interested party to ask for the accounts at an intermediate time, or authorize the trustee to delay or modify otherwise the date fixed for the rendering of the accounts.

**Art. 483. - Creditors of Trustee.**

The creditors of the trustee have no claim whatsoever to the property forming the object of the trust.

**Art. 484. - Creditors of the Trust.**

- (1) Those persons with whom the trustee has entered into an agreement relating to the property constituted in trust may enforce their right against all the property forming the object of the trust.
- (2) The trustee shall not be liable to them unless he has expressly bound himself or in accordance with the provisions governing Mandate.

**Art. 485. - Rights of Beneficiary. - 1. In Relation to the Trustee.**

- (1) The beneficiary may claim from the trustee the making over of the profits which, according to the act of constitution of the trust, are to accrue in his favor.
- (2) Where his rights are jeopardized, he may apply to the Court to dismiss the trustee or to compel him to give appropriate security.

**Art. 486. - 2. On the Property of the Trust.**

- (1) The beneficiary of the trust has no right to dispose of or to administer the property forming the object of the trust.
- (2) In relation to such property, he may only do those acts which preserve his rights, such as the interruption of a prescription.
- (3) He may also make publications with a view to informing third parties or certain third parties of the fact that certain property forms the object of the trust.

**Art. 487. - Creditors of Beneficiary. - 1. Principle.**

- (1) The person constituting a trust may declare that the income of the trust shall not be attached in the hands of the trustee by the creditors of the beneficiary of the trust.
- (2) Where the income has been declared not liable to attachment it may not even be validly transferred or subjected to obligations by the beneficiary of the trust.

**Art. 488. - 2. Power of the Court.**

The Court may, however, on the application of the beneficiary of the trust or of one of his creditors, authorize the attachment or the transfer of the income in the cases provided in Article 487, if such is in the interest of the beneficiary of the trust or if the claim which is brought forward is in relation to a criminal offence or a fraud for which the beneficiary of the trust is responsible.

**Art. 489. - Termination of the Trust. - 1. Normal Case.**

A trust shall terminate on the expiry of the period fixed by the person constituting the trust.

**Art. 490. - 2. Power of the Court.**

- (1) The Court may at any time on the application of the beneficiary of the trust, declare the termination of the trust where it thinks fit in the circumstances of the case.
- (2) The trustee shall be heard during the proceedings.
- (3) The settlor may, by an express provision, prohibit that this power be made use of.

**Art. 491. - Liquidation of the Trust.**

Upon termination of the trust, the property which formed its object, together with the documents which are required to prove ownership of such property and to justify the administration of the trustee, shall be handed over by the trustee to the persons who are entitled to it under the act of constitution of the trust.

## **Chapter 4. - Foreign Bodies Corporate and Property with a Specific Destination**

### **Art. 492. - Bodies Corporate.**

- (1) Bodies corporate whose head office is situated in a foreign country and which wish to carry out activities in Eritrea shall apply for an authorization to the office of associations in Asmara.
- (2) The office of associations may refuse to grant the authorization applied for where the proposed activities are contrary to the law or morals of Eritrea. The office of associations may, before making its decision, consult the Ministry concerned with the proposed activities.
- (3) No foreign body corporate may carry out activities nor recruit members in Eritrea until the authorization has been granted by the office of associations.

### **Art. 493. - Property with a Specific Destination.**

- (1) Endowments, trusts and committees constituted in a foreign country may not carry out any activity in Eritrea until they have been granted the necessary approval by the office of associations.
- (2) The office of associations may refuse its approval where the proposed activity is contrary to the law or morals of Eritrea. The office of associations may, before making its decision, consult the Ministry concerned with the proposed activity.

### **Art. 494. - Effect of Authorization or Approval.**

- (1) Bodies corporate which have been granted the authorization specified in Article 492 and endowments, trusts or committees approved under Article 493 shall be fully assimilated as regards the enjoyment and exercise of civil rights, to bodies corporate, endowments, trusts or committees established in Eritrea.

- (2) They shall be deemed to enjoy such nationality as is accorded to them in the State where their head office is situated.

**Art. 495. - Restriction.**

- (1) The carrying out of regular activities in Eritrea by foreign bodies corporate, endowments, trusts or committees or certain classes of the same may be prohibited or regulated by the Ministry of Local Government.
- (2) Foreign bodies corporate, endowments, trusts and committees may own immovable property other than land as may be provided by special law.

**Art. 496. - Revocation of Authorization or Approval.**

- (1) Any authorization granted under Article 492 and any approval given under Article 493 may at any time be revoked for good cause by the office of associations or the Ministry of Local Government, as the case may be.
- (2) An application to set aside such decision may be made to the Court by any of the directors of the body corporate, endowment or committee concerned or any of the trustees within thirty days from the day on which he was informed of the revocation.
- (3) The Court may stay the execution of the order of revocation until the application is decided on.

## **BOOK II - FAMILY**

### **TITLE I. - BONDS OF RELATIONSHIP BY CONSANGUINITY AND BY AFFINITY**

#### **Chapter 1. - General Provisions**

##### **Art. 497. - Natural Relationship.**

- (1) Bonds of natural relationship derive from community of blood.
- (2) A bond of relationship by consanguinity exists, in the direct line between ascendants and descendants.
- (3) In the collateral line, it exists between persons who descend from one or more common ascendants.

##### **Art. 498. - Computation of Degrees.**

- (1) In the direct line as many degrees are computed as there are generations, excluding the common ancestor. In the collateral line degrees are computed by generations, moving up from one of the relatives to the common ancestor and down from the latter to the other relative, always excluding the common ancestor.
- (2) The law does not recognize any connection of consanguinity beyond the sixth degree except for certain specially determined purposes.

##### **Art. 499. - Affinity.**

- (1) Bonds of affinity derive from marriage.
- (2) A bond of affinity exists, in the direct line, between a person and the ascendants or descendants of his spouse.
- (3) In the collateral line, it exists between a person and the collaterals of his spouse.



**Art. 500. - Limitation up to Third Degree.**

Affinity shall have no effect beyond the third degree in the collateral line.

**Art. 501. - Double Affinity.**

- (1) A bond of double affinity exists between a person and the spouse of the persons to whom he is related by affinity.
- (2) Such bond of double affinity shall produce the same effect as a bond of simple affinity.

**Art. 502. - Continuation of Affinity.**

A bond of affinity shall subsist in the direct and collateral line notwithstanding that the marriage by which it was created has been dissolved.

**Art. 503. - Relationship by Adoption.**

- (1) Bonds of consanguinity and affinity may be created by a contract of adoption, in accordance with the provisions of this Book on adoption.
- (2) Subject to the provisions of Article 504, an adopted child shall for all purposes be deemed to be a child of the adopter.

**Art. 504. - Saving Clauses.**

- (1) Adoption shall be of no effect with regard to the ascendants or collaterals of the adopter who have expressly declared to be opposed to the adoption.
- (2) The declaration referred to in sub-Article (1) shall be of no effect unless it is registered with a notary or in a Court registry within one year from the approval of the contract of adoption.
- (3) It shall produce effect in regard to the spouse and the descendants of the person making it.

**Art. 505. - Family of Origin.**

- (1) The adopted child shall retain his bonds with his family of origin.
- (2) The same shall apply to the spouse and the descendants of the adopted child.
- (3) Wherever a choice has to be made between the family of adoption and the family of origin, the family of adoption shall prevail.

**Chapter 2. - Betrothal**

**Art. 506. - Definition.**

A contract of betrothal is a contract whereby the fiancé and the fiancée agree that a marriage shall take place between them.

**Art. 507. - Simple Promise of Marriage.**

- (1) A simple promise of marriage, exchanged between two persons, shall not constitute a betrothal.
- (2) The breach of such promise may give rise to damages in cases of fault in accordance with the provisions of the Title of this Code relating to Non-contractual obligations.

**Art. 508. - Existence of Obstacle to Marriage.**

- (1) If there is a legal obstacle to the marriage of the future spouses, their betrothal shall be of no effect.
- (2) In particular, the betrothal shall be of no effect until both future spouses attain the marriageable age required by law.

**Art. 509. - Form of Betrothal.**

Subject to the following provisions, the form of betrothal shall be regulated by the usage of the place where it is celebrated.

**Art. 510. - Witnesses.**

- (1) A contract of betrothal shall be of no effect unless it is made in the presence of two witnesses for the future bridegroom and two witnesses for the future bride.
- (2) One of the witnesses for the bridegroom and one of the witnesses for the bride may have the character of principal witness.

**Art. 511. - Proof of Betrothal.**

- (1) Betrothal need not be entered in the registers of civil status.
- (2) It may be proved by all means of evidence.

**Art. 512. - Duration of Betrothal.**

If, at the time of the betrothal, no period has been agreed upon for the celebration of the marriage, the marriage shall take place within six months from the date upon which either of the future spouses has expressed his or her wish that the marriage be celebrated.

**Art. 513. - Breach of Betrothal.**

- (1) Betrothal shall be broken if either of the future spouses refuses to consent to the marriage, without a good cause justifying his delay or his refusal.
- (2) It shall also be broken if either of the future spouses behaves in such a way that the marriage is rendered, in fact or morally, impossible.

**Art. 514. - Effects of Breach. - 1. Expenses and Restitution.**

- (1) The person who is responsible for the breach of betrothal shall pay all the expenses incurred in connection with the betrothal.
- (2) Presents received on the occasion of the betrothal shall be returned by the person who is responsible for the breach as well as by the members of his family.

**Art. 515. - 2. Moral Prejudice.**

- (1) A reasonable compensation may be awarded to the fiancé or the fiancée who is not responsible for the breach, by way of compensation for the moral prejudice caused by the breach of betrothal.
- (2) In establishing the amount of the indemnity, the Court shall have regard to local custom.
- (3) The indemnity awarded as compensation for moral prejudice may not exceed ten thousand Nakfas.

**Art. 516. - 3. Penalty.**

- (1) If a penalty clause has been attached to the betrothal, the person responsible for the breach of the betrothal shall pay the agreed amount.
- (2) Such amount may be reduced having regard to the circumstances of the case.
- (3) It may be reduced where it appears that it is manifestly exaggerated.

**Art. 517. - Limitation.**

All actions based on breach of betrothal shall be barred if not instituted within one year from the day when the betrothal has been broken.

**Chapter 3. - Celebration of Marriage**

**Art. 518. - Various Kinds of Marriages.**

- (1) Marriages may be contracted before a civil status officer.
- (2) Marriages may also be contracted according to the religion of the parties or to local custom.

**Art. 519. - Civil Marriage.**

A civil marriage shall take place when a man and a woman have appeared before the civil status officer for the purpose of contracting

marriage and have given their respective consent before the civil status officer.

**Art. 520. - Religious Marriage.**

A religious marriage shall take place when a man and a woman have performed such acts or rites as are deemed to constitute a valid marriage according to their religion or the religion of one of them.

**Art. 521. - Marriage According to Custom.**

A customary marriage shall take place when a man and a woman perform such rites as constitute a permanent union between such man and woman under the rules of the community to which they belong or to which one of them belongs.

**Section 1. - Conditions Common to All Forms of Marriage**

**Art. 522. - Age.**

- (1) A man and a woman who have not both attained the full age of eighteen years may not contract marriage.
- (2) Sub-Article (1) does not apply if the man and woman have both attained the full age of sixteen years and the woman submits to the authority who will celebrate the marriage a declaration made by a doctor stating that the woman is pregnant or has already given birth to a child, without prejudice to sub-Article (1) of Article 527.
- (3) The Minister of Justice or a person specially appointed by him may for good cause grant dispensation from the rule concerning age.

**Art. 523. - Consanguinity, Including by Adoption.**

- (1) Marriage between persons related by consanguinity in the direct line, as well as between brothers and sisters, uncles and nieces and aunts and nephews is prohibited.
- (2) The Minister of Justice or a person specially appointed by him may, for good cause, grant dispensation to allow persons related by adoption to marry.

**Art. 524. - Affinity.**

- (1) Marriage between persons related by affinity is prohibited.
- (2) The Minister of Justice or a person specially appointed by him may for good cause grant dispensation to allow persons related by affinity to marry.

**Art. 525. - Filiation Not Established legally.**

The existence of a bond of natural filiation which is commonly known is sufficient to render applicable the impediments to marriage referred to in Article 523 and 524 notwithstanding the fact that the filiation is not established legally.

**Art. 526. - Bigamy**

A person may not contract marriage so long as he is bound by the bonds of a preceding marriage.

**Art. 527. - Representation Not Allowed.**

- (1) Each of the spouses shall personally consent to the marriage at the time that the marriage takes place.
- (2) Representation shall not be allowed unless a dispensation be given for good cause by the Attorney General.

**Art. 528. - Marriage of Minors.**

The conditions under which a minor may contract marriage are laid down in the title of this Code relating to Capacity of Persons.

**Art. 529. - Judicially Interdicted Persons.**

The conditions under which a judicially interdicted person may contract marriage are laid down in the Title of this Code relating to Capacity of Persons.

**Art. 530. - Threat.**

- (1) No consent shall be valid which has been extorted by threat.
- (2) Threat shall be deemed to have occurred where consent is given only with a view to protecting the person who has given it, or one of his ascendants or one of his descendants, from a menace of a grave and imminent evil.
- (3) Threat shall not be deemed to have occurred where consent is prompted by reverential fear towards an ascendant or another person.

**Art. 531. - Error of Substance.**

- (1) Consent shall be vitiated where it was given only as a result of an error of substance of one of the spouses regarding the person of his spouse.
- (2) The following errors only shall be considered as errors of substance:
  - (a) error regarding the identity of the spouse, who is not the person with whom the other person intended to contract marriage;
  - (b) error regarding the religion of the spouse, who does not belong to the same faith as the other spouse;
  - (c) error regarding the state of health or the bodily conformation of the spouse, who is affected by leprosy or who does not have the requisite organs for the consummation of the marriage.

**Art. 532. - Opposition. - 1. By Whom Made.**

- (1) Opposition to the marriage may be made by the father or mother of the spouse or by the guardian of the spouse who is a minor. In default of the father or mother or if neither of them is in a position to oppose, one of the grandparents or great-grandparents may oppose. In

default of ascendants or if no one of them is in a position to oppose, an elder brother or sister or a paternal or maternal uncle or aunt may oppose.

- (2) Opposition may also be made by the public prosecutor.
- (3) Opposition may be made by no other person.

**Art. 533. - 2. *Time and Form.***

- (1) Opposition shall be made at the latest when the marriage is celebrated.
- (2) It shall be subject to no special form.

**Art. 534. - 3. *Withdrawal of Opposition.***

The withdrawal of the opposition to the marriage may be required by either of the spouses notwithstanding that he or she is a minor.

**Art. 535. - 4. *Impossibility.***

- (1) No opposition may be made to a marriage when the withdrawal of a previous opposition made to such marriage has been ordered by the Court.
- (2) No opposition may be made, except by the public prosecutor, to the marriage of a person who has been previously married.

**Art. 536. - *Period of Widowhood.***

- (1) A woman may not remarry unless three hundred and six days have elapsed since the dissolution of a previous marriage by death of her husband.
- (2) The provisions of sub-Article (1) shall not apply where the woman:
  - (a) gives birth to a child after the dissolution of that marriage;



- (b) submits to the authority who will celebrate the marriage a declaration by a doctor, made at least thirty days after the death of her husband, stating that she was not pregnant at any moment after that death;
- (c) has attained the age of fifty-two years; or
- (d) has lived separately from her husband without interruption during the last three hundred and six days prior to his death.

### **Section 2. - Civil Marriage**

#### **Art. 537. - Competent Civil Status Officer.**

Civil marriages shall be celebrated before the civil status officer of the commune where one of the spouses, or one of his parents or ascendants, has his residence established by continuously living there for not less than six months prior to the date of the marriage.

#### **Art. 538. - Undertaking Not to Marry.**

- (1) Any undertaking made by any person not to marry or not to remarry shall be of no effect.
- (2) The civil status officer shall not take it into consideration.

#### **Art. 539. - Request for Celebration of Marriage.**

The future spouses shall inform not less than one week in advance the civil status officer of their intention to contract marriage.

#### **Art. 540. - Refusal to Celebrate marriage.**

- (1) The civil status officer shall ascertain that the conditions of marriage are satisfied.
- (2) He shall refuse to celebrate the marriage if he finds or has good reasons to believe that there exists an obstacle to the marriage.

- (3) In such case, the civil status officer shall give the reasons for his refusal to the future spouses.

**Art. 541. - Appeal against Refusal.**

- (1) Either of the future spouses may appeal against a refusal under Article 540 to the Court which shall decide whether such refusal is justified or not.
- (2) Where the Court finds the refusal of the civil status officer to be unjustified, such officer may not refuse to celebrate the marriage for any reason whatsoever.

**Art. 542. - Fixing Date of Marriage.**

The exact date of the celebration of the marriage shall be fixed by agreement between the future spouses and the civil status officer.

**Art. 543. - Publicity of Marriage.**

Marriages shall be celebrated publicly, in the presence of the future spouses and of two witnesses for each of the future spouses.

**Art. 544. - Formalities of Celebration.**

- (1) The future spouses and the witnesses shall take an oath that, to their knowledge, there exists no obstacle to the marriage.
- (2) The civil status officer shall receive from each of the future spouses, one after the other, a declaration that they take one another as husband and wife.
- (3) In the name of the law, he shall pronounce them united in marriage and shall immediately draw up the record of marriage, if he is qualified to do so.

### **Section 3. - Other Marriages**

#### **Art. 545. - Religious Marriage.**

- (1) The conditions on which a religious marriage may be celebrated and the formalities of such celebration shall be as prescribed by the religion of the parties concerned.
- (2) The provisions of this Code relating to the Conditions Common to All Forms of Marriage shall be complied with in all cases.
- (3) A record of marriage shall be drawn up in accordance with the provisions of the Title of this Code relating to Natural Persons.

#### **Art. 546. - Marriage According to Custom.**

- (1) The conditions on which a marriage according to custom may be celebrated and the formalities of such celebration shall be as prescribed by local custom.
- (2) The provisions of this Code relating to the Conditions Common to All Forms of Marriage shall be complied with in all cases.
- (3) A record of marriage shall be drawn up in accordance with the provisions of the Title of this Code relating to Natural Persons.

### **Chapter 4. - Sanction of the Conditions of Marriage**

#### **Section 1. - Principles Common to All Forms of Marriage**

##### **Art. 547. - Age**

- (1) Where a civil status officer or authority has celebrated the marriage of a man or a woman who has not attained the age mentioned in Article 522, the dissolution of the marriage shall be ordered on the application of any interested person or of the public prosecutor.

- (2) It may no longer be applied for after the conditions of age required by law for marriage are satisfied.

**Art. 548. - Consanguinity or Affinity.**

The dissolution of a marriage celebrated notwithstanding an impediment arising out of consanguinity or of affinity shall be ordered on the application of any interested person or of the public prosecutor.

**Art. 549. - Bigamy.**

- (1) Where a civil status officer or authority has celebrated the marriage of a person bound by the bonds of a previous marriage, the dissolution of the marriage shall be ordered on the application of either of the spouses of the bigamous spouse or on the request of the public prosecutor.
- (2) The Court shall not order dissolution unless it is established, in an indisputable manner, that the former spouse of the bigamous spouse was alive at the time when the marriage was celebrated.
- (3) The marriage contracted by the bigamous spouse shall become valid on the day when the former spouse dies.

**Art. 550. - Marriage of Incapacitated Person.**

- (1) Where a civil status officer or authority has celebrated the marriage of a minor or of an interdicted person without the necessary authorization, the dissolution of the marriage may be requested from the Court by a minor or by an insane person who is interdicted or by a person who should have consented to the marriage of the minor or by the guardian of the interdicted person.
- (2) An application for dissolution may no longer be made by the incapacitated person six months after the termination of his disability.
- (3) It may no longer be made by the other persons six months after the day on which they came to know of the existence of the marriage and, in any case, when the disability of the minor or interdicted person has ceased.

**Art. 551. - Threat.**

- (1) A person who has contracted a marriage under the influence of threat may apply to the Court to order the dissolution thereof.
- (2) Such application may not be made six months after the cessation of such threat and, in any case, two years after the celebration of the marriage.

**Art. 552. - Error.**

- (1) Whosoever has contracted a marriage under the influence of an error of substance may apply to the Court to order the dissolution thereof.
- (2) Such application may not be made six months after the discovery of such error, and, in any case, two years after the celebration of the marriage.

**Art. 553. - Other Causes**

The dissolution of the marriage may not be ordered for the sole reason that:

- (a) an opposition has not been taken into consideration;
- (b) the period of widowhood has not been observed;
- (c) the civil status officer celebrating the civil marriage was incompetent; or
- (d) the formalities for the civil marriage were not observed.

**Section 2. - Other Marriages**

**Art. 554. - Nullity.**

- (1) The annulment of a marriage may not be ordered by the Court on the ground that one or more conditions or formalities required by religion or by custom have not been observed.

- (2) The annulment of a religious marriage ordered by the religious authorities may lead to a divorce in accordance with Chapter 7 if one or both spouses apply for it.
- (3) The annulment of a marriage according to custom ordered by the customary authorities shall be of no legal effect.

**Art. 555. - Fine and Damages.**

- (1) The conditions and formalities required in the case of a religious marriage or of a marriage according to custom may be sanctioned by a condemnation to a fine or by a condemnation to pay damages to the injured party, according to the religion or custom concerned.
- (2) Notwithstanding any custom or stipulation to the contrary, the Court may reduce the amount of such fine or damages as are due where such amount appears to it to be excessive.
- (3) It may also refuse to give effect to the custom relating to such matter if it appears to it to be unreasonable or contrary to equity or to morality.

**Chapter 5. - Effects of Marriage**

**Section 1. - General Provisions**

**Art. 556. - Various Forms of Marriage Equivalent.**

- (1) Marriage produces the same legal effects, whatever the form according to which it has been celebrated.
- (2) No distinction shall be made as to whether the marriage has been celebrated before a civil status officer or according to the forms prescribed by religion or custom.

**Art. 557. - Consummation of Marriage.**

The effects of marriage shall in no way depend on the real or presumed consummation of marriage.

**Art. 558. - Contract of Marriage.**

- (1) The spouses may, before their marriage, regulate by a contract of marriage the pecuniary effects of their union.
- (2) They may also specify in such contract their reciprocal rights and obligations in matters concerning their personal relations.
- (3) Nothing in this Article shall affect the mandatory provisions of the law.

**Art. 559. - Incapacity of a Spouse.**

- (1) When the person contracting the contract of marriage as provided in Article 558 is a minor, the consent of the minor and of the guardian shall be required.
- (2) The contract of marriage as provided in Article 558 is a judicially interdicted person shall be of no effect unless it is entered into by the interdicted person himself and approved by the Court.

**Art. 560. - Form of Contract.**

A contract of marriage as provided in Article 558 shall be of no effect unless made in writing and witnessed by four witnesses, two for the husband and two for the wife.

**Art. 561. - Deposit of Contract.**

- (1) A copy of the contract of marriage as provided in Article 558 shall be deposited in the registry of the Court or with a notary.
- (2) The copy specified in sub-Article (1) may be freely consulted there by either of the spouses or by any person authorized for this purpose by the spouses or by the Court.

**Art. 562. - Restrictions upon Freedom of Contracting.**

- (1) A contract of marriage as provided in Article 558 may not impose an obligation upon third parties nor derogate from any mandatory provision of law.
- (2) It may not refer purely and simply to local custom.

**Art. 563. - Modifications to Contract of Marriage.**

- (1) The family arbitrators may, at the request of both spouses, modify the terms of the contract of marriage as provided for in Article 558.
- (2) The arbitrators may, at the request of one of the spouses only, modify such terms if the interests of the family so requires. The other spouse shall be heard if possible. If the terms are modified, the other spouse may appeal to the Court.
- (3) A copy of the modifications made shall be deposited in the registry of the Court or with a notary.

**Art. 564. - Contracts between Spouses.**

- (1) Contracts made between spouses during marriage shall be of no effect under the law, unless they have been approved by the family arbitrators or by the Court.
- (2) Nothing in this Article shall affect the specific provisions of this Code relating to Contracts.

**Art. 565. - Legal Regime.**

Where there is no contract or the provisions of the contract of marriage as provided in Article 558 or of the contract made between the spouses are not valid, the following provisions shall apply.



## **Section 2. - Personal Effects of Marriage**

### **Art. 566. - Respect, Fidelity, Protection, Support and Assistance.**

- (1) The spouses owe each other respect, fidelity, protection, support and assistance.
- (2) An agreement to the contrary shall be of no effect.

### **Art. 567. - Management of Family. - 1. General Case.**

- (1) The spouses shall co-operate in the interest of the family, on the basis of equal rights and responsibilities of both sexes, to ensure the moral and material direction of the family, the upbringing of the children and the preparation of the children for their place in society.
- (2) The undertakings made by the spouses in this regard in the contract of marriage as provided in Article 558 shall be given effect to.

### **Art. 568. - 2. Impediment of One Spouse.**

- (1) Where one of the spouses is under a disability, or is absent or condemned for abandoning his family, the other shall alone carry out the duties mentioned in Article 567.
- (2) The same shall apply where one of the spouses voluntarily abandons life in common or is not in a position to manifest his will by reason of his absence or for any other cause.
- (3) Any provision to the contrary in the contract of marriage as provided in Article 558 shall be of no effect.

### **Art. 569. - Children of Previous Marriage.**

- (1) Each of the spouses shall retain an exclusive right of decision in matters concerning the education of the children whom he had before the marriage.
- (2) Any agreement to the contrary may be revoked by the spouse who is the natural parent of the child.

**Art. 570. - Cohabitation.**

- (1) The spouses are bound to live together.
- (2) They shall have with one another the sexual relations normal in marriage, unless these relations involve a risk of serious prejudice to the health of one or both spouses.
- (3) Any agreement to the contrary shall be of no effect, without prejudice to sub-Article (1) of Article 572.

**Art. 571. - Establishment of Residence.**

- (1) The common residence shall be chosen by common agreement of the spouses. If one of the spouses is judicially interdicted or not willing or not in a condition to express a wish, the common residence shall be chosen by the other spouse.
- (2) Each of the spouses may apply to the family arbitrators, if a dispute regarding the choice of the common residence arises between them.

**Art. 572. - Separation by Agreement.**

- (1) The spouse may agree for good cause to live separately for a definite or indefinite period of time.
- (2) An agreement made to this effect may be revoked at any time by one of the spouses, provided such revocation is not arbitrary.

**Art. 573. - Occupation of Spouses.**

- (1) Each of the spouses may carry on the occupation or the activity of his choice.
- (2) The other spouse may, in the interest of the household, object to the carrying on of a given occupation or activity.

### **Section 3. - Pecuniary Effects of Marriage**

#### **Art. 574. - Personal Property of Spouses. - 1. Property Not Acquired by Onerous Title.**

The property which the spouses possess on the day of their marriage or which they acquire after their marriage by succession or gift shall remain their personal property, unless otherwise agreed in the contract of marriage as provided in Article 558.

#### **Art. 575. - 2. Property Acquired by Onerous Title.**

Property acquired by onerous title by one of the spouses during marriage shall also be personal property of such spouse where such acquisition has been made in exchange for property owned personally or with monies owned personally or deriving from the alienation of property owned personally.

#### **Art. 576. - Administration of Personal Property. - 1. Principle.**

- (1) Each spouse shall administer his personal property and receive the income thereof.
- (2) He may freely dispose of his property.
- (3) One of the spouses may freely entrust to his spouse the administration of his property in whole or in part.

#### **Art. 577. - Common Property.**

- (1) The salaries and the income of the spouses shall be common property.
- (2) All property acquired by the spouses during marriage for valuable consideration and which has not been acquired in exchange for property owned personally or with monies owned personally or deriving from the alienation of property owned personally shall be common.
- (3) Property donated or bequeathed conjointly to the two spouses shall be common, unless otherwise stipulated in the act of gift or will.

**Art. 578. - Presumption.**

- (1) All property shall be deemed to be common unless one of the spouses proves that he is the sole owner thereof.
- (2) The fact that certain property is personal may not be set up by the spouses against a third person unless the latter knew or should have known of such fact.

**Art. 579. - Salaries and Income. - 1. Normal Management.**

- (1) Each spouse shall receive his earnings and salaries.
- (2) Each spouse may have a bank account in which his earnings and salaries and the income from his personal property are deposited.
- (3) He shall, at the request of the other spouse, render an account to the latter of the salaries and income received by him.

**Art. 580. - 2. Rights of Spouse.**

- (1) A spouse may freely give to the other spouse a mandate to receive the salaries and income which are due to him.
- (2) The family arbitrators may, at the request of one spouse, authorize such spouse to receive the salaries and income of the other spouse and to give receipts for such payments.
- (3) They may also authorize a spouse to attach the salary or income of the other spouse in whole or in part in the hands of the person from whom it is due.

**Art. 581. - Administration of Common Property.**

- (1) Each one of the spouses has the power to administer independently of the other spouse common property other than the earnings, salaries and income of a spouse, and to dispose of them.

- (2) Nothing in this Article shall affect the provisions of Article 568.
- (3) The family arbitrators may, at the request of a spouse, entrust to him or her, in the interest of the family, the powers mentioned in sub-Article (1) with regard to the common property or certain common property.

**Art. 582. - Duty to Give Notice.**

The spouse who performs an act of management in respect of common property shall without delay inform the other spouse of such act.

**Art. 583. - Restriction of Powers.**

The agreement of both spouses shall be required for:

- (a) alienating a common immovable or encumbering a common immovable with a hypothec, charge or other limited right
- (b) alienating a common movable the value of which exceeds one thousand Nakfas, or securities registered in the name of both spouses;
- (c) contracting a loan exceeding two thousand Nakfas; and
- (d) making a gift exceeding two hundred Nakfas or standing surety for a debt of a third party in an amount exceeding two hundred Nakfas.

**Art. 584. - Debts of Spouses.**

- (1) Debts owed by one spouse may be recovered on the personal property of such spouse and on all common property.
- (2) Debts incurred in the interest of the household shall be deemed to be joint and several debts of both spouses and may be recovered on the personal property of each spouse and on all common property.

**Art. 585. - Debts in the Interest of Household.**

The following debts shall be deemed to be debts incurred in the interest of the household:

- (a) debts contracted in order to ensure the livelihood of the spouses or their children;
- (b) debts contracted in order to fulfill an obligation of support to which the spouses or one of them is bound;
- (c) debts contracted in order to ensure the education of the children and the further education or professional training of either of the spouses; and
- (d) other debts which are acknowledged to be debts incurred in the interest of the household by the family arbitrators at the request of a spouse or creditor.

**Art. 586. - Contribution to Household Expenses.**

The spouses shall contribute to the household expenses in proportion to their respective means.

**Chapter 6. - Proof of Marriage**

**Art. 587. - Modes of Proofs.**

Marriage may be proved only by the modes of proof provided for in this Chapter.

**Art. 588. - Record of Marriage.**

Marriage is proved by producing the record of marriage drawn up at the time of or after its celebration in accordance with law.

**Art. 589. - Possession of Status.**

- (1) In default of the record of civil status, marriage is proved by the possession of the status of spouse. Two persons have the possession of the status of spouses when they mutually consider and treat themselves as spouses and

when they are considered and treated as spouses by their family and by society.

- (2) The possession of the status of spouse may be proved by producing four witnesses, who have direct or indirect knowledge of the fact that marriage was concluded.
- (3) It may also be contested by producing four witnesses, being relatives or not of the interested parties.

**Art. 590. - Act of Notoriety.**

In default of possession of status or if the possession of status is contested, the existence of the marriage is proved by an act of notoriety approved by the Court.

**Art. 591. - Authorization Necessary.**

- (1) The existence of a marriage may not be proved by means of an act of notoriety unless the Court authorizes such mode of proof.
- (2) An application to this effect may be made at any time by any interested person.
- (3) Save in case of act of God the spouses or their heirs shall be heard.

**Art. 592. - When Authorization May be Given.**

The Court may authorize the marriage to be proved by an act of notoriety where:

- (a) the circumstances mentioned in Article 135 of this Code are extant;
- (b) a record of marriage drawn up by a religious authority is produced by the plaintiff;
- (c) a contract of marriage as provided in Article 558 is produced by the plaintiff; or

- (d) the defendant spouse acknowledges the existence of the marriage, or there are presumptions or circumstantial evidence resulting from constant and sufficiently serious facts to enable the Court to grant the authorization.

**Art. 593. - Duties of Civil Status Officer.**

- (1) The person requested to draw up an act of notoriety in connection with a marriage shall ensure that such request be given publicity, in conformity with the regulations and with the instructions given to him by the Court.
- (2) He shall invite third parties to record their opposition, if any, within thirty days from such publicity.

**Art. 594. - Forms and Approval.**

- (1) The act of notoriety aiming at proving the existence of a marriage shall indicate, in so far as possible, the date upon which the marriage came into existence and the date, if any, on which it has ceased to exist.
- (2) It shall be of no effect unless certified by four witnesses and approved by the Court.

**Art. 595. - Probative Value.**

- (1) The record of marriage or the act of notoriety approved by the Court shall be effective as regards all persons.
- (2) The person who alleges the falsehood of either document shall prove either that the marriage has not been celebrated or that it has been celebrated on a date different to that resulting from such record or act.

**Art. 596. - Nullity or Dissolution of Marriage.**

The person who alleges that a marriage is null or has been dissolved shall prove such allegation.



## **Chapter 7. - Termination of Marriage**

### **Art. 597. - Various Forms of Marriage Equivalent.**

- (1) The causes and effects of termination of marriage shall be the same according to whichever form the marriage is celebrated.
- (2) In this respect, no distinction shall be made as to whether the marriage was celebrated before a civil status officer or according to the formalities prescribed by religion or custom.

### **Section 1. - Causes of Termination of Marriage.**

#### **Art. 598. - Various Causes.**

- (1) Marriage shall terminate on the death of the spouses.
- (2) It shall terminate where the Court orders its dissolution as a sanction for breach of one of the conditions of the marriage in accordance with Chapter 4 of the current Title.
- (3) It shall be terminated by divorce.
- (4) It shall be terminated where the absence of a spouse is declared by the Court in accordance with Chapter 4 of Title I of Book I.

#### **Art. 599. - Repudiation.**

Any unilateral repudiation of the wife by the husband or the husband by the wife shall be of no effect.

#### **Art. 600. - Petition for Divorce.**

- (1) A petition for divorce may be made to the family arbitrators either by the two spouses jointly or by one of them on the ground that the marriage has broken down irretrievably.

- (2) A marriage is presumed to have broken down irretrievably where the marital state of union of the spouses no longer exists and there can be no expectation that the spouses will restore it. There is a conclusive presumption of irretrievable breakdown of the marriage when the spouses have been separated for one year.
- (3) A spouse may allow himself or herself to be represented by another person.
- (4) A petition by a spouse may be made in the absence of the other spouse.
- (5) The death of one of the spouses after divorce proceedings have been commenced but before the divorce has been ordered shall put an end to divorce proceedings.
- (6) A petition for divorce may also be made to the Court. In that case the provisions dealing with the divorce proceedings before the family arbitrators apply *mutatis mutandis*, unless provided otherwise.

#### **Art. 601. - Provisional Measures.**

- (1) Once the matter is brought before the family arbitrators or the Court, the family arbitrators or the Court shall order such provisional measures as are required by the circumstances in particular as regards the support of the spouses and of the children or the management of the property of the spouses.
- (2) The family arbitrators or the Court may assign or prohibit a determinate residence to the husband or to the wife.

#### **Art. 602. - Revision May be Made.**

Any provisional measure taken by the family arbitrators may be revised or annulled by them on the request of any interested person.

**Art. 603. - Attempt to Reconcile.**

- (1) The family arbitrators shall attempt to reconcile the parties and to make them renounce the petition for divorce.
- (2) To this end, they may prescribe to the spouses any reasonable and appropriate measure they think fit.

**Art. 604. - Agreement on Conditions of Divorce.**

- (1) Where the family arbitrators fail to reconcile the spouses, they shall attempt to make them agree on the conditions of divorce, including the provision of support following divorce.
- (2) Where such agreement is reached, the award of divorce shall be made in accordance therewith.

**Art. 605. - Time for the Delivery of Award of Family Arbitrators.**

- (1) Failing agreement between the parties, the family arbitrators shall pronounce the divorce within six months from the date upon which the petition for divorce was made to them.
- (2) Sub-Article (1) shall not apply *mutatis mutandis* if a petition for divorce is made to the Court.

**Art. 606. - Contents of Award.**

- (1) The award of the family arbitrators which pronounce the divorce shall regulate the consequences thereof.
- (2) It shall in particular give directions regarding the custody and support of minor children born of the marriage and make such provisions as may be necessary for the liquidation of the relations between the spouses.
- (3) In deciding custody of a child, the views of the child who can form and express his ideas shall be heard and given due weight in accordance with the age and maturity of the child.

**Art. 607. - Support of Former Spouse Following Divorce.**

- (1) The family arbitrators may order, on request, the provision of support by one of the former spouses to the other former spouse following their divorce, either in the form of periodical payments or as a lump-sum.
- (2) If the provision of support is ordered in the form of periodical payments, the family arbitrators may limit the duration of this obligation.
- (3) In their decision to limit the duration of the obligation to provide support or not, the family arbitrators shall take into account all relevant factors, such as the duration of the marriage, whether children are born out of the marriage, the age and state of health of the former spouse entitled to support and the extent to which the marriage has influenced the ability of such former spouse to support himself.

**Art. 608. - Supplementary Award.**

- (1) The family arbitrators may confine themselves to pronouncing the divorce in a first award and may reserve for a supplementary award the regulation of the questions or of certain questions which arise out of the divorce.
- (2) The supplementary award shall be delivered within three months from the date upon which the award of divorce was given.

**Art. 609. - Custody of Children.**

- (1) The custody and support of children born of the marriage shall be regulated having regard solely to the best interest of such children.
- (2) Unless there be a serious reason for deciding otherwise, the children shall be entrusted to their mother up to the age of five years.

**Art. 610. - Revision May be Made.**

- (1) The provisions made regarding the custody and support of the children may at any time be revised by the family arbitrators on the application of the father, mother or other ascendant relative of the children.
- (2) The provisions made regarding the support of a former spouse may also be revised at any time, on the application of each of the former spouses.

**Section 2. - Liquidation of Pecuniary Relations between Spouses**

**Paragraph 1. - Death of One of the Spouses**

**Art. 611. - Autonomy of Agreements.**

- (1) On the death of one of the spouses, the pecuniary relations between the spouses shall be liquidated in accordance with the contract of marriage as provided in Article 558 and with the agreements entered into by the spouses.
- (2) In default of agreements or if these have not been validly stipulated, the pecuniary relations between spouses shall be liquidated in accordance with the provisions of this Section.

**Art. 612. - Retaking Personal Property.**

Each spouse shall retake in kind the property which is owned personally by him where he shows that he is the owner thereof.

**Art. 613. - Indemnities.**

- (1) Notwithstanding any agreement or final acquittance to the contrary, damages may be awarded to one of the spouses by reason of acts which have been performed by the other spouse and which have affected the common property or the property owned personally by either spouse where:

- (a) the spouse who has performed such acts did not have the right to perform them; or
  - (b) such acts constitute acts of bad administration or have been performed in fraud of the rights of the person making the claim.
- (2) No claim for indemnity based on the present article may be made by reason of acts which have been performed more than three years before the dissolution of the marriage.

**Art. 614. - Unlawful Enrichment.**

Unless otherwise agreed, an indemnity shall be awarded to a spouse who proves that the personal property of his spouse has been unlawfully enriched to the prejudice of his own personal property or of common property.

**Art. 615. - Partition of Common Property.**

- (1) Without prejudice to the provisions of the preceding Articles and unless otherwise provided in the contract of marriage as provided in Article 558 or in a contract validly concluded between the spouses, common property shall be divided equally between the spouses.
- (2) Those provisions in the Book of this Code relating to Successions which concern the manner of making a partition, the relations between co-heirs after partition and the rights of creditors after partition shall apply *mutatis mutandis* to the partition of common property.

Paragraph 2. - Divorce

**Art. 616. - General Rule.**

Without prejudice to the provisions of the following Articles, pecuniary relations between spouses shall be liquidated in case of divorce as in the case of death of one of the spouses.

**Art. 617. - Unequal Treatment of Spouses.**

- (1) The family arbitrators may award to one of the spouses three-quarters of the common property.
- (2) The family arbitrators shall make such order as is reasonable in the circumstances.
- (3) The family arbitrators shall, in particular, take into account whether the personal property of such other former spouse was acquired by common efforts or whether the possibilities of the requesting former spouse to acquire personal property during marriage were diminished because of the marriage.

**Art. 618. - Transfer of Personal Property.**

- (1) The family arbitrators may also award to one of the former spouses personal property belonging to the other former spouse, provided the value of such property does not represent more than one quarter of the personal property of such other former spouse.
- (2) The family arbitrators shall make such order as is reasonable in the circumstances.
- (3) The family arbitrators shall, in particular, take into account whether the personal property of such other former spouse was acquired by common efforts or whether the possibilities of the requesting former spouse to acquire personal property during marriage were diminished because of the marriage.
- (4) The family arbitrators shall take into account, inter alia, whether one of the former spouses has committed adultery or has deserted the conjugal residence without good cause.

### Paragraph 3. - Dissolution of Marriage

#### Art. 619. - Rule to be Followed.

- (1) Where the Court orders the dissolution of a marriage as a sanction for breach of one or more of the conditions of marriage in accordance with Chapter 4, it shall rule according to equity the consequences of such dissolution.
- (2) It shall be guided by the rules regarding the liquidation of the relations between spouses in cases of divorce.
- (3) It shall in particular have regard to the good or bad faith of the spouses, whether or not the marriage has been consummated, the interest of the children, if any, born of the dissolved union and the interest of third parties in good faith.

### Chapter 8. - Cohabitation Without Marriage

#### Art. 620. - Support.

- (1) If two persons have lived together, at least, for five years as if they were married and the relationship has broken down, the Court may, upon request, order the provision of support by one of the former cohabitantes to the other former cohabitee.
- (2) The Court shall make such order as is reasonable in the circumstances.
- (3) The provisions with respect to the obligation of support by a former spouse are applicable *mutatis mutandis*.

#### Art. 621. - Transfer of Property.

- (1) If two persons have lived together, at least, for five years as if they were married and the relationship has broken down, the Court may, upon request, award to one of the former cohabitantes property belonging to the other former cohabitee, provided the value of such property does not represent more than one quarter of the property of such other former cohabitee.



- (2) The Court shall make such order as is reasonable in the circumstances.
- (3) The Court shall, in particular, take in account whether the property of such other former cohabitee was acquired by common efforts or whether the possibilities of the former cohabitee making the request to acquire his or her own property were diminished because of the relationship.

**Art. 622. - Position of Surviving Cohabitee.**

- (1) If two persons have lived together, at least, for five years as if they were married and the relationship is terminated by the death of one of the cohabitees, the Court may, upon request, order that the surviving cohabitee shall have the same rights of succession as a surviving spouse.
- (2) The Court shall make such order as is reasonable in the circumstances.

**Chapter 9. - Conflicts in Cases Relating to Marriages and Divorces**

**Section 1. - General Provisions**

**Art. 623. - Existence of Valid Betrothal.**

Only the Court is competent to decide whether a betrothal has been celebrated or not and whether such betrothal is valid.

**Art. 624. - Disputes Arising Out of Betrothal.**

- (1) Disputes arising out of a betrothal or out of a breach of a betrothal shall be submitted to the arbitration of the persons who have been the witnesses to the contract of betrothal.
- (2) If some persons have been designated as principal witnesses, the disputes shall be submitted to their arbitration.

- (3) The parties may agree, at the time of the betrothal or subsequently, to have recourse to the arbitration of other persons.

**Art. 625. - Existence of Valid Marriage.**

Only the Court is competent to decide whether a marriage has been contracted and whether such marriage is valid.

**Art. 626. - Difficulties Arising Out of Marriage.**

- (1) Difficulties which arise between the spouses during the marriage shall be submitted to the arbitration of the persons who have been witnesses to such marriage.
- (2) If some persons have been designated as principal witnesses, the disputes shall be submitted to their arbitration.
- (3) The parties may agree, at the time of the marriage or subsequently, to have recourse to the arbitration of other persons.

**Art. 627. - Dissolution of Marriage by Death.**

Disputes arising out of the dissolution of a marriage shall be submitted to the arbitration of the same persons, when the dissolution of the marriage is caused by the death of one of the spouses.

**Art. 628. - Petition for Divorce.**

A petition for divorce made by both spouses or one of them shall be submitted for the arbitration of the same persons.

**Art. 629. - Disputes Arising Out of Divorce.**

- (1) Disputes arising out of divorce shall be submitted to the arbitration of the arbitrators who have pronounced the divorce.
- (2) The interested parties may agree, at the time of the divorce or subsequently, to have recourse to the arbitration of other persons.

**Art. 630. - Existence of Divorce.**

Only the Court is competent to decide whether a divorce has been lawfully pronounced by the family arbitrators or not.

**Art. 631. - Appointment of Arbitrators.**

If, on applying the rules laid down in the preceding Articles, it is found that no arbitrator has been designated for resolving a dispute which is to be submitted to arbitration, each of the spouses shall appoint two arbitrators.

**Art. 632. - Designation of Supplementary Arbitrators.**

Notwithstanding any agreement to the contrary, the family arbitrators may by a majority between them agree to complete their jurisdiction by calling one or more supplementary arbitrators.

**Art. 633. - Replacement of Arbitrator.**

- (1) Where a person called to give a decision as arbitrator dies or is not in a position to decide without delay the dispute which has arisen, he shall be replaced in the same manner as he has been appointed.
- (2) Where he refuses to perform the functions of arbitrator or is dismissed by the Court, a new arbitrator shall be appointed by the Court.
- (3) Where the parties required to appoint an arbitrator by agreement between themselves do not agree on such appointment, the arbitrator shall be appointed by the Court at the request of either party.

**Art. 634. - Failure to Appoint Arbitrator.**

Where the party required to appoint an arbitrator fails to do so within fifteen days after having been required to do so or appoints an arbitrator who does not accept his functions or who cannot for whatever reason carry out his duties without delay, an arbitrator shall be appointed by the Court on behalf of such party on the application of the other party.

**Art. 635. - Failure by Arbitrators to Give Decision.**

The Court may take cognizance of the matter and give a decision on the application of one of the parties, if the arbitrators fail to make their decision within the period prescribed to them by the law or, in default of such period, within a reasonable period.

**Art. 636. - Submission to Court Instead of to Arbitrators.**

Both parties or one of them may apply to the Court immediately without firstly submitting the matter to arbitration.

**Section 2. - Procedure of Family Arbitration**

**Art. 637. - Appointment of Family Arbitrators by Court**

- (1) Where a Court is required to appoint a family arbitrator, such appointment may be made by any Court.
- (2) Where a family arbitrator has been appointed he shall without delay signify his acceptance or refusal to the appointment in writing.

**Art. 638. - Procedure**

- (1) The procedure before family arbitrators shall, as near as may be, be the same as in a civil Court.
- (2) The family arbitrators shall in particular hear the parties and their evidence respectively and decide according to law unless by the submission they have been exempted from doing so.
- (3) Summonses may be issued for the attendance of witnesses who may be sworn: provided that, where a witness fails to appear in answer to the summons, either party may apply to the Court for the issue of a summons according to the provisions in the Civil Procedure Code on taking witness evidence.
- (4) When a party, who has been given the opportunity to be heard and produce his evidence, fails to do so, the family arbitrators may give their award in default.

### **Art. 639. - Making of Award**

- (1) The parties shall fix a period of time within which the award shall be made, and such period may be extended by the parties.
- (2) An award shall be made in the same form as a judgment and shall deal with the question of costs.
- (3) The award shall be the decision of the majority of family arbitrators.
- (4) A copy of the award dated and signed by the family arbitrators shall be served on both parties.

### **Art. 640. - Execution**

An award may be executed in the same form as an ordinary judgment upon the application of the successful party for the homologation of the award and its execution.

### **Art. 641. - Appeal from Award**

- (1) Any party to family arbitration proceedings may, in the terms of the arbitral submission and on the conditions laid down in Article 642, appeal from any arbitral award.
- (2) The parties may waive their right of appeal. Nevertheless a waiver shall be of no effect if it was made without full knowledge of the circumstances.
- (3) The provisions in the Civil Procedure Code regarding the making and hearing of an appeal from a judgment shall apply by analogy to the making and hearing of an appeal from an award.

### **Art. 642. - Grounds of Appeal**

No appeal shall lie from an award, except where:

- (a) the award is inconsistent, uncertain or ambiguous or is on its face wrong in matter of law or fact;

- (b) the family arbitrators omitted to decide matters referred to them;
- (c) irregularities have occurred in the proceedings, in particular where the family arbitrators:
  - (i) failed to inform the parties or one of them of the time or place of the hearing or to comply with the terms of the submission regarding admissibility of evidence; or
  - (ii) refused to hear the evidence of material witness or took evidence in the absence of the parties or one of them;
- (d) the family arbitrators or one of them have been guilty of misconduct, in particular where:
  - (i) they heard one of the parties and not the other;
  - (ii) they were unduly influenced by one party, whether by bribe or otherwise; or
  - (iii) they acquired an interest in the subject-matter or dispute referred to them.

**Art. 643. - Court to Which Appeal Lies**

An appeal against an award shall be made, on payment of the prescribed Court fee, to the Court which would have had appellate jurisdiction, had the dispute, in which the award appealed from has been given, not been referred to family arbitration.

**Art. 644. - Powers of Appellate Court**

Without prejudice to its power to confirm, vary or reverse the award appealed from, the Appellate Court may, where it thinks fit, remit such award or a portion thereof to the consideration of the family arbitrators.

**Art. 645. - Remission for Consideration**

- (1) No award may be remitted to the reconsideration of the family arbitrators who made it, except where the appeal is

made on any of the grounds mentioned in Article 642 paragraph (a) and (b).

- (2) Where an award is remitted, the family arbitrators shall, unless otherwise directed in the order of remission, make their second award within three months of the date of such order.
- (3) Where a portion only of an award is remitted, the remainder may be enforced pending the making of the second award if it is capable of execution.

#### **Art. 646. - Setting Aside of Award**

- (1) Notwithstanding any agreement to the contrary, the parties to family arbitration proceedings may, on the conditions laid down in Article 647, apply for an order that an award be set aside.
- (2) The application shall be made to the Court mentioned in Article 643 within thirty days of the making of the award.
- (3) The provisions in the Civil Procedure Code regarding the making and hearing of a third-party opposition shall apply by analogy to the making and hearing of an application under this Article.

#### **Art. 647. - Grounds for Application**

No application under Article 646 shall be made except where:

- (a) the family arbitrators decided matters not referred to them or made their award pursuant to a submission which was invalid or had lapsed;
- (b) the family arbitrators did not act together; or
- (c) the family arbitrators delegated any part of their authority, whether to a stranger, to one of the parties or to a co-arbitrator.

**Art. 648. - Decision on Application**

- (1) Where an application under Article 646 is dismissed, the award shall be deemed to be valid and enforceable.
- (2) Where the application is granted, the award shall be deemed to be null and void and shall be set aside.

**Chapter 10. - Filiation**

**Section 1. - General provisions**

**Art. 649. - Legal Rules Mandatory.**

The legal rules concerning ascertainment of the father and of the mother may not be derogated from by agreement, except where such agreements are explicitly provided for by law.

**Art. 650. - Maternal Filiation.**

The mother of a child is the woman who bore the child or the woman who adopted the child.

**Art. 651. - Paternal Filiation.**

The father of a child is the man:

- (a) married to the mother at the moment of the child's birth;
- (b) whose marriage with the mother was terminated by his death less than 307 days prior to the birth of the child;
- (c) who acknowledged the child;
- (d) whose paternity has been judicially established; or
- (e) who adopted the child.

**Art. 652. - Appointment.**

In all cases concerning filiation in which the child concerned is a minor, the child shall be represented by a guardian *ad hoc* appointed by the Court.



## **Section 2. - Contestation of Paternity Based on Marriage**

### **Art. 653. - Contestation by the Father.**

- (1) The paternity mentioned in the paragraphs (a) and (b) of Article 651, may be contested by ~~the father~~, if he is not the biological father of the child.
- (2) The father may not contest the paternity if he has consented to artificial insemination which may have resulted in the mother's pregnancy.
- (3) The contestation must be instituted in Court within three years after the father has become aware of facts or circumstances indicating that he may not be the biological father of the child, but in no case later than ten years after the child's birth.

### **Art. 654. - Contestation by the Mother.**

- (1) The paternity mentioned in the paragraphs (a) and (b) of Article 651 may be contested by the mother, if the father is not the biological father of the child.
- (2) The mother may not contest the paternity if the father and mother have consented to artificial insemination which may have resulted in the mother's pregnancy.
- (3) The contestation must be instituted in Court within three years after the child's birth.

### **Art. 655. - Contestation by the Child.**

- (1) The paternity mentioned in the paragraphs (a) and (b) of Article 651, may be contested by the child, if the father is not the biological father of the child.
- (2) The contestation may be instituted in Court at any time, even after the death of the father.

**Art. 656. - Death of Father, Mother or Child.**

The right to contest the paternity is strictly personal and may not be exercised by relatives or heirs.

**Art. 657. - Retroactive Effect of a Contestation of Paternity.**

- (1) A contestation of paternity declared well-founded by the Court has retroactive effect back to the moment of the child's birth.
- (2) Rights acquired by third parties shall however be respected. Persons who have acquired rights in accordance with this Code's provisions on Successions are not-considered to be third parties.
- (3) There shall be no obligation to re<sup>st</sup>itute costs of support nor of revenues from the parental use of the child's assets.
- (4) If a person loses his rights because of the retroactive effect, he shall not have the obligation to re<sup>st</sup>itute property which he has disposed of at the moment at which the proceedings were instituted, or, if this person himself has instituted the proceedings, at the moment at which he could reasonably foresee that he would institute proceedings.

**Section 3. - Acknowledgment**

**Art. 658. - Formalities.**

Acknowledgment of a child must be made:

- (a) before a civil status officer;
- (b) before a public notary; or
- (c) if acknowledgement before one of the persons mentioned in the paragraphs (a) and (b) is not reasonably practical, or can only take place after a lapse of time, acknowledgment may be made before the administrator of the commune.

**Art. 659. - Representation.**

- (1) The acknowledgment shall be made personally by the father, even where he is a minor. The personal consent of the minor shall be required for acknowledging a child.
- (2) A mandate to make the acknowledgment may only be given by a special authorization approved by the Court.
- (3) Acknowledgment may be made personally by a person subject to judicial interdiction or, with the permission of the Court, by a legal representative acting in his name.
- (4) If the father of the child is dead or not in a position to manifest his will, the acknowledgment of paternity may be made in his name by the paternal grandparents.
- (5) In default of paternal grandparents, acknowledgment may be made by paternal great-grandparents.

**Art. 660. - Retroactive Effect of Acknowledgment.**

- (1) An acknowledgment has retroactive effect back to the moment of the child's birth.
- (2) Rights acquired by third parties shall, however, be respected. Persons who have acquired rights in accordance with this Code's provisions on Successions are not considered to be third parties.
- (3) If a person loses his rights because of the retroactive effect, he shall not have the obligation to reconstitute property which he has disposed of at the time of the acknowledgment.

**Art. 661. - Nullity.**

An acknowledgment is null and void if a legal filiation link between the child and another man is in existence.

**Art. 662. - Consent by Child or Mother**

- (1) An acknowledgment is null and void if it has been made:

- (a) without the mother's consent if the child is under fifteen years of age; or
  - (b) without the child's consent if the child is fifteen years or older.
- (2) The consents mentioned in the paragraphs (1) (a) and (b) can be substituted by the Court, if the acknowledgment is not contrary to the child's interests, and provided that the man is the biological father of the child.
- (3) If the mother is dead or not in a position to manifest her will, the acknowledgment of paternity may be accepted by the maternal grandfather or grandmother of the child.

**Art. 663. - Annulment.**

- (1) If the man who has acknowledged the child is not the biological father of the child, the acknowledgment may be annulled by the Court upon the application of:
- (a) the child;
  - (b) the man who has acknowledged the child on the ground that the acknowledgment had been made as a result of mistake, fraud, threat or abuse of circumstances or during his minority unless the acknowledgment has been authorized by his guardian;
  - (c) the mother on the ground that her consent to the acknowledgment had been given as a result of mistake, fraud, threat or abuse of circumstances; or
  - (d) the Public Prosecutor on the ground that the acknowledgment is contrary to public policy.
- (2) The child's action for annulment may be instituted at any time, even after the death of the father.
- (3) The action for annulment must be instituted by the father or mother within three years from the discovery of the

mistake or the fraud; or three years from the time at which the threat or the abuse of circumstances ceased to be operative.

- (4) The action for annulment instituted by the father on the ground that the acknowledgment has taken place during his minority, must be instituted during his minority or within three years after attaining the age of majority. This right to annul is strictly personal to the minor and may not be exercised by his guardian.

**Art. 664. - Death of Father, Mother or Child.**

The right to annul is strictly personal and may not be exercised by relatives or heirs.

**Art. 665. - Retroactive Effect of Annulment.**

- (1) An annulment has retroactive effect back to the moment of birth.
- (2) Rights acquired by third parties shall however be respected. Persons who have acquired rights in accordance with this Code's provisions on Successions are not considered to be third parties.
- (3) There shall be no obligation to reconstitute costs of support nor of revenues from the parental use of the child's assets.
- (4) If a person loses his rights because of the retroactive effect, he shall not have the obligation to reconstitute property which he has disposed of at the moment at which the proceedings were instituted, or, if this person himself has instituted the proceedings, at the moment at which he could reasonably foresee that he would institute proceedings.

## Section 4. - Judicial Establishment of Paternity

### Art. 666. - Bringing of Action.

- (1) The action for judicial establishment of paternity of the man who begot the child, may be instituted:
  - (a) by the mother if the child has not attained the age of fifteen years; or
  - (b) by the child who is fifteen years or older.
- (2) If the mother of the child is dead or is not in a position to manifest her will, the action may be instituted in her place by the maternal grandparents.
- (3) In default of maternal grandparents the action may be instituted by maternal great-grandparents.
- (4) The person who institutes the action has to adduce substantial evidence that the man has begot the child.
- (5) Judicial establishment of paternity is not possible if a legal filiation link between the child and another man is in existence.
- (6) The action may be instituted even after the death of the man who begot the child.

### Art. 667. - Retroactive Effect.

- (1) The judicial establishment of paternity has retroactive effect back to the time of the child's birth.
- (2) Rights acquired by third parties shall however be respected. Persons who have acquired rights in accordance with this Code's provisions on Successions are not considered to be third parties.
- (3) If a person loses his rights because of the retroactive effect, he shall not have the obligation to restitute property which he has disposed of at the moment at

which the action for judicial establishment of paternity is instituted.

### **Section 5. - Proof of Filiation**

#### **Art. 668. - Record of Birth.**

Both the paternal and the maternal filiation of person are proved by his record of birth.

#### **Art. 669. - Possession of Status.**

- (1) In default of a record of birth, filiation is proved by the possession of status of child.
- (2) A person has the possession of status of child when he is treated by a man or a woman, by their relatives and by society as being the child of such man or woman.
- (3) Possession of status shall be proved by producing four witnesses. It may be contested by producing four witnesses.

#### **Art. 670. - Action of Child to Claim his Status.**

In default of possession of status or where the possession of status is contested or does not correspond with the particulars in the record of birth, filiation is proved by an act of notoriety, approved by the Court, upon a decision given on an action of the child to claim his status.

### **Section 6. - Adoption**

#### **Art. 671. - Adoptive Filiation.**

- (1) A bond of filiation may be created artificially by a contract of adoption between the adopter and the adopted person.
- (2) The bonds of consanguinity or affinity resulting from adoption as regards the relations between the adopter and the family of the adopted person and between the adopted person and the family of the adopter are set forth in Chapter 1 of this Title.

**Art. 672. - Age of Adopter.**

- (1) Any person of age may adopt, provided that there is a difference of age between the adopter and the adopted person of at least eighteen years.
- (2) Where an adoption is made by two spouses, it is sufficient that one of them be of age and that the difference of age applies to one of them.

**Art. 673. - Adoption of Child Merely Conceived.**

- (1) A child merely conceived may be adopted.
- (2) The adoption may, in such case, be revoked unilaterally at the will of the mother, before or within three months following the birth of the child.

**Art. 674. - Children of Adopter.**

The existence of children of the adopter shall not constitute an obstacle to adoption.

**Art. 675. - Adoption by One Spouse.**

- (1) Where one spouse to a marriage wishes to adopt a person, the consent of the other spouse must be obtained.
- (2) The consent mentioned in sub-Article (1) above can be substituted by the Court, on the application of the spouse wishing to adopt a person.

**Art. 676. - Parties to the Contract.**

- (1) The contract of adoption shall be made between the adopter and the adopted person, if the latter is more than fifteen years of age.
- (2) In other cases, it shall be made between the adopter and the guardian of the adopted child.



**Art. 677. - Consent of Parents of Adopted Child.**

- (1) Both the father and the mother of a child who is to be adopted must give their consent to the adoption where they are alive and known.
- (2) Where one of the parents of a child to be adopted is dead, absent, unknown or incapable to manifest his will, he shall as far as is possible be represented by his nearest ascendants who shall have power to give their consent to the adoption.
- (3) Where the child has no ascendant capable of giving his consent, the consent of the family council shall be required.

**Art. 678. - Approval of Adoption.**

- (1) The contract of adoption shall be of no effect unless it is approved by the Court.
- (2) Before making its decision, the Court shall hear the views of the person to be adopted, if the latter is over ten years of age, and, where the adopted person is a child, the person into whose custody the adopted child is to be entrusted, if such person has not given beforehand his consent to the adoption.
- (3) In respect of all children, including those who have not yet attained the age of ten years, the Court shall, insofar as possible, ascertain and give consideration to the child's wishes and opinions regarding adoption.

**Art. 679. - Conditions for Approval.**

Adoption may not take place unless there are good reasons for it and unless it offers advantages for the adopted person which cannot be achieved by making any other order. the best interests of the child shall always be the guiding principle for approval of a contract of adoption by the Court.

**Art. 680. - Revocation of Adoption.**

- (1) The adoption may, upon the adopted person's application, be revoked by the Court.
- (2) The action to revoke may be instituted at any time, even after the death of the adopter.

**Section 7. - Access to One's Biological Origins**

**Art. 681. - Institutions and Bodies. Duty to Keep Record and Disclose.**

- (1) Every private or public body or institution which receives born children or children merely conceived into its care shall, in so far as possible, make records documenting each child's biological parentage or most likely parentage.
- (2) The records referred to in sub-Article (1) should, if such information is available, include details of the parents' whereabouts and the reasons that the parents did not feel able to care for the child themselves.
- (3) Every private or public body or institution which receives born children or children merely conceived into its care shall, in so far as possible, keep a record of details of the child's upbringing and the persons by whom and institutions in which the child was brought up.
- (4) The institutions and bodies referred to in sub-Article (1) shall upon request disclose to the child the records kept in accordance with sub-Articles (1), (2) and (3). Disclosure should take place when the child has attained majority or at an earlier moment if such disclosure appears to be appropriate for the child.
- (5) Disclosure of information referred to in sub-Articles (1), (2) and (3) may only be refused if disclosure would result in serious harm to the child or another person.

**Art. 682. - Biological Parent or Other Person Who Has the Custody.**

A biological parent or other person who has custody of a child has an obligation, when that child has attained the age of majority or at an earlier time if such appears to be appropriate for the child, to inform, upon request by the child, that child of the name and, if possible, whereabouts of the child's other biological parent or parents.

**Art. 683. - Artificial Procreation.**

- (1) A medical establishment which provides a woman with artificial insemination by donor treatment or egg or embryo donation treatment, must keep records of the identity and, within reason, whereabouts of the donor.
- (2) The medical establishment shall have a duty to inform upon request any child born as a result of artificial insemination by donor or egg or embryo donation, when such child attains the age of majority, that the child is born as the result thereof and to advise such child of his right to be informed of the donor's identity and whereabouts.
- (3) Disclosure of information referred to in sub-Article (2) may only be refused if disclosure would result in serious harm to the child or another person.

**Art. 684. - Resolution of Disputes**

- (1) Any dispute arising under the foregoing three Articles between individuals or between individuals and an institution with respect to the disclosure of information regarding biological origins or upbringing, or any part of such information, or with respect to the time at which the information should be disclosed may be referred to the Court on the application of any party to the dispute.
- (2) In making its decision the Court shall have regard to the fact that the child's right to information about identity and upbringing is a fundamental right.

## Chapter 11. - Obligation of Support

### **Art. 685. - Subject-Matter of the Obligation.**

The person liable to provide support, shall provide to the creditor of support, the means to feed, to lodge, and to care for his health in a decent manner, having regard to the social condition of the interested persons and local custom.

### **Art. 686. - Persons between Whom the Obligation Exists.**

- (1) An obligation of support exists between relatives by consanguinity or affinity in the direct line.
- (2) An obligation of support likewise exists between brothers and sisters born of the same parents or born of the same father or of the same mother.

### **Art. 687. - Where there is No Obligation.**

The obligation of support shall not subsist between relatives of affinity in the case where the bond which created the affinity has been dissolved by a divorce.

### **Art. 688. - Abrogation of Obligation of Support by the Court.**

- (1) The Court may, upon application by the liable person, wholly or partially abrogate the obligation of support on the ground that the creditor has, through his own fault, brought himself into a position of need, if he has grossly neglected his own obligation of support toward the debtor, or if he has deliberately perpetrated a serious wrong against debtor or a close relative of that debtor.
- (2) Sub-Article (1) does not apply with respect to the obligation of support between parents and their children.

### **Art. 689. - Remarriage.**

The obligation of a former spouse to provide support to the other former spouse following their divorce ceases as a matter of law if the other former spouse contracts a new marriage.

**Art. 690. - Conditions for the Existence of the Obligation.**

- (1) The obligation of support shall not exist unless the person who claims its fulfillment is in need and not in a position to earn his livelihood by his work. This does not apply with respect to the obligation of parents to provide support for their children in need who have not yet attained the age of majority.
- (2) The obligation of support shall not exist where the debtor is not in a position to provide it.
- (3) However, the debtor is obligated to improve his capacity to earn.

**Art. 691. - Mode of Fulfillment of Obligation.**

- (1) The obligation of support shall, as a rule, be fulfilled by means of a support allowance paid by the debtor to the creditor of support.
- (2) The amount of such allowance shall be fixed by taking into consideration the needs of the person claiming it and the means of the person liable thereto.

**Art. 692. - Possibility of Revision.**

A judicial decision, an award of the family arbitrators or a contract with regard to support allowance, may be reviewed by the Court at any time upon the application of the debtor or creditor.

**Art. 693. - Duration of Obligation of Support of Former Spouse.**

- (1) If the provision of support by a former spouse to the other former spouse following their divorce is ordered in the form of periodical payments, the Court may limit the duration of this obligation.
- (2) If, according to criteria of reasonableness and equity, termination of the provision of support is manifestly unacceptable the Court may, upon the application of the person claiming the support, extend the duration of the obligation.

**Art. 694. - Place Where Allowance Paid.**

Saving any decision of the Court to the contrary, the support allowance shall be payable at the residence of the creditor.

**Art. 695. - Arrears. - 1. May Not be Assigned or Attached.**

- (1) The arrears of a support allowance may neither be assigned nor attached, without prejudice to the provisions of sub-Articles (2) and (3).
- (2) They may, even before they fall due, be assigned in favor of institutions of assistance which provide for the needs of the creditor.
- (3) They may be attached by the persons who have supplied to the creditor that which was necessary for his subsistence.

**Art. 696. - 2. No Accumulation.**

All arrears which, due to the fault of the creditor, have not been received or claimed within six months from their falling due, although the debtor made reasonable efforts to payment, shall cease to be due unless the creditor proves that such arrears were necessary for his subsistence.

**Art. 697. - Creditor may be Taken into Liable Debtor's House.**

- (1) The debtor may offer to perform his obligation by taking the creditor into his house, except when the support is due to a former spouse.
- (2) The Court shall decide whether, having regard to all the circumstances, such offer shall be accepted or not.
- (3) The debtor may never be compelled to take the creditor into his house.

**Art. 698. - Plurality of Debtors. - 1. Principle.**

Where several persons are liable to provide support to a person, the latter may claim support from any of such debtors.

**Art. 699. - 2. Recourse.**

- (1) The debtors who have been ordered to pay the allowance shall have recourse against those who have not been made parties to the suit.
- (2) The Court may order the latter to repay the whole or part of the allowance, taking into account their means and their degree of relationship by consanguinity or by affinity with the creditor.

**Art. 700. - 3. Order of Obligation.**

The different debts shall finally bear the liability arising out of the obligation to provide support in the following order:

- (a) in the first place, the spouse or former spouse;
- (b) in the second place, the descendants, according to their degree;
- (c) in the third place, the ascendants, according to their degree;
- (d) in the fourth place, the brothers and sisters of the full blood;
- (e) in the fifth place, the brothers and sisters of the half blood, whether on the father's or on the mother's side;
- (f) in the sixth place, the descendants by affinity, according to their degree; and
- (g) in the seventh place, the ascendants by affinity, according to their degree.

**Art. 701. - 4. Agreement between Co-debtors.**

- (1) The debtors may validly agree, as regards their reciprocal relations, that support shall be provided to the creditor by one of them.

- (2) If the creditor has adhered to such agreement, he may not make a claim against the other debtors to obtain support unless he has a serious reason for not respecting such agreement.

**Art. 702. - Case of Adoption.**

- (1) The adopted child, his spouse and his descendants may not claim support from the family of origin of the adopted child unless the adoptive family is not in a position to supply such support.
- (2) The adopted child, his spouse and his descendants shall not be bound to provide support to the ascendants of the family of origin unless the latter cannot claim support from another member of their family.

**Art. 703. - Funeral Expenses.**

- (1) Whosoever is bound to provide support to a person shall pay the funeral expenses of such person.
- (2) The person who has advanced such expenses may claim the repayment from debtor of support, in accordance with the provisions relating to voluntary management of the affairs of another person.

**Art. 704. - Particular Agreements.**

Any particular agreement providing for exceptions to the provisions of this Chapter shall be of no effect.



## BOOK III - SUCCESSIONS

### TITLE I. - DEVOLUTION OF SUCCESSIONS

#### Chapter 1. - General Provisions

##### Section 1. - Opening of Succession and Things Making up a Succession

###### **Art. 705. - Opening of Succession.**

- (1) Where a person dies, the succession of such person, called the deceased, shall open at the place where he had his principal residence at the time of his death.
- (2) Matters regarding the succession shall be dealt with by the Court that has jurisdiction at the place of principal residence.
- (3) The Court shall keep a register in which facts concerning the juridical position of successions that have opened up, must be entered.
- (4) The register is open to parties who have sufficient interest in the desired information.

###### **Art. 706. - Notarial Duties.**

The notarial duties described in this Title may be executed by other functionaries such as the administrator of the community on the authorization by the Government.

###### **Art. 707. - *Saisine*.**

The rights and obligations of the deceased which form the inheritance shall pass to his heirs and legatees in proportion to their shares in the inheritance, in accordance with the provisions of this Book, unless the nature of these rights and obligations justifies that they terminate by the death of the deceased.

**Art. 708. - Things Making up Inheritance. - 1. Life Insurance.**

- (1) Monies due in performance of a contract of life insurance to which the deceased was a party, shall form part of the inheritance where the deceased has not determined the beneficiary or the insurance is made to the benefit of the heirs of the deceased without any other indication.
- (2) In other cases, they shall not form part of the inheritance.

**Art. 709. - 2. Pensions and Indemnities.**

Pensions or indemnities payable to the relatives or to the spouse of the deceased as a consequence of his death shall not form part of the inheritance.

**Art. 710. - Different Kinds of Succession**

- (1) The succession of the deceased may be either intestate or testate.
- (2) It may also be partly intestate and partly testate.
- (3) The property of which the deceased has not disposed by will shall devolve upon his heirs-at-law.
- (4) In case the deceased has no heirs according to this law, the inheritance devolves upon the State by general title.

**Section 2. - Capacity to Succeed**

**Art. 711. - Condition Required for Succeeding.**

A person who is not alive at the moment the succession opens may not succeed the deceased. Nothing in this Article shall affect the provisions relating to representation in succession.

**Art. 712. - Survival of Heir to the Deceased.**

- (1) The proof that a person existed on the day of the death of the deceased shall be made in accordance with the provisions of the Title of this Code relating to Natural Persons.

- (2) The provisions of the same Title shall apply as regards the consequences of absence.

**Art. 713. - Persons Dying Simultaneously.**

If two or more persons are dead and it is not possible to prove which of such persons survived the other, the succession of each one of such persons shall be regulated as if he had been the last survivor without, however, receiving anything from the succession of the other persons.

**Art. 714. - Death of Heir.**

Where a person who is called to a succession dies after such succession has opened, his rights relating to the succession shall pass to his heirs.

**Art. 715. - Child Merely Conceived.**

A child who is merely conceived may be called to a succession as provided in the Title of this Code relating to Natural Persons.

**Art. 716. - Bodies Corporate.**

The capacity of bodies corporate and of property with a specific destination to receive legacies shall be as provided in the Title of this Code relating to Bodies Corporate and Property with a Specific Destination.

**Art. 717. - State of Children, Born In or Out of Wedlock or Adopted.**

- (1) The fact that the deceased or the heir was born in or out of wedlock shall not affect the ascertainment of the heirs or the value of the portion of each of them.
- (2) Without prejudice to the provisions of Article 503 (2) of this Code, adopted children shall be assimilated to the other children.

**Art. 718. - Sex, Age, Nationality of Heir.**

The sex, age and nationality of the heir shall not affect in any way the ascertainment of his rights to the succession.

**Art. 719. - Unworthiness. - 1. Crimes or Condemnations.**

Any person who has been sentenced for:

- (a) having intentionally caused the death of the deceased or the death of a descendant, ascendant or spouse of the deceased;
- (b) having attempted to kill any one of such persons; or
- (c) having made a false accusation or testimony which might have entailed the condemnation of any one of such persons to capital punishment or imprisonment for more than ten years, shall lose his capacity to succeed the deceased as unworthy.

**Art. 720. - 2. Explanation.**

The loss of capacity provided in the previous article shall not take place where the crime or attempted crime has been committed by the person called to the succession after the death of the deceased.

**Art. 721. - 3. Other Causes.**

Whosoever:

- (a) by taking advantage of the physical state of the deceased, has, within three months prior to the death of the latter, prevented him from making, modifying or revoking his will; or
- (b) has intentionally destroyed, caused to disappear or altered the last will of the deceased, without the consent of the latter, or has availed himself of a false will knowing it to be such,

shall lose his capacity to succeed the deceased as unworthy.

**Art. 722. - 4. Pardon by Deceased.**

Unworthiness may be terminated by an explicit and unambiguous pardon made by the deceased in writing.

### **Art. 723. - Rights of Third Parties**

- (1) An unworthy person must return the property that he has taken.
- (2) Rights of third parties, acquired in good faith before unworthiness has been determined in a judgment or by the beneficiaries, must be respected.
- (3) Where rights or property have been acquired by gratuitous title, the Court may condemn the person who derived profit to make repair as far as is equitable.

### **Chapter 2. - Intestate Successions**

#### **Art. 724. - First Relationship.**

- (1) The children of the deceased shall be the first to be called to his succession.
- (2) Each of the children shall receive an equal portion of the succession.

#### **Art. 725. - Second Relationship.**

- (1) Where the deceased is not survived by descendants, his father, his mother and his spouse shall be called to his succession, together with brothers and sisters of the deceased.
- (2) Each of them shall receive an equal portion of the succession; parents however will not receive less than a quarter of the inheritance each. A half-brother or -sister is entitled to half of the portion of a brother or sister.

#### **Art. 726. - Third Relationship.**

- (1) Where the deceased is not survived either by descendants or spouse, or by his father or mother or their descendants, his grandparents shall be called to his succession.
- (2) Each of them shall receive an equal portion.

**Art. 727. - Fourth Relationship.**

- (1) In default of grandparents, the great-grandparents of the deceased shall be called to the succession.
- (2) Each of them shall receive an equal portion.

**Art. 728. - Representation.**

- (1) Descendants of a child, brother, sister, grandparent or great-grandparent are called by representation.
- (2) Those who inherit by representation will be called to the succession per stripes to the share of the person whom they substitute.
- (3) Representation is applied to predeceased heirs, not to heirs who are unworthy, who have been disinherited, who renounce the succession or who do not have a bond of legal relationship with the deceased.

**Art. 729. - Limitation to Sixth Degree.**

One or more predeceased children of the person represented shall themselves be represented according to the same principles. Succession does not take place beyond relatives of the sixth degree.

**Chapter 3. - Wills**

**Section 1. - Conditions for the Validity of Wills**

**Paragraph 1. - Substantive Conditions**

**Art. 730. - Strictly Personal Nature.**

- (1) A will is a revocable juridical act which is strictly personal to the deceased.
- (2) Any agreement or undertaking whereby a person binds himself to make a will of a certain content, or grants to another person the power to make, modify or revoke a will on his behalf shall be of no effect.

- (3) A person may not entrust a third person with the task of determining how and on whom his succession is to devolve.

**Art. 731. - Prohibition of Joint Wills.**

Where several persons make their will by one and the same instrument, such instrument shall be of no effect.

**Art. 732. - Undertakings Relating to Wills.**

- (1) Any undertaking whereby any person binds himself to do, modify or revoke a will shall be of no effect.
- (2) Notwithstanding any stipulation to the contrary, a will may at any time be modified or revoked by the testator.

**Art. 733. - Capacity.**

- (1) The conditions on which a minor may make a will are laid down in the Title of this Code relating to Capacity of Persons.
- (2) The conditions on which a judicially interdicted person may make a will are laid down in the Title of this Code relating to Capacity of Persons.

**Art. 734. - Insanity.**

- (1) A will may not be declared invalid unless the testator was obviously insane at the time when he made the will.
- (2) The testator is presumed not to have been insane at that time in case on the request of the testator a notary has added a declaration of this intent to a public will.
- (3) The presumption may be rebutted by the interested party.

**Art. 735. - Execution Impossible.**

- (1) A testamentary provision which fails to specify in a sufficiently clear manner its beneficiary or its object shall be of no effect.

- (2) A provision in a will shall be of no effect where it cannot be enforced.

**Art. 736. - Illicit Provisions.**

A provision contained in a will shall be of no effect where its object is contrary to the law or morality.

**Art. 737. - Threat.**

- (1) A provision contained in a will shall be of no effect where it has been made by the testator under the influence of threat.
- (2) In such a case, the provisions of this Code relating to the invalidation of contracts on the ground of threat shall apply by analogy.

**Art. 738. - Undue Influence. - 1. Principle.**

Subject to the following articles, a provision contained in a will may not be invalidated on the ground that the beneficiary of such provision or some other person had an excessive influence on the testator.

**Art. 739. - 2. Provisions in Favor of Guardian.**

- (1) The Court may invalidate a testamentary provision made by the testator in favor of his guardian.
- (2) The provisions of sub-Article (1) shall not apply unless the testator dies before he attains the age of twenty years.
- (3) The provisions of sub-Article (1) shall not apply where the beneficiary of the testamentary provision is an ascendant of the testator.

**Art. 740. - 3. Physicians and Clergymen.**

- (1) The Court may invalidate a testamentary provision made by the testator within six months preceding his death, in favor of a physician or any other person who has professionally bestowed on him bodily care or spiritual assistance.



- (2) For the purpose of sub-Article (1), the word "physician" means any person who even illegally has prescribed or applied a medical treatment to the testator.
- (3) The provisions of this article shall not apply where the beneficiary of the testamentary provision is a relative by consanguinity or affinity or the spouse of the testator.

**Art. 741. - 4. *Notary or Witness of Will.***

The Court may invalidate a testamentary provision made by the testator in favor of a notary, Court registrar, witness or interpreter who has taken part in the making of the will.

**Art. 742. - 5. *Spouse of Testator.***

The Court may invalidate a testamentary provision made by the testator in favor of his or her spouse, where the testator is survived by descendants who are not also the descendants of the spouse.

**Art. 743. - 6. *Relations.***

The Court may invalidate a testamentary provision made in favor of a descendant, ascendant or spouse of any of the persons mentioned in the preceding articles.

**Art. 744. - 7. *Application for Invalidation.***

- (1) Where a testamentary provision is made in favor of the spouse of the testator, its invalidation may be required from the Court only by the descendants of the testator.
- (2) In other cases, the request may be made by the descendants, ascendants or spouse of the testator and by no other heir.
- (3) The request for invalidation shall be barred where it is not made within three months following an application by the beneficiary of the provision for the execution of the will.

**Art. 745. - 8. Court to Give Reasoned Decision.**

The Court shall give in its judgment the reasons why it deems it equitable to invalidate a testamentary provision made by the testator.

**Art. 746. - Fraud.**

In case of fraud the provisions of this Code relating to the invalidation of contracts on the ground of threat shall apply by analogy.

**Art. 747. - Mistake.**

- (1) In the case of mistake, the provisions of this Code relating to the invalidation of contracts on the ground of mistake shall apply by analogy.
- (2) A provision contained in a will may not be invalidated on such ground unless the mistake which was committed by the testator and influenced his mind in a decisive manner results from the contents of the will itself, or from a written document to which the will makes reference.

**Art. 748. - Effect of Nullity of a Provision.**

The nullity of a provision contained in a will shall not entail the nullity of other provisions contained in the same will, unless it appears in a clear manner that there existed in the mind of the testator a necessary connection between the execution of the provision which is null and that of other provisions.

**Art. 749. - Nullity of Conditions or Burdens.**

- (1) Where a testator has made a legacy to depend on a condition or has imposed a burden on a legacy, such condition or burden shall be deemed not to have been attached or imposed where it is impossible or contrary to the law or morality.
- (2) In such case, the legacy shall not be null, notwithstanding that the consideration of the condition or burden induced the testator to make the disposition.

## Paragraph 2. - Form and Proof of Wills

### Art. 750. - Various Kinds of Wills.

There are three kinds of wills: public wills, holograph wills and oral wills.

### Art. 751. - Central Registration.

Central registration of the existence of wills takes place according to the law. Notaries, Court registrars and local authorities have a legal duty to take care of this registration.

### Art. 752. - Public Will.

- (1) A public will shall be written by the testator himself or by any person under the dictation of the testator.
- (2) The will shall be of no effect unless it is read out to the testator by a notary or a Court registrar, acting in the discharge of his official duties, in the presence of the two witnesses. A deaf person may read out his will himself, in the presence of the two witnesses and the notary or registrar.
- (3) The will shall be of no effect unless it is signed by the testator, the two witnesses and the notary or registrar.
- (4) The will shall be of no effect unless express mention of the fulfillment of the formalities prescribed in sub-Articles (1), (2) and (3) and of its date is made therein.
- (5) A public will shall be deposited with a notary or in a Court registry or registry of a local authority.

### Art. 753. - Capacity of Witnesses.

- (1) The witnesses to a public will must have legal capacity.
- (2) They shall themselves be able to read or to hear what is read and to understand the language in which the will is drawn up.

- (3) The will shall be of no effect where such requirements are not fulfilled.

#### **Art. 754. - Holograph Will.**

- (1) A holograph will shall be of no effect unless it is wholly written, dated and signed by the testator himself.
- (2) It shall be of no effect where it appears that the testator, being illiterate or not knowing the language in which the will is drawn up, has reproduced graphic symbols without understanding their meaning.
- (3) It shall be of no effect unless each of the leaves which make it up is dated and signed by the testator.
- (4) A holograph will typewritten by the testator shall be of no effect unless it bears on each of its leaves a handwritten indication of such fact.
- (5) A holograph will may be deposited with a notary or in a Court registry or registry of a local authority.

#### **Art. 755. - Erasures, Cancellations and Words Written Over.**

- (1) A public or holograph will shall be of no effect where it contains erasures, cancellations or words written over others which may modify the will of the testator.
- (2) The provision which contains such erasures, cancellations or words written over other shall alone be of no effect where it can be isolated from the rest of the will, having regard to the testator's intention and all the circumstances.
- (3) Where the erasures, cancellations or words written over others have been approved in an explicit manner by a note signed by the testator and in the case of a public will, by the witnesses, they shall be given effect.

**Art. 756. - Additions.**

- (1) The provisions of Article 755 shall apply where a public will contains additions in the margin or between the lines thereof or after the signatures of the witnesses.
- (2) A holograph will shall not be vitiated by such additions.

**Art. 757. - Oral Will.**

- (1) An oral will is that whereby a person declares verbally the disposition of his last will to two witnesses.
- (2) By means of an oral will, a testator may only:
  - (a) give directives regarding his funeral;
  - (b) make dispositions for particular legacies the amount of each of which may not exceed five thousand Nakfas; or
  - (c) make provisions regarding the guardian of his minor children.
- (3) Any other disposition made by an oral will shall be of no effect. Legacies exceeding five thousand Nakfas ordered by an oral will shall be reduced to that amount.

**Art. 758. - More than One Will.**

- (1) Testamentary provisions made by a person may be contained in one or more wills.
- (2) The provisions contained in various wills shall be enforced together where such course is possible.
- (3) If the provisions of two wills cannot be enforced together, the provisions contained in the latest will shall prevail.

**Art. 759. - Proof of Will.**

- (1) Whosoever claims rights under a will shall prove the existence and the contents of such will.

- (2) The existence and contents of a public or holograph will shall be proved by producing the instrument itself in which such will is contained, or a copy thereof certified to be true by the notary or registrar who has received the will for the deposit thereof in his archives.
- (3) They may not be proved by any other means for the purpose of obtaining their execution.
- (4) They may be proved by any means for the purpose of obtaining damages from the person who, through his fault or negligence, has caused the will to disappear.

### Paragraph 3. - Revocation and Lapse of Wills

#### Art. 760. - Express Revocation.

- (1) A will shall be revoked in its entirety where the testator expressly declares in the forms required for the validity of wills that he revokes his will.
- (2) It shall be revoked partially where the testator, in the same forms, makes a disposition which cannot be executed together with a clause of the will.

#### Art. 761. - Destruction or Cancellation.

- (1) The testator may revoke his will or a provision contained therein, by materially destroying or by tearing or by cancelling the contents thereof, in a manner that shows sufficiently his intention of revoking or modifying his will.
- (2) Unless the contrary is proved, the testator shall be deemed to have wanted to revoke his will where he has done any one of the actions referred to in the preceding sub-Article.
- (3) Unless the contrary is proved, the destruction or cancellation of the will shall be deemed to have been done by the testator.

**Art. 762. - Alienation of the Thing Bequeathed.**

- (1) Any alienation of the thing bequeathed, whether in whole or in part, made willingly by the testator shall operate as a revocation of the legacy in regard to all that which has been alienated.
- (2) Such revocation shall remain effective notwithstanding that the thing comes again to belong to the testator at a later date.

**Art. 763. - Lapse of Oral Wills.**

An oral will shall lapse three months after it has been made, where the testator is still alive on such day.

**Art. 764. - Lapse of Holograph Wills.**

A holograph will shall lapse where it is not deposited with a notary or in a Court registry within seven years after it has been made.

**Art. 765. - Birth of Child.**

- (1) Notwithstanding any provision to the contrary, legacies, whether by universal or singular title, contained in a will shall lapse where, after the date of the will, a child is born to the testator and such child accepts the succession.
- (2) In such a case the Court may maintain the effects of the legacies, in whole or in part, where it appears that, had the testator known the circumstances, he would probably have maintained them.
- (3) The child of the testator who is born after the making of the will shall in any case receive three fourths of the share which he would receive in the intestate succession.

**Art. 766. - Provision in Favor of Spouse.**

Any testamentary provision made by the testator in favor of his spouse shall lapse where the marriage of the testator with that spouse is dissolved through any cause other than death, unless the contrary follows from the provision.

**Art. 767. - Lapse of Legacies.**

- (1) A legacy made in favor of a person shall lapse where the legatee dies before the testator or he cannot or does not want to take such legacy.
- (2) Where the legatee named dies before the testator, representation shall take place:
  - (a) where it is a case of a legacy by universal title; or
  - (b) where it is a case of a legacy by singular title and where, in default of a legatee, the property bequeathed is to devolve upon the state.

**Section 2. - Content and Interpretation of Wills**

**Paragraph 1. - General Provisions**

**Art. 768. - Different Kinds of Dispositions.**

The testator may in his will:

- (a) appoint one or more legatees by universal title; and
- (b) order legacies by singular title;
- (c) disinherit one or more of his heirs or constitute an endowment or trust;
- (d) give directions regarding his funeral; and
- (e) make any other declarations of will to which this Code or particular laws acknowledge juridical effects after his death.

**Art. 769. - Interpretation.**

- (1) In case of doubt, a will shall be interpreted in conformity with the presumed intention of the testator as resulting from the will itself and other circumstances.



- (2) However, where the terms of the will are clear, they may not be departed from to seek by means of interpretation the true intention of the testator.

**Art. 770. - Presumption.**

- (1) Unless otherwise specified, any indeterminate reference in the will shall be interpreted in accordance with his position at the time of his death.
- (2) Proof to the contrary is admitted to rebut such presumption.

**Art. 771. - Legacies by Universal or Singular Title.**

- (1) A legacy by universal title is a disposition whereby the testator calls one or more persons to receive the full ownership or the bare ownership of the whole or of one portion of the property.
- (2) Any other disposition is a legacy by singular title.

**Art. 772. - Legacies and Rules of Partition.**

An assignment of a portion of the succession or of property forming part of such succession made by the testator to one of his heirs shall not be deemed to be a legacy but a mere rule for partition, unless the contrary intention of the testator emerges from the disposition.

**Art. 773. - Appointment of Legatee by Universal Title. - 1. Form.**

The appointment of a legatee by universal title shall not be subject to any special form.

**Art. 774. - 2. Effects.**

- (1) Unless otherwise expressly provided by the testator, a legatee by universal title shall be assimilated to an heir-at-law.
- (2) In particular, he shall be called to receive the whole succession in default of any other legatee or heir-at-law.

- (3) The testator may expressly specify that the legatee by universal title shall not receive more than a given portion of the succession.

Paragraph 2. - Identification of Legatees

**Art. 775. - Determination of Beneficiary of Legacy.**

- (1) The beneficiary of a legacy is sufficiently determined where the will binds the heir, the legatee by universal title or another person to select such beneficiary from among a specified category of persons.
- (2) The Court may, on the application of any interested person, fix a time within which the person who is to designate the beneficiary of the legacy shall make his selection.
- (3) Where such person fails or refuses to make such designation, the Court shall entrust that task to another person under conditions which are most appropriate for giving effect to the presumed intention of the testator.

**Art. 776. - Legacy in Favor of the Poor.**

- (1) A legacy made in favor of the poor, without any other designation, shall be valid.
- (2) Unless the contrary is proved, it shall be deemed to be made in favor of the poor of the place where the testator had his principal residence at the time of his death.
- (3) The authority qualified to accept the legacy and to give effect to the intention of the testator shall be prescribed by regulations.

**Art. 777. - Several Legatees.**

- (1) Where the testator has appointed several legatees by universal title or bequeathed a thing to two or more persons, without specifying the portion of each, the legatees shall have equal rights to the succession or to the thing bequeathed to them.

- (2) Where any of such legatees cannot or does not want to accept the disposition made in his favor, his portion shall devolve upon his co-beneficiaries.

**Art. 778. - Determination of Subject of Legacy.**

- (1) The thing forming the subject of a legacy is sufficiently specified where the testator has ordered that the heir or the legatee himself or some other person shall choose it from among various things or from among things of a specified nature or of a specified value.
- (2) The legatee shall make the selection himself where the testator has not specified who shall make it or where the person charged with making it has not made it within a reasonable period given to him by the legatee.

**Paragraph 3. - Conditional Legacies**

**Art. 779. - Principle.**

Legacies whether by universal or singular title may be made conditional upon the accomplishment of a suspensive or resolute condition.

**Art. 780. - Condition of Marrying or Not Marrying.**

- (1) A condition that the legatee shall marry or shall not marry a particular person, or a condition in general terms that the legatee shall not marry or shall not remarry shall be of no effect.
- (2) The testator may stipulate that the legatee shall have the usufruct of certain property or shall receive a specified pension during that period of time in which he is unmarried or not remarried.

**Art. 781. - Presumption.**

- (1) Unless otherwise expressly provided by the testator, a legacy made under a condition that the legatee does not do a specified thing should be deemed to be made under a resolute condition.

- (2) The same shall apply where a legacy is made under the condition that the legatee shall continue to do a specified thing.

**Art. 782. - Security.**

- (1) Where a legacy is made by the testator subject to a resolutive condition, the Court may, on the application of any interested person, order the legatee to give a security or another guarantee for the restitution of the property bequeathed in the case that the resolutive condition is accomplished.
- (2) Where a legacy is made by the testator subject to a suspensive condition, the Court may, on the application of the legatee, order the person who is in possession of the thing bequeathed to give a security or another guarantee for the delivery of the thing bequeathed to the legatee in the case that the suspensive condition is fulfilled.

**Paragraph 4. - Charges**

**Art. 783. - Principle.**

The testator may bind heirs or legatees, on the value of the property, to give something to or to do something for one or more specified persons.

**Art. 784. - Limit of Obligation.**

The heir or legatee on whom the charge has been imposed shall be liable for the execution of such charge to the extent only of the value which he has received in the succession.

**Art. 785. - Execution of Charge.**

- (1) The person to whose benefit the charge has been ordered may demand its execution.
- (2) Where such action is justified in the circumstances, such person may also require the heir or legatee thus charged to give a security or another guarantee for the execution of the charge.

- (3) The same rights may be exercised by the person named for this purpose by the testator or, in default of such person, by each of the heirs of the testator or by each of his legatees by universal title.

**Art. 786. - Dissolution of Legacies.**

- (1) The failure to execute the charge shall not entail the dissolution of the legacy unless the testator has expressly so disposed and regulated the consequences thereof.
- (2) The rights which third parties in good faith have acquired on the property bequeathed shall not be affected.

**Art. 787. - Unforeseen Circumstances and Legacy or Charge.**

Upon the demand of an heir or legatee, burdened with a charge, or upon the demand of the beneficiary, the Court may modify the effects of a legacy or charge on the basis of unforeseen circumstances after the deceased which are of such a nature that according to criteria of reasonableness and equity, parties may not expect that the will be maintained in an unmodified form

Paragraph 5. - Substitution

**Art. 788. - *Substitutio Vulgaris*.**

- (1) The testator may order that, in default of a legatee by universal or singular title, some other person shall be called to receive the legacy.
- (2) Unless otherwise expressly provided, a disposition to that effect shall benefit the substituted legatee whenever the legatee appointed in the first place cannot or does not want to receive the legacy made in his favor.

**Art. 789. - Principle.**

- (1) The testator may order that his heir or legatee shall, on the expiry of a certain period or on his death or on the accomplishment of a specified condition, pass the property or certain property forming part of the succession to one or more other persons who shall be substituted for him.

- (2) The heir or the legatee who receives the property in the first place is called the "institute".
- (3) The person to whom he shall pass the property on the opening of the substitution is the "substitute".

**Art. 790. - Persons Who may be Called to Succeed.**

- (1) The substitute need not have the capacity to receive on the day of the death of the testator.
- (2) It shall be sufficient that he can be determined and that he have the capacity to receive on the day when the substitution comes into effect.
- (3) The substitution may also be made in favor of the descendants or of the heirs of the institute.

**Art. 791. - Effects.**

- (1) A disposition made in terms of Article 789 has, in relation to the property to which it refers, the effect of a disposition prohibiting alienation or attachment.
- (2) Without prejudice to the provisions of the following Articles, the rules contained in the Title of this Code relating to Usufruct and Other Rights *in Rem* shall apply for the purposes of determining the effects of such disposition.

**Art. 792. - Limitation of Power of the Court.**

The Court may in no case authorize the alienation or the attachment of immovable property on the application of the institute or his creditors.

**Art. 793. - Time for Bringing Action.**

- (1) The substitute, his representative or the person appointed by the testator for the purpose of having the substitution complied with, may at any time demand the nullity of the alienation or of the attachment which have taken place unduly.

- (2) It suffices that they institute their action within two years from the opening of the substitution.

**Art. 794. - Limitation of Substitution to One Passage.**

- (1) A provision whereby the testator declares that property or rights cannot be alienated or attached after they have been transmitted to the substitute shall be of no effect.
- (2) A provision whereby the testator seeks to regulate what is to happen to such property or rights after they are transmitted to the substitute shall be of no effect.

**Art. 795. - Refusal by Institute.**

Unless otherwise provided in the will, the substitute shall be called immediately where the institute cannot or does not want to accept what has been bequeathed to him.

**Art. 796. - Default of Person Called to Succeed.**

- (1) The institute may freely dispose of the property and the rights forming the subject matter of the substitution, where the substitute dies or where, for any other reason, it becomes clear that it will not be possible for the substitution to take place.
- (2) Where, on account of the default or refusal of the substitute or for any other reason, the substitution ordered by the testator cannot take place, the property shall pass to the heirs of the institute.
- (3) Unless otherwise stipulated in the will, the heirs of the testator shall have no right on such property.

**Paragraph 6. - Disinheritance**

**Art. 797. - Express.**

- (1) The testator may, in his will; expressly disinherit his heirs-at-law, or any of them, without appointing a legatee by universal title.

- (2) In such case, the succession shall devolve as though the heir or heirs who has or have been disinherited had died before the testator.

**Art. 798. - Special Provision Regarding Descendants.**

- (1) An express disinheritance of a child or other descendant shall be of no effect unless the testator has given in his will a reason which justifies the disinheritance.
- (2) Where the will of the testator results in a descendant receiving less than half of what such descendant would have received in intestate succession, the provision of sub-Article (1) shall apply by analogy.
- (3) The Court shall ascertain whether the reason given by the testator, assuming that it is correct, justifies the disinheritance.
- (4) It may not ascertain whether in the circumstances of the particular case, the reason given is correct.

**Art. 799. - Tacit Disinheritance.**

- (1) Unless otherwise provided, the appointment of a legatee by universal title shall imply the disinheritance of the relatives of the testator if they are of the second, third or fourth relationship.
- (2) It shall not imply the disinheritance of the descendants of the testator.
- (3) Where the testator is survived by descendants and has not expressly disinherited them, the legatee by universal title shall partake of the succession together with such descendants as if he himself were a child of the testator.

**Art. 800. - Prohibition of Certain Provisions.**

Any provision whereby the testator orders the disinheritance, in whole or in part, of his heirs or any of them, should they impugn the validity of the will or of any disposition contained therein, shall be of no effect.



## TITLE II. LIQUIDATION OF SUCCESSIONS

### Chapter 1. - General Provisions

#### **Art. 801. - Guiding Principle.**

As long as the succession has not been liquidated, and a partition of the inheritance has not been accomplished, it shall constitute a distinct estate.

#### **Art. 802. - Position of Creditors of the Inheritance.**

- (1) Pending the liquidation, before partition, only the creditors of the inheritance shall be able to take recourse on the inheritance. They have the right to object to a partition.
- (2) The creditors shall not have a right of recourse on the personal property of an heir, as long as it is not clear that the inheritance is accepted fully by him.
- (3) A creditor of the inheritance may claim that an heir makes the choice to accept in full, to accept under the benefit of inventory or to renounce the succession in due time.

#### **Art. 803. - Position of Creditors of Heirs**

- (1) Pending the liquidation and before the partition, the personal creditors of the heirs shall have no recourse on the property of the succession.
- (2) A creditor may claim that partition shall take place. However, in case the interests of a creditor and of one or more of the heirs are contradictory, the Court may decide that partition may be postponed during a certain period.
- (3) A creditor of an heir may claim that in due time an heir makes a choice between acceptance, acceptance under the benefit of inventory or renunciation of the inheritance. A decision of an heir to accept fully, or to renounce an inheritance, due to which the recourse on the property of the heir will not be sufficient, may be annulled on the terms of Article 848.

**Art. 804. - What the Liquidation Consists of:**

The liquidation of the succession consists of:

- (a) the determination of the persons who are called to take the property in the inheritance;
- (b) the determination of what it is made up;
- (c) the recovery of debts due to and the payment of the debts due by the succession which are exigible;
- (d) the payment of the legacies by singular title and the taking of such other steps as are required to carry into effect the provisions made by the deceased.

**Art. 805. - Agreement Providing for Arbitration.**

The heirs may agree that any dispute arising between them regarding the liquidation or partition of the succession shall be submitted to one or more arbitrators.

**Art. 806. - Dispositions Providing for Arbitration.**

- (1) The testator may dispose that any dispute between the heirs with respect to the liquidation or partition of the succession shall be submitted to the arbitration of one or more persons designated in his will.
- (2) The disposition shall have no effect where it is not accepted by all the heirs.

**Chapter 2. - Liquidator of the Succession**

**Art. 807. - Principle.**

A succession, whether intestate or testate, shall be liquidated by one or more persons hereinafter referred to as "the liquidators".

**Art. 808. - Designation by Law.**

On the day of death, the capacity of liquidator shall devolve on the heirs-at-law.

**Art. 809. - Designation by Will.**

- (1) Where the deceased has left a will, the capacity of liquidator shall as of right devolve on the person designated by the deceased in such will as testamentary executor.
- (2) Failing any express disposition, it shall as of right devolve on the legatees by universal title.
- (3) The heirs-at-law shall cooperate with the legatee by universal title with a view to assuring the liquidation of the succession, unless the stipulations of the will are such that they stand to receive no share of the succession.

**Art. 810. - Liquidator who is a Minor or an Interdicted Person.**

Where in accordance with the preceding Articles, a minor or an interdicted person is the liquidator of a succession, he shall be represented by his guardian for the performance of the functions of liquidator.

**Art. 811. - Judicial Liquidation. - 1. Unaccepted Inheritance or Vacant Succession.**

- (1) The Court shall appoint a liquidator, on the application of any interested person, where the heirs are unknown or all the heirs-at-law have declared that they renounce or do not want to liquidate the succession.
- (2) It shall appoint a liquidator where the testator has not left heirs and his succession is taken by the State.
- (3) In the latter event the person or authority which is to be appointed liquidator by the Court may be designated by the concerned authority.

**Art. 812. - 2. Other Cases.**

The Court may, on the application of any interested person, appoint a notary or some other person to replace the liquidator referred to in the preceding Articles, where:

- (a) there is a doubt regarding the designation of a liquidator because the validity of the will whereby he was appointed is contested, or for any other reason;
- (b) there are several liquidators and they are not in agreement on the administration and liquidation of the succession;
- (c) among the heirs, there is a minor or an interdicted person or any other person, who, for any other reason, is not in a position to look after his interests;
- (d) the liquidator remains inactive or is dishonest or is found to be incapable to perform his functions properly; or
- (e) the administration or liquidation of the succession raises particular problems.

**Art. 813. - Security.**

Where serious grounds for such order exist, the Court may, on the application of any interested person, require the liquidator to give a security or some other guarantee for the proper performance of his functions.

**Art. 814. - Voluntary Nature of Functions.**

No person is bound to accept the functions of liquidator.

**Art. 815. - Resignation.**

- (1) The liquidator may at any time resign his functions, unless he has expressly undertaken to bring them to their conclusion or to perform them for a certain period of time.
- (2) The liquidator may be held liable where he resigns at an inopportune moment.
- (3) The resignation shall in no case take effect unless it has been communicated to the other liquidators or a new liquidator has been appointed.

**Art. 816. - Termination of Functions.**

- (1) The functions of a liquidator shall cease where he is replaced by a new liquidator in conformity with the law, the will or a decision of the Court.
- (2) They shall, moreover, cease where the liquidator has accomplished his functions and rendered an account of his management.

**Art. 817. - Duties of Liquidator.**

The liquidator shall:

- (a) make a search to find out whether the deceased has left a will, and establish on whom the succession devolves and inform heirs and legatees of their position; and
- (b) administer the succession; and
- (c) pay the debts of the succession which are exigible; and
- (d) pay the legacies ordered by the deceased and take all other measures necessary to execute the will.

**Art. 818. - Limitation of Powers.**

- (1) The deceased or the Court may limit the powers of the liquidator or give him instructions regarding the manner in which he shall perform his functions.
- (2) The Court may, where there is particular reason for doing so, modify the instructions referred to in sub-Article (1).
- (3) Notwithstanding any stipulation to the contrary, holding the liquidator liable under Article 822 shall be the sole manner of sanctioning any transgression of these provisions.

**Art. 819. - Several Liquidators.**

- (1) Where there are several liquidators they shall act together, without prejudice to any stipulation to the contrary by the deceased or the Court.

- (2) The liquidators may distribute among themselves the tasks which the liquidation involves, or entrust one of them with a mandate to make such liquidation.
- (3) In the absence of such stipulations or mandate, if a liquidator performs by himself an act of the liquidation, the rules relating to voluntary management of the affairs of another person shall apply.

**Art. 820. - Remuneration of Liquidator.**

The liquidator shall be entitled to a remuneration where this is justified by the work he has performed, under the conditions determined by the deceased, or by agreement between the heirs, or by the Court.

**Art. 821. - Rendering Accounts of Management.**

- (1) The liquidator shall account for his management at the end of his functions.
- (2) Furthermore, he shall give an account of his management before that date, at such intervals as were agreed upon with the heirs or fixed by the Court.

**Art. 822. - Liability of the Liquidator.**

- (1) The liquidator shall be liable for any damage he causes by his fault or negligence
- (2) He shall be deemed to be at fault where he acts contrary to the provisions of the law, to the provisions of the will or to the instructions given to him by the deceased or by the Court.
- (3) The Court may relieve him in whole or in part of such liability in his relations with the heirs or legatees where it appears that he has acted in good faith with the intention of performing his functions.

**Chapter 3. - Final Determination of the Persons Entitled to the  
Succession**

**Section 1. - Provisional Determination of Persons Entitled to  
Succeed**

**Art. 823. - Search for a Will.**

- (1) The liquidator shall in the first place make a search to find out whether the deceased has left a will.
- (2) For this purpose, he shall examine the papers of the deceased immediately and make all appropriate searches in particular in the notary offices and registers of last wills.

**Art. 824. - Duty to Declare Will.**

- (1) Whosoever has in his possession, finds or knows, in his capacity as a witness, of a will made by the deceased shall make a declaration regarding such will to the liquidator as soon as he comes to know of the death.
- (2) He shall make such declaration notwithstanding that the will seems to be affected by nullity.

**Art. 825. - Deposit of Will.**

- (1) A public or holograph will shall be deposited without delay with a notary or in the registry of the Court in the place where it is discovered or conserved, where the liquidator or any interested person makes an application to this effect.
- (2) An oral will shall be immediately drawn up in writing and deposited by those who have been witnesses thereto with a notary or in the registry of the Court in the place where it was made.

**Art. 826. - Opening of Will. - 1. Date.**

- (1) A will shall be opened by the liquidator at the latest thirty days after the death of the deceased.
- (2) Where it has been discovered after such date, it shall be opened on a day fixed by the liquidator within thirty days such discovery.

- (3) In such case it shall first be deposited with a notary or in the registry of the Court.

**Art. 827. - 2. *Anticipated Opening.***

- (1) The date mentioned in Article 826 (1) may be put forward where the deceased has so ordered or this appears necessary for the purpose of making arrangements for his funeral or the majority of the heirs called in the first place by the law agree to the putting forward of the date of the opening.
- (2) Where any of the heirs called in the first place is not in a position to be present or represented at the anticipated opening of the will, the will shall, prior to its opening, be deposited with a notary or in the registry of the Court in the place where it is to be found.

**Art. 828. - 3. *Place.***

- (1) The will shall be opened in the office of the notary or in the registry of the Court where the will has been deposited during the lifetime of the deceased or after his death.
- (2) Failing such deposit, the will shall be opened in the place where the deceased had his principal residence at the time of his death.

**Art. 829. - 4. *Publicity.***

- (1) The heirs-at-law whom the law calls in the first place to the succession of the deceased shall be invited to be present or represented at the opening of the will.
- (2) In any case, at least four persons of age and not interdicted shall be present at the time of the opening of the will.

**Art. 830. - 5. *Order of the Day.***

- (1) At the time of the opening of the will, the liquidator and all persons present shall verify the validity of the will with respect to form.
- (2) The contents of the will shall be read out.



- (3) The measures necessary to ensure the preservation of the will shall be taken.

**Art. 831. - 6. Several Wills.**

The provisions of the preceding Articles shall apply whether the deceased left only one will or more than one will.

**Art. 832. - Establishing of Persons Entitled to the Succession.**

*- 1. Testate Succession.*

- (1) During the meeting, the liquidator shall establish who are the heirs or legatees of the deceased, and to what portion of the succession each of them is entitled.
- (2) He shall inform the interested persons, without delay, of the manner in which the succession should devolve.
- (3) For the purpose of sub-Article (2) the expression "interested persons" means the persons who are called to receive the property of the deceased, and those who, in the absence of a will, would have been called to receive it.

**Art. 833. - 2. Intestate Succession.**

- (1) Where thirty days elapsed after the death of the deceased, without any will having been discovered, the deceased shall be presumed to have left no will.
- (2) Thereafter without delay the liquidator shall inform the interested persons of the manner in which he considers that the succession should devolve.

**Art. 834. - Arbitration.**

Arbitrators shall, as far as possible, be appointed to settle any dispute arising out of the succession.

**Art. 835. - Action of Nullity. - 1. Persons Present.**

- (1) Whosoever is present or represented at the opening of the will may within thirty days from the opening of the will declare his intention to apply for the nullity of the will or of

a provision contained in the will, or to impugn the establishment of persons entitled to the succession.

- (2) Any such declaration shall be of no effect unless it is made in writing and notified to the liquidator, the Court or the arbitrators within the period specified in sub-Article (1).
- (3) An application for the nullity shall only be entertained where it is made within three months from the declaration.

**Art. 836. - 2. Persons Not Present.**

(1) With regard to persons who are not present nor represented at the opening of the will, such period shall begin to run from the day when the liquidator informs them of the establishment of persons entitled to the succession. It shall run in like manner where there is no will.

(2) The validity of a will and the establishment of persons entitled to the succession proposed by the liquidator may in no case be contested after five years from the day of the opening of the will or, if there is no will, five years from the death of the deceased.

**Art. 837. - 3. Provisional Measures.**

The Court may, on the application of any interested person and pending the delivery of a judgment on the applications mentioned in Article 835 and 836, take all provisional measures it thinks fit to avoid delays in the liquidation of the succession.

**Section 2. - Option of Heirs and Legatees by Universal Title**

**Art. 838. - No Forced Succession.**

- (1) No heir is bound to accept the succession or legacy to which he is called.
- (2) A succession may be accepted in full, accepted under the benefit of inventory, or renounced.

**Art. 839. - Personal Nature of the Option.**

- (1) The right to accept, to accept under the benefit of inventory, or to renounce a succession is strictly personal to the heir.
- (2) This right may not be exercised by the creditors of the heir, without prejudice to Article 848.
- (3) The minor and the interdicted person may only accept the succession under the benefit of inventory. Renunciation of the succession by the same persons must be approved by the Court.
- (4) The choice may not be made with a time limit or under a condition.

**Art. 840. - Time for Making the Choice.**

- (1) An heir has to make his choice within two months from the day when the liquidator has informed him that he is called to the succession.
- (2) During this period creditors of the inheritance cannot take recourse on property of the deceased, unless this would also have been possible in the event of the deceased's bankruptcy.
- (3) On the application of the heir, the Court may extend the period up to a maximum of two months.
- (4) On the application of a creditor, the Court may determine that a choice must be made within a certain period. In case no choice is made subsequently, the inheritance will be deemed to be accepted under the benefit of inventory.

**Art. 841. - Form of Renunciation.**

- (1) The renunciation of a succession shall be of no effect unless a declaration of this intent is made at the Court registry or central registry of wills or to a notary.

- (2) It shall be of no effect unless it is made known to the liquidator before the expiry of the period fixed in Article 840.

**Art. 842. - Forms of Acceptance Under the Benefit of Inventory.**

Acceptance under the benefit of inventory requires the formality described in Article 841. An inheritance is deemed to be accepted under the benefit of inventory in case no other choice is made and no form is required.

**Art. 843. - Forms of Full Acceptance.**

- (1) The full acceptance of a succession shall be of no effect unless a declaration to this intent is made at the Court registry, central registry of wills or to a notary.
- (2) After having accepted under the benefit of inventory, an heir may still fully accept any time before the closure of the liquidation.

**Art. 844. - Renunciation in Favor of Others.**

- (1) A renunciation made in favor of one or more specified persons shall be deemed to be an assignment of the rights to the succession.
- (2) An heir who makes such renunciation shall be deemed to have accepted the succession under the benefit of inventory.
- (3) The rule shall not apply where the heir has renounced the succession in favor of all his co-heirs indistinctly without receiving any pecuniary compensation.

**Art. 845. - Misappropriation or Concealment.**

The heir who misappropriates or conceals property forming part of the succession, shall be deemed to have fully accepted the succession.

**Art. 846. - Death of Heir Before Opting.**

Where the heir who is called dies before having made a choice, the right to choose shall devolve on his heirs.

**Art. 847. - Partial Acceptance or Renunciation.**

- (1) The acceptance in full or acceptance under the benefit of inventory or renunciation may not be partial.
- (2) Whosoever has renounced the succession in his capacity as legatee by universal title may still accept it in his capacity as heir-at-law of the deceased.
- (3) An heir in whose favor a legacy by singular title has been ordered may renounce the succession and accept the legacy or, conversely, accept the succession and renounce the legacy by singular title.

**Art. 848. - *Actio Pauliana*.**

- (1) The creditors of a person who renounces a succession may, within two years from the day when the renunciation has taken place, apply to the Court to annul it, if it is clearly prejudicial to them.
- (2) The same applies to acceptance of an inheritance where the amount of the debts is clearly larger than the amount of rights and property.
- (3) The renunciation or acceptance may be annulled by the Court only up to the extent of what is due to the creditors.

**Art. 849. - Time of Effectiveness of Acceptance.**

Acceptance in full and acceptance under the benefit of inventory shall be effective from the day of the death of the deceased.

**Art. 850. - Effect of Acceptance in Full and under the Benefit of Inventory.**

- (1) Creditors of the inheritance may not be restricted in their recourse to the property of the inheritance where an heir accepts a succession in full.
- (2) Creditors of the inheritance shall be restricted in their recourse to the property of the inheritance where an heir accepts a succession under the benefit of inventory. There

is no recourse on other property of the heir, unless the interests of the creditors have not been sufficiently taken into consideration in the liquidation and administration of the inheritance.

- (3) Where an inheritance is accepted under the benefit of inventory, an inventory has to be made according to Article 864.

#### **Art. 851. - Effect of Renunciation.**

- (1) An heir who has renounced a succession shall be deemed never to have been an heir.
- (2) The portion which he has renounced shall devolve upon his co-heirs who have accepted the succession, and, where appropriate, to the heirs who come next.
- (3) The heirs who have already accepted the succession may renounce such portion within thirty days from the day when the renunciation of their co-heir is brought to their knowledge.

#### **Art. 852. - Annulment.**

An heir may invoke nullity of his choice where it was due to fraud, threat and gross disparity. An heir who has accepted unrestrictedly may request, within three months, that his acceptance will be considered to be under the benefit of inventory in view of the consequences of a later renunciation by another heir or of the discovery of a will.

#### **Section 3. - Certificate of Heir and *Petitio Haereditatis***

##### **Art. 853. - Certificate of Heir. - 1. Issue.**

- (1) An heir may apply to the Court to be given a certificate of heir of the deceased and the share of the succession which he is called to take.
- (2) The Court may require the applicant to adduce such evidence and to give such securities as it thinks fit.

**Art. 854. - 2. Effects.**

- (1) So long as the certificate has not been annulled, the heir shall be deemed to have the status which the certificate attributes to him.
- (2) The acts performed by the heir in such capacity may not be impugned, unless it is proved that the person who avails himself of such acts knew for certain, at the moment when such acts were performed, that the heir had no right.

**Art. 855. - 3. Annulment.**

- (1) Where an action of *petitio haereditatis* has been instituted, the Court may annul the certificate of heir issued by the Court.
- (2) In such case, the heir shall return the certificate.
- (3) Where the heir alleges that the certificate has been lost or that for any other reason he is unable to return it, he shall be ordered to give all appropriate securities to ensure that he will not in future make use of his certificate.

**Art. 856. - *Petitio Haereditatis*. - 1. Principle.**

Where a person without a valid title has taken possession of the succession or of a portion thereof, the true heir may institute an action of *petitio haereditatis* against such person to have his status of heir acknowledged and obtain the restitution of the property of the inheritance.

**Art. 857. - 2. Effects.**

- (1) The defendant who loses a suit of *petitio haereditatis* shall return to the plaintiff all the property of the inheritance which has remained in his possession.
- (2) He may not claim to have become the owner of such property as a result of his good faith.
- (3) As regards the rest, the provisions of the Chapter of this Code relating to Unlawful Enrichment shall apply.

**Art. 858. - 3. Legatee by Universal and Singular Title.**

The provisions of the preceding articles shall apply to legatees by universal and singular title.

**Chapter 4. - Administration of the Succession**

**Art. 859. - Principle.**

- (1) The liquidator shall administer the property of the deceased until the closure of the liquidation.
- (2) The liquidator shall administer the property of the succession with the care and zeal of a reasonable and prudent person.

**Art. 860. - Power of the Liquidator.**

- (1) The rules on Co-ownership apply on the internal and external relations of the heirs, subject to particular rules provided in this Title.
- (2) In case not all heirs act as liquidators, these heirs are represented by the liquidators. A liquidator may represent other liquidators according to Article 819. A liquidator is entitled to performs acts of management, such as:
  - (a) to institute all the actions necessary for the preservation of the property of the succession;
  - (b) to contest actions instituted by third parties who claim to have rights to the property of the succession;
  - (c) to demand payment of what is due to the succession if the debts are exigible; and
  - (d) to give acquittance for such debts.

**Art. 861. - Disposal of Property Pertaining to the Inheritance.**

- (1) In case it is a matter of management the liquidator may sell and transfer property of the inheritance such as the fruits



and the crops of the succession, as well as all movables to the succession which are rapidly perishable or which, for their custody and preservations, involve considerable expense or require particular care.

- (2) He shall not sell and transfer other movable goods unless it is a matter of management, such as where a sale is necessary to pay the debts of the succession.
- (3) He may not sell the immovable property except with the consent of all the heirs, or with the authorization of the Court.

#### **Art. 862. - Property Destined for Payment.**

In order to pay the debts of the succession, the liquidator shall make use in the first place of the liquid cash which he finds in the succession.

#### **Art. 863. - Seals.**

- (1) The affixing of seals on the effects, or on some of the effects, may be ordered by the Court on the application of any interested person, immediately after the death of the deceased.
- (2) The expenses of the affixing and removal of seals shall be borne by the person having requested the affixing of seals.

#### **Art. 864. - Inventory.**

- (1) In case one or more heirs have accepted the inheritance under the benefit of inventory the liquidator is obliged to draw up an inventory of the assets and liabilities of the deceased within sixty days from the date of the choice or the publicity given to the liquidation.
- (2) In other cases an inventory is optional.

#### **Art. 865. - Debts of Deceased.**

- (1) The liquidator shall take all necessary steps with a view to establishing whether there are any persons who are creditors of the succession.

- (2) To this end, he shall examine the registers and papers of the deceased and make the necessary searches in the public registers, in the places where the deceased has resided and in those where he has immovable property.

**Art. 866. - Liquidation After Mandatory Inventory.**

- (1) In order to draw up an inventory, publicity to the liquidation in one or more local newspapers is required. In case the liquidator is of the opinion that all creditors have already been known, a request may be submitted to the Court not to publicize the liquidation. No appeal shall lie from the decision of the Court.
- (2) No inventory has to be made in case all creditors that made themselves known within six months from the publicity are paid fully.
- (3) No inventory is necessary where the value of the inheritance is negligible.
- (4) When the inventory has been made up, the account of it may be contested by creditors or by other interested parties. Where the inheritance is insufficient, creditors must be paid according to their rank.
- (5) Creditors that have not made themselves known upon a sufficient publicity of the liquidation may take recourse on property of the inheritance, which is left over after the complete satisfaction of the other creditors.

**Art. 867. - Valuation of Property.**

- (1) Each of the constituents, whether an asset or a liability, of the succession shall be valued by the liquidator.
- (2) Where necessary, the valuation shall be made with the assistance of experts.

**Art. 868. - Duties of Heirs.**

- (1) In their relations with the succession, the heirs shall retain all the rights and obligations which they had against or in

favor of the deceased, with the exception of the rights and obligations which come to an end with the death.

- (2) In regard to such rights and obligations, the heirs shall give the liquidator all relevant information so as to enable him to draw up the inventory.

#### **Art. 869. - Information to Interested Persons.**

- (1) In the event where an inventory is mandatory, whosoever is called to receive a share of the succession may require that a copy of the inventory be sent to him at his expense.
- (2) The same right may be granted by the Court to the creditors of the deceased or of the succession.

#### **Art. 870. - Revision of Valuation.**

- (1) Until the final partition of the succession has been effected, the persons referred to in Article 869 may require that the provisional valuation of the property made by the liquidator be revised.
- (2) The expenses of the valuation by experts shall be charged to the succession where the provisional valuation is found to be incorrect.
- (3) In other cases, the expenses shall be charged to the person who has given cause to them.

### **Chapter 5. - Payment of the Debts of the Succession**

#### **Art. 871. - Order to be Followed.**

The debts of the succession shall be paid in the following order:

- (a) in the first place, the expenses of the funeral of the deceased;
- (b) in the second place, the expenses of the administration and of the liquidation of the succession;
- (c) in the third place, the debts of the deceased;

- (d) in the fourth place, the debts regarding support; and
- (e) in the fifth place, the legacies by singular title ordered by the deceased.

**Art. 872. - Funeral Expenses.**

- (1) Funeral expenses shall not have priority over other debts of the succession unless they are justified under the circumstances.
- (2) They shall not include the expenses for the commemoration of the deceased.
- (3) The commemoration of the deceased shall not constitute a juridical obligation of his spouse or relatives.

**Art. 873. - Expenses of Administration.**

The expenses of the administration and liquidation of the succession shall comprise:

- (a) the expenses of the affixing of seals and of the inventory and those of the account of the liquidation;
- (b) the useful expenses incurred by the liquidator for the ordinary preservation, support and administration of the property of the inheritance;
- (c) the expenses of the partition and those of the transmission of the property of the inheritance to the heirs; and
- (d) estate duty.

**Art. 874. - Exigible Debts.**

- (1) The liquidator shall pay such debts of the succession as are exigible, unless opposition has been made to such payment or it appears obvious that the assets of the succession are not sufficient to satisfy all the creditors.
- (2) In these two cases, he shall observe the rules laid down in the Code of Civil Procedure relating to the insolvency of a debtor.

**Art. 875. - Executive Title.**

- (1) Executive titles enforceable against the deceased are equally enforceable against the liquidator.
- (2) However, the liquidator may postpone the payment of all debts till the time when he has made the inventory of the succession.
- (3) The Court may, on the application of any interested person, compel the liquidator to pay the debts or certain debts before that time, if it is evident that the succession will be in a position to pay such debts.

**Art. 876. - Debts Not Exigible.**

- (1) The creditors of the succession whose debts are not exigible may require that securities be given to them to ensure the payment of their debts when they fall due.
- (2) The provisions of sub-Article (1) shall apply to those persons who have conditional claims to bring forward against the succession.

**Chapter 6. - Survival of the Obligation of Support**

**Art. 877. - Determination of Creditors Regarding Support.**

- (1) The spouse of the deceased and his descendants shall have a claim for support, on the condition laid down in the following Articles.
- (2) Where the succession devolves on the State, the persons who lived with the deceased or were supported by him at the time of his death shall also have a claim for support, on the conditions laid down in the following articles.

**Art. 878. - Time of Payment and Character of the Claim.**

- (1) Claims regarding support shall be paid as soon as it appears that the succession has sufficient means for paying them.

- (2) Even in case an inheritance is fully accepted by an heir, the support has to be paid out of the inheritance.

**Art. 879. - Living Standard of Creditors Regarding Support.**

The persons mentioned in Article 877 shall have a claim for support in case, taking into account the financial effects of the succession, their living standard will be considerably lower than the standard the deceased could have provided for.

**Art. 880. - Unworthiness.**

The persons mentioned in Article 877 shall have no claim for support if they are excluded from the succession as unworthy, and also in case payment of the claim could according to standards of reasonableness and equity not have been required of the deceased.

**Art. 881. - Claim of Creditor-Descendant.**

- (1) The claim for support is at most half the value which the descendants would have received from the succession by virtue of the law, had the deceased not made testamentary dispositions to their prejudice.
- (2) Liberalities of uncommon extent made by the deceased when still alive shall be assimilated to such testamentary dispositions in order to determine this value.

**Art. 882. - Claim of Creditor-Spouse.**

- (1) A spouse may have a claim for support even in case the deceased has appointed heirs or made testamentary dispositions to his or her prejudice.
- (2) Apart from the payment in money the spouse shall be entitled to the use of the matrimonial house and the household-goods in case they are part of the inheritance. The heirs are obliged to cooperate in the establishment of a right of usufruct on this part of the inheritance, unless another agreement is made.

### **Art. 883. - Claim by Creditor.**

- (1) A claim with a view to establishing a debt for support shall be made to the liquidator within six months from the opening of the succession.
- (2) In urgent cases, a provisional claim for support may be acknowledged by the liquidator in favor of the interested persons.
- (3) A decision of the liquidator refusing to acknowledge a claim for support may be immediately 'impugnéd' before the Court.

### **Art. 884. - Agreements Relating to Obligations for Support.**

- (1) Any act or contract concluded during the lifetime of the deceased relating to eventual obligations of the succession for support shall be of no effect.
- (2) Testamentary dispositions aiming at excluding or modifying the rules laid down in this Chapter shall be of no effect.

## **Chapter 7. - Payment of Legacies**

### **Art. 885. - Principle.**

The liquidator shall pay the legacies ordered by the deceased unless the payment of a legacy has been imposed by the will on one of the heirs.

### **Art. 886. - Option of the Legatee.**

Without prejudice to the provisions of Article 887 and 888, the provisions of this Book relating to the option of the heirs or legatees by universal title shall apply to the acceptance or refusal of legacies by singular title.

### **Art. 887. - More than One Legacy.**

A person to whom more than one legacy by singular title has been bequeathed may accept one of such legacies and refuse the other.

**Art. 888. - Effect of Refusal.**

Where a legatee refuses a legacy bequeathed to him, such refusal shall benefit the person who, under the will, has the charge of paying the legacy.

**Art. 889. - Time of Payment.**

The legacies shall be paid as soon as it appears that the succession has sufficient means for paying them.

**Art. 890. - Reduction of Legacies.**

- (1) If the succession has not sufficient means for paying all the legacies, the order expressly laid down by the deceased in his will shall be followed in making payments.
- (2) Failing an express disposition, the legacies which, in the will or in another written act drawn up by the deceased, are said to have been ordered as a remuneration for services rendered by the legatee or as a performance of an imperative moral duty shall be paid in preference.
- (3) The other legacies shall be reduced in proportion to their value.
- (4) Legatees whose legacies are thus reduced may take recourse on the property of heirs who have accepted the inheritance fully.

**Art. 891. - Legacy of a Determinate Thing.**

- (1) The liquidator shall deliver the thing bequeathed, with its accessories, in the state in which it is found to the legatee.
- (2) The legatee may not request that the thing bequeathed be delivered to him in a better state.
- (3) Where the thing bequeathed has been given as a pledge or has been hypothecated by the deceased, securities shall be given to the legatee to guarantee the liberation of the thing when the debt falls due.



- (4) The legatee who pays the debt secured by pledge or hypothec when it falls due shall be subrogated in the rights of the creditor whom he has paid.

**Art. 892. - Legacy of Thing of a Given Genus.**

- (1) Where the thing bequeathed has not been determined except by its genus, the legatee may select that which he wishes from among the things of that genus belonging to the testator.
- (2) Where several legatees are called to select from things of the same genus, the order in which they are to make their selection shall be determined by the drawing of lots.
- (3) Where the succession does not contain any thing of the same genus as the thing bequeathed, the legatee may in his discretion require the liquidator to give him any such thing of average quality or to pay him the value of the thing bequeathed.

**Art. 893. - Legacy of Thing Which is Not Within Disposal.**

- (1) A legacy made by the deceased shall be of no effect where it has for its subject matter a thing on which the deceased had no right at the time of his death.
- (2) Notwithstanding the provisions of sub-Article (1), the legacy shall be valid where the deceased has ordered the legacy knowing such circumstance.
- (3) In such case, the liquidator may pay to the legatee the value the thing had at the moment of drawing up the will, in case obtaining the thing would be unreasonably difficult or expensive.

**Art. 894. - Legacy of a Claim.**

- (1) The legacy of a claim shall be effective in respect of the amount of such claim due to the deceased on the day of his death.

- (2) The liquidator fulfills the obligation resulting from the will by delivering to the legatee the instrument which makes possible the recovery of the claim.
- (3) The succession shall not stand as surety for the payment of the claim.

**Art. 895. - Legacy of an Annuity.**

Where an annuity has been bequeathed by the deceased, the arrears thereof shall be due as from the day of the death of the testator.

**Art. 896. - Fruits and Interest.**

- (1) Where a determinate thing has been bequeathed, the fruits
- (2) Where a sum of money has been bequeathed, interest thereon at the market rate shall run from the day when the liquidator has been called upon to effect payment.

## TITLE III. PARTITION OF SUCCESSIONS

### Chapter 1. - Community of Hereditary Estate and Right to Partition

#### **Art. 897. - Community of Hereditary Estate.**

- (1) A succession shall remain in common between the heirs until it is partitioned.
- (2) The rights of the co-heirs on the property of the inheritance which is in common shall moreover be governed by the provisions of the Title of this Code relating to Co-ownership.
- (3) Nothing in this Article shall affect the provisions of Title 2 relating to the Liquidation of Successions and the provisions of the following Articles.

#### **Art. 898. - Assignment of Rights to a Succession.**

- (1) After the opening of the succession, an heir may assign his rights to such succession in whole.
- (2) An heir may assign his rights to such succession in part in case the interests of the co-heirs are not harmed by it or in case they consent.

#### **Art. 899. - Pre-emption in Case of Assignment of Rights to a Succession.**

- (1) The co-heirs have a right of legal pre-emption against the person to whom rights to a succession have been assigned, except in the case where the assignment has been made in favor of one of the co-heirs.
- (2) The provisions of the Title of this Code relating to Usufruct and Other Rights *in Rem* shall apply in regard to such pre-emption.

#### **Art. 900. - Time of Partition.**

When the succession has been liquidated, each of the co-heirs may at any time require that the partition of the inheritance be effected.

**Art. 901. - Time Limit for Partition.**

- (1) Where the application for partition is made at a time which is inopportune, the Court may order that the community be maintained for a period not exceeding two years.
- (2) Unless otherwise authorized by the Court, the community shall be maintained where the manner of making the partition depends on the condition of the birth of a child who is merely conceived.
- (3) Where necessary, the Court shall in such cases appoint a person to administer the property of the inheritance or certain property forming part thereof.

**Art. 902. - Disposition or Agreement Concerning Community.**

- (1) The right of the co-heirs to apply for partition may be excluded by the will of the deceased or by a contract concluded between the co-heirs.
- (2) Any stipulation or agreement mentioned in sub-Article (1) shall be effective for not more than five years or for such shorter period as is fixed therein.
- (3) Where no period is fixed or a period longer than five years is fixed, the stipulation or agreement shall cease to have effect at the end of five years.

**Chapter 2. - Collation by Co-heirs**

**Art. 903. - Principle of Collation.**

- (1) Any descendant of the deceased who accepts his succession shall bring into the succession the value of the liberalities which he has received from the deceased, in accordance with the following provisions.
- (2) Collation may be imposed by the deceased on his other heirs at the occasion of liberality or in his will. It is due only if the succession is accepted.

**Art. 904. - Gift Subject to Collation.**

- (1) Collation shall be due for what has been disbursed for establishing one of the co-heirs, or for paying his debts.
- (2) It shall not be due for the expenses incurred for the education of one of the co-heirs.

**Art. 905. - Exemption from Collation.**

- (1) No heir shall be bound to collate liberalities which the deceased intended to make to him as a preference or in addition to his share or as exempt from collation.
- (2) In the case of gifts, an express clause is necessary to establish such intention.
- (3) In the case of legacies, the intention of the deceased of exempting his heir from collation may be established by all means of evidence.

**Art. 906. - Income or Premiums.**

- (1) No heir shall be bound to collate liberalities which have been made by the deceased out of his income.
- (2) Nor shall he be bound to collate the premiums which have been paid by the deceased to constitute an insurance in favor of the heir.

**Art. 907. - Indirect Benefits.**

No heir shall be bound to collate the profits which he has been able to acquire from agreements or associations entered into between himself and the deceased.

**Art. 908. - Status of Heir Acquired After the Day of the Liberality.**

An heir shall be bound to make the collation notwithstanding that he was not heir presumptive of the deceased on the day when the liberality was made to him.

**Art. 909. - Representation.**

Whosoever succeeds in representation of another person shall collate the liberalities made to him personally as well as the liberalities which the person represented by him has received from the deceased.

**Art. 910. - Effect of Collation.**

- (1) For the purpose of forming the mass to be divided between the co-heirs, the value of the property which has been donated or bequeathed in legacy by the deceased and of which collation is due to the succession shall be added to the property left by him.
- (2) A co-heir by whom collation is due shall be deemed to have already received his portion of the succession to the extent of the value which he is bound to collate.

**Art. 911. - Effect of Collation Limited to Relations between Heirs.**

- (1) Collation shall be effective only as regards the partition of the succession and the relations between the co-heirs.
- (2) It may not be required by the creditors of the succession nor by the legatees.

**Art. 912. - Principle of Collation Consists in Taking Less.**

- (1) Collation is made in value and shall be effected on the basis of the rule of taking less.
- (2) No heir shall collate more than the value to which he has a right in the succession.

**Art. 913. - Value to be Collated.**

The value to be collated shall be determined at the time the liberality took place. Interest at market rate will be due in case this is reasonable, taking into account the real profit the heir had from the liberality.

**Art. 914. - Loss of Property Donated.**

Collation shall be made by the heir even if the property given may have perished, unless the property would also have perished not being given to him.

**Chapter 3. - Modes of Partition and Composition of Shares**

**Art. 915. - Partition by Whom Made.**

- (1) A partition may be effected by common agreement, provided the co-heirs were all present in person or were duly represented when the plan of partition was decided upon.
- (2) Where one of the co-heirs is a minor, the plan of partition shall be submitted to the Court.
- (3) If the Court approves the plan, it shall, with a view to assuring the interests of the minor, designate a person who shall proceed with the partition.
- (4) If the Court disapproves the plan, the succession shall be partitioned judicially.

**Art. 916. - Failing Agreement between Heirs.**

- (1) Failing an agreement between the heirs or where one of the heirs contests the modalities or some aspects of the partition, the contested plan shall be submitted to the Court by the most diligent of the co-heirs.
- (2) The Court may set down the manner of effecting the partition, or effect the partition itself. The provisions of this Chapter shall apply where appropriate.

**Art. 917. - Approval by the Court.**

- (1) The approval of the plan of partition by the Court shall be sought, under pain of nullity, where one of the heirs was absent or was not duly represented when the plan of partition was decided upon.

- (2) Where the approval of the Court has not been sought, the nullity of the partition may not be invoked by anyone other than the person without whose participation the partition has been effected.
- (3) The nullity must be applied for, under pain of loss of right, within a year from such person having come to know of the partition and, in all eventualities, within ten years from the death of the deceased.

**Art. 918. - Rule to be Followed.**

- (1) The partition shall be made in conformity with the provisions made by the deceased.
- (2) Failing such provisions, it shall be made in accordance with the provision of the following Articles.

**Art. 919. - Valuation of Property. - 1. Principle.**

- (1) The property placed in the shares of the heirs shall be valued on the day when the partition is effected.
- (2) The valuation of the property shall be made by the heirs themselves.
- (3) Failing agreement between them, the valuation shall be made by arbitrators selected by them or, if they do not agree on the appointment of such arbitrators, by arbitrators appointed by the Court.

**Art. 920. - 2. Appraisement by Expert.**

- (1) In the case of an valuation of immovables, the report of the experts shall show the bases for the appraisement.
- (2) It shall state whether the thing appraised can be divided conveniently and in which manner.
- (3) It shall, in cases of partition, establish each of the shares which can be formed therefrom and their value.



**Art. 921. - Formation of Shares.**

- (1) The shares shall be formed by the person chosen by agreement of the heirs between themselves.
- (2) Failing agreement, the shares shall be formed by an expert appointed by the Court.

**Art. 922. - Rule of Partition in Kind.**

- (1) As a rule, a partition shall be made in kind, each of the heirs receiving some of the property of the succession.
- (2) The inequality of the shares in kind shall be set off by the payment of sums of money.

**Art. 923. - How Shares Are Made up.**

- (1) Without prejudice to the provisions in the following Articles, the heirs shall receive, as far as possible, shares made up in the same manner.
- (2) The utmost care shall be taken to give to each of the heirs the things which are most useful to him.

**Art. 924. - Debts of the Heirs.**

- (1) Where one of the heirs is indebted towards the succession, his debt shall be placed in his share, irrespective of his solvency.
- (2) If a debt is subject to a term, its cash value at the time of partition is its imputed value.
- (3) The preceding sub-Article shall not apply to debts under a suspensive condition which has not yet been fulfilled.

**Art. 925. - Property Which is Difficult to Divide. - 1. Principle.**

If there is in the succession a thing which cannot be divided without serious inconvenience, and if the heirs do not agree as to who among them shall have that thing in his share, the thing shall be sold and the price divided.

**Art. 926. - 2. Sale by Auction.**

- (1) The sale shall be made by auction where one of the heirs so require.
- (2) Failing agreement between the co-heirs, outsiders shall be admitted to such sale by auction.

**Art. 927. - Family Objects.**

- (1) Family papers and objects which have a sentimental value may not be sold where any one of the heirs objects to the sale.
- (2) Failing agreement between the co-heirs, the Court shall, where appropriate, decide whether such objects shall be sold or allotted to one of the co-heirs.
- (3) In the latter case, it shall give such directives as are required to ensure that such objects remain in the family.

**Art. 928. - Nature of Rights to be Divided.**

- (1) The provisions of this Chapter shall apply without there being need to make a distinction as to whether the deceased was the owner or the lessee or former tenant of the property forming part of the succession or whether he had any other right on such property.
- (2) For the purpose of putting such provisions into effect, it is sufficient that, in the circumstances of the particular case, they can be put into effect.

**Art. 929. - Keeping Community between Several Co-Heirs.**

- (1) The provisions of this Chapter which give rights to an heir may be invoked by several heirs if the latter have agreed to exercise such rights conjointly.
- (2) No property may be allotted to several heirs conjointly, unless such heirs have given their explicit consent to such conjoint allotment.

## **Chapter 4. - Relations between the Co-Partitioners.**

### **Section 1. - Warranty of Co-Partitioners**

#### **Art. 930. - Reference.**

- (1) In respect of the corporeal things placed in their shares, the heirs owe to each other the warranties which a seller owes to a buyer.
- (2) In respect of rights and debts placed in their shares, they owe to each other the warranty provided for in regard to the case of an assignment of a claim by onerous title.

#### **Art. 931. - Amount of Indemnity.**

The amount of indemnity due shall be fixed according to the value of the thing at the time of the partition.

#### **Art. 932. - By Whom Indemnity is Due.**

- (1) Indemnity shall be due by each of the co-heirs in proportion to the share of the succession which he has received.
- (2) If any one of the co-heirs is insolvent, the part due by him shall be divided between the heirs in whose favor the warranty operates and all the other heirs who are solvent, in proportion to the share of the succession which each has received.

#### **Art. 933. - Right to Have Securities.**

A co-heir to whom a sum of money is due of the co-heirs to set off an inequality in the value of shares or who has received in his share a claim which might not be recovered may require from the moment of the partition that securities be given to him to guarantee his rights.

#### **Art. 934. - No Warranty.**

- (1) Warranty shall not be due where the dispossession or defect complained of by the co-partitioner is due to his fault or derives from a cause subsequent to the partition.

- (2) Nor shall it be due where in the act of partition it has been expressly agreed in regard to certain property that such property has been placed in the share of one of the heirs without warranty.

## **Section 2. - Nullity of Partition**

### **Art. 935. - Causes of Annulment.**

Without prejudice to the provisions in the following Articles, a partition may be annulled in the same circumstances as other contracts. If annulment is claimed, the Court may, at the request of an heir, also make a rectification of the partition.

### **Art. 936. - Property Omitted.**

- (1) If, after the partition, some other property which forms part of the succession is discovered, a supplementary partition may be made in relation to such property.
- (2) The partition previously made shall not be thereby affected.

### **Art. 937. - Concealment of Property.**

Where the property newly discovered was in the possession of one of the heirs who, in bad faith, had concealed the existence thereof from his co-heirs, such heir shall be deprived of his portion of the property so concealed.

### **Art. 938. - Rectification of Partition. - 1. Case in Which it Takes Place.**

- (1) A rectification of a partition shall be made on the application of any of the persons entitled thereto where, by reason of an erroneous valuation of certain property, such person has received in all less than three-fourth parts of what he had a right to.
- (2) A rectification of a partition may also be made where a gift subject to collation has not been declared by the person who was bound to collate it in favor of his co-heirs.

**Art. 939. - 2. Time.**

The right to apply for the rectification of a partition shall be barred if not exercised within one year after the reason to correct the partition became known to the applicant, and within three years after the partition has been made.

**Art. 940. - 3. Effects.**

- (1) Where the Court allows rectification of a partition, it shall fix the amount of indemnity due to the applicant, the person by whom and the conditions on which such indemnity shall be paid.
- (2) Where a partition is corrected in consequence of a gift subject to collation not having been declared in the partition as corrected, the co-heir who has received such gift shall be deprived of a value equal to that which he was bound to collate.
- (3) The Court may waive the application of sub-Article (2) where the co-heir proves his good faith.

**Art. 941. - Payment of Indemnities.**

- (1) The indemnities due shall in all cases be fixed in money.
- (2) The payment of such indemnities may be requested only from the co-partitioners of the person making the request, or from their heirs or legatees.

**Art. 942. - Actio Pauliana.**

The creditors of one of the co-heirs may only impugn a partition as having been made in fraud of their rights where such partition was made without them notwithstanding an opposition made by them.

## **Chapter 5. - Rights of Creditors after the Partition**

### **Art. 943. - Division of Claim.**

- (1) After partition the creditor has to divide his claim among the heirs, in proportion to the value of the share received by each, unless the debt due to him is indivisible.
- (2) He may, however, avail himself of agreements made in the partition whereby a larger part or the whole debt is charged to one or more heirs. By accepting such agreement, he becomes a party to it.

### **Art. 944. - Creditors' Right to Object to Partition or to the Merger of Property.**

- (1) Creditors of the inheritance have the right to object to a partition. In case a partition is made after such an objection has been made, the creditor who objected may still take recourse for his whole claim on property that belonged to the inheritance and is allotted to an heir.
- (2) In case there is only one heir, the right to object to a partition must be considered to be directed against the merger of property of the inheritance and other property of that heir. The inheritance shall be considered to be a distinct patrimony as long as the creditor has not been satisfied.

### **Art. 945. - Insolvency of One of the Co-Heirs.**

In case of insolvency of any one of the co-heirs, his portion of the debt shall be divided pro rata among all the others.

### **Art. 946. - Assimilation of Legatees to Creditors.**

The legatees by singular title shall be assimilated to creditors of the succession as regards the applicability of Article 945.

### **Art. 947. - Relations between the Heirs.**

- (1) An heir who, after the partition, has had to pay a debt of the succession, shall have recourse against his co-heirs where

he has paid more than the portion which should finally remain to his charge.

- (2) With regard to such recourse, the rules laid down in the Title of this Code relating to Contracts in General shall apply in so far as they relate to suretyship.

## **TITLE IV - CONVENTIONS RELATING TO AN INHERITANCE**

### **Chapter 1. - Pacts on Future Successions**

#### **Art. 948. - Prohibition of Pacts on Future Successions**

Any contract or unilateral undertaking relating to the succession of a person who is still alive shall be of no effect unless it is expressly authorized by law.

#### **Art. 949. - Acceptance or Renunciation of a Future Succession.**

- (1) It is not lawful to accept or renounce a succession in advance, or to assign in advance one's eventual rights to a succession.
- (2) The stipulations referred to in sub-Article (1) shall be of no effect notwithstanding that the person whose succession is concerned has agreed thereto.

#### **Art. 950. - Institution by Contract.**

No person may bind himself by contract to leave his succession or to bequeath a legacy to a person contracting with him or to a third person.

### **Chapter 2. - Partitions Made by Gifts**

#### **Art. 951. - Principle.**

The father and the mother and the other ascendants may make a distribution and partition of their property among their children and descendants.

#### **Art. 952. - Forms.**

A partition made by gift shall be made according to the forms prescribed by the law for gifts.

#### **Art. 953. - Subject-Matter.**

It may have for its subject-matter only the property which belongs to the ascendant at the moment when it takes place.



**Art. 954. - Omitted Property.**

Where part only of the property which the ascendant leaves on the day of his death has been included in the partition made by gift, the property which has not been included shall be divided in conformity with the law.

**Art. 955. - Omitted Children. - 1. Nullity of the Gift.**

Where any one of the children of the donor has been omitted in the partition made by gift or where a child is born to the donor after the day of such gift, the nullity of the partition made by gift may be demanded at the time of the death of the donor by the child who has been omitted or by his representatives.

**Art. 956. - 2. Exception.**

- (1) Nullity may not be demanded where the deceased has left a valid will through which the omitted child is validly disinherited.
- (2) In such case, any eventual claim of the disinherited child or his representatives against the succession shall not be affected.
- (3) Nullity may not be applied for in the case mentioned in Article 955 where the deceased has left sufficient property to be allotted to the omitted child besides the property which has formed the subject matter of the partition made by gift.

**Art. 957. - Lesion.**

- (1) Unless otherwise provided in the act of the partition made by gift, the rescission of such partition made by gift may be applied for where one of the descendants has suffered lesion of more than one-fourth part.
- (2) For the purpose of establishing whether there is a lesion, the property should be valued according to its value on the day of the partition made by gift.
- (3) An action of rescission shall be barred if not brought within two years from the death of the ascendant who has made the gift and ten years at most from the date of the partition made by gift.

## **BOOK IV - PROPERTY**

### **TITLE I - KINDS OF PROPERTY AND ITS APPROPRIATION**

#### **Chapter 1. - Kinds of Property**

##### **Art. 958. - Division of Property.**

All corporeal property is movable or immovable. Any property that is not qualified by law as movable or immovable, is movable.

##### **Art. 959. - Movables.**

Things which have a material existence and can move themselves or be moved by an extrinsic force without losing their individual character are movables.

##### **Art. 960. - Claims and Securities.**

Unless otherwise provided by law, claims, as well as incorporeal property embodied in securities to bearer and order, shall be deemed to be movables.

##### **Art. 961. - Natural Forces.**

Unless otherwise provided by law, natural forces of an economic value, such as electricity, shall similarly be deemed to be movables where they have been mastered by man and put to his use.

##### **Art. 962. - Immovables.**

Land, unextracted minerals, plants attached to land, buildings and works durably united with land, either directly or through incorporation with other buildings or works, are immovables.

##### **Art. 963. - Integral Parts of a Thing. - 1. Principle.**

Unless otherwise provided, rights on, or dealings relating to a thing shall apply to all integral parts thereof.

**Art. 964. - 2. Definition.**

- (1) Anything which by accepted practice is considered as a constituent element of a thing forms an integral part thereof.
- (2) Similarly anything which is materially united to a thing and cannot be detached therefrom without destroying or substantially damaging such thing shall be deemed to be an integral part thereof.
- (3) No integral part shall lose its character of integral part when it is temporarily detached from the thing to which it is destined.

**Art. 965. - 3. Trees and Crops.**

- (1) Trees and crops shall be an integral part of the land until they are separated therefrom.
- (2) They shall however be deemed to be distinct movable things where they are subject to contracts made for their separation from the land or implying such separation.

**Art. 966. - 4. Rights of Third Parties.**

- (1) A thing which becomes an integral part of a movable or immovable shall cease to constitute a distinct thing.
- (2) All the rights which third parties previously had on such thing shall be extinguished.
- (3) Nothing in this provision shall affect the right of such third parties to make claims based on liability for damages or unlawful enrichment.

## **Chapter 2. - De Facto Relationships Concerning Property**

### **Section 1. - Possession**

#### **Paragraph 1. - General Provisions**

##### **Art. 967. - Definition.**

- (1) Possession consists in the actual control which a person exercises over a property.
- (2) Possession is acquired by taking possession, by transfer or by succession.

##### **Art. 968. - Direct or Indirect Possession.**

The possessor may exercise his control over the property directly or through a third party who holds such property.

##### **Art. 969. - Loss of Possession.**

A possessor of property loses possession when it is evident that he abandons the property or when another acquires possession of it.

##### **Art. 970. - Temporary Hindrance.**

The possessor shall not lose his rights where he is temporarily interrupted or prevented from exercising control over the property.

##### **Art. 971. - Transfer of Possession**

- (1) A possessor transfers his possession by enabling the acquirer to exercise such control over the property as he himself was able to exercise over it.
- (2) Any transfer of possession made by virtue of a contract shall be effective at the time when the thing is delivered.

##### **Art. 972. - Documents Representing the Property.**

- (1) Possession may be transferred to a new possessor by the delivery of the documents representing the property and enabling him to dispose thereof.

- (2) Where a dispute arises between the holder of the documents and the person who has the actual possession of the property, the latter shall be preferred unless his bad faith can be proved.

**Art. 973. - Constructive Possession.**

- (1) A bilateral declaration without material acts is sufficient for the transfer of possession:
- (a) where the transferor possesses the property and henceforth holds it for the acquirer by virtue of a stipulation made at the time of delivery;
  - (b) where the acquirer was holder of the property for the transferor; and
  - (c) where a third party held the property for the transferor and holds it for the recipient after the transfer. In this event possession does not pass until the third party has acknowledged the transfer or has been notified of it by the transferor or acquirer.
- (2) Nothing in this Article shall affect the rights of the creditors of the person exercising actual control over the property in the event of his bankruptcy, unless they knew or should have known that this person was not the owner of the property.

**Art. 974. - Secret or Dubious Possession.**

- (1) Secret or dubious possession shall give rise to no right.
- (2) Possession is secret where he who exercises actual control over the property conceals his status as possessor in circumstances which justify the assumption that he has no right in respect thereof.
- (3) Possession is dubious where in the circumstances it is doubtful whether it belongs to him who alleges himself to be the possessor or whether he holds the property on behalf of another person.

**Art. 975. - Change of Title.**

- (1) Unless the contrary is proved, he who began to possess on behalf of another person shall be regarded as a mere holder.
- (2) Proof of the contrary may be adduced by all means.
- (3) It shall not result from a mere change in the intention of the holder.

**Art. 976. - Use of Force.**

- (1) The possessor and the holder may use force to repel any act of usurpation or interference.
- (2) Where the property has been taken away from him either by violence or secretly, he may take it back forthwith, either by expelling the usurper or by seizing the property from the hands of a usurper caught in the act or when running away.
- (3) He shall refrain from any act of violence which is not justified in the circumstances.

**Art. 977. - Legal Action.**

- (1) The possessor or holder who is deprived of his possession or whose possession is interfered with may require the restoration of the property or the cessation of the interference and claim compensation for damages.
- (2) The action shall be barred if it is not brought within one year from the day when he becomes aware of the usurpation or interference.
- (3) The Court shall order the restoration of the property or the cessation of the interference unless the defendant can prove forthwith and conclusively the existence of a right in his favor justifying his conduct.

**Art. 978. - Junction of Possessions.**

- (1) The possessor who is entitled to avail himself of prescriptions shall benefit by the periods of prescription

having run in favor of the former possessor where such former possessor could avail himself of prescription.

- (2) The bare owner may similarly avail himself of the taxes paid by the usufructuary.

## Paragraph 2. - Usucaption and Other Effects of Possession

### *A. - Usucaption*

#### **Art. 979. - Principle.**

- (1) Where he is in good faith, the possessor who has the intention of acting as the holder of a real right over property becomes the owner thereof, under conditions laid down hereafter.
- (2) The good faith possessor with such an intention becomes the owner of a movable property or of a right under document payable to bearer or to order where his possession is uninterrupted for three years.
- (3) The good faith possessor with such an intention becomes the owner of any other property where his possession is uninterrupted for ten years.

#### **Art. 980. - Reference.**

- (1) Those provisions of this Code in the Book on Obligations which relate to the interruption of prescription periods shall apply in matters of usucaption.
- (2) Those provisions which lay down the conditions on which prescription may be raised, enforced or waived shall also apply in matters of usucaption.

#### **Art. 981. - Usucaption of a Succession.**

A person who has taken possession of a succession cannot acquire that succession by usucaption nor the property belonging to it to the detriment of the owner until after the latter's action to claim that succession has been prescribed.

**Art. 982. - Beginning of Usucaption.**

Usucaption begins to run with the commencement of the day following the beginning of the possession:

**Art. 983. - Succeeding to Possession.**

- (1) A person who succeeds to the possession of another by succession through inheritance, fusion of patrimonies by marriage or succession to the patrimony of a legal person which has ceased to exist continues an already running usucaption.
- (2) The same applies to the possessor in good faith who otherwise has acquired possession from another person.

**Art. 984. - Involuntary Loss.**

Involuntary loss of property does not interrupt usucaption, provided that possession is recovered within a year or an action instituted within a year leads to such recovery.

**Art. 985. - Acquisition by Prescription of Right of Action.**

A person who possesses property at the time of the completion of the prescription of the right of action to terminate possession, acquires the property even if his possession was not in good faith.

*B. - Acquisition in Good Faith*

**Art. 986. - Principle.**

- (1) Whosoever in good faith by onerous title enters into a contract to acquire the ownership of a movable thing shall become the owner thereof by virtue of his good faith.
- (2) His rights shall not be affected by the fact that the person with whom he contracted had no valid title.
- (3) Delivery of a movable thing which remains in the hands of the transferor has no effect with respect to a third person who has a prior right *in rem* to the thing, until the time



when the thing has come into the hands of the acquirer, unless the third person has consented to the alienation.

**Art. 987. - Definition and Proof of Good Faith.**

- (1) Whosoever acquires a movable thing shall be deemed to be in good faith unless he knew or ought to have known that he was contracting with a person not entitled to transfer the thing to him.
- (2) The good faith of the acquirer shall be presumed; absence of good faith must be proven.

**Art. 988. - Time When Good Faith Must Exist.**

- (1) Good faith must exist at the time of the entry into possession.
- (2) Discovery by the possessor that he acquired the thing from a person who was not entitled to transfer the ownership thereof shall be of no effect where such discovery occurs after the thing comes into his hands.

**Art. 989. - When Ownership Cannot be Reclaimed.**

- (1) Whosoever voluntarily relinquishes the ownership of a movable thing may not reclaim it from the person who has become owner thereof in good faith.
- (2) He may not raise against him the fact that the person into whose hands he relinquishes his property acted fraudulently.

**Art. 990. - Possibility of Reclaiming Stolen Property.**

- (1) Any person from whom a movable thing was stolen may reclaim it from the person who has become owner thereof in good faith.
- (2) Such claim shall be barred if it is not made within three years from the time when the theft occurred.

**Art. 991. - Indemnity Due to the Possessor.**

Where the person from whom the property is reclaimed acquired it from a tradesman dealing in similar articles, in market overt or at a public auction, he may require the seller to reimburse him with the price paid.

**Art. 992. - Stolen Cultural Objects.**

The possessor of a stolen cultural object shall return it.

**Art. 993. - Compensation.**

- (1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that he exercised due diligence when acquiring the object.
- (2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation.
- (3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.
- (4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which he could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.
- (5) The possessor shall not be in a more favorable position than the person from whom he acquired the cultural object by inheritance or otherwise gratuitously.

**Art. 994. - Currency and Securities to Bearer and Order.**

- (1) Currency or securities to bearer and order may in no case be claimed from a person who acquired them in good faith.
- (2) They may not be claimed either from a person who acquired them from a third party in good faith.

**Section 2. - Vacant Property**

**Paragraph 1. - Things Without an Owner**

**Art. 995. - Principle.**

Whosoever takes possession of a movable thing which has no master acquires ownership of such thing.

**Art. 996. - Animals.**

- (1) Tamed or captured animals shall become things without a master where they escape from the control of their owner and he does not attempt to recapture them within the following month or he ceases for one month to attempt to recapture them.
- (2) The provision of sub-Article (1) shall not apply to animals of the equine or asinine species or cross-breeding thereof nor to camels and animals of the bovine, porcine and caprine species, poultry and pigs.

**Art. 997. - Bees.**

- (1) Bee swarms which have left their hive shall be deemed to be things without a master.
- (2) The person in whose hive they settle down shall become the owner of such swarms by virtue of occupation.
- (3) The former owner may take them back where he chases them and arrives where they have settled immediately afterwards.

Paragraph 2. - Things Lost.

**Art. 998. - Duties of Finder.**

- (1) Whosoever finds and takes control of a movable thing shall comply with the administrative regulations requiring him to report his find.
- (2) Failing such regulations, he shall take all appropriate steps to make his find known and make such investigations as are required in the circumstances with a view to informing the owner of his find.

**Art. 999. - Detention of Object.**

- (1) The finder who has carried out the duties prescribed by Article 998 shall detain in his control the thing found.
- (2) He shall in such case take all reasonable steps for its preservation.

**Art. 1000. - Sale of Object.**

- (1) The finder may sell the object found at a public auction where it is exposed to rapid deterioration or its custody is onerous.
- (2) The proceeds of the sale shall in such a case replace the thing sold.

**Art. 1001. - Recovery of Object by Owner.**

- (1) The owner of the object may require its restitution so long as he has not lost the ownership thereof.
- (2) He shall in such a case refund all expenses incurred by those who have found and kept such object.

**Art. 1002. - Reward to Finder.**

- (1) The Court may, where appropriate, grant to the finder a reward not exceeding one quarter of the value of the object found.

- (2) In deciding whether a reward ought to be granted and in fixing its amount, the Court shall have regard to the financial position of the parties concerned and the chance the owner had of finding the object himself.
- (3) The right to apply for a reward shall be barred where the finder does not exercise it within the year following restitution.

**Art. 1003. - Acquisition of Ownership by Finder.**

- (1) A finder who has complied with the requirements imposed upon him in Article 998 acquires ownership of the thing one year after he reported his find or took the appropriate steps to make his find known or made such investigations as were required in the circumstances, provided that at that time the thing is still under his control.
- (2) The preceding sub-Article does not apply where the owner or another person entitled to receive the thing has presented himself for that purpose to the depositary before the expiry of the applicable term.

**Art. 1004. - Treasure.**

- (1) A treasure shall become the property of the owner of the thing in which it was found.
- (2) The finder is entitled to a reward equal to one half of the value of the treasure.
- (3) Things of which nobody can be shown to be the owner shall be deemed to be treasures where it appears certain, at the time of their discovery, that they have been buried or hidden for not less than fifty years.

**Art. 1005. - Antiques.**

Nothing shall affect the provisions of special laws or regulations relating to archaeological excavations and antiques.

## **TITLE II - OWNERSHIP**

### **Chapter 1. - Rights and Duties of the Owner**

#### **Art. 1006. - Definition.**

- (1) Ownership is the widest right that may be had on property.
- (2) Such right may neither be divided nor restricted except in accordance with the law.

#### **Art. 1007. - Scope of Right.**

- (1) Without prejudice to restrictions prescribed by law and regulation, the owner may use his property and exploit it as he thinks fit.
- (2) He may dispose of his property by onerous title or gratuitously, *inter vivos* or *mortis causa*.

#### **Art. 1008. - Right to Reclaim Property.**

- (1) The owner may claim his property from any person who unlawfully possesses or holds it and may oppose any act of usurpation.
- (2) In opposing acts of usurpation, the owner shall refrain from any act of violence which is not justified in the circumstances.

### **Chapter 2. - Fruits and Accession**

#### **Section 1. - Fruits**

#### **Art. 1009. - Fruits for Possessor in Good Faith.**

- (1) Whosoever owns a thing shall own the natural, civil and industrial fruits thereof.
- (2) Periodical products of a thing and anything which may according to usage be derived from a thing in conformity with its purpose shall be deemed to be fruits.

**Art. 1010. - Increase from Breeding.**

- (1) As regards ownership, increase from breeding shall follow the mother.
- (2) The owner of the mother shall be the owner of the increase.

**Section 2. - Immovable Accession**

**Paragraph 1. - Crops**

**Art. 1011. - Against Will of Landholder.**

- (1) Whosoever sows seeds in land held by another against the clearly expressed will of the landholder may neither till nor reap what he has sown.
- (2) Where the harvest has been reaped the whole crop shall be the property of the landholder.
- (3) The provisions of this Article shall apply where the landholder did not have the possibility to object to the sowing.

**Art. 1012. - Without Objection by Landholder.**

- (1) Whosoever sows seeds in land held by another without the landholder objecting to the sowing may till and reap what he has sown. He shall clear the land after the harvest has been reaped.
- (2) Where the sower acted in the belief that he was the holder of the land or was entitled to sow seeds therein, one quarter of the crop shall devolve upon the sower and three quarter upon the landholder.
- (3) Where the sower knew that he was not the holder of the land or not entitled to sow seeds therein, the whole crop shall be the property of the landholder.

- (4) The provisions of this Article shall apply notwithstanding that the landholder was aware of the sowing and failed to object thereto.

**Art. 1013. - Claim by Landholder.**

- (1) The landholder shall be entitled to the crop or a share therein in accordance with the preceding two Articles regardless of whether the land he holds was previously cultivated or not.
- (2) Where the crop has been sold, given away or consumed, the landholder shall be entitled to the value which the crop or his share therein would have had on the day on which he makes his claim.
- (3) The right of the landholder to claim the crop or a share therein shall be barred if it is not exercised within one year from the reaping of the crop.

**Paragraph 2. - Plantations**

**Art. 1014. - Against Will of Landholder.**

- (1) Whosoever plants trees on land held by another against the clearly expressed will of the landholder shall have no right on such trees.
- (2) He shall not be entitled to any compensation for the enrichment thereby occasioned to the landholder.
- (3) He shall bear the costs incurred *in removing* the trees, where the landholder orders their removal.
- (4) The provisions of this article shall apply where the landholder did not have the possibility to object to the plantation.

**Art. 1015. - With Landholder's Permission.**

- (1) Where the plantation was made with the permission of the landholder, the latter may at any time acquire the full ownership of the trees against payment of compensation



the amount of which shall be fixed by agreement between the parties.

- (2) Failing agreement, the provisions of Article 1016 shall apply.
- (3) If the plantation was made without the landholder objecting to the plantation, the provisions of sub-Articles (2) and (3) of Article 1018 and Art. 1019 shall apply *mutatis mutandis*.

#### Art. 1016. - Compensation.

- (1) The amount of the compensation provided in the preceding Article shall be equal to one half of the value of the profits which are likely to be derived from the trees during a period of ten years, where such trees are normally grown for their products.
- (2) It shall be equal to one half of the value which the trees are likely to have after a period of ten years, where such trees are normally not grown for their products.
- (3) The period of ten years specified in sub-Articles (1) and (2) shall run from the day on which the landholder expressed his intention to terminate the co-ownership.

#### Paragraph 3. - Buildings

#### **Art. 1017. - Against Will of Landholder.**

- (1) Whosoever has erected a building on land which is held by another against the clearly expressed will of the landholder shall have no right on such building.
- (2) The landholder may at his option evict the builder or order him to take the building down without compensation in either case.
- (3) The provisions of this Article shall apply where the landholder did not have the possibility to object to the building.

**Art. 1018. - Without Objection by Landholder.**

- (1) Whosoever has erected a building on land which is held by another without the landholder objecting to the building shall be the owner of such building.
- (2) The landholder may evict the builder against payment of compensation the amount of which shall be fixed by agreement between the parties or, failing agreement, in accordance with the provisions of Article 1019. The builder may at any time take the building down at his own expense and clear the land.
- (3) The provisions of this Article shall not apply unless the landholder was aware of the building and failed to object thereto.

**Art. 1019. - Compensation.**

- (1) The amount of the compensation due to the builder in the case mentioned in Article 1018 (2) shall be fixed in accordance with the provisions of this Code governing Arbitration.
- (2) Such amount shall be reduced by three-quarters where the builder knew or should have known that he was not the holder of the land or was not entitled to erect a building thereon.

**Section 3. - Movable Accession**

**Art. 1020. - Accession.**

- (1) The ownership of a movable thing which becomes a component part of another movable thing, which itself is to be regarded as the principal thing, passes to the owner of the principal thing.
- (2) A thing is deemed to be a principal thing where its value considerably exceeds that of the other thing, or where according to common opinion it is considered as such.
- (3) A landholder who makes buildings, plantations or works with material the property of another shall become owner of such material.

- (4) He shall refund the value of the material and may be ordered to pay damages, where appropriate.

**Art. 1021. - Specification**

- (1) Where a person has worked with or transformed a substance which did not belong to him, the new article shall become the property of the worker where the labor supplied is of greater value than that of the substance.
- (2) Where the worker did not act in good faith, the Court may allot the new thing to the owner of the substance even though the value of the labor supplied is greater.
- (3) Nothing shall affect the provisions of the Title of this Code relating to Non-contractual obligations.

**Art. 1022. - Merger and Embodiment.**

- (1) Where things belonging to several owners are mixed together or embodied in such a manner that they cannot be separated without appreciable deterioration or only at the cost of excessive labor or expenses, the parties concerned shall become co-owners of the new thing pro rata to the value of its component parts prior to the mixture or embodiment.
- (2) Where two things are mixed together or embodied but one of them must be regarded as an accessory to the other, the new thing shall belong to the owner of the principal thing.
- (3) Nothing shall affect the provisions of the Title of this Code relating to Non-contractual obligations.

### **Chapter 3. - Special Rules Regarding Immovable Property**

#### **Art. 1023. - Fences.**

A holder may fence the land he holds according to his wishes, unless local authorities have imposed limitations with regard to shape, kind and height.

#### **Art. 1024. - Boundary Marks.**

Where the boundaries of parcels of land are uncertain, each landholder shall, if so required by his neighbor, assist in ascertaining such boundaries.

#### **Art. 1025. - Holding Under the Land**

Holding of land shall extend below the surface of the land to the extent necessary for the exploitation of the land.

#### **Art. 1026. - Excavations or Works Underground.**

A holder who makes excavations or works below the surface of the land he holds shall not shake his neighbor's land, expose it to damage or endanger the solidity of the works thereon.

#### **Art. 1027. - Holding Above the Land.**

Holding of land shall extend above the surface of the land to the extent necessary for the exploitation of the land.

#### **Art. 1028. - Branches and Roots.**

- (1) A holder of a land which is encumbered by branches or roots springing from adjoining land may apply to the Court to order his neighbor to cut such branches or roots within thirty days.
- (2) The holder of a land may, without having to make a request, cut from the boundary all roots rising on the land he holds.

#### **Art. 1029. - Buildings and Plantations.**

A holder may make on the land he holds such buildings or plantations as he thinks fit.

**Art. 1030. - Works Above or Below Land.**

- (1) Without prejudice to provisions of this Code relating to Co-ownership and to immovable accessions, buildings and other works constructed above or below a parcel of land or permanently united therewith may have a distinct holder.
- (2) The rights of such holder shall be subject to the provisions relating to servitudes.

**Art. 1031. - Trespass**

A holder may prohibit third parties from entering on the land he holds.

**Art. 1032. - Trespass Necessary. - 1. *Imminent Damage or Danger.***

- (1) Where a person cannot protect himself or another from an imminent damage or actual danger except by entering on land held by somebody else, such entry shall not constitute trespass and the holder is bound to permit such entry.
- (2) The holder may claim compensation for any damage thereby caused.

**Art. 1033. - 2. *Repair of Wall or Building.***

- (1) Access to land shall likewise be permitted by the holder where it is necessary for the purpose of repairing a wall or building set up on adjoining land.
- (2) The holder may claim compensation for any damage thereby caused.

**Art. 1034. - 3. *Lost Things or Animals.***

- (1) Where things have been carried away or animals such as cattle, bee swarms or poultry have strayed on land held by somebody else by the operation of a natural force or in consequence of a fortuitous event, the holder of the land shall allow the interested person to enter on the land he holds for purposes of search and removal.

- (2) The holder may claim compensation for any damage thereby caused and shall have a right to detain the lost thing or animal.
- (3) The holder may prohibit access where he himself immediately searches the lost thing or animal and returns it to the interested person.

**Art. 1035. - Pipes.**

- (1) A holder shall, against full payment in advance of compensation for the damage thereby caused, allow the installation on the land he holds of water, gas or electrical lines or similar works to the benefit of other lands.
- (2) The installation shall be made with minimum disturbance to the land encumbered.
- (3) The holder may at any time require that the installation be removed at his own expense and placed on some other part of the land.

**Art. 1036. - Right of Way.**

- (1) A holder of a land which constitutes an enclave or whose access to public ways is not sufficient to enable him to exploit the land he holds may demand right of way from his neighbor against payment of compensation proportionate to the damage that may be caused thereby.
- (2) Right of way shall be demanded from the neighbor from whom it is the most reasonable to demand it. For this purpose, regard shall be paid to the position of the lands, the access thereto, the exigencies of the enclosed land and the inconvenience to the encumbered land.
- (3) Where the enclave arises from the division of land by sale, exchange, partition or any other contract, right of way shall be demanded from the original holder.
- (4) The beneficiary of a right of way shall maintain such right of way and shall cause the least damage possible to the land over which such right of way passes.

- (5) The right of way, no matter how long it has existed, ceases to exist once it is no longer needed.

**Art. 1037. - Abuse.**

- (1) The holder or owner of a house shall not cause nuisance or damage to his neighbor. He shall not cause smoke, soot, unpleasant smells, noise or vibrations in excess of good neighborly behavior, taking into account local custom, the position of the lands and the nature thereof.
- (2) Without prejudice to any claim for damages, whosoever has suffered damage or is threatened with damage by reason of another holder or owner abusing his rights may require such holder or owner to restore the former state of affairs or to take measures to prevent the occurrence of damage.

**Art. 1038. - Restrictions Binding.**

- (1) The restrictions on the right of holdership or ownership in this Section shall apply without entry in the register of immovable property.
- (2) They may not be waived nor altered by agreement between the parties.

**Chapter 4. - Water**

**Section 1. - General Provisions**

**Art. 1039. - Use by Community.**

- (1) The community shall have priority in the usage of all running and still water.
- (2) Such water shall be controlled and protected by the competent authority.

**Art. 1040. - Appropriation of Water.**

Water shall be private property only where it is collected in a container basin or cistern, made by the hand of man, out of which it does not flow naturally.

### **Art. 1041. - Legal Provisions Regarding Water.**

- (1) The conditions on which water may be appropriated or used and the rights of use or servitudes to which it may be subject shall be as laid down in this Title.
- (2) Nothing shall affect the provisions of special legislation relating to the collective exploitation of irrigation or drainage areas.
- (3) Nothing shall affect the provisions of special laws and administrative regulations, whether of general or local application.

### **Art. 1042. - Fishing and Navigation.**

The right to fish shall be subject to the provisions of special laws, as shall the right to sail on rivers and lakes.

### **Art. 1043. - Power of the Court.**

- (1) In deciding on a dispute arising between two persons to whom water may be of use, the Court shall reconcile the conflicting interests with the respect due to holdership or ownership.
- (2) Unless otherwise provided by law, any infringement of rights of holdership or ownership shall give rise to compensation.

### **Section 2. - Domestic Use**

#### **Art. 1044. - Right of Holder.**

A landholder may use the water on, below, running through or bordering the land he holds for his personal use, that of the persons living with him and for watering his cattle.

#### **Art. 1045. - Right of Neighbors.**

A landholder who has water in excess of what he requires for domestic purposes shall give his neighbors the water indispensable for



their personal use, for that of the persons living with them and for watering their cattle.

**Art. 1046. - Right of Neighbors How Exercised.**

- (1) The landholder may regulate in a reasonable manner the exercise of the right granted to his neighbors under the preceding Article.
- (2) He may require a fair compensation where his rights as holder are notably reduced or impaired by the neighbors exercising their right.

**Art. 1047. - Prohibited Works.**

- (1) Whosoever is entitled to use a well, spring or other water, whether running or still, may object to the construction of any work such as a sewer or latrine, capable of polluting the water used by him.
- (2) He may require that any such work done in disregard of his rights be destroyed.

**Section 3. - Irrigation**

**Art. 1048. - Right of Holder.**

- (1) A holder of a land which is crossed or bordered by running water may use such water for irrigating the land he holds.
- (2) Such right may not be exercised to the detriment of those who, on the land or downstream, use such water for their personal use, for that of the persons living with them and for watering their cattle.

**Art. 1049. - Priority of Domestic Use.**

- (1) Where the use of water for purposes of irrigation is or may be detrimental to persons downstream who use such water for purposes other than domestic, the said persons may, where they show the existence of vested rights to their benefit, object to the water being used for irrigation.

- (2) There shall be deemed to be vested rights on the use of water for purposes other than domestic where apparent or notorious works or installations have been done on the ground with a view to using the water for such purposes.

**Art. 1050. - Penalty.**

Where the existence of vested rights is proved, the Court shall order the cessation or putting out of use of the works or installations done on the land upstream to the extent that they are incompatible with such vested rights.

**Art. 1051. - Compensation.**

The holder of the land upstream shall be entitled to compensation where the exploitation of the land he holds is impaired or rendered impossible by the prohibition from using water crossing or bordering the land he holds.

**Art. 1052. - Amount of Compensation.**

- (1) The Court shall fix in accordance with equity the amount of compensation due under the preceding Article.
- (2) In making its decision, the Court shall have regard to all the circumstances of the case and in particular to the decrease in the value of the land which the prohibition from using water entails and to the profit derived from the use of the water by the persons downstream.
- (3) Compensation shall in all cases include the value of the works or installations the use of which is prohibited by the Court and which have been done in good faith without the persons downstream objecting thereto.

**Art. 1053. - Court Having Jurisdiction.**

Any dispute as mentioned in the preceding Articles shall be settled by the Court in whose jurisdiction the immovable on which works or installations are contemplated or have been done, is situated.

## **Section 4. - Industrial Use**

### **Art. 1054. - Right of Holder.**

- (1) The holder of land which is crossed or bordered by water may use such water for industrial or commercial undertakings such as water-mills, wash-houses or bathing establishments.
- (2) He shall ensure that the water flowing from the land he holds be unsoiled and fit for the uses to which it may normally be put.

### **Art. 1055. - Restriction.**

- (1) Where the holder prevents the flowing of water from the land he holds or the water flows soiled or unfit for certain uses, the provisions of the preceding Articles regarding the use of water for purposes of irrigation shall apply.
- (2) Without prejudice to any administrative recourse, the holder of land shall not be entitled to compensation from the landholders downstream as regards works or installations the use of which is prohibited by the Court.

### **Art. 1056. - Hydraulic Power.**

Only those undertakings which have been granted a concession by the competent authority may do work on rivers with a view to distributing, carrying or selling hydraulic power.

## **Section 5. - Rainwater and Drainage**

### **Art. 1057. - Rainwater.**

- (1) The owner of a building shall build the roof so that rainwater falls on his and not on his neighbor's land.
- (2) He shall make such gutters or pipes as may be necessary to bring the water to public sewers.

**Art. 1058. - Duties of Landholders Below.**

- (1) The holder of land on a low level shall accept the flow of water from land on a higher level where such water flows naturally and not artificially.
- (2) The holder of the land below may not set up a dike to prevent such flow.
- (3) The holder of the land above may not increase the responsibilities of the landholder below.

**Art. 1059. - Drainage.**

- (1) Where the holder of the land above constructs drainage works on the land he holds, the landholders below shall accept without compensation the water flowing therefrom.
- (2) The holder of the land above shall construct such works as are required to reduce to a minimum the damage to be occasioned to landholders below.
- (3) The landholders below may require that the water be evacuated by means of underground pipes where, failing such pipes, the water would run on land on which buildings are erected or on gardens or yards pertaining to such buildings.

**Art. 1060. - New Springs.**

The provisions of the preceding Article shall apply where a holder creates springs on the land he holds by boring or underground works.

**Section 6. - Taking of Water**

**Art. 1061. - Right of Holder.**

- (1) A holder who requires water bordering the land he holds for irrigation or other purposes may build on the neighboring riparian's land the works necessary for the taking of water.
- (2) He shall have access to such neighboring land for the purpose of constructing or maintaining such works.

**Art. 1062. - Compensation.**

- (1) The neighboring riparian shall be entitled to compensation where the works constructed on the land he holds deprive him permanently of a part of the land he holds.
- (2) The neighboring riparian shall be entitled to compensation where he is unduly or unreasonably inconvenienced as a neighbor by the size or duration of such works.

**Art. 1063. - Use of Works.**

- (1) The holder of a land on which land works are to be constructed shall bear one half of the costs of building and maintenance where such works are also for his own benefit.
- (2) Where the holder of land wishes to use such works to his own benefit during construction or after completion, he shall bear the costs arising from any changes in the works required to adapt them for his use.

**Section 7. - Aqueduct and Underground Water**

**Art. 1064. - Right of Holders.**

A holder who wishes to make use for domestic or irrigation or other purposes of water which does not cross or border the land he holds may apply to the Court to be allowed to bring such water through land held by other persons against payment in advance of a fair compensation.

**Art. 1065. - Laying Out of Pipes.**

- (1) Regard shall be had to all the circumstances of the case for the purpose of laying out the pipes and determining their siting and nature.
- (2) Pipes shall be installed so as to reduce to a minimum any damage to the holders of a land which they cross.
- (3) Pipes shall as far as possible avoid land on which buildings are erected or gardens or yards pertaining to such buildings.

**Art. 1066. - Compensation.**

- (1) The holders of a land which is crossed by pipes shall be entitled to compensation.
- (2) In fixing the amount of compensation, regard shall be had to the value of the land whose holders are permanently deprived.
- (3) Regard shall also be had to the inconvenience caused to a holder by reason of the installation and maintenance of the pipes.

**Art. 1067. - Underground Water.**

No person may without permission construct on the land he holds a drilling exceeding one hundred meters in depth.

**Chapter 5. - Proof of Ownership**

**Art. 1068. - Presumption of Ownership.**

- (1) The possessor of a movable thing is presumed to be the owner.
- (2) Whosoever disputes such ownership shall have to show that the presumption laid down in sub-Article (1) is not justified in the circumstances.

**Art. 1069. - Title Deeds.**

- (1) The issuance, by the administrative authorities of a title deed to the effect that a given immovable property belongs to a given person shall raise a presumption that such person is the owner of such property.
- (2) The fees to be charged on delivery, to cover the expenses of the administrative authorities and to meet the liability of such authorities arising from delivery, shall be prescribed by regulations.

### **Art. 1070. - Proof to the Contrary.**

The presumption laid down in Article 1069 shall be rebutted where it is shown that:

- (a) the title deed was not issued in accordance with the law or was issued by an authority having no jurisdiction;
- (b) the title deed was drawn up on the basis of an invalid act; or
- (c) the plaintiff acquired the ownership of the immovable property at a date subsequent to the date on which the title deed was drawn up.

### **Art. 1071. - Duties of Administrative Authorities.**

- (1) Prior to issuing to a person a title deed relating to an immovable property, the administrative authorities shall require that the title deed previously issued to another person in relation to the same immovable property be returned to them so that it may be cancelled.
- (2) Where it is alleged that such previous title deed has been lost or destroyed, the administrative authorities shall require the person applying for a new title deed to produce sufficient security to cover such damage as may be caused to third parties by reason of the previous title deed not having been cancelled.

### **Art. 1072. - Liability of the State.**

- (1) The State shall be liable for any damage caused to a person who has acquired a right on an immovable property on the basis of a title deed which was not issued in accordance with the law or was issued by an authority having no jurisdiction.
- (2) The State shall be liable for any damage caused to a person who has acquired a right on an immovable property on the basis of a title deed which the administrative authorities failed to cancel.

- (3) Nothing shall affect the right of the State to make a claim against the public officials at fault.

**Art. 1073. - Demarcation of Lands.**

- (1) The boundaries of lands shall be determined in accordance with the cadastral survey plan and the boundary marks found on the land.
- (2) The boundaries appearing in the cadastral survey plan shall prevail where they differ from those pointed out on the land.

**Art. 1074.- Buildings, Plantations and Works.**

- (1) All buildings, plantations and works on land shall be deemed to have been made by the holder at his own expense and to be his property.
- (2) Evidence may be produced to rebut the presumption laid down in sub-Article (1).

**Art. 1075. - Party-Walls.**

The rule regarding ownership of a wall, fence or hedge separating two parcels of land is stated at article 1107 of this Code.

**Art. 1076. - Ditches.**

- (1) A ditch shall not be deemed to be joint property where the embankment is to be found on one side of the ditch only.
- (2) The ditch shall be deemed to be the sole property of the holder of the land on which the embankment is.
- (3) Evidence may be produced to rebut the presumptions laid down in sub-Article (1) and (2).

**Art. 1077. - Water, Gas and Electrical Supply.**

- (1) Water and gas pipes, electrical and other lines shall be deemed to be accessories of the undertaking from which



they originate and to be the property of the holder of such undertaking.

- (2) Evidence may be produced to rebut the presumption laid down in sub-Article (1).

### **Chapter 6. - Transfer of Ownership**

#### **Art. 1078. - Cause of Transfer.**

Ownership may be transferred by virtue of law or in pursuance of juridical acts.

#### **Art. 1079. - Immovable Property.**

- (1) The transfer of ownership of an immovable by contract or by will requires an entry in the register of immovable property.
- (2) The registration of immovables shall be regulated by special legislation.

#### **Art. 1080. - Movable Things.**

- (1) The ownership of a movable thing shall be transferred to the purchaser or legatee at the time of the delivery of the possession.
- (2) Nothing in this Article shall affect the provisions of special laws or regulations relating to special kinds of movable things.

#### **Art. 1081. - Postponement of Transfer of Ownership.**

- (1) Provisions to the effect that ownership shall be transferred at a different time than that fixed in the preceding Articles shall not affect third parties, unless the latter knew or should have known these provisions.
- (2) Provisions mentioned in sub-Article (1) with regard to immovable property are invalid unless they have been given publicity through registration in accordance with the law.

## **Chapter 7. - Extinction of Ownership**

### **Art. 1082. - Loss of Thing.**

Ownership shall be extinguished where the thing to which it extends is destroyed or loses its individual character.

### **Art. 1083. - Acquisition by Third Party.**

Ownership shall be extinguished where it is acquired by, or transferred to, a third party in accordance with law.

### **Art. 1084. - Waiving of Right.**

The ownership of a moveable thing shall be extinguished where the owner expresses in an unequivocal manner his intention to waive his rights as an owner.

## **TITLE III - CO-OWNERSHIP**

### **Chapter 1. - General Provisions**

#### **Art. 1085. - Principle.**

A property may be owned by several persons as co-owners thereof.

#### **Art. 1086. - Co-ownership: How Regulated.**

- (1) Without prejudice to the mandatory provisions of the law, the rights and duties of the co-owners shall be subject to the instrument wherefrom co-ownership originates and to the agreements entered into by the co-owners.
- (2) The following provisions shall apply where no instrument or agreement as mentioned in sub-Article (1) are made or where such instrument or agreements are defective or contrary to law.

#### **Art. 1087. - Equality of Shares.**

The shares of co-owners are equal, unless their juridical relationship produces a different result.

#### **Art. 1088. - Disposal of Share.**

- (1) A co-owner may dispose of or pledge his share, unless the juridical relationship between the co-owners produces a different result.
- (2) Creditors may attach the share of a co-owner and execute against it.

#### **Art. 1089. - Legal Right of Pre-Emption.**

- (1) Co-owners shall have the right of pre-emption.
- (2) The right mentioned in sub-Article (1) shall be exercised in the manner prescribed in the provisions of this Code regarding the right of pre-emption.

**Art. 1090. - Surrender of Share.**

- (1) Where a co-owner surrenders his share in a property commonly owned, such share shall accrue to the other co-owners.
- (2) A co-owner who has surrendered his share shall be liable for the debts which he was liable for prior to surrender.

**Art. 1091. - Use of Property.**

Unless the rules governing the co-ownership provide otherwise, any one of the co-owners is entitled to use co-owned property, provided that this is compatible with the right of the other co-owners.

**Art. 1092. - Increase.**

- (1) The fruits of a property co-owned shall be co-owned.
- (2) Each co-owner may at any time apply for the partition of such fruits.

**Art. 1093. - Administration.**

- (1) Acts for the purpose of ordinary maintenance or preservation of co-owned property and, generally, acts which cannot be postponed may be performed by any one of the co-owners, if necessary independently of the others. Any co-owner has the right to interrupt prescription for the benefit of the co-ownership.
- (2) In all other cases the co-owners manage the property together, unless the rules governing the co-ownership provide otherwise. Management includes all acts which may serve the normal exploitation of the property as well as the acceptance of prestations owed to the co-ownership.
- (3) Except for those acts referred to in the preceding sub-Articles, only the co-owners acting together have the power to perform acts concerning co-owned property.

**Art. 1094. - Costs.**

The co-owners must contribute, in proportion to their shares, to the expenses which result from acts duly performed in the interest of the co-ownership.

**Art. 1095. - Sale and Encumbrance.**

- (1) The competent Court may authorize a co-owner, at his request, to sell co-owned property in order to pay a debt for which the co-ownership is answerable or for other serious reasons. If a co-owner wishes to acquire it upon payment of its estimated value, the aforementioned Court may order that the co-owner for whom such property has a particular value acquires it.
- (2) This Court may authorize a co-owner, at his request, to encumber co-owned property with a right of pledge or hypothec as security for the payment of a debt for which the co-ownership is answerable, whether that debt already exists or must as yet be contracted for the preservation of co-owned property.

**Art. 1096. - Partition.**

- (1) Any co-owner, as well as the holder of a right *in rem* upon a co-ownership share, may at any time demand partition of co-owned property, unless the nature of the co-ownership or the provisions of the following sub-Articles produce a different result.
- (2) Upon the demand of a co-owner, the Court seized of an action for partition may determine that all or certain exigible debts for which the co-ownership is answerable, must be paid before proceeding to the partition.
- (3) If the interests of one or more co-owners which are harmed by an immediate partition are considerably greater than the interests served by the partition, the Court seized of an action for partition may, upon the demand of such a co-owner, exclude proceedings, once or repeatedly, for a maximum of three years on each occasion.

- (4) If no action for partition has been brought, a decision pursuant to sub-Article (2) and (3) may be rendered at the request of any of the co-owners by the Court which would have jurisdiction in an action for partition.
- (5) Those who have the right to demand partition can exclude their power to do so by contract, once or repeatedly, for a maximum of five years on each occasion.

#### **Art. 1097. - Partition Entire Co-Ownership.**

If partition of co-owned property is demanded, any one of the co-owners may demand that all property belonging to the co-ownership and all debts for which the co-ownership is answerable be included in the partition, unless there are serious reasons for a partial partition. Property which must remain undivided for one of the reasons mentioned in the foregoing article is excluded from the partition.

#### **Art. 1098. - Creditor Demands Partition.**

A creditor who has an exigible claim against a co-owner may demand partition of the co-ownership, but not beyond what is necessary for the recovery of his claim.

#### **Art. 1099. - Partition by the Court.**

- (1) To the extent that the co-owners and those whose cooperation is required cannot reach agreement on a partition, the competent Court, upon the demand of any interested party, may order the manner of partition or decides upon the partition itself.
- (2) The following manners of partition may be ordered:
  - (a) attribution of part of the property to each of the co-owners;
  - (b) over-attribution to one or more co-owners against compensation for the excess value; or
  - (c) partition of the net proceeds of the property or part thereof after its sale in the manner determined by the Court.

**Art. 1100. - Provision for Arbitration.**

The act creating the co-ownership or an agreement entered into by the co-owners may provide that any dispute arising between co-owners in relation to the property co-owned shall be settled by one or more arbitrators, in accordance with the provisions of this Code regarding Arbitration.

**Art. 1101. - Replacement.**

Property which is deemed to take the place of co-owned property belongs to the co-ownership.

**Art. 1102. - Accounts.**

Annually, and in any event upon the termination of the management, each of the co-owners may claim the rendering of accounts from the co-owner who has carried out the management for the others.

**Art. 1103. - Acquirer of Share.**

- (1) The acquirer of a co-ownership share or of a right *in rem* pertaining to it must, without delay, notify the remaining co-owners or the person appointed manager of the property by the co-owners or by the Court, of the acquisition.
- (2) A share which has been transferred is acquired subject to the obligation to compensate the co-ownership for what the transferor owed to it. The transferor and the acquirer are solidarily liable for this compensation. The acquirer may avoid this obligation by transferring the share, at his own expense, to the remaining co-owners who are obliged to cooperate in such a transfer.
- (3) The preceding sub-Articles do not apply to attachment of and execution against the totality of shares in co-owned property.

**Art. 1104. - Debt Co-Owner.**

- (1) In a partition, any one of the co-owners may demand that what another co-owner owes to the co-ownership be imputed to his share. Imputation takes place irrespective of

the solvency of the debtor. If a debt is subject to a term; its cash value at the time of partition is its imputed value.

- (2) The preceding sub-Article does not apply to debts under a suspensive condition which has not yet been fulfilled.

#### **Art. 1105. - Annulment of Partition.**

The provisions of the Book of this Code on Successions which relate to the annulment of a partition apply *mutatis mutandis*.

### **Chapter 2. - Party-Wall and Other Related Co-Owned Property**

#### **Art. 1106. - Co-Ownership Arising from a Legal Act.**

- (1) Co-ownership arises where an immovable property is owned in common by the holders of right of use of two or more lands and where it is designated by them for the common benefit of those lands by a written agreement in the register of immovable property where the immovable is situated.
- (2) Common benefit includes among others a common owned garden, shed and parking place.
- (3) Co-ownership which has arisen by virtue of sub-Article (1) is terminated:
  - (a) when the co-ownership ends;
  - (b) when the designation of the property for the common benefit of the lands is terminated by a written agreement referred to in sub-Article (1); or
  - (c) once the benefit of the property has been terminated for each of the lands.
- (4) The fact that the benefit of the property has been terminated for each of the lands can be entered in the register of immovable property.



**Art. 1107. - Co-Ownership *de Jure*.**

- (1) A free standing dividing wall, a fence or a hedge is held in co-ownership if the boundary between two lands belonging to different owners runs along the length under this wall, fence or hedge.
- (2) The dividing wall common to two buildings and works belonging to different owners is also held in co-ownership.

**Art. 1108. - No Severance or Partition.**

- (1) The right to a property which is held in co-ownership in accordance with this Section cannot be severed from the right of use of the lands.
- (2) No action lies for the partition of a property held in co-ownership in accordance with this Section.

**Art. 1109. - Access.**

Co-ownership entails the obligation of each co-owner to give to the other co-owners access to the property held in co-ownership.

**Art. 1110. - Maintenance, Cleaning, Renewal.**

Properties which are held in co-ownership must be maintained, cleaned and, if necessary, renewed at the expense of all co-owners.

**Art. 1111. - Transfer of Share.**

- (1) A co-owner of a property which is held in co-ownership can, even separately from the land he holds, transfer his share in the property to the other co-owners.
- (2) If a co-owner, at his own expense, wants to do so because of future charges for maintenance, cleaning and renewal, the other co-owners must cooperate in the transfer, provided that, if necessary, he grants them a right of servitude so as to allow them to continue to exercise their rights with respect to the property.

- (3) The preceding sub-Articles do not apply to a common wall of two buildings or works nor to a wall, fence or hedge.

**Art. 1112. - Building against Wall.**

- (1) Each co-owner may build against a dividing wall which is held in co-ownership in accordance with this Section and may install, up to half its thickness, beams, ribs, ancrs and other works, provided that he causes no damage to the wall or to the works which the neighbor has rightfully connected to it.
- (2) Except in cases of emergency a co-owner may demand that, before the other co-owner proceeds to install the work, experts determine in which fashion this can take place without damage to the wall or the works which the former co-owner has rightfully installed.

**Art. 1113. - Agreement between Co-Owners.**

The foregoing articles shall apply without prejudice to an agreement between the co-owners about the enjoyment, use and management of the property held in co-ownership.

**Chapter 3. - Apartment Rights**

**Section 1. - General provisions**

**Art. 1114. - Division into Apartment Rights.**

- (1) An owner of a building is entitled to divide into apartment rights, the right which he has in the building, the land belonging to it and their accessories.
- (2) In its turn, an apartment right is susceptible of being divided into apartment rights. An apartment owner is entitled to do so to the extent that the agreement of division does not provide otherwise.
- (3) An apartment right means a share in the property which is involved in the division and includes the right to the exclusive use of certain portions of the building and accessories which, as indicated by their lay-out, are

intended to be used as separate units. The share can also include the right to the exclusive use of certain portions of the land belonging to the building.

- (4) An apartment owner means the holder of an apartment right.
- (5) A building in this Section also means a group of buildings which are involved in a single division.

**Art. 1115. - Division Intended Building:**

An owner is entitled to divide into apartment rights, the right he has in a building which he intends to construct or the lay-out of which he intends to change. The building includes the land belonging to it and accessories to both the land and building. Also in the event of such a division, the apartment rights are created at the time of registration of the agreement of division.

**Art. 1116. - Obligation of Owners.**

Apartment owners have a reciprocal obligation to undertake and maintain the construction and the lay-out of the building and the land belonging to it, in accordance with the relevant provisions of the agreement of division.

**Art. 1117. - Agreement of Division:**

- (1) The division takes place by written agreement intended for that purpose, followed by its entry in the register of immovable property.
- (2) A plan is attached to the minute of the agreement of division which indicates the boundaries of the different portions of the building and land which are intended to be used as separate units and the exclusive use of which, according to the agreement, is included in an apartment right. The plan must comply with the requirements of the law for the purposes of registration.
- (3) In the provisions of this Section, the agreement of division includes the plan, unless the contrary results from the provision.

**Art. 1118. - No Right of Disposal.**

- (1) Although the person who makes the division lacks the right to dispose of registered property involved in it, the division is valid if it is followed by a valid transfer of an apartment right or by the valid establishment of a right *in rem* on an apartment right.
- (2) An invalid division is also deemed valid where an apartment right has been acquired by usucaption.

**Art. 1119. - Contents of Agreement of Division.**

The agreement of division must contain:

- (a) mention of the geographical location of the building;
- (b) an accurate description of the portions of the immovable properties which are intended to be used as separate units as well as mention, for each of those portions, of the apartment right to which the right of use belongs. The description can be made by reference to the plan;
- (c) the cadastral designation of the apartment rights and mention of the apartment owner;
- (d) the by-laws.

**Art. 1120. - Contents of By-Laws and Statutes of Association of Owners.**

- (1) The by-laws must contain:
  - (a) a provision indicating which debts and expenses are borne by the apartment owners;
  - (b) provisions regarding the drafting of an annual revenue and expense account for the preceding year and the contributions to be made by the apartment owners;

- (c) provisions regarding the use, management and maintenance of the portions which are not intended to be used as separate units;
  - (d) a provision indicating who must take out insurance on the building for the benefit of the apartment owners and against which risks; and
  - (e) the foundation of an association of owners the purpose of which it is to look after the common interests of the apartment owners, and the statutes of the association.
- (2) The statutes of the association of owners must contain:
- (a) the name of the association and of the place where it has its principal place of business;
  - (b) the purpose of the association;
  - (c) provisions regarding amounts which the apartment owners owe to the association, and which are payable periodically but at least annually; and
  - (d) the manner of calling the general meeting and the determination of the number of votes which each of the apartment owners may cast in the meeting.
- (3) The by-laws may contain provisions pursuant to which the membership of another association, more fully described in the by-laws, is attached to all or certain apartment rights; to the extent that this membership is in conformity with the statutes of that association.
- (4) The by-laws may contain provisions regarding the use, management and maintenance of the portions which are intended to be used as separate units. Such provisions may determine that the association of owners has the power to deny the use of these portions to an apartment owner, or the person who exercises the latter's rights, for serious reasons, more fully set out in the by-laws.

### **Art. 1121. - Equal Shares, Contributions.**

- (1) The shares which are created by the division into apartment rights are equal, unless the agreement of division has provided for a different ratio.
- (2) The apartment owners must, amongst themselves and vis-à-vis the association of owners, contribute equally to the debts and expenses which they owe pursuant to the law or the by-laws with respect to each apartment right, unless a different ratio is provided for in the by-laws.
- (3) If the apartment owners are jointly liable to creditors for a debt mentioned in the preceding sub-Article, and the prestation owed is divisible, they are each liable for a part according to the ratio referred to in the preceding sub-Articles.
- (4) If the apartment owners are jointly liable for a debt mentioned in sub-Article (2), the association is solidarily liable with them.
- (5) Those persons, who were apartment owners at the time of the creation of a debt of the association, are solidarily liable for that debt with the association and if the prestation is divisible, each for a part according to the ratio referred to in sub-Article (2).

### **Art. 1122. - Hypothec and Attachment.**

- (1) Where, at the time of registration of the agreement of division, all registered property involved in the division is encumbered with a hypothec or attached, this hypothec or attachment will, as of that time, attach itself to each apartment right for the entire debt.
- (2) Where, at the time of registration of the agreement of division, only part of the registered property is encumbered with a hypothec or attached, the power to execute against this part continues to exist in spite of the division; execution terminates the division in respect of that part.

- (3) A servitude or usufruct encumbering the registered property, or part of it, at the time of the registration of the agreement of division, continues to exist without change after that time.

**Art. 1123. - Transfer.**

- (1) An apartment right can be transferred, attributed in a partition, encumbered and executed against as independent registered property.
- (2) Without prejudice to the provisions of the foregoing, property involved in the division cannot be wholly or partially transferred, attributed, encumbered or executed.
- (3) Termination of the division in respect of a part of the registered property involved in the division cannot take place except by modification of the agreement of division.
- (4) Contrary to sub-Article (2), the apartment owners can encumber immovable properties involved in the division with a servitude.

**Art. 1124. - Servitude.**

- (1) To the extent that the agreement of division does not provide otherwise, an apartment owner may, without the cooperation of the other apartment owners, establish a servitude on that portion of the immovable properties which is intended to be used by him as a separate unit, in favor of another portion of those properties or of another immovable property.
- (2) To the extent that the agreement of division does not provide otherwise, an apartment owner may, without the cooperation of the other apartment owners, accept the establishment of a servitude exclusively in favor of a portion of the immovable properties which is intended to be used by him as a separate unit. He may also, without their cooperation, abandon such a servitude.
- (3) The servitudes referred to in this article are extinguished when the right to exclusive use of the portion which is

encumbered with the servitude, or in favor of which the servitude has been stipulated, is terminated.

**Art. 1125. - Alterations.**

- (1) An apartment owner may, without the consent of the other apartment owners, alter a portion intended to be used by him as a separate unit, provided that the alterations do not cause harm to another portion. He becomes sole owner of anything removed on the occasion of a permissible alteration.
- (2) He must without delay notify the association of owners of any alteration. Where the alteration results in a modification of the insurance premium, he and his successors must bear the difference.
- (3) When the value of the property involved in the division proves, upon termination of the division, to have been diminished as a result of an alteration, even though permissible, this fact will be imputed in the division of the co-ownership to the person who has made the alteration or to his successor.
- (4) The by-laws may derogate from this article and may, for the application of sub-Article (2), assimilate modifications in the way of use to alterations.

**Art. 1126. - Use.**

- (1) Without prejudice to the provisions of the foregoing articles, an apartment owner is entitled to use himself, or to give to another person to use, the portion which is intended to be used by him as a separate unit, including the common use to which he is entitled in respect of the portions which are not intended to be used as separate units.
- (2) Provisions in the by-laws regarding use, management and maintenance also apply to the person who acquires the right of use. Other provisions in the by-laws may be declared applicable to him by those by-laws.



- (3) A provision in the by-laws, registered after a contract of lease and hire has been entered into, does not bind the lessee, unless he has consented to it. If he refuses to give his consent or remains silent, the competent Court in whose jurisdiction the building, or the larger part of it, is situated may, upon the request of each apartment owner, decide that the provision in the by-laws will bind the lessee.
- (4) After termination of the division, those who are entitled to the property which was involved in the division must respect a lease, provided that its agreed duration is in accordance with local usage and that the lease does not contain unusual conditions onerous for them.

**Art. 1127. - Authorization by Court.**

- (1) In all cases where an apartment owner needs the cooperation or the consent of one or more other apartment owners, of the association of owners or of its organs in order to perform a certain act in respect of the portions which are not intended to be used as separate units and, in the event of a stipulation as referred to in the foregoing articles, in respect of the portions which are intended to be used as separate units, that cooperation or consent can, upon the request of the person who needs it, be replaced by an authorization of the competent Court in whose jurisdiction the building, or the larger part of it, is situated. The foregoing also applies to cases where the association or its organs need the consent of one or more apartment owners in order to perform such an act. The authorization may be granted if the cooperation or consent is refused without reasonable grounds, or the person who must give it remains silent.
- (2) Where the act involves expenses, the competent Court may also determine, upon the request of an apartment owner or the association of owners, the proportion in which all or certain apartment owners or the association of owners must contribute to the expenses.
- (3) Where the construction of a new work or a new installation is concerned, the competent Court may, upon request, also make rules providing that the apartment owners of all or

certain apartment rights will in the future bear the costs of maintenance of the work or installation, and in which proportion each of them shall bear it.

**Art. 1128. - Transfer of Rights.**

- (1) Unless otherwise provided, transfer or attribution in a partition of an apartment right also includes the rights acquired as apartment owner.
- (2) After transfer or attribution, the acquirer must without delay give written notice to the association of owners of his acquisition.
- (3) The acquirer and the former apartment owner are solidarily liable for the contributions which are owed in respect of the acquired and which have become exigible, or will as yet become exigible in the current or preceding financial year.
- (4) The by-laws may provide for the extent to which either the former owner or the acquirer will be liable for contributions mentioned in the preceding sub-Article. They may also provide that the former apartment owner instead of the acquirer will be bound for certain contributions which become exigible at a later date.

**Art. 1129. - Usufruct.**

- (1) The usufructuary of an apartment right, and not the apartment owner, is liable for the joint debts and the contributions owed to the apartment owners and the association of owners. Upon the termination of the usufruct, however, the usufructuary is entitled to reclaim from the apartment owner the amounts which he has paid, other than those for ordinary charges and repairs.
- (2) The apartment owner who has paid debts or contributions referred to in sub-Article (1) can require the usufructuary to return to him the amounts paid plus interest as of the day of payment, to the extent that these amounts concern ordinary charges and repairs. The usufructuary only owes interest from the day of payment until the termination of

the usufruct with respect to other amounts paid by the apartment owner.

- (3) Unless otherwise provided upon the establishment of the usufruct, the usufructuary exercises, in the association of owners, the right to vote which is attached to an apartment right.
- (4) The foregoing article applies *mutatis mutandis* to the establishment, transfer and termination of the usufruct of an apartment right.

## **Section 2. - The Association of Owners**

### **Art. 1130. - The Association of Owners.**

The association of owners is a legal person, and the subject of rights and duties.

### **Art. 1131. - Attribution of Powers.**

- (1) The meeting of owners possesses all powers in the association except those which have been attributed to other organs by law or by the statutes.
- (2) Notwithstanding any stipulation to the contrary, every apartment owner is a member of the association of owners, and membership is terminated where a member ceases to be an apartment owner.
- (3) Where, at the time of registration of the agreement of division, all apartment rights still belong to a single person or to the same persons, the association does not come into existence until the apartment rights belong to different persons.
- (4) An unanimous decision of all persons entitled to vote, even if not present at a meeting, shall have the same force as a decision of the meeting of owners, provided it was taken with the advance knowledge of the manager.

**Art. 1132. - Management.**

- (1) The association of owners manages the co-ownership except for the portions which are intended to be used as separate units.
- (2) Within the limits of its powers, the association can represent the apartment owners judicially and extra-judicially.
- (3) The association supervises the performance of the obligations which the apartment owners owe one another as a result of the provisions of the law and the by-laws; for that purpose, it can take appropriate action in Court against them. In this context an apartment owner includes the person who derives a right of use from an apartment owner.

**Art. 1133. - Meeting.**

- (1) The manager of the association shall convene all meetings of owners at the place where the building is situated.
- (2) A meeting of owners shall be convened where one fourth of the members or one fourth of the shares so require.
- (3) The manner of convening and time of the meeting shall be fixed by the manager in a reasonable manner.
- (4) If the request as referred to in sub-Article (2) has not been complied with within fourteen days and, unless the statutes prescribe another manner of convening the meeting of owners, the apartment owners may then proceed to convene the meeting themselves in the manner in which the meeting is convened by the manager.

**Art. 1134. - Decisions.**

- (1) The decisions shall be taken by a majority vote.
- (2) They shall be served by the manager on the apartment owners who were not present or represented at the meeting.

**Art. 1135. - Use of Common Portions.**

- (1) In the absence of provisions to that effect in the by-laws, the meeting of owners has the power to make rules for the use of the portions which are not intended to be used as separate units.
- (2) Every apartment owner can ask a lessee or other user to declare whether he is willing to comply with a rule as mentioned in the preceding sub-Article. Where the user is not willing to do so, or remains silent, the competent Court in whose jurisdiction the building, or the larger part of it, is situated may, upon the request of any apartment owner, decide that the rule will bind the user.

**Art. 1136. - Nullity of Decision.**

A decision of an organ of the association of owners that is contrary to the law, the agreement of division, the by-laws or the statutes of the association of owners is null.

**Art. 1137. - Annulment of Decision.**

- (1) Without prejudice to the preceding Article, an apartment owner is entitled to request the competent Court in whose jurisdiction the building, or the larger part of it, is situated to annul a decision of an organ of the association of owners on the ground that it is unreasonable towards him.
- (2) The request to annul must be made within thirty days following the day when the person so requesting has become aware of the decision or has been able to become aware of it.
- (3) The person who makes the request, all other persons entitled to vote and the association of owners are individually summoned in order to be heard.
- (4) The Court may suspend the decision until the request has been irrevocably decided upon.

**Art. 1138. - Manager. - 1. *Appointment.***

- (1) The manager shall be appointed by the meeting of owners.

- (2) Where necessary, a manager may be temporarily appointed by the Court on the application of an apartment owner.
- (3) The manager must be an apartment owner.
- (4) The meeting of owners may appoint more than one manager.

**Art. 1139. - 2. *Written Authority.***

- (1) The manager may require the association to provide him with a written authority specifying his duties and powers.
- (2) Where the manager is appointed for a period of time such period shall be specified in the written authority.

**Art. 1140. - 3. *Remuneration.***

- (1) Unless otherwise agreed, the manager shall be remunerated.
- (2) He shall be paid all expenditures incurred on behalf of the association.

**Art. 1141. - 4. *Revocation.***

- (1) The association may at any time revoke the appointment of the manager, without prejudice to the right of the manager to claim such remuneration as may have been agreed.
- (2) Any agreement to restrict revocation of the appointment of the manager for good cause shall be of no effect in particular where the manager commits a serious breach of duties or is incapable of carrying out his duties in a proper manner.

**Art. 1142. - 5. *Duties.***

- (1) The manager shall be responsible for the maintenance, security, cleanliness and repair of the parts of the building that are subject to co-ownership.
- (2) The manager shall enforce the decisions of the meeting.

**Art. 1143. - Liability.**

- (1) The manager shall be liable to the association in accordance with the provisions relating to mandate.
- (2) Notwithstanding any agreement to the contrary, an appeal shall lie to the Court against any decision of the association approving the accounts of the manager or relating to the manager's liability, where the manager or his representative took part in such decision.

**Art. 1144. - Access to Separate Units.**

The apartment owners and the users of the portions intended for use as separate units must give a manager, or the persons to be designated by him, access to those portions where this is necessary for the fulfillment of the duties of the manager.

**Art. 1145. - Summons or Notices.**

- (1) Summons or notices addressed to the apartment owners may be delivered to the manager of the association in person or to his domicile, in which case they need not contain the names and domiciles of the apartment owners.
- (2) The manager must notify the apartment owners forthwith of the contents of the summons or notice.

**Section 3. - Rights Resulting from Insurance**

**Art. 1146. - Representing Person.**

- (1) The person who, pursuant to the by-laws, must have the building insured represents the apartment owners in the exercise of the rights resulting from the insurance contract; he administers for them the insurance proceeds received.
- (2) As soon as a decision has been taken to make repairs, the insurance proceeds are used for this purpose, in which case the relationship between the values of the apartment rights must be the same after the repairs as before. In calculating that value, however, account may not be taken of the additions which an apartment owner has made to the

portion which he uses as a separate unit, unless he had timely notified the association of owners of this fact.

- (3) Repairs of damage done to portions which are intended to be used as separate units are made, as much as possible, according to the directives of the apartment owners concerned.
- (4) Payment to each apartment owner of his share in the insurance proceeds is only made:
  - (a) if, after the damage has been repaired, there proves to be a surplus;
  - (b) if three months have passed after a decision of the association of owners to abandon repairs or further repairs; or
  - (c) in the event of termination of the division.
- (5) The by-laws may derogate from the provisions of this article.

#### **Art. 1147. - Disputes Regarding Repairs.**

Upon the request of a directly interested party, the competent Court in whose jurisdiction the building, or the larger part of it, is situated, decides upon disputes regarding repairs or the manner of effectuating them.

#### **Section 4. - Modification of the Agreement of Division and Termination of the Division**

#### **Art. 1148. - Modification.**

- (1) A modification of the agreement of division may only take place with the cooperation of all apartment owners. The permission of holders of a right *in rem* on an apartment right as well as of attachors of that apartment right is required. The permission of persons entitled to a servitude is not necessary if their right is not to be limited as a result of the modification.



- (2) The permission of attachors is unnecessary if the modification exclusively concerns the by-laws.
- (3) The modification is made in writing intended for that purpose, followed by its entry in the register of immovable property.

**Art. 1149. - Authorization by Court.**

- (1) If one or more persons mentioned in the first sub-Article of the preceding article remain silent or refuse to cooperate or consent without reasonable ground, this cooperation or permission may be replaced by an authorization of the competent Court in whose jurisdiction the building, or the larger part of it, is situated.
- (2) The authorization may only be granted upon the request of one or more apartment owners holding at least one half of the number of votes in the meeting of owners.
- (3) The authorization may also be granted upon the request of two apartment owners, or of one apartment owner with several apartment rights, where the modification is exclusively intended to change the mutual boundary of the portions which are intended to be used by them as separate units, whether or not accompanied by a change in the mutual relationship between their shares in the property involved in the division, or their contributions to the debts and expenses which the apartment owners bear by virtue of the law or the by-laws.
- (4) All persons whose cooperation or permission is required pursuant to the foregoing article, are individually summoned to be heard upon a request as referred to in the preceding sub-Articles.

**Art. 1150. - Annulment of Modification.**

- (1) Failing the permission or the authorization which takes its place as referred to in the two preceding articles, the modification is annulled by judgment upon the demand of the person whose permission has not been given.

- (2) The right to claim an annulment is prescribed by one year from the day following the one on which the person who can claim the annulment has become aware of the modification or has been notified of it in writing.
- (3) The Court may reject the action where the plaintiff suffers no damage or where reasonable compensation is offered to him for the payment of which sufficient security has been furnished.

**Art. 1151. - Rights *in Rem*.**

After the modification of the agreement of division, rights *in rem* and attachments encumbering the apartment rights attach to the modified apartment rights, unless the agreement of modification provides otherwise.

**Art. 1152. - Termination of Division.**

- (1) The division is terminated *de jure* by entry in the register of immovable property of an order expropriating an entire cadastral lot involved in the division, unless other lots are also involved in it.
- (2) In all other cases, the termination of the division is made, with the cooperation of all apartment owners, by a written instrument intended for that purpose, followed by its entry in the register of immovable property. The foregoing articles apply *mutatis mutandis*.

**Art. 1153. - Order by Court.**

- (1) Upon the request of a person whose cooperation is required for the modification of the deed of division or for the determination of the division the competent Court in whose jurisdiction the building, or the larger part of it, is situated may order that the agreement of division be modified or that the division be terminated:
  - (a) where the agreement of division does not conform to the requirements of these provisions;

- (b) where the lay-out of the portions of the building which are intended to be used as separate units does not show this destination;
  - (c) where the construction or lay-out of the building or the lay-out of the land belonging to it does not conform or no longer conforms to the description in the agreement of division;
  - (d) in the event of division of a right in a building which is intended to be constructed or the lay-out of which is intended to be changed, where the construction or the modified lay-out of the building has not been completed within a period of three years from the day of registration;
  - (e) where part of the registered property involved in the division has been executed against; where part of the cadastral lots has been expropriated; or where the person who has made the division did not have the right to dispose of part of the registered property involved in the division;
  - (f) where the building has been seriously damaged or wholly or partially demolished, unless it is to be expected that repairs will be made within a reasonable period; or
  - (g) where all apartment owners have entered into a contract to modify or to terminate the division.
- (2) The Court may grant the request subject to conditions.
- (3) All persons whose cooperation or permission is required, are individually summoned to be heard upon a request as referred to in the preceding sub-Articles.

**Art. 1154. - Compliance.**

Once the decision has become final, the apartment owners must comply with an order as referred to in the preceding article.

**Art. 1155. - Rights *in Rem* after Termination.**

After termination of the division, rights *in rem* on an apartment right and attachments of that right attach to the share of the former apartment owner in the property involved in the division.

**Art. 1156. - Dissolving Association.**

- (1) Notwithstanding any stipulation to the contrary, termination of the division dissolves the association of owners. However the association shall continue to exist up to the extent required for the purpose of the liquidation of its assets and liabilities.
- (2) After the dissolution the apartment owners at the moment of the termination of the division are entitled to the surplus assets in proportion to their shares.

## TITLE IV - LITERARY AND ARTISTIC OWNERSHIP

### Chapter 1. - Copyright

#### **Art. 1157. - Attribution of the Right.**

- (1) The author of a work of the mind shall have, on the work he created, by the mere fact of his creation, an incorporeal property right of ownership.
- (2) He shall have such right regardless of the nature, form of expression, merit or purpose of the work.
- (3) He shall have such right notwithstanding that he executed the work in pursuance of a contract of employment or a contract for the performance of a project entered into with a third party.

#### **Art. 1158. - Works of the Mind.**

The following works shall be deemed to be the works of the mind:

- (a) literary works such as books, booklets, articles in reviews and newspapers, lectures, speeches, sermons, theatrical and other dramatic works, computer programs, in source code and/or object code;
- (b) musical compositions with or without text, dramatic-musical works, radiophonic or audiovisual works, choreographic works or pantomimes, the production of which is reduced to writing or otherwise;
- (c) the works of the figurative arts such as drawings, paintings, engravings and sculptures, as well as photographic and cinematographic works;
- (d) illustrations, maps, plans, sketches, plastic works pertaining to geography, topography, architecture or other sciences; and
- (e) any other work created by the intelligence of their author and presenting an original character.

**Art. 1159. - Translations and Adaptations.**

Without prejudice to the right of the author of the original work, translations, adaptations, musical arrangements and other renderings of a literary or artistic work shall be protected as original works.

**Art. 1160. - Encyclopedias and Anthologies.**

Collection of literary or artistic works such as encyclopedias or anthologies which by the choice or arrangement of the material constitute intellectual creations shall be protected as such without prejudice to the rights of the authors over each of the works included in such collection.

**Art. 1161. - Official Texts.**

- (1) Official texts of a legislative, administrative or judicial nature shall not be subject to the provisions of this Title.
- (2) They may be freely reproduced.

**Art. 1162. - Right of Publication.**

- (1) Only the author shall have the right to publish his work.
- (2) After his death, this right shall pass to the person named by him or, in default of such person, to the heirs of the author.
- (3) Where the heirs do not agree on the expediency or conditions of publication, the Court shall settle the matter on the application of any of them.

**Art. 1163. - Production and Reproduction of the Work.**

- (1) Only the author shall have the right to produce his work.
- (2) He shall alone have the right to reproduce it.

**Art. 1164. - Adaptations.**

- (1) Only the author shall have the right to authorize the adaptation of his work to the theatre, cinematography or television, or any other kind of adaptation.

- (2) A work shall be regarded as an adaptation of a third party's work where it explicitly refers to the said work or it is obvious, from the circumstances of the case, that it closely derives its inspiration therefrom.
- (3) A parody, pastiche or caricature shall not be regarded as an adaptation of the work.

**Art. 1165. - Translations.**

- (1) Only the author shall have the right to authorize the translation of his work.
- (2) However, this right will be subject to the exceptions and limitations as set forth by legislation.

**Art. 1166. - Performances and Communication to the Public.**

- (1) Only the author shall have the right of public communication of his work.
- (2) This right includes:
  - (a) the public performance of the whole or part of the work, or of a reproduction or adaptation of the work; and
  - (b) the public communication by whatever means, including broadcasting and cable transmission, of the whole or part of the work, or of a reproduction or adaptation of the work.
- (3) Performances given free of charge at a family gathering, a gathering of friends or a similar gathering, and performances in a school or university in the framework of education, shall not be considered as a public communication.
- (4) The simultaneous broadcasting or cable transmission of a work incorporated in a radio or television program by the organization communicating the original broadcast, shall not be considered as a separate public communication.

**Art. 1167. - Rental Right.**

- (1) Only the author shall have the right to authorize the rental to the public of originals or copies of computer programs and cinematographic works.
- (2) The preceding section shall not apply to a computer program, if that work is part of a data carrier containing data and serves to make the said data accessible.

**Art. 1168. - Articles and Information of Topical Interest.**

- (1) Articles of topical interest published in newspapers and reviews may be reproduced in the press, whether printed or broadcasted, unless such reproduction was expressly reserved.
- (2) The source shall always be clearly stated.
- (3) Daily news articles on current events which are mere press information may freely be reproduced.
- (4) Allowed is the inclusion of a work in a short recording, showing or announcement thereof in public in a photographic, film, radio or television report, provided this is necessary in order to give a proper account of the current affairs that are the subject of the report.

**Art. 1169. - Public Speeches.**

Speeches delivered in political assemblies, at public meetings or on the occasion of official ceremonies may be freely reproduced by the press, whether printed or broadcasted, during fifteen days from the day on which they were made.

**Art. 1170. - Collection of Speeches or Articles.**

Only the author shall have the right to publish his speeches and articles in book form or to issue a collection thereof.

**Art. 1171. - Limitation of the Exclusive Right of Reproduction.**

- (1) The author cannot forbid analyses and press reviews of his work.



- (2) Copies or reproductions of the work made in a single copy shall be permitted where they are intended for private use only.
- (3) In the interest of school and university education and for scientific purposes, the right of reproduction will be subject to the limitations as set forth by a special law.

**Art. 1172. - Quotations.**

- (1) The author cannot forbid quotations from his work, if the work from which the quotation is taken has been lawfully communicated to the public, and the quotation is in conformity with that which may be reasonably accepted in accordance with social custom and the number and length of the quoted passages are justified by the purpose to be achieved.
- (2) In the case of a short work, or in the case of a work as referred to in Article 1157, paragraphs (c) or (d), the entire work may be reproduced for the purpose and under the conditions stated in sub-Article (1) of this Article, if done in such a way that the reproduction differs appreciably in size or process of manufacture from the original work.
- (3) For the purposes of this article quotations includes quotations from articles that have appeared in daily or weekly newspapers, weeklies or other periodicals in the form of press reviews.
- (4) The provisions of this article shall also apply to quotations in a language other than the original.

**Art. 1173. - Assignment of the Work.**

- (1) The incorporeal property right of ownership of the author shall be independent of the ownership of the material object which constitutes the protected work.
- (2) The rights specified in this title shall not vest in the acquirer of the object by the mere fact of his acquisition.

- (3) The author may not require the owner of the material object to place this object at his disposal so as to enable him to exercise his rights.

**Art. 1174. - Reference to Rules Governing Contracts of Publications.**

- (1) The conditions on which literary or artistic rights of ownership may be assigned by the author to third parties shall be as provided by the Chapter of this Code relating to Publishing Contracts.
- (2) Unless otherwise agreed, the authors of cinematographic works shall be deemed to have given license to the producer to communicate the work to the public, to make reproductions of it, to add subtitles to it and to dub the dialogues. The preceding sentence shall neither apply to the authors of preexisting works, included whether or not adapted in the cinematographic work, nor apply to those who have written the scenarios and the dialogues, to those who have composed music for use in the cinematographic work or those who have written the lyrics belonging to the music.

**Art. 1175. - Alteration of a Work.**

- (1) Notwithstanding assignment of the copyright in the work, the author has the right to claim the authorship of his work.
- (2) Notwithstanding assignment of the copyright in the work, the author has the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his dignity in that capacity.
- (3) Notwithstanding assignment of the copyright in the work and notwithstanding any stipulation of the contrary, the author may prevent his work, if altered by a third party, from being presented as his own.

**Art. 1176. - Ascertainment of the Author.**

- (1) Subject to contrary proof, the person in whose name the work was published shall be deemed to be the author thereof.
- (2) The author may claim the benefit of the rights deriving from the provisions of this Title notwithstanding that he used a pseudonym, provided that there is no doubt as to his identity.

**Art. 1177. - Anonymous Works.**

As regards anonymous and pseudonymous works other than those mentioned in Article 1176, the publisher whose name appears on the work shall without further proof be deemed to represent the author. This representation power shall cease to apply, when the author reveals his identity and establishes his claim to authorship of the work.

**Art. 1178. - Works Produced By Several Authors. - 1. Rights of Co-Authors.**

- (1) A work produced as a result of the cooperation of several authors shall be co-owned by them.
- (2) Author's rights shall be exercised by common agreement between the co-authors.
- (3) Where each of the authors contributed in a different type of work, each of them may, unless otherwise agreed, utilize separately his personal contribution provided that such utilization is not detrimental to the use of the common work.
- (4) Where the copyright in a work is co-owned by two or more persons, it may be enforced by any one of them, unless otherwise agreed.

**Art. 1179. - 2. Protection of Third Parties.**

- (1) Where a work has been published under the name of a single author, third parties shall be justified in assuming that the said author is the sole author of the work.

- (2) Rights of co-authors shall not affect them.

**Art. 1180. - Terms of Protection.**

- (1) Copyright shall expire fifty years after 1 January of the year following the year of the death of the author.
- (2) The copyright in a work of which the author has not been indicated or has not been indicated in such a way that his identity is beyond doubt shall expire fifty years after 1 January of the year following that in which the work was first lawfully communicated to the public. If the author discloses his identity prior to the end of the term referred to in the preceding sentence, the duration of the copyright in the work concerned shall be calculated in accordance with the provisions of sub-Article (1).
- (3) The duration of the copyright co-owned by two or more persons in their capacity as co-authors of a work shall be calculated from 1 January of the year following the year of the death of the last surviving co-author.
- (4) Copyright in works for which the duration of copyright is not calculated in accordance with sub-Article (1) and (2) and which have not been lawfully communicated to the public within fifty years from their creation, shall expire. However, if a work is for the first time communicated to the public after the death of the author, but before 1 January of the year following the year of his death, the work shall be protected for a period of fifty years after 1 January of the year following that in which it was first communicated to the public.
- (5) The copyright in a cinematographic work shall expire fifty years after 1 January of the year following the year in which it was first lawfully communicated to the public or, failing such communication, the year of its creation.
- (6) The copyright in photographic works and works of applied art shall expire twenty five years after 1 January of the year following the year of the creation of the work.

- (7) If the term of copyright has already expired in the country of origin of the work, protection may no longer be invoked in Eritrea.

**Art. 1181. - Integrity Rights After Death of Author.**

- (1) The rights laid down in Article 1175, may be exercised by the author's spouse, ascendants, children and grandchildren during their life.
- (2) Where the persons, mentioned in sub-Article (1) do not agree, the Court shall settle the matter on the application of any of them.

**Art. 1182. - Enforcement of Literary or Artistic Rights of Ownership.**

- (1) Any person whose rights of literary or artistic ownership is infringed may demand the cessation of such infringement and the destruction of the copies or adaptations of his work made in breach of the law.
- (2) He may in addition claim damages for the moral and material prejudice caused to him.
- (3) The conditions on which he may act shall be specified in the Title of the Code relating to Non-contractual obligations.

**Chapter 2. - Neighboring rights**

**Art. 1183. - Definitions.**

For the purposes of the provisions of this Chapter:

- (a) *performer* means an actor, singer, musician, dancer or any other person who acts, sings, delivers or otherwise performs a literary or artistic work;
- (b) *fixation* means the fixing of sounds, images or a combination thereof, for the first time, on any object suitable for reproducing or communicating to the public such a fixation;

- (c) *reproduction* means the manufacture of one or more copies of a fixation or of a part of a fixation;
- (d) *phonogram* means any fixation or reproduction of such fixation of the sounds only, of a performance, or of other sounds; and
- (e) *phonogram producer* means the natural or legal person who first manufactures a phonogram or first has a phonogram manufactured.

**Art. 1184. - Rights of a Performer.**

- (1) The performer shall have the right to authorize any of the following acts:
  - (a) the fixation of an unfixed performance;
  - (b) the reproduction of a fixation;
  - (c) the rental of phonograms; and
  - (d) the broadcasting, rebroadcasting or communication to the public of a performance, or a recording of a performance, or a fixation or a reproduction thereof.
- (2) The rebroadcasting of a program by the organization making the original broadcast shall not be considered as a separate communication to the public.

**Art. 1185. - Rights of a Phonogram Producer.**

The producer shall have the right to authorize any of the following acts:

- (a) any reproduction of his phonogram; and
- (b) the rental of a phonogram containing his performance.

**Art. 1186. - Reference to other Articles.**

Articles 1157, 1168, 1171, sub-Article (1) and (2), 1172, 1173, 1174 and 1178 shall be applicable *mutatis mutandis*.

**Art. 1187. - Term of Protection.**

The term of protection of available to performers and phonogram producers under this Chapter shall expire fifty years after 1 January of the year following the year in which the fixation was made or the performance took place.

**Art. 1188. - Territorial Criteria of Application.**

- (1) This Chapter shall apply to a performer if:
  - (a) he is a national of Eritrea or has his normal place of residence in Eritrea;
  - (b) his performance took place in Eritrea;
  - (c) his performance was recorded on a phonogram as referred to in sub-Article (2) below; or
  - (d) his performance, not being recorded on a phonogram, has been first communicated to the public in a program of a broadcasting organization in Eritrea.
  
- (2) This Chapter shall apply to a phonogram producer if:
  - (a) he is a national of or a legal person established under the laws of Eritrea, or has his normal place of residence in Eritrea; or
  - (b) the fixation took place in Eritrea; or
  - (c) the phonogram was brought into circulation for the first time, or within 30 days of its first release in another country, into Eritrea.
  
- (3) Bringing into circulation, as referred to in sub-Article (2), means that sufficient copies of authorized reproductions of a phonogram have been made available to meet the reasonable needs of the public.

## **TITLE V - USUFRUCT AND OTHER RIGHTS *IN REM***

### **Chapter 1. - Usufruct and Right of Occupation**

#### **Section 1. - General Provisions**

##### **Art. 1189. - Definition.**

Usufruct gives a right to hold and use property belonging to another and to enjoy the fruits thereof, subject to the provisions of this Chapter.

##### **Art. 1190. - References.**

- (1) Unless otherwise provided, the rules governing the acquisition, transfer or loss of ownership of movable things shall apply to the acquisition, transfer or loss of an usufruct relating to movable things.
- (2) Unless otherwise provided, the rules governing the acquisition, transfer or extinction of credits and other incorporeal property shall apply to the acquisition, transfer or extinction of an usufruct relating to credits or other incorporeal property or an inheritance.

##### **Art. 1191. - Rights of Usufructuary.**

- (1) The usufructuary may use or consume property subject to the usufruct according to the rules made at the time of establishment of the usufruct or, in their absence, with due regard to the nature of the property and local usage governing use or consumption.
- (2) Furthermore, a usufructuary is entitled to perform all acts which may serve the good management of the property subject to the usufruct. All other acts pertaining to the property can only be performed by the owner and the usufructuary jointly.
- (3) The usufructuary is obligated toward the owner to exercise the care of a good usufructuary with respect to the property subject to the usufruct and its management.



**Art. 1192. - Upkeep of the Property.**

The usufructuary shall bear the normal costs of upkeep of the property and management expenses, as well as the payment of interest upon debts charged thereon.

**Art. 1193. - Ordinary Charges.**

- (1) The usufructuary shall pay, when they are due, annual taxes and other charges on the property which are normally paid out of the income.
- (2) The usufructuary may not claim the acquisition of ownership of any property by way of usucaption.

**Art. 1194. - Contribution by Owner Entitled to Share.**

The owner who, as a result of a limitation upon the enjoyment of the usufructuary, is entitled to a share of the fruits, must proportionally contribute to the costs and charges as referred to in the two preceding Articles.

**Art. 1195. - Extraordinary Charges.**

- (1) Any extraordinary charge on the property during the course of the usufruct shall be borne by the owner.
- (2) Where the usufructuary does not lend him the necessary sums without interest, the owner may, in order to pay such charge, sell property or rights to which the usufruct extends.

**Art. 1196. - Inventory**

The owner and the usufructuary may at any time require that an inventory be made at the joint cost of both parties of the property to which the usufruct extends.

**Art. 1197. - Restoration.**

- (1) The usufructuary or his heirs shall restore the property to the owner upon the termination of the usufruct.

- (2) The usufructuary shall be liable for the loss or deterioration unless he can show that such loss or deterioration occurred without any fault on his part.
- (3) The usufructuary shall not be liable to pay compensation for depreciation caused by ordinary wear and tear.

**Art. 1198. - Alienation.**

- (1) To the extent that property subject to a usufruct is intended to be alienated, the usufructuary is entitled to alienate it in conformity with its destination.
- (2) In other cases a usufructuary may not alienate or encumber property without the consent of the owner or the authorization of the competent Court. Authorization is not granted, unless it is in the interest of the usufructuary or the owner and does not prejudice the interest of the other.

**Art. 1199. - Replacement.**

- (1) Property taking the place of property subject to the usufruct and duly disposed of, belongs to the owner and is also subject to the usufruct. The same applies to what is received from the collection of debts subject to the usufruct and to claims for compensation which take the place of property subject to the usufruct, including claims resulting from depreciation of that property.
- (2) The benefits which property yields during the usufruct and which are not fruits are also subject to the usufruct.

**Art. 1200. - Leasing of Property.**

- (1) The usufructuary may lease the property to which the usufruct extends.
- (2) He shall become the owner from day to day of the rents produced by the property.

**Art. 1201. - Termination of Lease.**

- (1) The lease of the property shall terminate when the usufruct itself terminates.

- (2) Leases made in respect of a building between the usufructuary and a tenant shall bind the owner and third parties for a period of three years from the termination of the usufruct.
- (3) Where the usufruct terminates, the owner may forthwith terminate any such lease where he can show that it was made in abnormal conditions and in fraud of his rights.

#### **Art. 1202. - Transfer and Encumbrance**

A usufructuary may transfer or encumber his right without thereby modifying the duration of the right. The acquirer and the original usufructuary are solidarily liable to the owner for all obligations resulting from the usufruct. Where, at the time of establishment of the usufruct, the original usufructuary has been given more extensive power to alienate or consume than that granted by law, subsequent acquirers of the usufruct are not entitled to do this.

#### **Art. 1203. - Loss of Property.**

- (1) The usufruct shall be extinguished by the loss of the property to which it extends.
- (2) The usufruct shall extend to the equivalent value of the property in case of its expropriation or requisition.

#### **Art. 1204. - Insurance.**

- (1) The usufructuary must insure the object of his usufruct in favor of the owner for risks it is customary to insure. Where a building is subject to usufruct, the usufructuary must insure it against fire.
- (2) To the extent that the usufructuary does not fulfill the obligations described in the first sub-Article, the owner is entitled to take out insurance for which the usufructuary must reimburse him.

#### **Art. 1205. - Extinction of Usufruct.**

- (1) The usufruct shall terminate upon the death of the usufructuary or where the period of time for which it was created expires.

- (2) The usufruct of bodies corporate or property with a specific destination shall terminate after thirty years or such shorter period as may have been fixed, or upon the dissolution of the body corporate or the determination of the property with a specific destination.

**Art. 1206. - Cancellation of Usufruct.**

If the usufructuary seriously fails in the performance of his obligations the Court may, upon the demand of the owner, cancel the usufruct.

**Art. 1207. - Abandonment of Usufruct.**

If a usufructuary wants to abandon his right, at his own expense, because of the charges and obligations attached to the usufruct, the owner must cooperate herein.

**Art. 1208. - Owner Disposing of Property.**

- (1) Without prejudice to the foregoing provisions, any act whereby the owner disposes of the property to which the usufruct extends shall not affect the rights of the usufructuary.
- (2) The usufructuary shall retain his rights unless he has expressly waived them.

**Art. 1209. - Surety.**

- (1) An owner who can show that his rights are in jeopardy may require sureties from the usufructuary.
- (2) He may at any time require sureties prior to restoration where the usufruct extends to consumable goods.
- (3) Where the usufructuary fails on request to produce sureties within a reasonable period of time or where after the owner has objected he continues to make unlawful use of the property the Court shall order the property to be vested in a curatory.

### **Art. 1210. - More than One Person.**

- (1) Usufruct can be established in favor of two or more persons, either jointly or consecutively. In the latter case, persons who will be called to the usufruct consecutively must exist at the time of its establishment.
- (2) A usufruct in favor of two or more persons accrues to each remaining usufructuary, proportionately to his share, upon the termination of the right of one of them; unless otherwise provided, it is not terminated until the extinction of the right of the last remaining usufructuary.

### **Art. 1211. - Actions.**

- (1) Unless otherwise provided at the time of establishment, the usufructuary is entitled to demand, judicially and extrajudicially, the performance of claims subject to the usufruct and to accept payments.
- (2) Unless otherwise provided at the time of establishment, the usufructuary is only entitled to set aside contracts to the extent that this may serve good management.
- (3) The owner is not entitled to exercise the powers referred to in the preceding sub-Articles, unless he has obtained consent to do so from the usufructuary or authorization from the competent Court.

### **Art. 1212. - Legal Proceedings**

Both the usufructuary and the owner are entitled to institute actions and to submit petitions to obtain a judicial decision concerning their respective rights, provided that each ensures that the other is timely joined in the proceedings.

### **Art. 1213. - Fruits.**

The usufructuary is entitled to all fruits which become separated or exigible during the usufruct. At the time of establishment of the usufruct, it may be specified what, in relation to the usufruct, must be considered as fruits.

**Art. 1214. - Treasure.**

The usufructuary shall have no right on a treasure that might be discovered during the currency of the usufruct.

**Art. 1215. - Destination, Changes.**

- (1) The usufructuary may not change the destination which the properties subject to the usufruct had at the beginning of the usufruct, without the consent of the owner.
- (2) Unless otherwise provided in the agreement, the usufructuary of a property is entitled, both for the duration of his right and upon its termination, to remove changes and additions made to the property, provided that he restores it to its original condition.

**Art. 1216. - Right to Vote.**

Unless otherwise provided in the law or at the time of establishment of the usufruct, the exercise of the right to vote attached to property subject to usufruct remains with the owner.

**Art. 1217. - Considerable Repairs.**

- (1) Considerable repairs are repairs which entail an expense exceeding the average yearly income derived from the property to which the usufruct extends.
- (2) The usufructuary shall inform the owner where considerable repairs need be made for the preservation of the property. He shall not himself make such repair unless he rendered them necessary in particular by failing to maintain the property since the usufruct originated.
- (3) The owner shall not be bound to make considerable repairs on the property. Where the owner decides to make considerable repairs, the usufructuary shall accept the inconvenience arising therefrom. In making the repairs, the owner shall have regard to the interests and convenience of the usufructuary.

**Art. 1218. - Debts under a Hypothec.**

- (1) The usufructuary shall not be liable for the debts under a hypothec charging the property to which the usufruct extends.
- (2) Where he has been compelled to pay them, he may require the owner to reimburse him.

**Art. 1219. - Duty to Inform Owner.**

- (1) The usufructuary shall report to the owner any person who, during the currency of the usufruct, commits acts of usurpation or otherwise interferes with the rights of the owner.
- (2) Where he fails so to inform the owner, he shall be liable for any damage as though he had himself caused the damage.

**Art. 1220. - Loss of Property.**

Neither the owner nor the usufructuary shall be bound to rebuild what has collapsed as a result of decay or has been destroyed by accident.

**Art. 1221. - Partial Loss.**

Where part of the property to which the usufruct extends is lost, the usufructuary shall retain his rights on what remains.

**Art. 1222. - Usufruct of Flock.**

- (1) Where the flock to which the usufruct extends is lost by reason of accident or disease without the usufructuary being at fault, the usufructuary shall return the hides to the owner or refund their value.
- (2) Where the flock is not a total loss, the usufructuary shall replace the animals lost out of the increase from breeding.

**Art. 1223. - Limitation.**

- (1) Any claim arising from changes made in or damage occasioned to the property shall be barred where the owner

does not bring it within one year from the property having been returned to him.

- (2) The right of the usufructuary to remove any installation made by him shall be barred after the same period of time.

## **Section 2. - Special Rules Regarding Usufruct of Credits and Other Rights**

### **Art. 1224. - Income.**

The usufructuary of a credit or another right shall acquire the interests, arrears due and dividends on the day on which they become exigible.

### **Art. 1225. - Exceptional Profits.**

- (1) The usufructuary shall not acquire exceptional profits which may derive from the right to which the usufruct extends as fruits.
- (2) His rights to usufruct shall extend to such profits.

### **Art. 1226. - Subscription for New Shares.**

- (1) Where a preferential right of subscription is granted in respect of a share to which the usufruct extends, the right to subscribe for the new shares shall belong to the owner of the share.
- (2) the usufructuary's right shall extend to the new shares subscribed for by the owner or to the proceeds of the sale of the subscription rights.

### **Art. 1227. - Capital Constituted By Credit or Right.**

- (1) Where the credit or right to which the usufruct extends is satisfied or discharged during the usufruct the principal shall not be paid to the usufructuary unless the owner has agreed thereto.



- (2) Where the owner does not authorize the payment of the sum to the usufructuary, the debt shall be validly released where the debtor deposits the sum.
- (3) The owner or usufructuary may demand that such deposit be made where the credit has become exigible.

**Art. 1228. - Usufruct of an Annuity.**

The usufruct of an annuity shall enable the usufructuary during the term of the usufruct to collect arrears without being liable for compensation.

**Art. 1229. - Issue of the Distinct Title Deeds.**

- (1) The owner or the usufructuary may require from the creditor or the establishment which issued the securities to which the usufruct extends that two separate title deeds be delivered to them at their cost evidencing their respective rights as owner and usufructuary.
- (2) The provisions of sub-Article (1) shall not apply to bank notes.

**Section 3. - Right of Occupation of Premises**

**Art. 1230. - Definition.**

The right of occupation of premises is the right to live in a house or to occupy a part thereof.

**Art. 1231. - Beneficiary of Right.**

Unless otherwise provided, whosoever benefits by a right of occupation of premises may live in the house concerned with his spouse or cohabitee, his direct ascendants or descendants and his servants.

**Art. 1232. - Right Extending to Part of a House.**

Where the right extends to part of a house, the beneficiary of such right may use all installations for common use.

**Art. 1233. - Expenses of Maintenance.**

- (1) The beneficiary shall bear the costs arising from ordinary maintenance repairs of a house or flat intended to be used by him only.
- (2) Where the right of occupation is exercised concurrently with the right of the owner, the latter shall bear such costs.

**Art. 1234. - Right Not Transmissible.**

The right of occupation of premises is inalienable and shall not pass to the heirs of the beneficiary.

**Art. 1235. - Other Provisions Applicable.**

The provisions regarding usufruct shall apply in addition to those of this Section.

**Chapter 2. - Servitudes**

**Art. 1236. - Definition.**

- (1) A servitude is a charge encumbering an immovable property, hereinafter called the servient tenement for the benefit of another immovable, hereinafter called the dominant tenement.
- (2) The agreement establishing a servitude may impose an obligation upon the holder of the right of use of the dominant tenement to pay to the holder of the right of use of the servient tenement a sum of money, called the retribution, payable at regular or at irregular intervals.

**Art. 1237. - Obligation to Tolerate or Not to Do.**

- (1) The charge which a servitude imposes upon the servient tenement consists of an obligation to tolerate something or not to do something on, above or under one of the lands. The agreement of establishment may stipulate that the charge also include an obligation to construct buildings or works or to install plantations which are necessary for the exercise of the servitude, provided that these buildings,

works or plantations will be wholly or partially situated on the servient tenement.

- (2) The charge which a servitude imposes upon the servient tenement may also consist of an obligation to maintain the servient tenement or the buildings, works or plantations which are or will be wholly or partially situated on the servient tenement.

**Art. 1238. - Change of Owner.**

- (1) A servitude shall run with the immovable property notwithstanding that the holder of the right of use of the servient or dominant changes.
- (2) Servitudes which have been registered in accordance with law shall follow the immovable property into whatever hands it may pass.

**Art. 1239. - Creation of Servitude.**

- (1) A servitude may be created by agreement between the holders of the right of use of the dominant and servient tenement. It may also be created by a will in which the holder of the right of use of an immovable property divides such land between two or more persons..
- (2) The creation of a servitude shall be of no effect unless it is evidenced in writing.
- (3) A servitude shall be of no effect on third parties unless it has been entered in the register of immovable property at the place where the servient tenement is situated.

**Art. 1240. - Interpretation of Doubtful Clauses.**

Where it is doubtful whether a provision in an instrument creates a servitude running with the immovable property or imposes a personal obligation on the owner of such property, such equivocal provision shall be deemed to impose a personal obligation and not to create a servitude.

### **Art. 1241. - Acquiring by Usucaption**

An apparent servitude may be acquired by enjoyment in good faith for ten years. A servitude is apparent where its existence is evidenced by some apparent sign. A servitude which is not apparent may not be acquired by usucaption.

### **Art. 1242. - Effect on Third Parties.**

- (1) Whosoever has acquired an apparent servitude by usucaption may require that the existence of the servitude be evidenced by an instrument specifying the extent of the servitude and that such servitude be entered in the register of immovable property.
- (2) A servitude acquired by usucaption shall be inopposable to third parties unless it has been entered in the register of immovable property.

### **Art. 1243. - License.**

A license to use an immovable property in a particular manner shall not be deemed to be a servitude for the benefit of the person to whom such license was given.

### **Art. 1244. - Extent of Servitude**

The contents and the manner of exercising the servitude are determined by the agreement of establishment and, to the extent that the agreement lacks rules in this respect, by local usage. The exercise of a servitude in a certain manner, in good faith, for a rather long period and unopposed, is decisive in case of doubt.

### **Art. 1245. - Means Necessary for the Enjoyment**

The existence of a servitude shall entail the existence of the means necessary for the enjoyment of such servitude.

### **Art. 1246. - Necessary Works.**

- (1) The holder of the right of use of the dominant tenement may take any steps and construct any works necessary for the enjoyment and preservation of the servitude.

- (2) Unless otherwise provided in the agreement establishing the servitude, such works shall be constructed at the expense of the holder of the right of use of the dominant tenement.
- (3) He has the obligation to maintain what he has constructed or installed on the servient tenement to the extent that this is necessary in the interest of the servient tenement; he is entitled to remove it provided that he restores the land to its original state.
- (4) The holder of the right of use of the servient tenement does not have the right to use the buildings, works or plantations which the holder of the right of use of the dominant tenement has lawfully constructed or installed on the servient tenement.
- (5) The agreement of establishment may derogate from the preceding sub-Articles.
- (6) In case of co-ownership, the rules pertaining to that type of ownership apply instead of sub-Article 3 and 4.

#### **Art. 1247. - Surrender of Servient Tenement**

Where works as defined in the foregoing article are under the agreement establishing the servitude to be done at the expense of the holder of the right of use of the servient tenement, the latter may relieve himself of such obligation by surrendering to the holder of the right of use of the dominant tenement the whole servient tenement or such part thereof as is necessary for the enjoyment of the servitude.

#### **Art. 1248. - Duties of Owner Dominant Tenement.**

- (1) The holder of the right of use of the dominant tenement shall exercise his rights so as to cause minimum inconvenience to the holder of the right of use of the servient tenement.
- (2) He shall exercise his rights in accordance with the agreement establishing the servitude and may not make on the dominant or servient tenement any alteration which would increase the burden of the servitude unnecessarily.

**Art. 1249. - Division of Lands.**

- (1) Where the dominant tenement is divided, the servitude continues to exist in favor of each part to which it can be beneficial.
- (2) Where the servient tenement is divided, the charge continues to encumber each part, in respect of which the exercise of the servitude is possible, according to the agreement of establishment and the nature of the servitude.
- (3) The agreement of establishment may derogate from the preceding sub-Articles.

**Art. 1250. - More Than One Owner.**

- (1) Where the dominant or servient tenement belongs to two or more persons, either as co-holders of the right of use, or as holders of the right of use, of different parts, they are solidarily liable for the performance of the pecuniary obligations which result from the servitude and become exigible during the existence of their right, to the extent that these obligations have not been divided over their rights.
- (2) After transfer or attribution of the dominant or the servient tenement, or of a part or a share of it, the acquirer and his predecessor are solidarily liable for the pecuniary obligations, referred to in sub-Article 1, which have become exigible in the two preceding years.
- (3) The agreement of establishment may derogate from the preceding sub-Articles. However, derogation from sub-Article 2 is of no effect where this would be detrimental to the acquirer.

**Art. 1251. - Changing Extent of Servitude.**

Where a servitude is exercised on a part only of the servient tenement, the holder of the right of use of the servient tenement may, in appropriate cases and provided he pays the expenses thereby occasioned, require that the servitude be exercised on such other part of the servient

tenement as will be equally convenient to the holder of the right of use of the dominant tenement.

**Art. 1252. - Modification or Cancellation by Court**

Upon the demand of the holder of the right of use of the servient tenement, the competent Court may modify or cancel a servitude:

- (a) on the ground of unforeseen circumstances which are of such a nature that, according to criteria of reasonableness and equity, one cannot require from the holder of the right of use of the servient tenement that the servitude remain unchanged; or
- (b) if at least twenty years have passed since the time of creation of the servitude, and it is contrary to the general interest that the servitude remain unchanged.

**Art. 1253. - Cancellation Due to Impossibility to Exercise Servitude**

Upon the demand of the holder of the right of use of the servient tenement, the competent Court may cancel a servitude if it has become impossible to exercise it or if the holder of the right of use of the dominant tenement no longer has a reasonable interest to exercise it, and if it is unlikely that the possibility of exercise or the reasonable interest will return.

**Art. 1254. - Modification Due to Unforeseen Circumstances.**

Where, by reason of unforeseen circumstances, it has become permanently or temporarily impossible to exercise the servitude or where the interest of the holder of the right of use of the dominant tenement has been considerably diminished, the competent Court, upon the demand of the holder of the right of use of the dominant tenement, may modify the contents of a servitude in such a manner that the possibility of exercise or the original interest be restored, provided that this change can be imposed upon the holder of the right of use of the servient tenement according to criteria of reasonableness and equity.

**Art. 1255. - Conditions Determined By Court.**

- (1) The competent Court may grant a demand pursuant to the three foregoing articles, subject to conditions to be determined by it.

- (2) Where one of the properties is encumbered with a right *in rem*, the demand will not be granted, unless the holder of the right *in rem* has been joined in the action. His interest must also be taken into account in judging whether the criteria of the three foregoing articles have been complied with.

**Art. 1256. - Abandonment.**

- (1) If the holder of the right of use of the dominant tenement wants to abandon his right, at his own expense, because of the charges and obligations attached to the servitude, the holder of the right of use of the servient tenement must cooperate herein.
- (2) The agreement of establishment may contain, for the first twenty years of the servitude, a stipulation to the contrary.

**Art. 1257. - Merger.**

- (1) The servitude shall be extinguished by merger of the qualities of owner of the dominant tenement and owner of the servient tenement.
- (2) If, at the time when one and the same person becomes owner of both the dominant and servient tenement, a third person leases one of the properties or has another personal right of use in it, the servitude is only extinguished by merger at the extinction of this right.

**Chapter 3. - Contractual Rights of Purchase or Pre-emption**

**Art. 1258. - Definition.**

- (1) A promise of sale is an agreement whereby the owner of a property undertakes to sell such property to a specified person, should such person wish to buy it.
- (2) A right of pre-emption is a right deriving from an agreement whereby the owner of a property undertakes to sell such property in preference to a specified person, should the owner decide to sell it.



**Art. 1259. - Scope of this Chapter.**

An agreement for a promise of sale or right of pre-emption shall not constitute a restriction of ownership under this Chapter nor shall it constitute a right *in rem*, unless it is based on the following provisions.

**Art. 1260. - Conditions for Validity**

An agreement under this Chapter shall be of no effect unless it is made in writing and specifies the time within which and price for which the person in whose favor the agreement is made may require its performance.

**Art. 1261. - Maximum Time Limit.**

- (1) No agreement under this Chapter shall be effective for more than ten years.
- (2) Where the period fixed in the agreement is longer than ten years, it shall be reduced to ten years.

**Art. 1262. - Expropriation.**

- (1) Agreements under this Chapter shall not be enforced where they relate to property which is expropriated.
- (2) The beneficiary may not claim damages on the ground that the agreement could not be enforced as a result of expropriation.

**Art. 1263. - Right Not Transmissible.**

- (1) Unless otherwise agreed, rights granted by agreements under this Chapter benefit only the person in whose favor the agreement was made.
- (2) Such rights may not be alienated by such person, nor shall they pass to his heirs.
- (3) The creditors of such person may not exercise his rights in his stead.

**Art. 1264. - Attachment of the Property.**

- (1) Where the property to which a promise of sale or a right of pre-emption relates is attached, the owner shall give notice thereof to the person in whose favor the promise was made.
- (2) Such person shall lose his right if he fails to exercise it prior to the property being sold by auction.
- (3) Any provision to the contrary shall be of no effect.

**Art. 1265. - Right of Pre-Emption.**

- (1) Where the party who granted a right of pre-emption intends to sell the property, he shall inform the beneficiary of this right of this intention and of all charges existing on such property.
- (2) A right of pre-emption shall be exercised within two months from the beneficiary having been informed of the owner's intention to sell.
- (3) The parties may by agreement extend this period to one year. Where a period exceeding one year has been agreed, it shall be reduced to one year.
- (4) The beneficiary shall lose his right where he fails to exercise it within the aforementioned period. The owner may thereupon alienate the property. He may also retain the ownership thereof.

**Art. 1266. - Effect on Third Parties. - 1. Immovables.**

- (1) Agreements containing a promise of sale or a right of pre-emption which relate to registered immovables shall not affect third parties unless they have been entered in the register of immovable property.
- (2) Failing registration, such agreements shall only affect such third parties insofar as they knew or should have known them.

**Art. 1267. - 2. Movable.**

Agreements containing a promise of sale or a right of pre-emption which relate to movables shall only affect such third parties insofar as they knew or should have known them.

**Art. 1268. - Right of Beneficiary.**

- (1) If, due to one of the two foregoing articles, the agreement can affect the rights of third parties, the beneficiary may require any third party who has acquired the ownership of a property in violation of the rights of the beneficiary, to surrender such property to him on the conditions laid down in the agreement creating the right of the beneficiary.
- (2) Notwithstanding any agreement to the contrary, the beneficiary shall lose his right where he fails to claim it within six months from the third party having taken possession of the property.
- (3) Nothing shall affect the right of such third party to bring action against the person from whom he acquired the property.

## **TITLE VI - COLLECTIVE EXPLOITATION OF PROPERTY**

### **Chapter 1. - Public Domain**

#### **Art. 1269. - State Property and Provisions Applicable Thereto.**

- (1) The State is owner of the land, water and natural resources below and above the surface of Eritrea.
- (2) Immovable property which has no other owner belongs to the State.
- (3) Such property shall be subject to the provision of this Section, where it forms part of the public domain.
- (4) Property belonging to the State or other administrative bodies shall be subject to the provisions relating to property privately owned.

#### **Art. 1270. - Public Domain**

- (1) Property belonging to the State or other administrative bodies shall be deemed to form part of the public domain where:
  - (a) it is directly placed or left at the disposal of the public; or
  - (b) it is destined to a public service and is, by its nature or by reason of adjustments, principally or exclusively adapted to the particular purpose of the public service concerned.
- (2) The following property, if owned by the State or other administrative bodies, shall be deemed to form part of the public domain:
  - (a) roads and streets, canals and railways;
  - (b) port installation and lighthouses; and
  - (c) buildings specially adapted for public services.

- (3) The use of water, forming part of the public domain, shall be governed by the provisions of this Code regarding the Ownership and Use of Water.
- (4) Movables which are placed at the disposal of the public by a public service or entrusted to the custody of a public service shall be deemed to form part of the public domain.

**Art. 1271. - Limits of Public Domain.**

- (1) The competent authorities shall fix the public domain.
- (2) Third parties injured by such decision may be granted compensation in accordance with the provisions relating to expropriation, where the Court is of opinion that the decision of the authorities is not justified.
- (3) The Court may not revoke such decision.

**Art. 1272. - Public Domain Inalienable.**

Property forming part of the public domain may not be alienated unless it has been declared no longer to form part of the public domain.

**Art. 1273. - Possession in Good Faith and Usucaption.**

Property of the State or other administrative bodies or property forming part of the public domain may not be acquired by possession in good faith or usucaption.

**Art. 1274. - Concessions.**

Property forming part of the public domain may be given in concession to private persons, providing that no such concession may have the effect of modifying the purpose of such property.

**Art. 1275. - Occupation of Public Domain.**

- (1) No property forming part of the public domain may be occupied by a private party except with the authorization of the competent authorities.

- (2) Such authorization shall specify whether the person concerned may construct works on the property and the nature of such works.
- (3) The authorization shall specify the time for which it is granted and the dues (if any) to be charged.

**Art. 1276. - Failure to Perform Obligations.**

A concession granted under Article 1274 or authorization given under Article 1275 may be revoked at any time where the beneficiary fails to perform his obligations.

**Art. 1277. - Right of Competent Authorities.**

- (1) Notwithstanding any agreement to the contrary, the competent authorities may at any time order the destruction of any work or the cessation of any activity which impairs the existence or purpose of the property forming part of the public domain.
- (2) Any concession granted or authorization given may in such case be revoked.
- (3) Nothing shall affect the right of the person to whom such concession or authorization was granted to claim compensation, in accordance with the provisions of law regarding administrative contracts.

**Chapter 2. - Expropriation**

**Section 1. - Expropriation Proceedings**

**Art. 1278. - Authority to Expropriate.**

The competent authorities as designated by law may expropriate property and such rights as enumerated in this Chapter, under the conditions provided in this Chapter.

**Art. 1279. - National or Public Interest.**

- (1) Expropriation is only justified in the national or public interest.
- (2) Expropriation may not be used solely for the purpose of obtaining financial benefits.

**Art. 1280. - Expropriation in Exceptional Cases:**

- (1) In case of a state of emergency, the highest local representative of the State is entitled to take immediate and full possession of any property. In case of a state of emergency which does not apply to the whole of Eritrea, such authorization is only existing in such areas where the state of emergency is in effect.
- (2) No more than three months after taking possession the State shall commence expropriating proceedings according to this Chapter unless the owner wishes to reclaim his rights. If the owner does not wish to be reinstated in his full rights justification of expropriation in the national or public interest is deemed present.
- (3) Upon request of the State, having heard the summoned owner, if appearing, the competent Court can prolong the term mentioned in sub-Article (2) with no more than three months.
- (4) If the owner repossesses his property the State shall indemnify all damages caused by taking possession of the property under sub-Article (1) of this Article.

**Art. 1281. - Rights Subject to Expropriation.**

- (1) The ownership of immovable property, and the rights of interested third parties on such property stemming from limited rights, such as usufruct, hypothec, servitude, and other rights *in rem* on the immovable property may be expropriated.
- (2) In case of dispute of ownership or of the right of the interested third party, the expropriation proceedings will

continue. However, the indemnification awarded to the owner or third interested parties, or such part of it as the competent Court dealing with the expropriation deems reasonable, shall be deposited with that Court at the request of the expropriating authority or one of the parties involved in the expropriation, among which the excluded party. Within three months from the judgment of expropriation, the excluded party will have to summon all other known parties before that Court in order to ascertain his right to the indemnification. If the excluded party fails to do so, the deposited indemnification is distributed among the owner and the interested third parties in accordance with the judgment on the final indemnification.

- (3) When the owner of immovable property is also the expropriating authority, rights as mentioned in sub-Article (1) may be expropriated separately. In other cases expropriation of such rights may only be effected together with expropriation of the ownership itself.
- (4) No share or portion in a property may separately be expropriated.
- (5) Where part of a building is expropriated, the owner may demand that the whole building be expropriated.

#### **Art. 1282. - Declaration of Public Utility.**

- (1) Expropriation in the national or public interest is not possible unless the expropriating authority first declares the project which renders expropriation necessary to serve the national or public interest.
- (2) The declaration of public utility shall be published in the Gazette of Eritrean Law and at least one national daily newspaper within fifteen days after the decision is taken.
- (3) Notwithstanding the prior sub-Articles, the declaration of public utility which renders expropriation necessary in the national or general public interest shall be announced through ample notification in the locality where the property is situated.



- (4) In each case where the owner, or the interested third party is known or can be known by consulting the registers, the declaration of public interest shall be sent to him via registered mail by the expropriating authority.

**Art. 1283. - Specification.**

- (1) The declaration of public utility shall stipulate to which purpose and for which project expropriation is deemed necessary by the expropriating authority. It shall also specify where the entire plans for such projects can be studied by anybody. The plan will be deposited at least in the municipal town halls where the project is going to be realized.
- (2) The declaration of public utility shall also specify which rights will be expropriated.
- (3) The declaration of public utility shall specify that the owners and other interested parties whose rights stand to be expropriated, but also all other interested parties, may express their views on the necessity of expropriation with the expropriating authority both in writing and orally within fifteen days from the date of publication and notification in the Gazette of Eritrean Law. If views are expressed orally, the expropriating authority will make an ample account of the expressed opinions.

**Art. 1284. - Personal Notification of Decision.**

- (1) Within fifteen days from the end of the term stipulated in the previous Article the expropriating authority shall, in writing via registered mail, inform those owners and other interested parties that have timely expressed their views whether the declaration of public utility is withdrawn, amended, and if so how, or maintained.
- (2) The expropriating authority shall thereby specify the reasons for maintaining or amending the declaration of public utility.

**Art. 1285. - Time Barred Negotiation.**

- (1) The declaration of public utility shall lapse if within three months the expropriating authority has not submitted a statement of claim before the competent Court.
- (2) During the time from publication and notification of the declaration of public interest or, if applicable, the decision of the expropriating authority as referred to in the preceding Article, until such time as a summons is issued, the expropriating authority shall at least once make the owner and all other interested parties a serious offer in writing for voluntary acquisition of the right which is to be expropriated. The offer will at least entail the price the expropriating authority is willing to pay for the voluntary acquisition of the right in question.
- (3) When it is necessary to dig, measure or realize other works to ascertain the feasibility of a project, the owner shall not hinder such works if he is notified via registered mail 48 hours prior to commencement of such works and is immediately and fully indemnified by the State. If such paid indemnification is not satisfactory to the owner, he may demand extra indemnification either in due course of the expropriation and judicial proceedings or by stating a claim to that effect.

**Section 2. - Judicial Proceedings**

**Art. 1286. - Judicial Proceedings of Expropriation.**

The Civil Procedure Code is applicable to the judicial proceedings of expropriation unless otherwise indicated in this Section.

**Art. 1287. - Statement of Claim.**

- (1) Where the property which is to be expropriated is not acquired by the expropriating authority through voluntary acquisition or where the declaration of public utility has lapsed, the expropriating authority will file a statement of claim.
- (2) No counter-claim by any interested party shall be allowed.

#### **Art. 1288. - Special Requirements of Statement.**

- (1) The statement of claim will enclose a certified copy of the declaration of public utility, the original or a certified copy of the Gazette of Eritrean Law, such journals where the declaration has been publicized and a certified copy of the notification that was announced, signed on behalf of the competent expropriating authority.
- (2) Furthermore the statement of claim will enclose a certified copy of the written offer for voluntary acquisition to each owner or interested third party.
- (3) The statement of claim with annexes and summons of appearance shall be served to the defendant by the expropriating authority.

#### **Art. 1289. - Defense and Judgment on Expropriation.**

- (1) The Court will handle all procedures concerning expropriation before all other cases.
- (2) A defendant will on the day fixed for statement of defense be allowed to respond in writing to the claim without the required formalities or be allowed a delay of a maximum of fourteen days to do so. A defendant who, although appearing before the Court, has not submitted a statement of defense will be considered to oppose expropriation and reject the written offer.
- (3) If, in case more than one defendant is summoned in the same issue of summons, not all the defendants appear before the Court, the procedure shall continue with the defendants who have appeared and the Court shall rule as if all defendants have appeared. Defendants who have not appeared will be considered to be opposed to expropriation and having rejected the written offer.
- (4) On the day fixed for statement of defense the Court shall set on the shortest possible notice the only day for hearing of the suit pertaining to the expropriation itself.

- (5) No later than one month after the hearing the Court will render a judgment on the claim for expropriation itself.
- (6) The Court may reject the claim for expropriation on other grounds than laid down in the statement of defense.

#### **Art. 1290. - Appeal.**

- (1) A decision rejecting the statement of claim or denying expropriation or a judgment of expropriation is open to appeal.
- (2) A statement of claim is rejected if it does not meet the formal requirements stipulated in the Civil Procedure Code and this Section.
- (3) A claim for expropriation can only be denied if the expropriating authority has no competence to expropriate or the project for which expropriation is deemed necessary is not in the national or public interest.
- (4) The judgment concerning the indemnification or the attribution of costs is also open to appeal.

#### **Art. 1291. - Judgment of Expropriation.**

- (1) The judgment of expropriation shall also stipulate an advance on indemnification due to the expropriated party. The advance shall be equal to the compensation offered by the expropriating authority for voluntary acquisition, unless all parties involved have agreed on a final compensation which is to be included in the judgment.
- (2) The judgment of expropriation will serve as title of execution for both the expropriation and the advance on indemnification or the final indemnification if such indemnification has been fixed pursuant to sub-Article (1).
- (3) The judgment of expropriation will be entered in the register of immovable property to pass ownership or rights *in rem* from the expropriated owner or interested third parties to the expropriating authority.

- (4) The title of ownership shall at such time pass to the expropriating authority free of all encumbrances.
- (5) The judgment of expropriation shall elapse if within three months the advance on indemnification is not paid, or in case of such a judgment whereby final indemnification is fixed, final indemnification is not paid, or the ownership has not passed to the expropriating authority. The judgment of expropriation shall also lapse if within three months after the judgment on final indemnification, the difference between the advance on indemnification and final indemnification is not paid by the expropriating authority. In case of appeal the term is lengthened to three months after the appellate Court has reached its judgment and this judgment is final.
- (6) If due to the expropriated party, the expropriating authority is not able to pay indemnification, the indemnification shall be deposited with the Court.
- (7) In case the judgment lapses the expropriated party can file a statement of claim against the expropriating authority with the Court which has rendered the lapsed judgment to restore him in his former rights. Likewise the expropriating authority can in case of an elapsed judgment file a statement of claim for restitution of a indemnification or advance thereon paid to the expropriated party. In no case can the expropriated party be obligated to retribute more than 90% of the received indemnification or advance, nor has the expropriating authority any other claim on the expropriated party for reasons of unjust enrichment or otherwise.

**Art. 1292. - Expert Estimation.**

- (1) In case no final indemnification has been fixed pursuant to the preceding Article, the Court will appoint independent experts, in uneven numbers, to estimate the indemnification.
- (2) The Court, or one of its member judges, will at least once visit the object of expropriation, accompanied by all appointed experts.

- (3) All interested parties, including such parties that have not until this point been identified as third interested parties in the procedure have a right to be present at such an inspection for which they, if known, will be invited through the expropriating authority at least ten working days prior to the inspection via registered mail.
- (4) All such involved parties can at such time communicate to the Court or its member judge present all comments, orally or both orally and in writing, that may be of interest to ascertain the indemnification.
- (5) The Court or its member judge will make an official report of the inspection including a brief reproduction of statements made by the experts or such comments of all parties involved which have not also been communicated in writing. All such relevant documents as have been handed to the Court or its member judge on the occasion of the inspection will be annexed to the report.
- (6) The Court will send the report to the experts and all parties involved on the shortest possible notice.

**Art. 1293. - Expert Report.**

- (1) The Court, or its member judge present at the inspection, will at the end of the inspection, having heard the experts, set a date, at which time the experts will deposit the report of estimate of indemnification with the Court.
- (2) The Court will send the expert-report to all parties involved on the shortest possible notice.
- (3) Within ten days after the expert-report has been sent, all parties involved may file their written complaints with regard to the expert-report. A copy of the complaint will be sent by the Court to the other parties involved on the shortest possible notice.
- (4) On the first possible day for civil cases after the period mentioned in sub-Article (3) the Court will set a trial date for all parties involved.

- (5) At least one reporting expert will then be present to account for and elucidate the expert-report and answer questions raised during the session.

#### **Art. 1294. - Legal Costs.**

- (1) The costs of the expropriating proceedings will be borne by the expropriating authority. If the compensation offered by the expropriating authority for voluntary acquisition is higher than the indemnification awarded in the judgment rendered by the Court, the Court may attribute such portion or all of the costs to the expropriated party as it finds reasonable.
- (2) The costs of the expropriating proceedings may also be attributed to the expropriated party if he, according to the Court, has obstructed the proceedings.
- (3) The costs of the expropriating proceedings include such reasonable cost made by the expropriated party for legal and other expert assistance.

### **Section 3. - Indirect Expropriation**

#### **Art. 1295. - Indirect Expropriation. - 1. Principle.**

The competent authorities may, without using expropriation proceedings, construct works or set up permanent installations on land privately held, where such works or installations do not seriously impair the rights of the holder or notably reduce the value of the immovable.

#### **Art. 1296. - 2. Application.**

The following works may be carried out by way of indirect expropriation:

- (a) works executed within less than one month which do not impair the normal exploitation of the immovable; and
- (b) installation of underground pipes, aerial lines, poles or pylons.

**Art. 1297. - 3. Restriction.**

Indirect expropriation may never have the effect of impairing rights on dwelling-houses.

**Section 4. - Indemnification**

**Art. 1298. - Full Indemnification.**

- (1) All expropriated parties have a right to full indemnification of all damages directly due to expropriation.
- (2) Indemnification other than in currency is possible when such indemnification is reasonable.

**Art. 1299. - Modifications.**

When calculating the indemnification no attention shall be paid to modifications made after the day of publication of the declaration of public utility in the Gazette of Eritrean Law, unless such modifications were normal or necessary and correspond with the usual nature and use of the property subject to expropriation as proven by the expropriated party.

**Art. 1300. - Date of Reference.**

When calculating the indemnification the value of the expropriated property on the day of the judgment of expropriation is decisive.

**Art. 1301. - True Value Indemnified.**

- (1) Only the true value, not the emotional value the property has for the expropriated party shall be indemnified.
- (2) The true value is the value that the expropriating authority and the expropriated party would have agreed to after entering into normal commercial negotiations for the acquisition of the property.
- (3) In exceptional cases the Court may ascertain the true value otherwise.



**Art. 1302. - Advantages and Disadvantages.**

When ascertaining the indemnification due to loss of an immovable property, advantages or disadvantages caused by the project for which the expropriation takes place or works or plans in relation thereto, will not be taken into account.

**Art. 1303. - Abandoning Project. - 1. Principle.**

Where the project in view of which expropriation was ordered is abandoned, the former owners shall have a right of pre-emption on their former property.

**Art. 1304. - 2. Right of Pre-emption.**

- (1) The conditions and effects of the right of pre-emption shall be as provided by the provisions of this Code regarding Contractual Rights of Purchase or Pre-emption.
- (2) Whosoever exercises his right of pre-emption shall have to pay as a price the amount he received in compensation for expropriation.

**Art. 1305. - Indemnification of Expropriated Rights.**

Unless otherwise indicated, the previous Articles are *mutatis mutandis* applicable to expropriation of rights of interested third parties.

**Art. 1306. - Indemnification of Expropriated Rented Premises.**

- (1) In case of expropriation of a rented, leased or letted shop, the renter, hirer or lessee or in case of legal sub-rent, sub-lease or sub-let his renter or lessee will receive full indemnification. When ascertaining the indemnification the fact that the rent or lease might have ended before the agreed term is taken into account.
- (2) In case of expropriation of another kind of rented, leased or letted immovable property, the renter, hirer or lessee shall receive an indemnification equal to the sum of two years rent if according to the contract it would normally have lasted at least one year from publication of the declaration of public utility in the Gazette of Eritrean Law.

- (3) No indemnification can be claimed from the expropriating authority if the contract was entered into after publication in the Gazette of Eritrean Law unless it is proven that neither parties to the contract could possibly have known of said publication.

### **Chapter 3. - Town or Country-Planning Areas**

#### **Art. 1307. - Creation of Area.**

- (1) By decree the State can designate an area as Town or Country-planning area in order to promote the development of a town or country in an economically sound manner or to protect a town or country from further unwanted developments.
- (2) The decree shall fix in a precise manner the limits of the area. It shall furthermore explain the reasons for the decree and the objectives of Town or Country-plans to be made thereunder.

#### **Art. 1308. - Plan.**

- (1) The municipality shall draw up a detailed plan relating to each Town or Country-planning area in concordance with the reasons and objectives of the decree. The plan shall at least consist of a detailed map, explanation and regulations pertaining to the use of immovable property and erection of buildings.
- (2) The plan shall, where necessary, divide each area into sub-areas.

#### **Art. 1309. - Deposition.**

- (1.) The draft plan shall be deposited for public inspection in the town hall of the applicable municipality for a period of three months.
- (2.) This deposition shall be announced in the Gazette of Eritrean Law and in at least one national daily newspaper within fifteen days after the deposition. It shall be

announced through ample notification in the locality where the area is situated.

**Art. 1310. - Objections.**

- (1) Anyone having objections to the draft plan may raise such objections with the municipality within the period of deposition.
- (2) If objections are raised orally, the municipality will make an ample account of the expressed objections.

**Art. 1311. - Carrying Out of Plan.**

- (1) In carrying out the plan, the municipality may impose the necessary restrictions on the rights of the holders and owners within the area.
- (2) It may in particular impose servitudes not to build, rights of way or servitudes relating to municipal sewers and pipes.
- (3) It may, where necessary, use expropriation proceedings.

**Art. 1312. - Government Approval.**

- (1) After the three month of deposition the municipality will send the draft plan and all expressed objections to the central government.
- (2) The plan and any amendment thereto shall be of no effect unless approved by decree of the State.
- (3) The decree of approval shall be announced in the Gazette of Eritrean Law and in at least one national daily newspaper within fifteen days after it is issued. It shall be announced through ample notification in the locality where the area is situated.

**Art. 1313. - Compensation.**

- (1) As far as any interested party can show that, due to the plan or due to the restrictions on his rights, he has suffered damages or will suffer damages in the future which

reasonably should not be borne by him, he may claim compensation from the municipality, unless such compensation will be awarded through expropriation.

- (2) If he does not accept the compensation offered to him by the municipality, he may file a statement of claim with the competent Court.
- (3) The costs of these proceedings will be borne by the municipality if the compensation offered by the municipality is lower than the compensation awarded in the judgment rendered by the Court.
- (4) The costs of these proceedings may be attributed to the claimant if he, according to the Court, has obstructed the municipality in offering a reasonable compensation.
- (5) The costs include such reasonable costs made by the claimant for legal and other expert assistance.

#### **Art. 1314. - Provisions for Use of the Land.**

- (1) Anyone using immovable property in violation of the provisions and regulations of the plan may be ordered by the municipality to stop such use forthwith.
- (2) The municipality is authorized to undo all activities in violation of the plan and charge such costs as connected therewith to the violator.

#### **Art. 1315. - Building Permit.**

- (1) No one may construct a building within a Town or Country-planning area, not even when the contemplated construction site is designated as such in the plan, unless he has been granted a building permit by the municipal council or such municipal organ authorized to do so by the municipal council.
- (2) The application for a building permit shall specify the nature of the contemplated building.

**Art. 1316. - Particulars in Application.**

- (1) An application for a permit to build a house shall specify whether such house shall be used as a dwelling-house only or whether it shall be used for commercial or industrial purposes also.
- (2) An application for a permit to build a factory, a shop or commercial or industrial premises shall specify the nature of the contemplated commerce or industry.
- (3) An application for a permit to build a factory or industrial premises shall specify the effects of the activity for which such building is erected on the environment and the public health. The application for such permit will immediately be sent to the Ministry of Land, Water and Environment. If such effects are considered to be too great by the municipality or this Ministry, the building permit is refused.

**Art. 1317. - Other Particulars.**

The application shall specify the time when the work should begin and the costs of the contemplated building.

**Art. 1318. - Granting of Permit.**

The permit shall be deemed to be granted where the municipality fails to inform the applicant of its refusal or of the conditions imposed for the granting of the permit within three months from the application having been made.

**Art. 1319. - Authorized Conditions.**

- (1) The granting of the permit may be made conditional upon the applicant carrying out street work or laying pipes in connection with the contemplated building.
- (2) It may also be made conditional upon the applicant complying with specific requirements as to the size or type of the building or the materials used. :

**Art. 1320. - Prohibited Conditions.**

The granting of the permit may not be made conditional upon the applicant employing specific persons in constructing the building or upon the building being constructed by a particular firm.

**Art. 1321. - Creation of Servitude.**

- (1) The granting of the permit may be made conditional upon the applicant causing his neighbors to create in his favor a servitude not to build.
- (2) Whosoever has been granted a permit may, failing agreement, compel his neighbors to create such servitude in his favor.
- (3) The compulsory creation of a servitude referred to in sub-Article (2) shall be ordered by the Court which shall fix the compensation to be paid to the servient owner.

**Art. 1322. - Absence of Permit.**

- (1) Where the construction of a building is undertaken in the absence of a building permit or in deviation of the permit, the municipality may order that the construction be stopped forthwith.
- (2) The municipality is authorized to undo all activities in violation of the plan and charge such costs as connected therewith to the violator.

**Art. 1323. - Provisions Regarding Individual Ownership.**

Without prejudice to the provisions of the preceding Articles, the provisions of the Title of this code on ownership shall apply as regards the rights of owners of immovable property within Town or Country-planning areas.

## **BOOK V - OBLIGATIONS**

### **TITLE I - CONTRACTS IN GENERAL**

#### **Art. 1324. - Contract Defined.**

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligations.

#### **Art. 1325. - Provisions Applicable to Contracts.**

- (1) The provisions of this Title shall apply to contracts regardless of the nature thereof and the parties thereto.
- (2) Nothing in this Title shall affect such special provisions applicable to certain contracts as are laid down in Book VI of this Code and in the Commercial Code.

#### **Art. 1326. - Scope of Application of this Title.**

- (1) The relevant provisions of this Title shall apply to obligations notwithstanding that they do not arise out of a contract.
- (2) Nothing in this Title shall affect the special provisions applicable to certain obligations by reason of their origin or nature.

### **Chapter 1. - General Provisions**

#### **Art. 1327. - Freedom of Contract.**

The parties are free to enter into a contract and to determine its content.

#### **Art. 1328. - Binding Character of Contract.**

A contract validly entered into shall be binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided by law.

**Art. 1329. - Mandatory Rules.**

Nothing in this Title shall restrict the application of mandatory rules.

**Art. 1330. - Modification by the Parties.**

The parties may derogate from or vary the effect of any of the provisions of this Title, unless they are of a mandatory nature.

**Art. 1331. - Good Faith and Fair Dealing.**

- (1) Each party must act in accordance with good faith and fair dealing.
- (2) The parties may not exclude or limit this duty.

**Art. 1332. - Usages and Practices.**

- (1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
- (2) The parties are bound by a usage that is widely known to and regularly observed by parties in the particular field concerned except where the application of such a usage would be unreasonable.

**Art. 1333. - Notice.**

- (1) Where notice is required it may, unless otherwise provided, be given by any means appropriate to the circumstances.
- (2) A notice is effective when it reaches the person to whom it is given.
- (3) For the purpose of sub-Article (2) a notice "reaches" a person when given to that person orally or delivered at that person's place of domicile or personal mailing address or, if the contract has arisen in the course of that person's business or professional activities, at that person's place of business or business mailing address.



- (4) Unless the recipient has determined the means of communication, in the event that the notice has been inaccurately communicated to the recipient by the person or means of communication designated by the sender, the notice as received is deemed to be the notice of the sender.
- (5) For the purpose of this article "notice" includes a declaration, demand, request or any other communication of intention.

**Art. 1334. - Definitions.**

In this Title:

- (a) where a party has more than one place of business the relevant "place of business" is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) "debtor" refers to the party who is to perform an obligation and "creditor" refers to the party who is entitled to performance of that obligation; and
- (c) "writing" means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

**Chapter 2. - Formation of Contracts**

**Art. 1335. - Manner of Formation.**

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

**Art. 1336. - Definition of Offer.**

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

**Art. 1337. - Withdrawal of Offer.**

- (1) An offer becomes effective when it reaches the offeree.
- (2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

**Art. 1338- Revocation of Offer.**

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.
- (2) However, an offer cannot be revoked:
  - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
  - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

**Art. 1339. - Rejection of Offer.**

An offer lapses when a rejection reaches the offeror.

**Art. 1340. - Mode of Acceptance.**

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.
- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.

- (4) The contract shall be deemed to be made at the place where the indication of assent reaches the offeror.

**Art. 1341. - Duty to Accept.**

- (1) No acceptance shall be required where a party is bound by law or by a concession granted by the authorities to enter into a contract on terms stipulated in advance.
- (2) In such a case, the contract shall be completed upon receipt of the offer.

**Art. 1342. - Invoices.**

Particulars entered by a party in an invoice shall not bind the other party unless they conform to a prior agreement or have been expressly accepted by the other party.

**Art. 1343. - Declaration of Intent.**

No person shall be deemed to make an offer where:

- (a) he declares his intention to give, to do or not to do something but does not make his intentions known to the beneficiary of the declaration; or
- (b) he sends to another or posts up in a public place tariffs, price-lists or catalogues or displays goods for sale to the public.

**Art. 1344. - Sale by Auction.**

- (1) Whosoever offers a thing for sale by auction shall be deemed to make a declaration of intention and not an offer.
- (2) In such a case, the contract shall be completed only where the thing is knocked down upon the last bid being made.

**Art. 1345. - Public Promise of a Reward.**

- (1) A promise published by posters or in any other manner to reward the person who will find an object which has been lost or who will perform a certain act shall be deemed

accepted where a person brings the object back or performs the act, notwithstanding that he did not know of the promise.

- (2) The promisor shall give the promised reward.

#### **Art. 1346. - Time of Acceptance.**

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

#### **Art. 1347. - Acceptance Within a Fixed Period of Time.**

- (1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by means of instantaneous communication begins to run from the moment that the offer reaches the offeree.
- (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

#### **Art. 1348. - Late Acceptance. Delay in Transmission.**

- (1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.
- (2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the

offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

**Art. 1349. - Withdrawal of Acceptance.**

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

**Art. 1350. - Modified Acceptance or Counter-Offer.**

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
- (2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

**Art. 1351. - Writings in Confirmation.**

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different term, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy.

**Art. 1352. - Conclusion of Contract Dependent on Agreement on Specific Matters or in a Specific Form.**

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form.

**Art. 1353. - Contract with Terms Deliberately Left Open.**

- (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further

negotiations or to be determined by a third person does not prevent a contract from coming into existence.

- (2) The existence of the contract is not affected by the fact that subsequently:
  - (a) the parties reach no agreement on the term; or
  - (b) the third person does not determine the term,

Provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

#### **Art. 1354. - Negotiations in Bad Faith.**

- (1) A party is free to negotiate and is not liable for failure to reach an agreement.
- (2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.
- (3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

#### **Art. 1355. - Duty of Confidentiality.**

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

### **Chapter 3. - Validity**

#### **Art. 1356. - Elements of Contract.**

No valid contract shall exist unless:

- (a) the parties are capable of contracting and give their consent sustainable at law;
- (b) the contract is made in the form prescribed by law or by the parties, if any; and
- (c) the object of the contract is sufficiently defined and is lawful.

#### **Section 1. - Capacity**

#### **Art. 1357. - Capacity to Conclude Contracts.**

- (1) Every natural person has the capacity to conclude contracts, subject to rules of law limiting this capacity for determined categories of persons.
- (2) A contract concluded by a natural person who lacks the capacity to perform contracts may be avoided by the natural person or body corporate that administers the property of this person.

#### **Section 2. - Consent**

#### **Art. 1358. - Definition of Mistake.**

Mistake is an erroneous assumption relating to facts existing when the contract was concluded.

#### **Art. 1359. - Relevant Mistake.**

- (1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and:

- (a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or
  - (b) the other party had not at the time of avoidance acted in reliance on the contract.
- (2) However, a party may not avoid the contract if
- (a) it was grossly negligent in committing the mistake; or
  - (b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

**Art. 1360. - Fraud.**

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

**Art. 1361. - Threat.**

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

**Art. 1362. - Gross Disparity.**

- (1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to:



- (a) the fact that the other party has taken unfair advantage of the first party's dependence, reverential fear caused by family relationship or subordination, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill; and
  - (b) the nature and purpose of the contract.
- (2) Upon the request of the party entitled to avoidance, a Court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.
- (3) A Court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has acted in reliance on it. The provisions of sub-Article (2) of Article 1385 apply accordingly.

#### **Art. 1363 - Third Persons.**

- (1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behavior or knowledge had been that of the party itself.
- (2) Where fraud, threat, gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance acted in reliance on the contract.

#### **Section 3. - Form of the Contract**

#### **Art. 1364. - Form of Contracts.**

- (1) Unless otherwise provided, no special form shall be required and a contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirements.

- (2) Where a special form is expressly prescribed by law such form shall be observed.
- (3) The parties may stipulate that the contract shall be made in a special form.

**Art. 1365. - Effect of Provisions as to Form.**

- (1) Where a special form is prescribed by law and not observed there shall be no contract but a mere draft of a contract.
- (2) A contract shall be valid notwithstanding that fiscal provisions, such as provisions relating to stamp duty or registration fee, have not been complied with.
- (3) Unless otherwise provided, a contract shall be valid notwithstanding that prescribed measures of publication have not been complied with.

**Art. 1366. - Preliminary Contracts.**

Preliminary contracts shall be made in the form prescribed in respect of final contracts.

**Art. 1367. - Variations.**

A contract made in a special form shall be varied in the same form.

**Art. 1368. - Contracts Relating to Immovables.**

- (1) A contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or hypothec of an immovable shall be in writing and registered with a Court or notary.
- (2) Any contract by which an immovable is divided and any compromise relating to an immovable shall be in writing and registered with a Court or notary.

**Art. 1369. - Contracts Made with a Public Administration.**

Any contract binding the Government or a public administration shall be in writing and registered with a Court, public administration or notary.

**Art. 1370. - Contracts for a Long Period of Time.**

The following contracts shall be in writing:

- (a) contracts of suretyship;
- (b) insurance contracts; and
- (c) any other contract in respect of which such form is required by law.

**Art. 1371. - Agreed Form.**

A contract which the parties agree to make in a special form not required by law shall not be deemed to be completed until it is made in the agreed form.

**Art. 1372. - Written Form.**

- (1) Any contract required to be in writing shall be supported by a special document signed by all the parties bound by the contract.
- (2) Each party may require that it is attested by two witnesses.

**Art. 1373. - Signature.**

- (1) Any party bound by a contract shall affix his handwritten signature thereto.
- (2) Where a party cannot write, he may affix his thumb-mark.
- (3) The signature or thumb-mark of a blind or illiterate person shall not bind him unless it is authenticated by a notary, registrar or judge acting in the discharge of his duties.

**Art. 1374. - Witnesses. - 1. Capacity.**

- (1) Where witnesses are required by law or agreement, they shall be, of age and not judicially interdicted, unless otherwise expressly provided.
- (2) Sex or nationality shall not be considered in determining the capacity to act as witness.

**Art. 1375. - 2. Duties.**

- (1) Where necessary, the witnesses shall certify that a contract made and the terms thereof.
- (2) Unless they act expressly as sureties, the witnesses shall not guarantee the performance of the contract.

**Art. 1376. - Merger Clause.**

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

**Art. 1377. - Written Modification Clauses.**

A contract in writing which contains a clause requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.

**Section 4. - Object of the Contract**

**Art. 1378. - Initial Impossibility.**

- (1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.
- (2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to

which the contract relates does not affect the validity of the contract.

**Art. 1379. - Contracts Contrary to Good Morals, Public Order or Mandatory Rules of Law.**

- (1) A contract which by its content or necessary implication is contrary to good morals or public order is null and void.
- (2) Violation of a mandatory rule of law entails nullity of the contract; if, however, such a rule of law is intended solely for the protection of one of the parties to the contract, the contract may only be avoided by that party.
- (3) Mandatory rules of law which do not purport to invalidate contracts contrary to them, shall not entail that these contracts are null and void or may be avoided.

**Art. 1380. - Anti-Corruption Provision.**

The following contracts which, either directly or through intervening persons, are intended as a means of acquiring property, are null and void and oblige the person who acquired the property to pay damages to whoever sustains injury as a result of the contract:

- (a) contracts pertaining to the acquisition by judges, members of the office of the public prosecutor, assistant judges, clerks, advocates, executing officers and public notaries, of property in respect of which procedures are pending before the Court in whose jurisdiction they exercise their profession;
- (b) contracts pertaining to the acquisition by civil servants, public servants, officials of government agencies, government officials of property which is sold by them or before them;
- (c) contracts pertaining to the acquisition by persons holding public office of property which belongs to the State or other public bodies and of which the management has been entrusted to them.

**Art. 1381. - *Actio Pauliana.***

- (1) If a debtor enters into a juridical act, in circumstances in which he knew or ought to have known that his act would adversely affect the recourses of one or several of his creditors against his patrimony, the act may be declared inopposable; any creditor whose recourses have been adversely affected by the juridical act may invoke this ground for inopposability, irrespective of whether his claim has arisen before or after the act.
- (2) Acts by gratuitous title excepted, a juridical act, either multilateral or unilateral and directed at one or more specifically determined persons, can only be declared inopposable because of prejudice to a creditor, if those persons with whom or in respect of whom the debtor performed the juridical act knew or ought to have known that prejudice to one or more creditors would result from it.
- (3) Where a juridical act by gratuitous title is declared inopposable because of prejudice, the inopposability does not affect the rights of a beneficiary who neither knew nor ought to have known that prejudice to one or more creditors would be the result of the juridical act, but only to the extent that this beneficiary shows that, at the time of the declaration or the institution of the action in inopposability, he did not derive profit from the juridical act.
- (4) The inopposability may only benefit the creditor attacking the juridical act, and extends no further than necessary to remove the prejudice which he has experienced.
- (5) Rights which third parties in good faith have acquired, other than by gratuitous title, in property which was the object of the annulled juridical act shall be respected. With respect to a third party in good faith who has acquired property by gratuitous title, the annulment shall have no effect to the extent that he shows that at the time the property is claimed from him he does not derive profit from the juridical act.

**Art. 1382. - Presumption That Both Parties Knew of the Prejudice to Creditors.**

- (1) If the juridical act which has adversely affected one or several creditors has been performed within the year preceding the time the ground for annulment was invoked, and if the debtor had not bound himself to that juridical act prior to such period, there is a presumption that, on both sides, one knew or ought to have known that prejudice to a creditor or creditors would be the result of the juridical act.
  - (a) in contracts whereby the value of the obligation on the debtor's side considerably exceeds that of the obligation on the other side;
  - (b) in juridical acts to pay or to secure an obligation which is not exigible;
  - (c) in juridical acts performed by a debtor, who is a natural person, with or with respect to:
    - (i) his spouse, his adopted child or foster child, or a relative by blood or marriage up to the third degree;
    - (ii) a legal person in which he, his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree is an officer or director, or a body corporate in which the aforementioned persons, either separately or jointly, hold as shareholders, directly or indirectly, at least one half of the issued stock;
  - (d) in juridical acts performed by a debtor, who is a body corporate, with or with respect to a natural person
    - (i) who is an officer or director of that body corporate, or with or with respect to his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree;

- (ii) who, whether or not together with his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree, holds, as a shareholder, directly or indirectly, at least one half of the issued stock;
  - (iii) whose spouse, adopted child or foster child, or relative by blood or marriage up to the third degree, hold as shareholders, separately or jointly, directly or indirectly, at least one half of the issued stock;
- (e) in juridical acts performed by a debtor, who is a body corporate, with or with respect to another body corporate, if
- (i) one of these body corporates is an officer of the other;
  - (ii) an officer of one of these body corporates, himself a natural person, his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree is an officer of the other body corporate;
  - (iii) an officer, who is a natural person, or a director of one of these body corporates, or his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree, separately or jointly, hold as shareholders, directly or indirectly, at least one half of the issued stock;
  - (iv) the same body corporate or the same natural person, whether or not together with his spouse, adopted child or foster child, or relative by blood or marriage up to the third degree, holds, directly or indirectly, at least one half of the issued stock in both body corporates;



- (f) in juridical acts performed by a debtor, who is a body corporate, with or with respect to a group company.
- (2) A spouse includes any other partner in life.
- (3) A foster child is a person who has been durably looked after and educated as one's own child.
- (4) An officer, director or shareholder includes a person who had that capacity less than a year prior to the juridical act.
- (5) A body corporate includes a body corporate-officer, if the officer of the body corporate-officer is itself a body corporate.

**Art. 1383. - Presumption that the Debtor Knew of the Prejudice to Creditors.**

In the event of prejudice caused by a juridical act by gratuitous title which the debtor has performed within the year preceding the time the ground for annulment was invoked, there is a presumption that he knew or ought to have known that prejudice to one or several creditors would be the result of the juridical act.

**Art. 1384. - Party.**

For the purposes of the three preceding articles, a debtor includes a person against whose property recourse can be taken for the obligation of another.

**Section 5. - Avoidance of the Contract**

**Art. 1385. - Confirmation.**

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

**Art. 1386. - Loss of Right to Avoid.**

- (1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or

performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has acted in reliance on a notice of avoidance.

- (2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

#### **Art. 1387. - Notice of Avoidance.**

The right of a party to avoid the contract is exercised by notice to the other party.

#### **Art. 1388. - Time Limits.**

- (1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.
- (2) Where an individual term of the contract may be avoided by a party under Article 1362, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.
- (3) This article does not prevent the avoidance as a defense.

#### **Art. 1389. - Avoidance by Court.**

- (1) Avoidance may also be pronounced by the Court upon request of a party.
- (2) The rules on avoidance by notice are applicable *mutatis mutandis*.

#### **Art. 1390. - Partial Avoidance.**

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having

regard to the circumstances, it is unreasonable to uphold the remaining contract.

**Art. 1391. - Retroactive Effect of Avoidance.**

- (1) Avoidance takes effect retroactively.
- (2) On avoidance either party may claim restitution of whatever it has supplied under the contract or the part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.

**Art. 1392. - Damages.**

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

**Art. 1393. - Mandatory Character of the Provisions.**

The provisions of this Chapter are mandatory, except insofar as they relate to the binding force of mere agreement, initial impossibility or mistake.

**Art. 1394. - Unilateral Declarations.**

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

**Chapter 4. - Content of the Contract**

**Section 1. - General Provisions**

**Art. 1395. - Express and Implied Obligations.**

The contractual obligations of the parties may be express or implied.

**Art. 1396. - Implied Obligations.**

- (1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of

their rights and duties, a term which is appropriate in the circumstances shall be applied.

- (2) In determining what is an appropriate term regard shall be had, among other factors, to
  - (a) the intention of the parties;
  - (b) the nature and purpose of the contract;
  - (c) good faith and fair dealing;
  - (d) reasonableness; and
  - (e) practices established between the parties and usages;

**Art. 1397. - Co-operation between the Parties.**

Each party shall co-operate with the other party when such cooperation may reasonably be expected for the performance of that party's obligations.

**Art. 1398. - Duty to Achieve a Specific Result. Duty of Best Efforts**

- (1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.
- (2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

**Art. 1399. - Determination of Kind of Duty Involved.**

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to:

- (a) the way in which the obligation is expressed in the contract;

- (b) the contractual price and other terms of the contract;
- (c) the degree of risk normally involved in achieving the expected result;
- (d) the ability of the other party to influence the performance of the obligation.

**Art. 1400. - Determination of Quality of Performance.**

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

**Art. 1401. - Price Determination.**

- (1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.
- (2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.
- (3) Where the price is to be fixed by a third person, and that person cannot or will not do so, the price shall be a reasonable price.
- (4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

**Art. 1402. - Contract for an Indefinite Period.**

A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.

## **Section 2. - Effect of Standard Terms**

### **Paragraph 1. - Standard Terms in General**

#### **Art. 1403. - Contracting Under Standard Terms.**

- (1) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.
- (2) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 1404-1406.

#### **Art. 1404. - Surprising Terms.**

- (1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.
- (2) In determining whether a term is of such a character regard is to be had to its content, language and presentation.

#### **Art. 1405. - Conflict between Standard Terms and Non-Standard Terms.**

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

#### **Art. 1406. - Battle of Forms.**

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

Paragraph 2: Standard Terms Used vis-à-vis Consumers

**Art. 1407. - Standard Terms Used Vis-a-vis a Consumer**

- (1) A consumer is a natural person who, in concluding a contract, is acting for purposes which are outside his trade, business or profession.
- (2) The consumer, is bound by the standard terms even if, at the time of entering into the contract, the merchant invoking the standard terms, understood or ought to have understood that the consumer did not know the content of the standard contract terms.
- (3) A consumer is not bound by the standard contract terms if the merchant has not afforded the consumer a reasonable opportunity to take cognizance of the standard contract terms. The contract shall, however, continue to bind the parties upon the terms agreed if it is capable of continuing in existence without the standard contract terms.
- (4) The merchant has afforded the consumer a reasonable opportunity as referred to in the preceding sub-Article, if
  - (a) he has given a copy of the standard contract terms to the consumer before or at the time of entering the contract,
  - (b) or, if this is not reasonably possible, the merchant has informed the consumer, before the formation of the contract, that he has the conditions available for inspection, and that they will be sent to the consumer upon request, without delay and at the cost of the merchant.

**Art. 1408. - Unfairness of Standard Terms Used Vis-a-vis Consumer**

- (1) If a standard contract term is regarded as unfair, it shall not be binding on the consumer. The contract shall, however, continue to bind the parties upon the terms agreed if it is capable of continuing in existence without the unfair standard contract terms.

- (2) A standard contract term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
- (3) The unfairness of a standard contract term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded, the other terms of the contract and all the circumstances attending the conclusion of the contract.
- (4) Assessment of the unfair nature of the standard contract terms shall relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price and remuneration to be paid for the services or goods supplied insofar as these terms are in plain intelligible language.

#### **Art. 1409. - Interpretation**

- (1) A merchant shall ensure that any written term of a contract is expressed in plain, intelligible language. Where there is doubt about the meaning of a written term, the interpretation most favorable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedure laid down in Article 1411.

#### **Art. 1410. - Grey List**

The terms in the following non-exhaustive list are presumed to be unfair:

- (a) a term excluding or limiting the legal liability of a merchant in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of the merchant;
- (b) a term excluding or limiting the legal liability of a merchant in the event of loss of or injury to the consumer's property resulting from an act or omission of the merchant;



- (c) a term inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the merchant or another party in the event of total or partial non-performance or inadequate performance by the merchant of any of the contractual obligations, including the option of offsetting an obligation owed to the merchant against any claim which the consumer may have against him;
- (d) a term making an agreement binding on the consumer whereas provision of services by the merchant is subject to a condition whose realization depends on the latter's will alone;
- (e) a term permitting the merchant to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive commensurate compensation from the merchant where the latter is the party canceling the contract;
- (f) a term requiring any consumer who fails to fulfill his obligation to pay a disproportionately high sum in compensation;
- (g) a term authorizing the merchant to terminate the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the merchant to retain the sums paid for goods or services not yet supplied by him where it is the merchant himself who terminates the contract;
- (h) a term enabling the merchant to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (i) a term which provides for automatic extension of a contract of fixed duration unless the consumer indicates to the contrary, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (j) a term enabling the merchant to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;

- (k) a term enabling the merchant to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) a term providing for the price of goods to be determined at the time of delivery or allowing a merchant to increase the price without in both cases giving the consumer a corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) a term giving the merchant the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n) a term limiting the merchant's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o) a term obliging the consumer to fulfill all his obligations where the merchant does not perform his;
- (p) a term giving the merchant the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; and
- (q) a term excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration, unduly restricting the evidence available to him or imposing on him a burden of proof which should lie with another party to the contract.

**Art. 1411. - Group Action and Public Action**

- (1) If a body corporate or governmental body referred to in sub-Article (2) suspects certain standard contract terms to be unfair, it may bring proceedings for an injunction against any merchant or person recommending the use of such a term in contracts concluded with consumers.

- (2) The proceedings may be instituted by:
- (a) a body corporate whose purpose is, according to its articles of association, to take care of the interests of consumers;
  - (b) a body corporate whose purpose is, according to its articles of association, to prevent unfair competition; or
  - (c) any governmental body whose legal duty is to monitor consumer interests or unfair competition.
- (3) The Court on an application by a body corporate or governmental body may grant an injunction on such terms as it thinks fit.
- (4) The proceedings are brought before the Court of the place at which the merchant or the person who recommends the use of the unfair contract terms has its place of business or, if he does not have a place of business, before the Court of the place at which the merchant or person who recommends the use of the unfair contract terms is domiciled. If the merchant has neither a place of business nor a domicile in Eritrea, the proceedings are to be brought before the Court of the place at which the body corporate or governmental body which challenges the standard contract term or terms has its place of business.

### **Chapter 5: - Interpretation**

#### **Art. 1412. - Intention of the Parties.**

- (1) A contract shall be interpreted according to the common intention of the parties.
- (2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.
- (3) The Court may not make a contract for the parties under the guise of interpretation.

**Art. 1413. - Interpretation of Statements and Other Conduct.**

- (1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.
- (2) If the preceding sub-Article is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

**Art. 1414. - Relevant Circumstances.**

In applying Articles 1412 and 1413, regard shall be had to all the circumstances, including:

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned; and
- (f) usages.

**Art. 1415. - Reference to Contract or Statement as a Whole.**

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

**Art. 1416. - All Terms to be Given Effect.**

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

**Art. 1417. - *Contra Proferentum* Rule.**

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

**Art. 1418. - Gratuitous Contracts.**

The obligations assumed by a party who derives no advantage from the contract shall be interpreted in his favor.

**Art. 1419. - Linguistic Discrepancies.**

Where a contract is drawn up in two or more language versions which are equally authoritative, in case of discrepancies between the versions, the version in which the contract was originally drawn up will prevail, unless the circumstances of the case indicate the contrary.

**Chapter 6. - Performance**

**Section 1. - Performance in General**

**Art. 1420. - Time of Performance.**

A party must perform its obligations:

- (a) if a time is fixed by or determinable from the contract, at that time;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

**Art. 1421. - Performance at One Time or in Installments.**

In cases under Article 1420, sub-Articles (b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

**Art. 1422. - Partial Performance.**

- (1) The creditor may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the creditor has no legitimate interest in so doing.
- (2) Additional expenses caused to the creditor by partial performance are to be borne by the debtor without prejudice to any other remedy.

**Art. 1423. - Order of Performance.**

- (1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.
- (2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

**Art. 1424. - Earlier Performance.**

- (1) The creditor may reject an earlier performance unless he has no legitimate interest in so doing.
- (2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.
- (3) Additional expenses caused to the creditor by earlier performance are to be borne by the debtor, without prejudice to any other remedy.

**Art. 1425. - Place of Performance.**

- (1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

- (a) a monetary obligation, at the creditor's place of business or, in the absence thereof, at the place where the creditor is domiciled; or
  - (b) any other obligation, at its own place of business or, in the absence thereof, at the place where it is domiciled.
- (2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business or place of domicile subsequent to the conclusion of the contract.

**Art. 1426. - Payment by Cheque or Other Instrument.**

- (1) Payment may be made in any form used in the ordinary course of business or social conduct at the place for payment.
- (2) However, a creditor who accepts, either by virtue of sub-Article (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honored.

**Art. 1427. - Payment by Funds Transfer.**

- (1) Unless the creditor has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the creditor has made it known that he has an account.
- (2) In case of payment by a transfer the debtor is released when the transfer to the creditor's financial institution becomes effective.

**Art. 1428. - Currency of Payment.**

- (1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the debtor in the currency of the place for payment unless
  - (a) that currency is not freely convertible; or

- (b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.
- (2) If it is impossible for the debtor to make payment in the currency in which the monetary obligation is expressed, the creditor may require payment in the currency of the place for payment, even in the case referred to in sub-Article (1) (b).
- (3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.
- (4) However, if the debtor has not paid at the time when payment is due, the creditor may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

**Art. 1429. - Currency Not Expressed.**

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

**Art. 1430. - Costs of Performance.**

Each party shall bear the costs of performance of its obligations.

**Art. 1431. - Imputation of Payments.**

- (1) A debtor owing several monetary obligations to the same creditor may specify at the time of payment the obligation to which he intends the payment to be applied. However, the payment is imputed first to any expenses, then to interest due and finally the principal.
- (2) If the debtor makes no such specification, the creditor may, within a reasonable time after payment, declare to the debtor the obligation to which he imputes the payment, provided that the obligation is due and undisputed.



- (3) In the absence of imputation under sub-Articles (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria and in the order indicated:
  - (a) an obligation which is due or which is the first to fall due;
  - (b) the obligation for which the creditor has least security;
  - (c) the obligation which is the most burdensome for the debtor;
  - (d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

**Art. 1432. - Imputation of Non-Monetary Obligations.**

Article 1431 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

**Art. 1433. - Application for Public Permission.**

Where the law requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise, the party whose performance requires permission shall take the necessary measures.

**Art. 1434. - Procedure in Applying For Permission.**

- (1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.
- (2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

**Art. 1435. - Permission Neither Granted Nor Refused.**

- (1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted

nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.

- (2) Where the permission affects some terms only, sub-Article (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

**Art. 1436. - Permission Refused.**

- (1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.
- (2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

**Section 2. - Hardship**

**Art. 1437. - Contract to be Observed.**

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

**Art. 1438. - Definition of Hardship.**

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and:

- (a) the events occur or become known to the disadvantaged party after the conclusion of the contract;
- (b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;

- (c) the events are beyond the control of the disadvantaged party; and
- (d) the risk of the events was not assumed by the disadvantaged party.

**Art. 1439. - Effects of Hardship.**

- (1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.
- (2) The request for renegotiations does not in itself entitle the disadvantaged party to withhold performance.
- (3) Upon failure to reach agreement within a reasonable time either party may resort to the Court.
- (4) If the Court finds hardship it may, if reasonable,
  - (a) terminate the contract at a date and on terms to be fixed; or
  - (b) adapt the contract with a view to restoring its equilibrium.

**Chapter 7. - Modalities of Obligations**

**Section 1. - Special Terms of Obligations or Contracts**

**Paragraph 1. - Provisions as to Time**

**Art. 1440. - Applicability.**

Where an act of a legal nature is to be performed after a certain period of time from the date of concluding the contract or any other date, such period shall be reckoned in accordance with the provisions of this section.

**Art. 1441. - Determination of Period.**

- (1) A period established by a law, other legal acts, a transaction, or designated by a Court shall be determined

by a calendar date or by the expiry of a period of time which shall be calculated by years, months, weeks, days, or hours.

- (2) A period may also be determined by specifying an event which must inevitably take place afterwards.

**Art. 1442. - Commencement of Period Determined by Period of Time.**

The running of a period determined by a period of time shall commence on the following day after the calendar date or ensuing of the event by which its commencement is determined.

**Art. 1443. - Ending of Period on Non-Work Day.**

If the last day of a period comes on a non-work day, the next work day following shall be considered to be the day of ending of the period.

**Art. 1444. - Procedure for Performing Actions on Last Day of Period.**

- (1) If a period has been established for performing something, it may be fulfilled up to 24:00 hours of the last day of the period.
- (2) However, if this action had to be performed in an organization, the period shall expire at the hour when in this organization the respective operations terminate according to the established rules.
- (3) Where the period is fixed in weeks, the debt shall be due on the last day of such period, the day of the making of the contract not being included.
- (4) Where the period is fixed in months, the debt shall be due on such day of the last month as corresponds by its number to the day of the making of the contract.

**Art. 1445. - Period Extended.**

Where the period is extended, the new period shall, unless otherwise agreed, begin to run from the day following the day on which the first period expired.

**Art. 1446. - Benefit of Period of Time.**

The period of time shall be deemed to be fixed for the benefit of the debtor unless the contract or the circumstances show that it is also fixed for the benefit of the creditor.

**Art. 1447. - Waiving of Benefit of Time.**

- (1) The debtor may perform his obligations before the expiry of the agreed period of time unless the contrary intention of the parties can be inferred from the terms or nature of the contract or from the circumstances.
- (2) Payments made before the expiry of the agreed period of time may not be recovered.

**Art. 1448. - Rights of Creditor.**

- (1) The creditor may not demand performance before the expiry of the agreed period of time unless such period was fixed for his exclusive benefit.
- (2) Where the period is fixed for the exclusive benefit of the creditor, he shall, where necessary, grant a reasonable period of time for the debtor to perform his obligations.

**Art. 1449. - Loss of Benefit of Time.**

The debtor whose insolvency has been established or who has reduced the value of the securities given by him to the creditor shall lose the benefit of the agreed period of time.

**Art. 1450. - No Period of Time Set.**

- (1) If no period of time has been set for the performance of the obligation, it may be performed immediately.
- (2) If no period of time has been set for the performance of the obligation, the creditor may claim performance after giving reasonable notice in advance.

## Paragraph 2. - Conditional Obligations

### **Art. 1451. - Principle.**

An obligation is conditional where, in virtue of the contract, its effect has been made dependent upon a future and uncertain event.

### **Art. 1452. - Suspensive Condition**

A suspensive condition causes the obligation to take effect upon the occurrence of the event.

### **Art. 1453. - Resolutive Condition**

A resolutive condition extinguishes the obligation upon the occurrence of the event.

### **Art. 1454. - Non-Interference.**

- (1) If reasonableness and equity so require, the condition is deemed fulfilled in the event that the party who has an interest in the non-fulfillment of the condition prevents its fulfillment.
- (2) If reasonableness and equity so require, the condition is deemed not to be fulfilled in the event that the party who has an interest in the fulfillment of the condition brings about its fulfillment.

### **Art. 1455. - Performance before Fulfillment of a Resolutive Condition.**

After fulfillment of a resolutive condition, the creditor must undo the prestations which have already been performed, unless otherwise agreed explicitly or implicitly by the parties.

### **Art. 1456. - Performance before Fulfillment of a Suspensive Condition.**

Where a prestation owed pursuant to an obligation under a suspensive condition has been performed before the fulfillment of the condition, the performer is entitled to reclaim it from the recipient as having been paid unduly, as long as the condition has not been fulfilled.

**Art. 1457. - Acts of Management.**

Acts of management done prior to the fulfillment of the condition by the party who exercises the right shall remain valid where the condition is fulfilled. Damages may be claimed where such acts were done in bad faith.

**Art. 1458. - Acts Beyond Management.**

- (1) Acts beyond management done by the party who exercises the right may be annulled where the other party so requires.
- (2) Any interested party may require the other party to state within a reasonable period of time whether he will require the acts beyond management to be annulled.
- (3) The effects of annulment shall be as provided for in Chapter 3 of this Title.

**Art. 1459. - Fruits and Profits.**

The party who exercises the right prior to the fulfillment of the condition shall, where the condition is fulfilled, retain the fruits and profits he received in good faith prior to the fulfillment of the condition.

**Art. 1460. - Protective Measures.**

A party whose conditional rights are imperiled may take such protective measures as he could take, were his rights not conditional.

**Art. 1461. - Unlawful or Immoral Condition.**

The provisions relating to the unlawful or immoral object of a contract shall apply where the condition on which a contract depends is unlawful or immoral.

**Art. 1462. - Condition Depending on a Party.**

An obligation assumed subject to a condition the fulfillment of which depends solely on the party who assumes the obligation shall be of no effect.

### Paragraph 3. - Alternative Obligations

#### Art. 1463. - Definition.

- (1) An obligation is alternative where the debtor must perform one of two or more different prestations at his choice, at the choice of the creditor or at that of a third party.
- (2) The choice belongs to the debtor, unless the contract produces a different result.

#### Art. 1464. - Alternative Obligation Becoming Simple.

An alternative obligation becomes a simple obligation through the choice made by the person who is entitled to do so.

#### Art. 1465. - Passing of the Right to Choose.

- (1) Where one of the parties is entitled to make the choice, the right to choose passes to the other party if it has given its counterpart a reasonable period of time in which to determine the choice and the latter has not chosen within this period.
- (2) The right to choose, however, does not pass to the creditor until he becomes entitled to claim performance, nor to the debtor until he has the right to perform.
- (3) Where a third party should make the choice, any interested party may request the Court to choose if it has given that third party a reasonable period of time in which to determine the choice and the latter has not chosen within this period, unless otherwise follows from the contract.
- (4) Sub-Article (3) shall apply *mutatis mutandis* where two or more persons should make the choice together and they do not agree.

#### Art. 1466. - Impossibility to Perform.

- (1) Impossibility to perform one or more of the prestations does not affect the right to choose.



- (2) However, if the choice is the debtor's, he may not choose an impossible prestation, unless the impossibility results from a cause which is imputable to the creditor, or the latter consents to the choice.

## **Section 2. - Plurality of Parties**

### **Paragraph 1. - Plurality of Debtors**

#### **Art. 1467. - Liability for Equal Shares.**

- (1) Where two or more debtors owe one and the same prestation each is liable for an equal share, unless unequal shares or solidarity are provided for by law, custom or a juridical act.
- (2) Where the prestation is indivisible, or where the debtors are each liable for the whole of the same obligation by reason of law, custom or a juridical act, they are solidarily liable.
- (3) A contract between debtor and creditor may have as a result that, where an obligation is transmitted to two or more successors, they will be liable for unequal shares or will be solidarily liable.

#### **Art. 1468. - Right to Full Performance.**

- (1) If two or more debtors are solidarily liable, the creditor has against each of them the right to full performance.
- (2) Performance by one of the debtors also releases his co-debtors with respect to the creditor. The same applies where the obligation is extinguished by giving in payment or set-off.

#### **Art. 1469. - Reasonableness and Equity.**

The standards of reasonableness and equity apply to the juridical relations between the solidary debtors.

**Art. 1470. - Renunciation by Gratuitous Title.**

- (1) Each solidary debtor is entitled to accept on behalf of his co-debtors an offer by the creditor to renounce his claim by gratuitous title to the extent that this renunciation also applies to the co-debtors.
- (2) An extension granted by the creditor for payment to one of the debtors also applies to his co-debtors to the extent that this turns out to be the intention of the creditor.

**Art. 1471. - Share in the Debt.**

- (1) Solidary debtors must contribute to the debt and the expenses, each for the share which concerns him according to their mutual relationship, and in accordance with the following sub-Articles. Unless otherwise agreed or provided for by law, they shall share equally.
- (2) The obligation to contribute to a debt which is performed at the expense of one of the solidary co-debtors for more than the share that concerns him, comes to rest upon each co-debtor for the amount of this surplus, each time up to the share which concerns him.
- (3) In proportion to the share of the debt which concerns him, each co-debtor must contribute to the reasonable expenses incurred by a solidary debtor, unless they are personal to the latter.

**Art. 1472. - Defenses of Co-Debtor.**

- (1) A co-debtor who, pursuant to the preceding article, has been called upon to contribute to a debt can invoke, against the solidary debtor demanding such contribution, the defenses which he had against the creditor at the time when the obligation to contribute arose.
- (2) Nevertheless, he cannot invoke such a defense against his solidary co-debtor where it has arisen after the creation of their obligation from a juridical act which the creditor has performed with or in respect of the person called upon to contribute.

- (3) The person who has been called upon to contribute cannot invoke the prescription of the right of action of the creditor, unless both he and the person who is asking for the contribution could have invoked the completion of the prescription against the creditor at the time when the obligation to contribute arose.
- (4) The current provision applies unless different rules result from the nature of the contract between the parties.

**Art. 1473. - Subrogation.**

- (1) Where the obligation is performed at the expense of a solidary debtor for more than the share which concerns him, he is subrogated for the surplus in the rights of the creditor against the co-debtors and third parties, in each case up to the share of each co-debtor or third party according to his relationship with that debtor.
- (2) Where the obligation consists of a prestation other than the payment of money, it is converted by the subrogation into a monetary obligation of equal value.

**Art. 1474. - Attribution to All Co-Debtors.**

- (1) Where it proves wholly or partially impossible to take recourse against a solidary debtor for an obligation referred to in the articles 1471 and 1473, the share which has proved to be irrecoverable is attributed to all his co-debtors in proportion to the share of the obligation that concerns each of them according to their mutual relationship.
- (2) Where the obligation was wholly or partially performed at the expense of a solidary debtor whom it did not concern, and where it proves impossible to take recourse against the co-debtors whom the obligation does not concern, the share which has proved to be irrecoverable is attributed to all the co-debtors whom it did not concern in proportion to the amounts for which each of them was liable towards the creditor at the time of performance of the obligation.

- (3) Each person involved in an attribution remains entitled to reclaim the amount which he has contributed from the person against whom it was impossible to take recourse.

#### **Art. 1475. - Renunciation of the Right to Claim.**

Renunciation by a creditor of his right to obtain performance of an obligation from a solidary debtor does not release the latter from his obligation to make contributions. Nevertheless the creditor can release him from his obligation to make contributions to a co-debtor by obliging himself towards the latter to reduce his claim by the amount which could have been claimed as contribution.

#### Paragraph 2. - Plurality of Creditors

#### **Art. 1476. - Right to Claim an Equal Share.**

- (1) Where a prestation is owed to two or more creditors, each of them has the right to claim an equal share, unless, as a result of the law, custom or a juridical act, they are entitled to unequal shares of the prestation or they have jointly a single claim.
- (2) Where the prestation is indivisible or the right to it is held in solidarity, they have jointly a single claim.
- (3) The fact that the right to claim is held in solidarity cannot be invoked against the debtor where this right results from a contract he has entered into with the partners, provided that he did not know nor ought to know that the right would be held in solidarity.

#### **Art. 1477. - Rules Pertaining to Solidarity Applicable *Mutatis Mutandis*.**

Where it has been agreed with the debtor that two or more persons can each as creditor claim the whole prestation from him, and that payment to one releases him with respect to the others, the rules pertaining to solidarity apply *mutatis mutandis* to their juridical relationship with the debtor, whether or not they are, among themselves, jointly entitled to the prestation.

## **Chapter 8. - Non-Performance**

### **Section 1. - Non-Performance in General**

#### **Art. 1478. - Non-Performance Defined.**

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

#### **Art. 1479. - Interference by the Other Party.**

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event as to which the first party bears the risk.

#### **Art. 1480. - Withholding Performance.**

- (1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance.
- (2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.
- (3) Where the party that is to perform first has good reasons to assume that the other party will not perform its obligation at all, it is entitled to withhold the performance of its own obligation.
- (4) If an obligation is performed only partially or improperly, then the other party may withhold the performance in so far as reasonableness and equity justify it.

#### **Art. 1481. - Cure by Non-Performing Party.**

- (1) The non-performing party may, at its own expense, cure any non-performance, provided that:

- (a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;
  - (b) cure is appropriate in the circumstances;
  - (c) the aggrieved party has no legitimate interest in refusing cure; and
  - (d) cure is effected promptly.
- (2) The right to cure is not precluded by notice of termination.
  - (3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's right of cure are suspended until the time for cure has expired.
  - (4) The aggrieved party may withhold performance pending one.
  - (5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any injury caused or not prevented by the cure.

**Art. 1482. - Additional Period for Performance.**

- (1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.
- (2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.
- (3) Where in a case of delay in performance which does not amount to fundamental non-performance, the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of

reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.

- (4) Sub-Article (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

**Art. 1483. - Extension of Liability.**

The parties may extend their liability under the contract and provide that they will be liable for non-performance notwithstanding that performance is prevented by *force majeure*.

**Art. 1484. - Limitation of Liability.**

The parties may limit their liability under the contract. Such clauses will be given effect in accordance with the principles stated at Article 1690.

Section 2. - Right to Performance

**Art. 1485. - Performance of Monetary Obligation.**

Where a party who is obliged to pay money does not do so, the other party may require payment.

**Art. 1486. - Performance of Non-Monetary Obligation.**

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

- (a) performance is impossible in law or in fact;
- (b) performance or, where relevant, enforcement is unreasonable burdensome or expensive;
- (c) the party entitled to performance may reasonably obtain performance from another source;
- (d) performance is of an exclusively personal character; or

- (e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

**Art. 1487. - Repair and Replacement of Defective Performance.**

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 1485 and 1486 apply accordingly.

**Art. 1488. - Change of Remedy.**

- (1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.
- (2) Where the decision of a Court for performance of a nonmonetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

**Section 3. - Termination**

**Art. 1489. - Right to Terminate the Contract.**

- (1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
- (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether
  - (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;
  - (b) strict compliance with the obligation which has not been performed is of essence under the contract;
  - (c) the non-performance is intentional or reckless;



- (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;
  - (e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.
- (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 1482 has expired.

**Art. 1490. - Notice of Termination.**

- (1) The right of a party to terminate the contract is exercised by notice to the other party.
- (2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

**Art. 1491. - Termination by Court.**

- (1) Termination may also be pronounced by the Court upon request of a party.
- (2) The rules on termination by notice are applicable *mutatis mutandis*.

**Art. 1492. - Prescription.**

- (1) The right to terminate the contract by notice lapses by the prescription of the right of action to terminate the contract.
- (2) The prescription does not prevent the termination of the contract as a defense.

**Art. 1493. - Anticipatory Non-Performance.**

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

**Art. 1494. - Adequate Assurance of Due Performance.**

A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

**Art. 1495. - Effects of Termination in General.**

- (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.
- (2) Termination does not preclude a claim for damages for non-performance.
- (3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

**Art. 1496. - Restitution.**

- (1) On termination of the contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.
- (2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect.

## **Section 4. - Damages**

### **Paragraph 1. - Damages in General**

#### **Art. 1497. - Right to Damages.**

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under the provisions of this Title.

#### **Art. 1498. - Full Compensation.**

- (1) The aggrieved party is entitled to full compensation for injury sustained as a result of the non-performance. Such injury includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or injury.
- (2) Such injury may be non-pecuniary and includes, for instance, physical suffering.

#### **Art. 1499. - Certainty of Injury.**

- (1) Compensation is due only for injury, including future injury, that is established with a reasonable degree of certainty.
- (2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.
- (3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the Court.

#### **Art. 1500. - Foreseeability of Injury.**

The non-performing party is liable only for injury which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

### **Art. 1501. - Replacement Transaction.**

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further injury.

### **Art. 1502. - Current Price.**

- (1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further injury.
- (2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

### **Art. 1503. - Injury Due In Part to Aggrieved Party.**

Where the injury is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the injury, having regard to the conduct of each of the parties.

### **Art. 1504. - Mitigation of Injury.**

- (1) The non-performing party is not liable for injury suffered by the aggrieved party to the extent that the injury could have been reduced by the latter party's taking reasonable steps.
- (2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the injury.

**Art. 1505. - Interest for Failure to Pay Money.**

- (1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.
- (2) The rate of interest shall be the average bank short-term lending rate to prime borrowers.
- (3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater injury.

**Art. 1506. - Interest on Damages.**

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

**Art. 1507. - Manner of Monetary Redress.**

- (1) Damages are to be paid in a lump sum. However, they may be payable in Installments where the nature of the injury makes this appropriate.
- (2) Damages to be paid in installments may be indexed.

**Paragraph 2. - Penal Clauses**

**Art. 1508. - Penal Clause.**

Any stipulation which provides that a debtor, should he fail in the performance of his obligation, must pay a sum of money or perform another prestation, is considered to be a penalty, irrespective of whether this is to compensate for injury or only to induce performance.

**Art. 1509. - No compensation for Injury.**

- (1) The creditor may not demand performance of both the penalty and the obligation to which the penalty attaches.
- (2) That which is owed pursuant to a penalty takes the place of compensation for injury due by law.

- (3) The creditor may not demand performance of the penalty where the non-performance cannot be imputed to the debtor.

**Art. 1510. - Warning Required.**

A warning or other previous declaration is required in order to demand performance of the penalty in the same cases as this is required to claim compensation for injury due by law.

**Art. 1511. - Correction by Court.**

- (1) The Court may reduce the stipulated penalty upon the demand of the debtor if it is manifest that equity so requires. The Court, however, may not award the creditor less than the compensation for injury due by law for nonperformance of the obligation.
- (2) The Court may award supplementary compensation upon the demand of the creditor if it is evident that equity so requires; this compensation is in addition to the stipulated penalty intended to replace reparation due by law.
- (3) Stipulations derogating from sub-Article 1 are null and void.

**Art. 1512. - Invalidation.**

- (1) A penalty shall be of no effect where the contract in which it is prescribed is annulled.
- (2) A contract shall remain in force notwithstanding that the penalty is not valid.

**Art. 1513. - Contractual Sanctions.**

Where a contract provides that a party may apply certain sanctions, should the other party fail to carry out one of his duties, the Court shall, notwithstanding any provision to the contrary, verify whether the agreed sanctions may be applied.

## Chapter 9. - Extinction of Obligations

### **Art. 1514. - Causes of Extinction.**

An obligation shall be extinguished where:

- (a) it is performed in accordance with the contract;
- (b) performance has become permanently impossible;
- (c) the contract in which it is provided is annulled or terminated;
- (d) the creditor renounces his claim;
- (e) the debtor's obligation is set off by an obligation owing from the creditor to the debtor;
- (f) the position of creditor and debtor are merged in the same person;
- (g) it is extinguished because of a resolutive condition or the expiry of a period of time ; or
- (h) it is extinguished by prescription.

### **Section 1. - Impossibility**

### **Art. 1515. - *Force Majeure*.**

- (1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- (2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.

- (3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.
- (4) Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

**Art. 1516. - Cases of *Force Majeure*.**

The following occurrences may, according to the circumstances, constitute cases of *force majeure*.

- (a) the unforeseeable act of a third party for whom the debtor is not responsible;
- (b) an official prohibition preventing the performance of the contract;
- (c) a natural catastrophe such as an earthquake, lightning or floods;
- (d) international or civil war; or
- (e) the death or a serious accident or unexpected serious illness of the debtor.

**Art. 1517. - Absence of *Force Majeure*.**

Unless otherwise expressly agreed, the following occurrences shall not be deemed to be cases of *force majeure*.

- (a) a strike or lock-out taking place in the undertaking of a party or affecting the branch of business in which he carries out his activities;
- (b) an increase or reduction in the price of raw materials necessary for the performance of the contract; or



- (c) the enactment of new legislation whereby the obligations of the debtor become more onerous.

## **Section 2. - Renunciation**

### **Art. 1518. - Principle.**

- (1) An obligation is extinguished by a contract between debtor and creditor whereby the creditor renounces his claim.
- (2) An offer to renunciate by gratuitous title, addressed by the creditor to the debtor, is deemed accepted when it has come to the attention of the debtor and he has not rejected it without delay.

## **Section 3. - Set-off**

### **Art. 1519. - Principle**

- (1) The debtor has the right to make a set-off if he has a claim to performance corresponding with his own obligation to the same party and he is entitled both to enforce performance from the same party and to perform his own obligation.
- (2) Where a debtor who has the right to make a set-off, notifies his creditor that he sets off his debt with a counterclaim, both obligations are extinguished up to the amount which they have in common.
- (3) The right to make a set-off does not exist in respect of a claim and a debt which fall into mutually separate patrimonies.
- (4) The debtor can use his right to make a set-off as a defense only if the debt of the other debtor is liquidated.

### **Art. 1520. - Negative Conditions.**

A debtor is not entitled to make a set-off:

- (a) if the special nature of the obligation requires that the creditor be actually paid, as in the case of support or wages necessary for the livelihood of the creditor and his family;
- (b) if his duty is to compensate for injury which he has caused intentionally; or
- (c) if the obligation is to restore a thing of which the owner has been unjustly deprived.

**Art. 1521. - Period of Grace.**

The granting of a period of grace shall be no bar to a set-off.

**Art. 1522. - Imputation of Payments.**

In so far as a notification of set-off insufficiently indicates which obligations are concerned in the set-off the order of imputation relating to imputation of payments applies.

**Art. 1523. - Effect.**

The set-off relates back to the moment at which the right to set-off came into being.

**Art. 1524. - Rights of Third Persons.**

Set-off shall not affect the rights which a third person may have in respect of one of the debts.

**Art. 1525. - Only when Raised.**

The Court shall not have regard to set-off unless raised.

**Art. 1526. - Waiving of the Right to Set-Off.**

The debtor may in advance waive his right to make a set-off.

**Art. 1527. - Contractual Set-Off.**

- (1) Set-off may occur in cases not provided by law where the parties agree.

- (2) The parties may in advance specify the conditions of a set-off.

**Art. 1528. - Set-off by the Court.**

- (1) Where a debt is not liquidated, the Court may hold that a set-off has been made to the extent of such amount of the debt as is admitted.
- (2) Where a debt is not liquidated but can be liquidated without delay, the Court may suspend judgment against the debtor whose debt is liquidated until the other debt is liquidated.

**Art. 1529. - One's Own Right to Set-Off.**

After the one party has issued a notification of set-off the other party may, provided it acts forthwith, deprive the notification of its effect by using its own right to set-off, but only if in so doing the set-off would relate back to an earlier moment.

**Art. 1530. - No Prescription**

The right to set-off does not terminate with the prescription of the claim.

**Art. 1531. - Notice of Termination**

A debtor in a contract who is entitled to set-off can remove the effect of the other party's notice of termination of the contract for nonperformance, by using his right to set-off without delay.

**Art. 1532. - Suspension by the Surety.**

- (1) The surety and the person whose property is secured for the debt of another may plead the suspension of their liability to the extent that the creditor is entitled to set-off his claim with a debt to the debtor which has fallen due.
- (2) They may plead the extinction of their liability to the extent that the creditor has caused a right to set-off with a debt to the debtor to be lost without reasonable grounds and through his fault.

**Art. 1533. - Current Account.**

- (1) Where pursuant to law, usage or a juridical act, money claims and money debts must be included into one account between two parties, set-off operates immediately and *de iure*, in the order in which the parties become entitled to set-off according to the preceding articles of this section, or pursuant to their mutual juridical relationship. At all times, only the balance is owed.
- (2) The party administering the account closes it annually and communicates to the other party what the outstanding balance is at that time, with mention of those items composing the account which have not as yet been communicated to the other party.
- (3) If the other party does not, within a reasonable period, contest the balance as communicated pursuant to the preceding sub-Article, this balance is deemed to be the one determined by the parties.
- (4) After the determination of the balance, the completion of a prescription period or of a term of forfeiture can no longer be invoked with regard to the individual items. The right of action to claim payment of the balance is prescribed by five years from the day following the one on which the account has been closed and the balance has been exigible.
- (5) The current provision is applicable unless different rules result from the nature of the contract between the parties.

**Art. 1534. - Document in Proof.**

- (1) If an obligation is extinguished either wholly or in part through a set-off, then the creditor who is aware of the fact causing the extinction is bound on request to provide the other party at the latter's expense with a document in proof of that fact, unless something different results from contract, custom or equity.
- (2) If the creditor possesses documentary evidence relating to the debt, then the debtor may, in addition, require the surrender thereof unless the creditor has a reasonable

interest in keeping the said evidence and the necessary endorsement is placed thereon.

#### **Section 4. - Merger**

##### **Art. 1535. - Principle.**

- (1) An obligation is extinguished by merger when, by the transfer of a claim or debt, the qualities of creditor and debtor are combined into one and the same person.
- (2) The extinction of an obligation does not affect the rights of third persons encumbering the claim.

##### **Art. 1536. - End of Merger.**

The obligation shall revive where merger comes to an end.

#### **Section 5. - Prescription of Rights of Action**

##### **Art. 1537. - Prescription Period.**

Unless otherwise provided for by law, rights of action are prescribed by twenty years.

##### **Art. 1538. - Performance of a Contractual Obligation.**

- (1) A right of action to claim the performance of a contractual obligation to give or to do is prescribed by five years from the beginning of the day following the one on which the claim has become exigible.
- (2) For an obligation to perform at an indeterminate time, the period referred to in sub-Article (1) does not begin to run until the day following the one by which the creditor has given notice of his intention to claim performance; and, in any case the right of action referred to in sub-Article (1) is prescribed by twenty years from the beginning of the day following the one on which the claim would have become exigible at its earliest, if need be after notification to that effect by the creditor.

**Art. 1539. - Amounts Payable Periodically.**

Rights of action for the payment of interest on sums of money, of life rents, dividends, rents and furthermore rights of action for all amounts payable annually or more frequently, are prescribed by five years from the beginning of the day following the one on which the claim has become exigible.

**Art. 1540. - Undue Payment.**

A right of action for undue payment is prescribed by five years from the beginning of the day following the one on which the creditor has become aware of both the existence of his claim and the person of the receiver of the undue payment, and, in any event, by twenty years from the day the claim has arisen.

**Art. 1541. - Compensation for Injury.**

- (1) A right of action to compensate for injury or to pay a stipulated penalty is prescribed by five years from the beginning of the day following the one on which the victim has become aware of both the injury or the exigibility of the penalty and the person responsible therefore, and, in any case, by twenty years following the event which has caused the injury or has made the penalty exigible.
- (2) The twenty years by which a right of action to compensate for injury is prescribed in any case, does not apply where the injury results from air, water or land soil pollution.

**Art. 1542. - Termination of a Contract.**

- (1) A right of action to terminate a contract for failure to perform it or a right of action to correct such failure is prescribed by five years from the beginning of the day following the one on which the creditor has become aware of the failure and, in any case, by twenty years from the day the failure has occurred.
- (2) A right of action to claim restitution of whatever has been supplied is prescribed by five years from the beginning of

the day following the one on which the contract has been terminated.

**Art. 1543. - Prescription of Principal Obligation.**

Rights of action for failure in performance, for payment of legal or conventional interest or for the delivery of fruits are, save interruption or extension, prescribed no later than the right of action for the performance of the principal obligation, or, where the failure is susceptible of correction, no later than the right of action to claim correction of the failure.

**Art. 1544. - Beginning of Period.**

Unless otherwise provided for by law, the prescription period of a right of action for the performance of an obligation to give or to do begins to run at the beginning of the day following the one on which the immediate performance can be claimed.

**Art. 1545. - Termination of an Unlawful Situation.**

- (1) ~~The~~ prescription period of a right of action to terminate an unlawful situation begins to run at the beginning of the day following the one on which the immediate termination of that situation can be claimed.
- (2) The prescription period of a right of action to terminate the possession of a the person who does not hold a title begins to run at the beginning of the day following the one on which that person became possessor or on which the immediate termination of the situation of which his possession forms the continuation could be claimed.

**Art. 1546. - Stolen Cultural Objects.**

- (1) Any claim for restitution of a stolen cultural object shall be brought within a period of five years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of seventy five years from the time of the theft.

- (2) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection shall not be subject to time limitations other than a period of five years from the time when the claimant knew the location of the cultural object and the identity of its possessor.

**Art. 1547. - *Petitio Haereditatis.***

The prescription period of a right of action to claim a succession begins to run at the beginning of the day following the one of the death of the *de cuius*.

**Art. 1548. - Interruption.**

- (1) Prescription of a right of action is interrupted by the institution of an action or by any other act of judicial recourse instituted in the required form by the person entitled to do so.
- (2) Where an action which has been instituted is not upheld, prescription is not interrupted, unless, within six months after the final judgment or other termination of the case, a new action is instituted and is as yet upheld. Where an act of judicial recourse is withdrawn, prescription is not interrupted.
- (3) Prescription of a right of action is also interrupted by an act to obtain a binding opinion, provided that the other party is expeditiously notified of it and that a binding opinion actually results. Where this is not the case sub-Article (2) applies *mutatis mutandis*.

**Art. 1549. - Written Warning.**

- (1) Prescription of a right of action to claim performance of an obligation is interrupted by a written warning or by a written communication in which the creditor unequivocally reserves his right to performance.
- (2) Prescription of other rights of action is interrupted by a written warning followed within six months by an act of interruption as described in the preceding article.



**Art. 1550. - Acknowledgment of a Right.**

Acknowledgment of the right whose protection is served by a right of action interrupts the prescription of the right of action as against the person who acknowledges the right.

**Art. 1551. - New Prescription Period.**

- (1) The interruption of prescription of a right of action otherwise than by the institution of an action which is upheld starts a new prescription period as of the beginning of the following day. Where a binding opinion has been requested and obtained, the new prescription period begins to run at the beginning of the day following the one on which the binding opinion has been rendered.
- (2) The new prescription period is equal to the original one but may not exceed five years. Nevertheless, the prescription is in no event completed until the time when the original period without interruption would have expired.

**Art. 1552. - Extension.**

Where a prescription period would otherwise expire during the existence of a cause of extension or within six months after the disappearance of such a cause, the period continues to run for six months from the disappearance of this cause.

**Art. 1553. - Cause for Extension.**

- (1) There is cause for extension of prescription:
  - (a) between spouses;
  - (b) between a legal representative and the incapable person whom he represents;
  - (c) between an administrator and the beneficiary for whom he administers with respect to claims concerning the administration;
  - (d) between body corporates and their directors;

- (e) between a succession accepted under the benefit of inventory and an heir; and
  - (f) between the creditor and a debtor who deliberately hides the existence of the debt or its exigibility.
- (2) The causes of extension referred to in sub-Article (b) and (c) continue until the final account of the legal representative or administrator has been closed.

**Art. 1554. - No Application *Ex Officio*.**

- (1) The Court may not *ex officio* apply the defense resulting from prescription.
- (2) Prescription may be renounced by a declaration of the person who can invoke it.
- (3) There can be no renunciation of prescription until its completion.

**Art. 1555. - Pledge and Hypothec.**

- (1) The completion of the prescription period of the right of action to claim performance of an obligation extinguishes the rights of pledge and hypothec securing it.
- (2) Nevertheless, the prescription does not prevent the right of pledge from being exercised against the encumbered property if the property consists of a moveable thing or a right payable to bearer or order, and if this thing or the document payable to bearer or order has been brought under the control of the pledgee or a third party.
- (3) The right of action to claim performance of an obligation secured by hypothec is not prescribed until twenty years from the beginning of the day following the one on which the hypothec has been attached to the obligation.

**Art. 1556. - Execution of a Judicial or Arbitral Decision.**

- (1) The power to execute forcibly a judicial or arbitral decision is prescribed by twenty years from the beginning of the day following the decision or, if conditions have been attached to execution, the fulfillment of which does not depend on the will of the person who has obtained the decision, from the beginning of the day following the one on which these conditions have been fulfilled.
- (2) Where, before the completion of the prescription period, a legal recourse or action is instituted by one of the parties to attack the decision to be executed, the period does not begin to run until the beginning of the day following the one on which the proceedings relating thereto have been terminated.
- (3) Payments to be made annually or more frequently pursuant to the decision are prescribed by five years.
- (4) Except for interruption or extension, the prescription of judicial orders for interest, penalties, forfeitures and other accessory judicial orders takes place no later than the prescription of the power to execute forcibly the principal judicial order.

**Art. 1557. - Application *Mutatis mutandis*.**

- (1) Articles 1551-1555 apply *mutatis mutandis* to the prescription of the preceding article.
- (2) The prescription of the preceding article is interrupted by:
  - (a) service of the decision or written warning;
  - (b) acknowledgment of the obligation determined in the decision; or
  - (c) any act of execution, provided that the other party is notified of it within the period provided for by law or, in the absence of such a provision, expeditiously.

**Art. 1558. - Areas of Law Other Than Patrimonial Law.**

The preceding articles apply *mutatis mutandis* to areas of the law other than patrimonial law to the extent that they are not incompatible with the nature of the juridical relationship involved.

**Chapter 10. - Third Parties In Relation to Contract**

**Section 1. - Principle**

**Art. 1559. - Relative Effect of Contract.**

- (1) Except in the cases provided for in this Code, contract shall only affect the rights and obligations of the contracting parties.
- (2) Nothing in this Chapter shall affect the provisions relating to extra-contractual liability or mandate.

**Section 2. - Promises and Stipulations Concerning Third Parties**

**Art. 1560. - Promise for Third Party.**

A person may stand promisor for a third party by promising an act or omission by the said third party.

**Art. 1561. - Effect.**

- (1) Where the third party ratifies the promise concerning him, the person who stood promisor shall be released.
- (2) Unless otherwise agreed, such person shall not guarantee the proper performance of the contract.
- (3) Where the third party does not ratify the contract, the person who stood promisor for him shall be liable towards the other contracting party for the injury resulting from the non-performance of the contract.

**Art. 1562. - Stipulation for the Benefit of Third Party.**

- (1) A contract creates the right for a third person to claim a prestation from one of the contracting parties or to invoke

the contract in another manner against one of them, if the contract contains a stipulation to that effect and if the third person accepts it.

- (2) Until its acceptance, the stipulation can be revoked by the stipulator. Revocation takes place by a notice of the stipulator to the promisor or to the third person.
- (3) Acceptance of the stipulation takes place by a notice of the third person to the promisor or to the stipulator.
- (4) An irrevocable stipulation which, with respect to the third person, has been made by gratuitous title, is deemed accepted if it has come to the attention of the third person and he has not rejected it without delay.

**Art. 1563. - Acceptance.**

- (1) Once the third person has accepted the stipulation, he is deemed to be a party to the contract.
- (2) The third person can also derive rights from the stipulation during the period prior to acceptance if this is in conformity with the necessary implication of the stipulation.

**Art. 1564. - Designation as Beneficiary.**

- (1) Where a stipulation for the benefit of a third person is without effect with respect to that person, the stipulator can designate either himself or another third person as beneficiary.
- (2) The stipulator is deemed to have designated himself as beneficiary when the person from whom the prestation has been stipulated has given him a reasonable period for the designation and he has not done so within such period.

**Art. 1565. - Claim of Performance.**

The party who has made a stipulation in favor of a third person may claim performance for the benefit of that third person, unless the latter objects.

**Art. 1566. - Defense for Conduct of Employee.**

Where a contracting party can derive a defense from the contract against his co-contracting party to shield him from liability for conduct by his employee, the employee may also invoke this defense, as if he were a party to the contract, if he is sued by the co-contracting party on the basis of this conduct.

**Section 3. - Assignment of Claims**

**Art. 1567. - Assignment of Rights.**

Unless such transfer is forbidden by law or the contract, or is barred by the very nature of the transaction, a creditor may transfer to a third party all or part of his claim or right of action against the debtor. The transfer is valid even without the consent of the debtor.

**Art. 1568. - Scope of Assignment.**

Arrears of interest and penalties shall be deemed to have been assigned with the principal of the debt.

**Art. 1569. - Warranty of Performance.**

- (1) Where, as the result of the transfer of a right, obligations of the creditor or obligations flowing from accessory rights are transferred to the new creditor, the previous creditor must warrant the performance of these obligations.
- (2) Sub-Article 1 does not apply to the transfer of a right payable to bearer or to order.

**Art. 1570. - Valid Defenses.**

- (1) The debtor may set up against the assignee, as he could have done against the assignor, any defenses which were available to him upon his becoming aware of the assignment.
- (2) Where he had a claim against the assignor which was not yet exigible at the time, he may invoke a set-off, provided his claim does not fall due later than the assigned claim does.

**Art. 1571. - Opposability of Assignment to Debtor.**

- (1) The debtor shall be released where, before the assignment was brought to his knowledge either by the assignor or the assignee, he pays the assignor in good faith.
- (2) Where the same claim was assigned to several assignees, regard shall be had to the date on which the assignments have been notified to the debtor or agreed by the latter in a document with an authenticated date.

**Section 4. - Subrogation**

**Art. 1572. - Subrogation.**

- (1) Subrogation to the rights of the creditor shall take place by virtue of the law or by contract.
- (2) Nothing in the following articles shall affect the special rules governing the assignment of certain specified rights. Neither shall they affect the cases where the claim is embodied in a registered document or an instrument to order or to bearer.

**Art. 1573. - Subrogation by Contract.**

- (1) A creditor who is paid by a third party may subrogate him to his rights, provided subrogation shall be express. It is effected at the time of payment.
- (2) A debtor who borrows money or other fungible things to perform his obligation may subrogate the lender to the rights of the creditor, even without the consent of the latter.
- (3) Subrogation by the debtor can only be effected where the instrument evidencing the loan bears an authenticated date and that the use of the sum lent is expressly specified therein.

**Art. 1574. - Legal Subrogation.**

Subrogation to the rights of the creditor shall take place by virtue of the law, to the extent of the amount paid:

- (a) for the benefit of any person who, being bound to an obligation with others or on behalf of others, performed the obligation in full and is thereby entitled to indemnity or contribution from his co-debtors;
- (b) for the benefit of any person who, being owner of a property or enjoying over it a right of priority, hypothec or pledge, paid a creditor who enjoyed over the same property a right of priority, hypothec or pledge; and
- (c) whenever the law so provides.

**Art. 1575. - Effect of Subrogation or Assignment.**

- (1) The subrogated creditor or the assignee of a right may exercise the priorities, securities and other accessory rights attached to it.
- (2) He may not enter into possession of the thing.

**Art. 1576. - Duties of Original Creditor.**

He who assigned a right or was paid by a third party shall hand over to the assignee or to the subrogated creditor the document of title relating to the obligation and furnish him with any available means of proof, as well as with the necessary information enabling him to vindicate his rights.

**Section 5. - Delegation**

**Art. 1577. - Principle of Delegation.**

A debtor may with the consent of the creditor, or without such consent in cases provided for by law or usage, delegate to another the performance of his obligations.

**Art. 1578. - Acceptance by Creditor.**

- (1) Unless the contrary has been expressly stipulated, the creditor who has agreed to such a delegation shall retain his right against the original debtor.



- (2) He may not demand satisfaction from the original debtor before demanding it from the delegate debtor.

**Art. 1579. - Revocation of Delegation.**

- (1) The delegator may no longer revoke the delegation after the delegate accepted the liability towards the creditor or performed the obligation.
- (2) The delegate may accept the liability or perform the obligation even after the death of the delegator or after the delegator having become incapable.

**Art. 1580. - Rights of Delegate.**

- (1) The delegate may not set up against the creditor defenses deriving either from his personal relationship with the delegator, or from the relationship between the creditor and delegator.
- (2) He may set up against the creditor defenses deriving from his personal relationship with him.

**Art. 1581. - Insolvency of Delegate.**

- (1) A creditor who has released the original debtor has no remedy against him where the delegate debtor becomes insolvent, unless the delegation instrument contains an express reservation on this point.
- (2) He shall retain his remedy against the original debtor where the insolvency of the delegate had been already judicially recorded at the time of the delegation.

**Art. 1582. - Securities.**

Third parties who have secured the obligation upon their property or are sureties shall not be liable to the creditor unless they consented to the delegation.

**Art. 1583. - Assignment of Undertaking.**

- (1) He who acquires a patrimony or an undertaking with assets and liabilities shall be personally liable for the debts to

creditors as soon as he notified them of the transfer or published it in the newspapers.

- (2) The former debtor shall be jointly liable with the new debtor for a period of two years.
- (3) This period shall run, in respect of exigible obligations, from the day of the notification or publication and, in respect of other obligations, from the date at which they become exigible.

**Art. 1584. - Amalgamation of Undertakings.**

Where two undertakings amalgamate by the mutual transfer of their assets and liabilities, the new undertaking shall be liable for all the debts of each of them.

**Art. 1585. - Formation of Partnership.**

- (1) The provisions of Article 1584 shall apply where an individual undertaking is converted into a general or limited partnership.
- (2) The new partnership shall be liable for the debts of the individual undertaking it absorbed.

**Section 6. - Heirs of the Parties**

**Art. 1586. - Principle.**

The heirs of a person shall be substituted for him in contracts to which he was a party, unless the contrary was stipulated or follows from the nature of the contract.

**Art. 1587. - Stipulation for the Benefit of Third Party.**

A stipulation for the benefit of a third party shall be performed for the benefit of his heirs where he dies after having accepted it but before it was performed.

## **Section 7. - Creditors of the Parties**

### **Art. 1588. - Attachment.**

- (1) The performance by the debtor of his obligations shall be secured by all his assets, with the exception of those which cannot be seized and sold according to law.
- (2) The rules relating to attachment, and in particular to the attachment of claims vested in the debtor, are contained in the Code of Civil Procedure.

### **Art. 1589. - Agreements Entered Into By Debtor.**

- (1) Agreements entered into by a person may be set up against his creditors.
- (2) Agreements entered into by a person in respect of a certain thing may be set up against third parties who acquire from that person a particular right in respect of such thing, as from the time their date is authenticated or, where the law provides for the publication of such agreements, as from the day of publication.

### **Art. 1590. - Exceptions.**

- (1) The provisions of Article 1589 shall not apply where the law so provides, in particular where a preferential right or priority is conferred upon the creditor by law or contract, or where the debtor has been deprived by judicial decision, of the management of his properties.
- (2) The provisions of Article 1588 shall not apply in cases of simulation.
- (3) Counter-deeds shall bind the contracting parties only.
- (4) The creditor of one of the parties may avail himself of such apparent act on the basis of which he contracted.

### **Art. 1591. - Preservatory Measures.**

A creditor may take in the name of the debtor any preservatory step required with a view to preventing the extinction of a right of the debtor.

**Art. 1592. - Exercise of Debtor's Rights.**

- (1) A creditor may, with the authorization of the Court, exercise as representative of the debtor all the rights of the debtor so as to prevent such impoverishment of the debtor as would jeopardize the payment of the debt.
- (2) The authorization to act shall be refused to the creditor where the right he intends to exercise is, by nature or under the law, inherent in the person of the debtor.
- (3) The authorization shall be refused where the creditor's rights are not imperiled by the inaction of the debtor whose insolvency is not in view.

**Art. 1593. - Simulation.**

A creditor may have established, by judicial decision, that a transaction effected by a debtor was a simulated one which, by agreement, was not intended to be carried out.

**Art. 1594. - Bankruptcy.**

The provisions of the preceding Articles shall not affect the rules concerning the exercise by creditors of the debtor's rights or the action of creditors against the debtor's fraudulent acts in the event of the latter's bankruptcy.

## **TITLE II - NON-CONTRACTUAL OBLIGATIONS**

### **Chapter 1. - Extra-Contractual Liability**

#### **Art. 1595. - Sources of Extra-Contractual Liability.**

- (1) Apart from any promise of his, a person is liable for injury caused to others by his fault.
- (2) Apart from any fault of his, a person is liable, where the law so provides, for injury caused to others by his activity or by a thing in his possession.
- (3) Finally, a person is liable where another person, for whom the law makes him answerable, incurs a liability based on fault or provided by law.

#### **Section 1. - Liability Based On Fault**

##### **Paragraph 1. - General Rules**

#### **Art. 1596. - General Principle.**

Whosoever, by his fault, causes injury to another shall make it good.

#### **Art. 1597. - Kinds of Fault.**

- (1) A fault may consist in an intentional act or in mere negligence.
- (2) A fault may consist in a positive act or a forbearance.

#### **Art. 1598. - Good Usage.**

- (1) A person commits a fault where he acts or forbears in a manner or in conditions which offend morality or usual standards of good conduct.
- (2) In this respect, regard shall be had to the conduct of a reasonable person.

- (3) Unless otherwise provided by law, fault shall be assessed without regard to the age or mental condition of the person concerned.

**Art. 1599. - Professional Fault.**

- (1) A person practicing a given profession or activity shall, in the practice of such profession or activity, observe the rules governing that practice.
- (2) He is liable where, after due consideration of scientific data or rules recognized by the practitioners of his craft, he is guilty of imprudence or negligence.

**Art. 1600. - Abuse of Rights.**

- (1) A person commits a fault where he intentionally uses his right so as to injure another without seeking personal gain, or to cause injury which is disproportionate to the personal gain he is seeking.
- (2) Subject to the foregoing, the manner in which a right is used may not be challenged on the ground that it is contrary to the economic or social purpose of that right.

**Art. 1601. - Diversion of Powers.**

- (1) A person commits a fault where he diverts to his own advantage powers conferred upon him in the interest of another person.
- (2) A public servant commits a fault where he diverts to his own advantage or that of a particular person, powers conferred upon him in the public interest.

**Art. 1602. - Infringement of a Law.**

- (1) A person commits a fault where he infringes any specific and explicit provision of a law, ordinance or administrative regulation.
- (2) Ignorance of the law is no excuse.

**Art. 1603. - Superior Order.**

- (1) The fact that an act is done on orders from superior authority does not necessarily exculpate the doer.
- (2) The doer commits a fault where he is aware of the illicit nature of the order, in particular by reason of the lack of competence of the person giving the order, and the criminal nature of the act ordered.
- (3) There is no fault where, in the circumstances of the case, and in particular having regard to the strict exigencies of administrative or military discipline, the doer was placed in such a position that he could not discuss the order received or act otherwise than he did.

**Art. 1604. - Non-Performance of a Contract**

- (1) A person shall not commit a fault involving his extra-contractual liability to the co-contractant where he fails to perform his obligations under a contract.
- (2) Only the rules relating to non-performance of contracts shall apply in such case.

**Art. 1605. - Member of group of persons**

- (1) If a member of a group of persons unlawfully causes injury and if the risk of causing this injury should have prevented these persons from their collective conduct, they are solidarily liable if the conduct can be imputed to them.
- (2) Among themselves, they must contribute to the reparation of the injury in equal parts, unless in the circumstances of the case equity requires a different apportionment.

**Art. 1606. - Effect of Penal on Civil Action.**

In deciding whether a fault has been committed, the Court is not bound by an acquittal or discharge pronounced under the penal law.

## Paragraph 2. - Special Cases

### Art. 1607. - Assault.

- (1) A person commits a fault where he intentionally applies force to or causes any impact on the body of another person, or causes another person to believe that any such force or impact is imminent, without the consent of that other person.
- (2) A fault shall be committed regardless of whether the bodily injury done to the other person is caused by personal contact or by the use of an object, animate or inanimate.
- (3) No fault shall be deemed to have been committed where:
  - (a) the defendant could not reasonably have foreseen that the plaintiff would object to his act; or
  - (b) the act was done in a reasonable manner, in the legitimate defense of oneself or another person; or to safeguard property of which the defendant was possessor or lawful owner; or
  - (c) the plaintiff was a dangerous lunatic whom it was necessary to restrain from doing harm, and the act was done in a reasonable manner; or
  - (d) the act consists of necessary and reasonable touching by legal executioners while performing their official duties; or
  - (e) there are any other circumstances such as to justify the defendant's act in the eyes of a reasonable person.

### Art. 1608. - Restraint of Liberty.

- (1) A person commits a fault where, without lawful authority, he restrains the liberty of another person, even for a short time, and prevents him from moving about as he is entitled to do.



- (2) In such case, the fault is committed notwithstanding that no contact is made with the plaintiff's body.
- (3) It is sufficient for the plaintiff to have been compelled to behave in a certain manner by the threat of a danger of which he had to heed.
- (4) No fault shall be deemed to have been committed where:
  - (a) the restraint has been applied in a reasonable manner to a person placed by law under the authority of the defendant and for the purpose of exercising such lawful authority; or
  - (b) the person who has restrained the liberty of another had good reason to believe that the latter had committed a penal offence. Nevertheless, the restraining person is liable if he fails forthwith to hand over the restrained person to the police.
- (5) A person who has provided bail for another, guaranteeing to the authorities that the latter will reside in a certain place, may lawfully restrain the liberty of the person on bail where he has good reason to believe that he is preparing to abscond.

**Art. 1609. - Defamation.**

- (1) A person commits a fault where by his words, his writings or by other means he acts in such a way as to make another living person detestable, contemptible or ridiculous or to jeopardize his credit, his reputation or his future.
- (2) The intent to injure is not a requisite for defamation. There shall be, nonetheless, no defamation where in his allegedly defamatory utterances or writings, the author did not intend to refer to any particular person. In such a case, the author of the utterances or writings shall be liable only where in the circumstances he should reasonably have foreseen that his words or writings would cause injury to another person.

- (3) A person commits no fault where he confines himself to expressing his opinion on matters of public concern, notwithstanding that such opinion causes injury to another person by bringing him under public blame. In this case, defamation is committed only where the defendant has made imputations concerning the plaintiff which he knew for certain to be false
- (4) No defamation is committed where the defendant adduces proof of the accuracy of his imputations. In this case, he is not liable unless he has acted solely with intent to injure.
- (5) No liability is incurred in respect of utterances made in parliamentary debates or in the course of judicial proceedings. A person who repeats such utterances accurately shall be liable where he has acted solely with intent to injure.
- (6) Where defamation is committed by way of the press, the defendant incurs no liability where he has acted without intent to injure or gross negligence, provided that at the plaintiff's request he publishes forthwith a withdrawal and apology. Where the defamation is committed by way of a periodical which appears at intervals of more than one week, the plaintiff may require the withdrawal and apology to be published immediately in a periodical of his choice. In other cases, the withdrawal and apology shall be published in the periodical in which the defamatory matter was published.

**Art. 1610. - Injury to the Rights of Spouses.**

- (1) A person commits a fault where, knowing her to be married, he or she induces a woman to leave her husband against the husband's will.
- (2) A person commits a fault where, knowing him to be married, he or she induces a married man to leave his wife against the wife's will.

**Art. 1611. - Duty to Educate and to Supervise.**

- (1) A person commits a fault where he fails to take in respect of persons entrusted to his charge or supervision by law

or in conformity with the law the measures of education and supervision which may reasonably be expected of him, having regard to the circumstances and customs.

- (2) He is liable where, as a consequence of his failure, injury is suffered by the person in his charge.
- (3) He is liable where, as a consequence of his failure, the person subject to his supervision causes injury to another person.

#### **Art. 1612. - Trespass to Land.**

A person commits a fault where, without legal authority, he enters upon the land held by, or into the house of, another, against the clearly expressed will of the possessor or lawful holder of the land or house.

#### **Art. 1613. - Trespass to Goods.**

A person commits a fault where, without legal authority, he seizes goods against the clearly expressed will of the possessor or lawful holder of such goods.

#### **Art. 1614. - Disregard of Contractual Relationship.**

- (1) Whosoever is aware of the existence of a contract between two persons commits a fault where he concludes with one of those persons a contract which renders substantially impossible the performance of the first contract.
- (2) He is not liable however, where the person complaining of the breach of the first contract has failed to take the measures which would have ensured the effective performance of that contract.

#### **Art. 1615. - Unfair Competition.**

A person commits a fault where, through inaccurate publications, or by other means contrary to good faith, he compromises the reputation of a product or the credit of a commercial establishment.

**Art. 1616. - Simulation.**

Where by his declarations or conduct or by nonfeasance, a person induces third parties, or certain third parties, to believe in a certain state of affairs, he commits a fault where, in breach of good faith; he takes action against such third parties based on the true state of affairs.

**Art. 1617. - Inaccurate Information.**

Whosoever, intentionally or negligently, supplies inaccurate information to another, commits a fault where:

- (a) he knows or should know that the person to whom the information is supplied or another given person, will act upon the information and thereby suffer injury; or
- (b) he is bound by the rules of his profession to give accurate information.

**Art. 1618. - Witnesses.**

Witnesses who testify to the occurrence or non-occurrence of a given event or to the existence or non-existence of a given fact shall be liable to persons having acted on the faith of such statements, where such statements are false.

**Art. 1619. - Advice or Recommendation.**

A person commits no fault where he confines himself to giving advice or making a recommendation to another.

**Art. 1620. - Seizure**

A person commits a fault where, in order to secure payment of a debt due to him, he unnecessarily seizes goods held by his debtor to an extent disproportionate to the amount of the debt.

**Art. 1621. - Execution of a Court Order.**

- (1) A bailiff commits no fault by executing a Court order which is made in the prescribed form.

- (2) A bailiff commits a fault where the order is not in the prescribed form or he exceeds it or executes it without observing the rules of the law.

**Art. 1622. - Prescription.**

A person commits no fault by invoking usucaption or prescription of a right of action which has operated to his benefit.

**Section 2. - Liability Irrespective of Fault**

**Art. 1623. - Necessity.**

- (1) A person is liable for injury he deliberately causes to another in order to save himself or a third person from imminent injury to person or property.
- (2) No liability is incurred where the imminent injury is due to the victim's fault.

**Art. 1624. - Bodily Injury.**

- (1) A person is liable where by his act he inflicts bodily injury on another.
- (2) No liability is incurred where:
  - (a) the act causing the injury was ordered by law, or was done in legitimate self-defense or defense to property or where the injury is due solely to the victim's fault; or
  - (b) in the exercise of a sporting activity, a person injures another taking part in the same activity, or attending as a spectator, provided that there is no malice or gross infringement of the rules of the sport.

**Art. 1625. - Dangerous Activities.**

- (1) Whosoever creates an abnormal risk for others, by using or storing explosive or poisonous substances, or by establishing high-tension electric transmission lines, or

by substantially modifying the natural lie of the land, or by conducting a peculiarly dangerous industrial activity, shall be liable where the danger he has created materializes, thereby causing injury to person or property.

- (2) The provisions of sub-Article (1) shall apply notwithstanding that the author of the danger is the State or that he has received an authorization from the public authorities.
- (3) Save in the case of fault, no liability is incurred where the value of neighboring property is reduced in consequence of an abnormal risk being created.

#### **Art. 1626. - Liability for Animals.**

- (1) The owner of an animal is liable for injury caused by the animal, notwithstanding that it has escaped his control accidentally or the injury caused was unforeseeable.
- (2) A person who has taken possession of an animal shall be liable for any injury caused by the animal while in his custody. However, an employee attending to an animal, or making use of it for the owner's account or for the account of another person, shall not be liable for any injury caused by the animal unless it is due to his own fault.
- (3) The owner who has paid compensation to the victim may recover from the person in whose charge the animal was. He may claim to be indemnified in full, unless the injury be due to his own fault or that of a person for whom he is liable.
- (4) In order to secure compensation which may be due to him, the possessor or holder of immovable property may seize and retain another person's animals which cause injury on that property. He may kill them where circumstances require this in order to prevent substantial injury disproportionate to the animal's value. He shall in both events notify the owner of the animals without delay

or, where the owner is unknown to him, take the necessary measures to ascertain him.

**Art. 1627. - Buildings.**

- (1) The owner of a building shall be liable for any injury due to the building even where the injury was unforeseeable.
- (2) The owner who has paid compensation to the victim may claim compensation from any person by whose fault the injury was caused, including the person who built the building or the occupier. He may claim to be indemnified in full, unless the injury arose by his fault or by that of a person for whom he is answerable.
- (3) A person endangered by another's building may require the owner thereof to take the necessary measures to avert the danger.
- (4) The occupier of a building is liable for injuries caused by things falling from it.

**Art. 1628. - Machines and Motor Vehicles.**

- (1) The owner of a machine or motor vehicle is liable for injury caused by it, notwithstanding that the injury was caused by a person who was not authorized to operate, handle or drive the machine or vehicle.
- (2) He is not liable where he proves that, at the time when the injury was caused, the machine or vehicle had been stolen from him.
- (3) Whosoever has received the machine or vehicle for purposes of personal benefit is also liable for injury caused by it, while in his holding. However, an employee who has charge of the machine or vehicle on behalf of the owner or another person, is not liable for injury caused by it, unless such injury is due to his fault.
- (4) The owner who has paid compensation to the victim may recover from the holder of the machine or vehicle. He may claim to be indemnified in full, unless the injury be

due to his fault or that of a person for whom he is answerable.

**Art. 1629. - Collision between Vehicles.**

- (1) Where two motor vehicles collide, each of them is deemed to have contributed equally to cause the accident.
- (2) The owner of each vehicle, or the holder answerable for it, bears half of the total amount of the injury caused by the accident.
- (3) The provisions of this Article shall not apply where it is proved that the accident was caused, wholly or chiefly, by the fault of one of the drivers.

**Art. 1630. - Manufactured Goods.**

- (1) A person who manufactures goods and supplies them to the public for profit is liable for injury to another person resulting from the normal use of these products.
- (2) No liability is incurred where the defect which has caused the injury could have been discovered by an ordinary examination of the products used.

**Art. 1631. - Exemption from Liability.**

- (1) The persons legally answerable in the case of the creation of an abnormal risk, or for injury caused by animals, buildings, machines, motor vehicles or manufactured goods, cannot relieve themselves of their liability to the victim by proving that they have committed no fault, or that the cause of the injury remains unknown, or that it was not within their power to prevent the injury, or that the injury was caused by the fault of a third person.
- (2) They are relieved of their liability, wholly or partly, only where the injury is caused solely or partly by the fault of the victim.



**Art. 1632. - Other Things.**

Except in the cases provided under the preceding Articles, the owner or holder of a thing is not liable for injury caused by that thing, unless he or a person for whom he is answerable has committed a fault.

**Art. 1633. - Contractual Relationship.**

- (1) The rules relating to liability arising out of abnormal risks, or out of animals, buildings or things, cannot be invoked by a person who, by virtue of a contract made with the person legally answerable, is connected with the dangerous activity, animal, building or thing which has caused the injury.
- (2) In this case, the consequences of the injury are settled in accordance with the rules governing such contract.

**Art. 1634. - Disinterested Relationship.**

- (1) The rules governing liability arising out of animals, buildings or things cannot be invoked by a person who, even in the absence of a contract, was at the time of the injury using the animal, building or thing without the owner or holder thereof deriving benefit from such use.
- (2) In such a case, the owner or holder is not liable unless he has committed a fault.

**Section 3. - Liability for the Actions of Others**

**Paragraph 1. - Liability of Parents and Guardians**

**Art. 1635. - Parental Authority or Guardianship; Liability**

A person who exercises parental authority or guardianship is answerable under the civil law where his minor child incurs a liability.

**Art. 1636. - Other Guardians of the Child.**

The following persons shall be liable in lieu of the parents:

- (a) the person in whose charge the child has been placed, where the child lives outside the family home;
- (b) the teacher or master during the time when the child is at school or serving an apprenticeship; and
- (c) the employer where, under the terms of the following Articles, his liability is involved in consequence of an act committed by the child.

**Paragraph 2. - Liability of the State**

**Art. 1637. - Principle.**

- (1) A public servant or government employee is in every case liable to make good the injury he causes to another by his fault.
- (2) Where the fault is an official fault, the victim may also claim to be compensated by the State, which may, if appropriate, subsequently recover from the public servant or employee at fault.
- (3) The State is not answerable where the fault committed is a personal fault.

**Art. 1638. - Official Fault.**

- (1) A fault is deemed to be an official fault where the person who committed it believed in good faith that he acted within the scope of his powers and in the public interest.
- (2) A fault is deemed to be a personal fault in other cases.
- (3) Saving contrary proof, the public servant or employee is presumed to have acted in good faith.

**Art. 1639. - Assimilated Cases.**

The provisions of Article 1637 and 1638 shall apply to the liability of public servants or employees of a territorial subdivision of the State or of a public service with legal status.

Paragraph 3. - Liability of Employers and Bodies Corporate

**Art. 1640. - Liability of Bodies Corporate.**

Bodies corporate and properties with specific destination are answerable under the civil law where one of their representatives, agents or salaried employees incurs a liability in the discharge of his functions.

**Art. 1641. - Employer's Liability.**

The employer is answerable under the civil law where one of his employees incurs a liability in the discharge of his functions.

**Art. 1642. - Discharge of Functions.**

- (1) For the purpose of Article 1640 and 1641, a liability is incurred in the discharge of functions where the faulty act or forbearance was committed with the intention of carrying out such functions.
- (2) The fact, that the faulty act or forbearance was *ultra vires*, or that its author was formally forbidden to commit it, does not release the person answerable for him under the civil law, unless the victim knew or ought to have known of that fact.

**Art. 1643. - Presumption.**

- (1) Where the injury is caused by the representative or agent of a body corporate or property with specific destination, or by a salaried employee, at the place where or during the time when he is normally employed, he is presumed to have caused the injury in the discharge of his functions.
- (2) Proof to the contrary is admissible to rebut such presumption.

**Art. 1644. - Non-Discharge of Functions.**

The liability is not incurred in the discharge of functions where such functions have merely provided their author with an opportunity of committing the faulty act or forbearance which caused the injury.

#### **Art. 1645. - Independent Workers.**

A person is not answerable for the faults committed by another person while carrying out work which he has required him to do, where the latter is not subject to the former's authority and is to be considered as having retained his independence.

#### **Art. 1646. - Representatives.**

If the conduct of a representative in the exercise of the powers resulting from the representation constitutes a fault towards another, the person who is represented is also answerable under the civil law toward that other person.

#### **Art. 1647. - Defamation.**

The managing editor of the newspaper, the printer of the pamphlet or the publisher of the book is answerable under the civil law for defamation committed by the author of a text printed therein.

#### **Art. 1648. - Joint Liabilities.**

- (1) The author of wrongful injury shall repair it notwithstanding that another person is answerable under the civil law for such injury.
- (2) The author of the injury and the person answerable for it under the civil law are solidarily liable to make good such injury.
- (3) The person answerable under the civil law may demand that the author of the injury be made a party to the proceedings brought by the victim for compensation.

## **Section 4. - Mode and Extent of Compensation**

### **Paragraph 1. - Pecuniary Compensation**

#### *A. - Pecuniary Compensation for Material Injury*

#### **Art. 1649. - Modes of Compensation.**

- (1) As a rule, the injury is made good by compensating the victim by means of an equivalent sum of money.
- (2) The Court may, subject to the liberty of persons and to the rights of third parties, order in lieu of or in addition to pecuniary compensation other appropriate measures to make good or limit the injury.

#### **Art. 1650. - Extent of Compensation.**

- (1) The compensation due by the person legally liable is equal to the injury caused to the victim by the fact giving rise to the liability.
- (2) The Minister of Justice may issue Regulations to fix the extent, upper and lower limits of compensation in respect of death and/or bodily injury.

#### **Art. 1651. - Future Injury.**

A future injury which is certain to occur shall be made good without waiting for it to materialize.

#### **Art. 1652. - Insured Victim.**

- (1) Where the victim is insured, he may claim compensation for the injury inflicted on him on the same terms as though he had not been insured.
- (2) The insurer has no independent claim to be indemnified by the person liable for the fact which has caused the risk covered by the insurance contract to materialize.
- (3) The insurance contract may, however, provide for the subrogation of the insurer to the victim's claim against the person liable.

**Art. 1653. - Victim Pensioned Off.**

- (1) Where the victim receives a pension as a result of the fact which caused him injury, he may claim compensation for the injury inflicted on him on the same terms as though he were not receiving a pension.
- (2) The person paying the pension has no independent claim to be indemnified by the person liable for the fact which has caused the pension to fall due.
- (3) The legal bond joining him to the victim may, however, provide for his subrogation to the victim's claim against the person liable.

**Art. 1654. - Mortal Accidents.**

- (1) In the case of liability for a mortal accident, the spouse of the victim, his ascendants and his descendants, and the brothers and sisters of the victim born of the same parents or born of the same father or of the same mother have each an independent claim to be compensated for the material injury they have suffered because of his death.
- (2) In this case compensation for the injury is due in the form and nature of a support allowance.
- (3) The support allowance is due notwithstanding that the plaintiffs have relatives from whom they could claim support.
- (4) No other persons shall have independent claims to be compensated because of a mortal accident, even where a plaintiff was factually supported by the victim, or the latter was bound to support him.

**Art. 1655. - Good Faith.**

- (1) Compensation for the injury may not be claimed contrary to good faith.

- (2) The victim may not claim compensation for the injury sustained in so far as, by acting in a reasonable manner, he could have avoided or limited such injury.

**Art. 1656. - Fault of the Victim.**

- (1) Where the injury is due partly to the fault of the victim, the latter shall receive partial compensation only.
- (2) In fixing the extent to which the injury shall be made good, all the circumstances of the case are taken into account, in particular the extent to which the respective faults have contributed to causing the injury and the gravity of each fault.

**Art. 1657. - Unawareness of Fault.**

- (1) The Court may, where equity so requires, reduce the compensation awarded where the fault giving rise to the liability was committed by a person who was not in a state to appreciate the wrongful nature of his conduct.
- (2) In this respect, regard shall be had to the respective financial positions of the parties and the consequences, for the author of the fault, of a liability to make the injury good.

**Art. 1658. - Chain of Command.**

- (1) The Court may, where equity so requires, reduce the compensation awarded where a sense of the duty of discipline or obedience moved the author of the fault to commit it.
- (2) In this respect, regard shall be had to the degree of imperativeness of the duty.

**Art. 1659. - Unforeseeable Injury.**

- (1) The Court may, where equity so requires, reduce the compensation to be paid by a person who is liable for an injury which, in consequence of unforeseeable

circumstances, expanded beyond what could reasonably be expected.

- (2) Such reduction must never be ordered where the liability arises from an intentional fault.

**Art. 1660. - Difficulty of Assessment.**

- (1) Where the exact amount of the injury cannot be ascertained, the Court shall estimate it, taking into account the ordinary course of events and the measures taken by the injured party.
- (2) Nevertheless, no indemnity shall be awarded in respect of a injury of which the very existence, and not only the amount, is uncertain.

**Art. 1661. - Necessity.**

The Court fixes equitably the amount of compensation due from a person who, without committing a fault, caused injury to the property of another in order to save himself or a third person from an imminent injury or danger.

**Art. 1662. - Nominal Injury.**

Compensation of a purely nominal injury may be awarded where the action has been brought solely with a view to establishing that a right of the plaintiff has been infringed, or that a liability has been incurred by the defendant.

*B. - Pecuniary Compensation for Moral Injury*

**Art. 1663. - Principle.**

- (1) The author of a wrong shall make good the moral injury resulting from the wrong wherever adequate procedure exists for such redress.
- (2) Pecuniary compensation for moral injury may be awarded only in cases expressly provided by law.



- (3) Unless otherwise provided, pecuniary compensation for moral injury shall not be less than one thousand Nakfas, but the Court may increase the amount up to ten thousand Nakfas, to be set at intervals of one thousand Nakfas from the minimum amount.

**Art. 1664. - Intentional Fault.**

Where moral injury has been inflicted upon the plaintiff intentionally, the Court may, by way of redress, order the defendant to pay an equitable compensation to the plaintiff or to a charity named by the plaintiff.

**Art. 1665. - Assault.**

Where the defendant has imposed upon the body of the plaintiff a contact which is unpleasant or repulsive, the Court may, by way of moral redress, order the defendant to pay an equitable compensation to the plaintiff or to a charity named by the plaintiff.

**Art. 1666. - Unlawful Restraint of Liberty.**

Where the plaintiff's liberty has been unlawfully restrained by the defendant, the Court may, by way of moral redress, order the defendant to pay an equitable compensation to the plaintiff or to a charity named by the plaintiff.

**Art. 1667. - Defamation.**

Equitable compensation may be awarded by way of moral redress to the plaintiff or to a charity named by him, in the case of insult or defamation where:

- (a) the insulting or defamatory imputations are that the plaintiff has committed a crime or offence punishable under the penal law;
- (b) they tend to show that the plaintiff is incompetent or dishonest in the exercise of his profession;
- (c) they tend to show that the plaintiff, if a merchant, is insolvent;

- (d) they tend to show that the plaintiff is suffering from a contagious disease; or
- (e) they tend to show that the plaintiff's morals are shocking.

**Art. 1668. - Injury to the Rights of Spouses.**

Equitable compensation may be awarded by way of moral redress to the plaintiff or to a charity named by him, where the defendant has injured his or her rights as a spouse.

**Art. 1669. - Abduction of Child.**

Equitable compensation may be awarded by way of moral redress to the plaintiff or to a charity named by him, where the defendant has been convicted under the penal law for having abducted a child which is in the plaintiff's lawful custody.

**Art. 1670. - Bodily Injuries or Death.**

- (1) Equitable compensation may be awarded by way of moral redress to the victim of bodily injuries or, in the event of his death in consequence thereof, to his family.
- (2) Notwithstanding the provisions of Art. 1663 (3), the Court may, in the case of bodily injuries or death, increase the maximum amount to twenty thousand Nakfas following the same pattern of setting the amount as provided for in Article 1663 (3).
- (3) The Minister of Justice may issue Regulations to change from time to time the extent and limits of compensation by way of moral redress in respect of bodily injuries or death.

**Art. 1671. - Sexual Offences.**

- (1) Where a person has been convicted under the penal law for sexual offences, the Court may award the victim an equitable compensation by way of moral redress.
- (2) Notwithstanding the provisions of Art. 1663 (3), the Court may, in the case of sexual offences, increase the

maximum amount to fifty thousand Nakfas following the same pattern of setting the amount as provided for in Article 1663 (3).

**Art. 1672. - Custom.**

- (1) In fixing the amount of the equitable compensation under the preceding Articles, and in establishing who is qualified to act as representative of the family, the Court shall have regard to local customs.
- (2) The Court shall not disregard such customs unless they are anachronistic and manifestly contrary to reason or morality.

**Art. 1673. - Representative of the Family.**

In the absence of any applicable local custom, the following are alone considered as qualified to represent the family:

- (a) the victim's husband or wife;
- (b) failing such or where he or she is incapable, the victim's eldest child who is capable under the law;
- (c) failing such or where he or she is incapable, the victim's father or mother; or
- (d) failing such or where she is incapable, the eldest of the victim's brothers or sisters who is capable under the law.

Paragraph 2. - Other Modes of Compensation

**Art. 1674. - Restitution.**

- (1) The Court shall order the restitution to the plaintiff of things which have been improperly taken away from him, and of the increments yielded by the things since the date of such taking.
- (2) Where the things have been lost or destroyed the defendant shall repay their value, notwithstanding that the loss is due to *force majeure*.

- (3) Where the defendant has incurred expense on the things which he is required to return, the provisions relating to unjust enrichment shall apply.

**Art. 1675. - Restitution in Kind.**

- (1) The Court may, where it thinks fit, order the thing which has been destroyed or injured to be replaced or repaired at the expense of the person liable for the destruction or deterioration.
- (2) In this case, the Court fixes the way in which the thing is to be replaced or repaired.
- (3) This mode of compensation shall not be prescribed where the duty to compensate falls on the State.

**Art. 1676. - Honor and Reputation.**

In the case of wrongs directed against the honor or reputation of a person, the Court may order such publicity to be made at the defendant's expense as is likely to counter the effect of these wrongs.

**Art. 1677. - Injunctions.**

- (1) The Court may grant an injunction restraining the defendant from committing, continuing to commit or resuming an act prejudicial to the plaintiff.
- (2) An injunction shall be granted only where there are good reasons to believe that the act prejudicial to the plaintiff is likely to be carried out and the impending injury is of such a nature that it cannot be redressed by a pecuniary compensation.

**Art. 1678. - Unfair Competition.**

In the case of unfair competition, the Court may enjoin the cessation of the practices that are contrary to good faith.

**Art. 1679. - Simulation.**

Acts done by third persons in relying on an ostensible situation may be declared demurrable against the person who, by his conduct or forbearance, has created the semblance of such situation.

**Section 5. - Action for Compensation**

**Art. 1680. - Legal immunity.**

No action for liability may be brought because of facts connected with their office against:

- (a) a member of the Eritrean Government;
- (b) a member of the Eritrean Parliament; or
- (c) a judge of the Eritrean Courts.

**Art. 1681. - Exception.**

The provision of Article 1679 does not apply where the person protected thereby have been convicted under the penal law for acts pertaining to their office.

**Art. 1682. - Reference to the Administrative Law.**

Where the State is liable, the rules of administrative law determine against whom the action shall be brought and which department or service shall finally assume the burden of the debt.

**Art. 1683. - Burden of Proof.**

The burden is on the victim to establish the amount of the loss sustained and to prove the circumstances which render the defendant liable to make it good.

**Art. 1684. - Causal Relationship**

Reparation can only be claimed for injury which is related to the event giving rise to the liability of the debtor in such a fashion that the injury, also taking into account its nature and that of the liability, can reasonably be imputed to the debtor as a result of this event.

### **Art. 1685. - Scope of Protection**

There is no obligation to repair injury when the violated norm does not have as its purpose the protection from injury such as that suffered by the victim.

### **Art. 1686. - Two or More Events.**

Where the injury may have resulted from two or more events for each of which a different person is liable, and where it has been determined that the injury has arisen from at least one of these events, the obligation to repair the injury rests upon each of these persons, unless he proves that the injury is not the result of the event for which he himself is liable.

### **Art. 1687. - Benefit to be Computed.**

Where one and the same event has created both injury and benefit for the victim, the benefit must, to the extent that this is reasonable, be computed in determining the injury to be repaired.

### **Art. 1688. - Heirs.**

- (1) The victim's heirs may claim compensation for the material injury suffered by the victim.
- (2) Save where otherwise provided by law, they may not claim compensation for the moral injury suffered by the victim unless an action for compensation for the moral injury has been initiated by the victim during his lifetime.
- (3) The successor of the person liable for the injury is liable as he himself was to make it good.

### **Art. 1689. - Victim's Creditors.**

- (1) The creditors of a person may not exercise their debtor's action for compensation for injury done to him where such injury is connected with the debtor's person, bodily integrity or honor.
- (2) They may, on the conditions laid down in Article 1592, exercise their debtor's action where the debtor has, after

the date on which they became his creditors, suffered a injury affecting solely his pecuniary interests.

**Art. 1690. - Contractual Limitation of Extra-Contractual Liability.**

- (1) A person may relieve himself of liability for his fault, unless the injury was caused intentionally or by gross negligence.
- (2) A person may stipulate by contract that he will not be liable for faults committed by another person for whom he is answerable under the civil law.
- (3) A person may stipulate by contract that he will not be liable, unless the injury was caused by himself intentionally or by gross negligence, for injury which, under the provisions of this Title, is to be made good irrespective of fault.
- (4) Such an exemption of liability will not be held effective if it is contrary to good faith. Regard should be had to the position of the parties in society, in particular the circumstance that the party who is confronted with such an exemption is not a professional party.

**Art. 1691. - Compromise.**

After injury has been caused, the parties may agree that it shall not entail compensation or may settle the terms of its compensation.

**Art. 1692. - Date of Assessment of Injury.**

- (1) The Court assesses the injury sustained by the victim as on the day on which it renders judgment.
- (2) Where it is impossible finally to assess the injury on that date, the Court may give a provisional judgment and authorize an application for reconsideration of such decision.
- (3) The application for reconsideration must be made within five years from the date of the provisional judgment.

**Art. 1693. - *Res Judicata*.**

- (1) Without prejudice to the provisions of Article 1692, the Court's evaluation of the injury shall be final.
- (2) The victim may not bring a fresh action for compensation for other injury he has suffered unless such injury was caused independently of that for which he has already claimed compensation.

**Art. 1694. - No Appeal.**

- (1) No appeal shall lie against the judgment of the Court of first instance relating to the amount of compensation.
- (2) However, an appeal may lie where:
  - (a) the Court has considered circumstances which it should not have taken into account or has failed to consider circumstances which it should have taken into account;
  - (b) the amount of compensation fixed by the Court is manifestly unreasonable and could only have been inspired by prejudice or anger; or
  - (c) such amount is due to an error of calculation on the part of the Court.

**Art. 1695. - Allowance.**

- (1) Where such mode of payment is justified by the nature of the injury or other circumstances attending the case, the Court may order the injury to be made good by means of a periodical allowance.
- (2) In such case, the debtor shall provide security for the payment of the allowance.

**Art. 1696. - Solidary Liability.**

- (1) Where several persons are liable to make good the same injury they are bound solidarily.



- (2) In particular, no distinction is made between instigator, principal and accomplice.
- (3) The persons liable to make good the same injury are bound solidarily regardless of whether the obligation to make good has its source for one or other of them in a contract or in an extra-contractual liability.

**Art. 1697. - Sole Fault.**

- (1) Where only one of the persons liable has committed a fault, he shall alone ultimately bear the burden of the obligation.
- (2) Where the fault has been committed in the performance of his functions by the representative or agent of a body corporate or by a salaried employee, the Court may decide that the obligation shall ultimately be borne, either wholly or partly, by the body corporate or the employer. Where the fault consists in an official fault committed by a public servant or employee, the Court may decide that the obligation shall ultimately be borne, either wholly or partly, by the State or its territorial subdivision or the public service concerned.
- (3) In making its decision, the Court takes account of the degree of gravity of the fault committed, and of the author's desire, if any, to carry out his functions to the best of his abilities. No regard shall be had to the respective financial positions of the persons declared liable.
- (4) No ultimate division of liability shall be granted by the Court where:
  - (a) the act giving rise to the liability was committed with intent to cause an injury; or
  - (b) the act is a penal offence for which the author has been duly convicted.

**Art. 1698. - Shared fault.**

- (1) Where several persons have contributed by their fault to cause the same injury, the Court fixes equitably the proportion of the obligation ultimately to be borne by each of these persons.
- (2) In making its decision, the Court shall have regard to all the circumstances, in particular the extent to which the respective faults have contributed to cause the injury and the gravity of each fault.

**Art. 1699. - Subrogation.**

- (1) Whosoever has paid the whole obligation although he is ultimately bound to bear only a part thereof shall recover from those liable with him.
- (2) For the purpose of such recovery he shall be subrogated to the victim's claim.
- (3) The Court may in its judgment subrogate the person sentenced to the victim's possible claims against other persons liable for the injury.

**Chapter 2. - Unjust Enrichment**

**Section 1. - General Provisions**

**Art. 1700. - General Principle.**

Whosoever has derived a gain from the work or property of another without a cause justifying such gain, shall indemnify the person at whose expense he has enriched himself to the extent of the latter's impoverishment, and within the limit of his own enrichment.

**Art. 1701. - Loss of Enrichment.**

- (1) Restitution is not due, to the extent to which the defendant can show that he is no longer enriched at the time of the claim for restitution.

- (2) Restitution is nevertheless due where the defendant has parted with the enrichment in bad faith or where, at the time of parting with it, he should have been aware that he was bound to make restitution.
- (3) Where the unjust enrichment has been transferred gratuitously to a third person, the claim for restitution may be brought against the latter.

## **Section 2. - Undue Payment**

### **Art. 1702. - Undue Payment.**

- (1) Anyone who has donated a thing to another without legal ground is entitled to reclaim it from the recipient as a performance which was not due.
- (2) If the performance which was not due was the payment of a sum of money, the claim is for the restitution of the same amount.
- (3) Anyone who without legal ground has made a performance of some other kind is entitled to claim from the recipient that the performance be reversed.
- (4) The person who made the undue payment may demand restitution of the increments of the thing, or the legal interest of the money, from the date of the payment, where the payee acted in bad faith.

### **Art. 1703. - Absence of Mistake.**

Restitution is not admitted where a person cognizant of the facts pays voluntarily what he knew he did not owe.

### **Art. 1704. - Sufficient Cause.**

- (1) Restitution is not admitted where the payment was made in the performance of a barred obligation or moral obligation.

- (2) Restitution shall nevertheless be admitted in such case where the person who made the payment had no capacity to alienate gratuitously.

**Art. 1705. - No Restitution.**

- (1) The receiver of the undue payment owes no restitution where, as a consequence of the payment, he has in good faith destroyed or cancelled his title, relinquished the security for his claim or allowed his action against the true debtor to lapse.
- (2) In such case, the person who made the undue payment has legal redress against the true debtor only.

**Art. 1706. - Legal Incapacity.**

A person under a legal incapacity who has received a performance which was not due incurs obligations within this section only so far as what has been received has genuinely benefited him or has come under the control of his guardian.

**Art. 1707. - Absence of Transfer of a Thing.**

- (1) Where the performance in question does not consist in the transfer of a thing, the principles in this section are to be applied.
- (2) If the performance by its nature precludes reversal then, so far as is reasonable, restitution shall be by reimbursement of the value of the performance at the time of its receipt, provided that the recipient has been enriched by the performance or was responsible for the performance being effected or had agreed to make some performance in exchange.

### **Section 3. - Expenses**

#### **Art. 1708. - Scope of this Section.**

Where a person is bound to return a thing which has been in his possession for some time, his rights and obligations arising out of any modifications he may have made to such thing are, unless otherwise provided by law or contract, subject to the following provisions.

#### **Art. 1709. - Necessary Expenses.**

Whosoever is bound to make restitution shall be reimbursed of the expenses he has incurred in preventing the loss or deterioration of the thing, unless such expenses were not useful or were rendered by his own fault or the fault of a person for whom he is answerable.

#### **Art. 1710. - Maintenance.**

The person bound to make restitution is not entitled to any indemnity for the cost of maintaining the thing or for the taxes he has paid because of possessing it.

#### **Art. 1711. - Value Added to the Thing.**

- (1) Where expenses incurred on the thing have increased its value, the person bound to make restitution is entitled to their reimbursement.
- (2) He may, however, not claim more than such increase in value, due to his expenses, as still subsists at the time of restitution.

#### **Art. 1712. - Bad Faith.**

- (1) The Court may, where equity so requires, reduce or refuse the indemnity as provided in Article 1711 where, at the time when he made the expense, the defendant knew or should have known of his duty to return the thing.
- (2) The Court may, where equity so requires, grant the plaintiff a period of grace not exceeding two years for payment of the indemnity provided in Article 1711.

**Art. 1713. - *Jus Tollendi*.**

A person bound to make restitution may before restitution of the thing remove anything he has joined to it, if it can be separated without appreciable injury to the thing.

**Art. 1714. - Right of Retention.**

- (1) The person bound to make restitution may refuse to return the thing until he has received payment of the indemnity due to him under the foregoing provisions or until he has received adequate security for its payment upon liquidation of the amount due.
- (2) The right of retention may, however, not be invoked by a thief or by a person who, at the time when he took possession of the thing, knew that he had no valid contractual or legal right to it.

**Art. 1715. - Deterioration.**

- (1) The person bound to make a restitution shall indemnify the person entitled where the former has caused the thing to deteriorate.
- (2) He is liable even for such deterioration of the thing as was caused by *force majeure*, if, at the time when this occurred, he knew that he had no valid contractual or legal right to the thing.

**Art. 1716. - Loss of the Thing.**

- (1) The provisions of Article 1715 apply in the case of total or partial loss of the thing.
- (2) They also apply where for any other reason the thing cannot be returned in kind to the person entitled to it.

**Art. 1717. - Extent of Indemnity.**

- (1) The indemnity due is equal to the value of the thing at the time when it becomes impossible to return it in kind.

- (2) Where the person required to make restitution knew at that time that he had no valid contractual or legal right to the thing, additional compensation may be demanded from him. In such case, the person entitled to restitution shall be placed in the position he would have been in, had he retained uninterrupted possession of the thing.

**Art. 1718. - Increments.**

- (1) The person bound to make restitution shall retain the collected increments of the thing.
- (2) He shall pay to the plaintiff their value where he knew at the time of taking possession of the thing that he had no valid contractual or legal right to it.

**Chapter 3. - Management of Another's Affairs**

**Section 1. - General Provisions**

**Art. 1719. - Scope of Application.**

Management of another's affairs occurs where a person consciously and with good reason undertakes to look after the interest of another without having the power to do so pursuant to a juridical act or another juridical relationship provided for elsewhere by law.

**Art. 1720. - Duties of the Manager.**

- (1) The manager must exercise the necessary care in his management and, to the extent that this can be reasonably required of him, he must continue the management which he has begun.
- (2) As soon as reasonably possible, the manager reports to the interested party on what he has done. He must render an account of the funds which he has spent or received on behalf of the interested party.
- (3) The Court may, having regard to the circumstances that induced the manager to undertake the management, reduce the damages to which he may be liable owing to his default.

### **Art. 1721. - Duties of the Interested Party.**

- (1) The interested party must compensate the manager for injury which he has suffered as a result of the management, to the extent that his interest is properly looked after.
- (2) Where the manager has acted in the course of a business or profession, he has, to the extent that this is reasonable, the further right to be paid for his activities in accordance with the prices usually charged for such activities at the time of the management.
- (3) Expenses made by the manager shall produce interest as from the day they were made without it being necessary that the interested party be placed in default.

### **Art. 1722. - Authority.**

A manager is entitled to perform juridical acts in the name of the interested party, to the extent that the latter's interest is properly looked after.

### **Art. 1723. - Approval by the Interested Party.**

- (1) If a person who acted with a view to looking after the interest of another, has done so without good reason or has not properly done so, the interested party may, by approving the acts, renunciate the right to invoke the defect against the manager. The interested party can be given an reasonable period for the approval.
- (2) Approval towards the manager does not imply ratification towards a third party.

## **Section 2. - Authority Granted by the Court**

### **Art. 1724. - Principle.**

The authority to do an act or acts of a certain kind on behalf of another may be given by the Court to a person hereinafter called the curator.



**Art. 1725. - Application for Appointment.**

- (1) An application for the appointment of a curator may be made to the Court by a relative or by the spouse of the person to be represented.
- (2) It may be made by no other person.

**Art. 1726. - Decision of the Court.**

- (1) The Court shall not grant the application unless the person to be represented is not in a position to appoint a mandatory by reason of his being away, ill or for any other cause.
- (2) The Court shall authorize the curator it appoints to carry out such acts as are of an urgent nature.
- (3) The Court shall make such order as it thinks fit to safeguard the interests of the person represented and to ensure that the curator will execute any sentence that may be passed upon him in relation to his liabilities to the person represented.

## **BOOK VI - SPECIAL CONTRACTS**

### **TITLE I - CONTRACTS RELATING TO THE TRANSFER OF OWNERSHIP AND OTHER RIGHTS**

#### **Chapter 1. - Sale**

##### **Section 1. - General Provisions**

###### **Art. 1727. - Definition.**

A contract of sale is a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him.

###### **Art. 1728. - Application of this Chapter.**

The provisions of this Chapter shall apply to the sale of property generally, subject to more particular rules governing the sale of certain kinds of movable things, and the sale of immovables..

###### **Art. 1729. - Integral Parts of Immovables.**

- (1) The sale of integral parts of an immovable shall be deemed to be a sale of movables where such parts are, under the contract, to be separated from the immovable and transferred as movables things to the buyer.
- (2) The provisions of sub-Article (1) shall apply in particular where the sale relates to crops, materials of a building under demolition or products of a quarry.

###### **Art. 1730. Things to be Manufactured.**

Contracts for the supply of things to be manufactured or produced are to be considered sales unless the party who orders the things undertakes to supply a substantial part of the materials necessary for such manufacture or production.

**Art. 1731. - Distinguished from Contract For Services.**

This Chapter does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the things consists in the supply of labor or other services.

Paragraph 1. - Formation of Contract

**Art. 1732. - Subject of Sale.**

- (1) A sale may relate to an existing thing belonging to the seller.
- (2) A sale may also relate to a future thing which the seller undertakes to make for delivery to the buyer.
- (3) It may also relate to a thing belonging to a third party.

**Art. 1733. - Terms of the Contract.**

- (1) The obligations in a contract of sale may be pure and simple or be subject to modalities.
- (2) Unless otherwise expressly stipulated, those modalities shall not be deemed to be conditions affecting the existence of the contract.

**Art. 1734. - Offers to the Public.**

A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Paragraph 2. - Performance of Contract

**Art. 1735. - Delay or Error in Transmission of Notice.**

Unless otherwise expressly provided in this Chapter, if any notice, request or other communication is given or made by a party in accordance with this Chapter and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

*A. - Obligations of Seller*

**Art. 1736. - General Provision.**

The seller must deliver the things, hand over any documents relating to them, transfer the ownership of the things and warrant the buyer against certain defects in the things, as required by the contract and this Chapter.

*i. - Delivery of the Things and Handing Over Of Documents*

**Art. 1737. - Essence of Obligation.**

Delivery consists in the handing over of things and their accessories or, in appropriate cases, handing over of any documents relating to the things in accordance with the contract.

**Art. 1738. - Quantity Fixed Approximately.**

- (1) Where the seller undertakes to deliver "about a certain quantity" of specified things, it shall be for him to determine the exact quantity to be delivered, unless it appears from the circumstances that such stipulation has been included in the contract in the sole interest of the buyer.
- (2) The difference between the approximate quantity fixed in the contract and the quantity actually delivered may not be more than ten per cent, where the sale relates to the whole cargo of a ship, or five per cent in other cases.

**Art. 1739. - Place of Delivery.**

If the seller is not bound to deliver the things at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the things in handing the things over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding paragraph, the contract relates to specific things, or unidentified things to be drawn from a specific stock or to be manufactured

or produced, and at the time of the conclusion of the contract the parties knew that the things were at, or were to be manufactured or produced at, a particular place in placing the things at the buyer's disposal at that place; and

- (c) in other cases - in placing the things at the buyer's disposal at the place where the seller had his place of business or, in the absence thereof, at the place where the seller was domiciled at the time of the conclusion of the contract.

#### **Art. 1740. - Shipping Arrangements.**

- (1) If the seller, in accordance with the contract or this Chapter, hands the things over to a carrier and if the things are not clearly identified to the contract by markings on the things, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the things.
- (2) If the seller is bound to arrange for carriage of the things, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
- (3) If the seller is not bound to effect insurance in respect of the carriage of the things, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

#### **Art. 1741. - Time of Delivery.**

The seller must deliver the things:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

- (c) in any other case, within a reasonable time after the conclusion of the contract.

**Art. 1742. - Documents Relating to the Things.**

- (1) If the seller is bound to hand over documents relating to the things, he must hand them over at the time and place and in the form required by the contract.
- (2) If the seller has handed over documents before the time required by the contract, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense.
- (3) In any event, the buyer retains any right to claim damages as provided for in this Chapter.

**Art. 1743. - Simultaneity with payment.**

- (1) Unless otherwise provided in the contract, delivery of the things shall be simultaneous with the payment of the price.
- (2) The seller may in such case retain the things until payment is made.

*ii. - Obligation to Transfer Ownership*

**Art. 1744. - Steps Necessary for the Transfer of Ownership.**

The seller shall take the necessary steps for transferring to the buyer unassailable rights over the things sold.

**Art. 1745. - Warranty against Dispossession.**

- (1) The seller shall warrant the buyer against any total or partial dispossession which he might suffer in consequence of a third party exercising a right this third party enjoyed at the time of the conclusion of the contract.

- (2) Where, at the time of the conclusion of the contract, the buyer knows that he risks dispossession, the seller does not warrant the buyer against dispossession unless he has expressly undertaken to do so.
- (3) Warranty shall however be due where dispossession is due to the seller's default on an obligation secured by a pledge of the things or by any other security interest in the thing.

**Art. 1746. - Third-Party Intellectual Property Claims.**

- (1) The seller warrants that the things delivered are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware.
- (2) Where, at the time of the conclusion of the contract, the buyer knows or could not have been unaware of a right or claim, the seller does not warrant that the things are free from any right or claim based on industrial or intellectual property.
- (3) The seller does not warrant that the things are free from any right or claim based on industrial or intellectual property if the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

**Art. 1747. - Provisions Excluding or Restricting Warranties.**

- (1) Provisions which exclude or restrict the warranties set out in Article 1745 and 1746 shall be construed strictly.
- (2) Unless otherwise expressly agreed, such provision shall impose on the seller the obligation to return the price to the buyer, in whole or in part, in cases of dispossession.
- (3) A provision excluding or restricting the warranty shall be of no effect where the seller has intentionally concealed that a third party had a right on the things or dispossession is due to the act of the seller.

**Art. 1748. - Notice of Third-Party Claims.**

- (1) The buyer loses the right to rely on the provisions of Article 1745 or 1746 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
- (2) The seller is not entitled to rely on the provisions of the preceding sub-Article if he knew of the right or claim of the third party and the nature of it.
- (3) Notwithstanding his failure to give notice, the buyer may reduce the price in accordance with Article 1793 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

**Art. 1749. - Making the Seller Join as Party to Proceedings.**

- (1) Where the buyer is sued for breach of warranties by a third party as set out in Article 1745 and 1746, the buyer shall make the seller join him as a party to the proceedings instituted against him.
- (2) Where the seller is joined in the proceedings in due time, he shall make good his warranty unless he can show that dispossession is due to the act of the buyer.
- (3) Where the seller is not joined in the proceedings without any fault on his part, he shall be released from his warranty where he can show that the proceedings might have had a more favorable issue, had he been joined in due time.

**Art. 1750. - Compromise.**

Where the buyer acknowledges the right of a third party outside judicial proceedings or he has entered into a compromise with such third party, he may not avail himself of the warranty given by the seller unless he can show that the latter could not have prevented the breach of warranty.



iii. - Warranty Against Defects in the Things

**Art. 1751. - Principle.**

The seller shall deliver things which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

**Art. 1752. - Conformity with Contract.**

Except where the parties have agreed otherwise, the things do not conform with the contract if they:

- (a) are unfit for the purposes for which things of the same description would ordinarily be used;
- (b) are unfit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;
- (c) do not possess the qualities of things which the seller has held out to the buyer as a sample or model; or
- (d) are not contained or packaged in the manner usual for such things or, where there is no such manner, in a manner adequate to preserve and protect the things.

**Art. 1753. - Buyer's Knowledge of Non-Conformity.**

The seller is not liable under Article 1752 for any lack of conformity of the things if at the time of the conclusion of the contract the buyer knew of such lack of conformity.

**Art. 1754. - Time when Defects Are to be Considered.**

- (1) The seller is liable in accordance with the contract and this Chapter for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

- (2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding sub-Article and which is due to a breach of any of his obligations, including a breach of any undertaking that for a period of time the things will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

**Art. 1755. - Right to Cure up to Date for Delivery.**

- (1) If the seller has delivered things before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the things delivered, or deliver things in replacement of any nonconforming things delivered or remedy any lack of conformity in the things delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense.
- (2) In any event, the buyer retains any right to claim damages as provided for in this Chapter.

**Art. 1756. - Examination of Things by Buyer.**

- (1) The buyer must examine the things, or cause them to be examined, within as short a period as is practicable in the circumstances.
- (2) If the contract involves carriage of the things, examination may be deferred until after the things have arrived at their destination.
- (3) If the things are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the things have arrived at the new destination.

**Art. 1757. - Provision Excluding or Restricting Warranty.**

Any provision excluding or restricting the warranty shall be of no effect where the seller has fraudulently concealed from the buyer the defects in the thing.

**Art. 1758. - Period for Relying on a Nonconformity.**

- (1) The buyer loses the right to rely on a lack of conformity of the things if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.
- (2) In any event, the buyer loses the right to rely on a lack of conformity of the things if he does not give the seller notice thereof at the latest within a period of two years from the date on which the things were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

**Art. 1759. - Contractual Period of Guarantee.**

Where the seller has guaranteed that for a period of time the things will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics, it shall be sufficient for the buyer to inform the seller of the nonconformity before the expiry of such period.

**Art. 1760. - Excuse for Failure to Notify.**

Notwithstanding Article 1758 and 1759, the buyer may reduce the price in accordance with Article 1793 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

**Art. 1761. - Seller's Knowledge of Nonconformity.**

The seller is not entitled to rely on the provisions of Article 1758, 1759 and 1760 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

**Art. 1762. - Prescription of Right of Action and Defenses.**

- (1) Rights of action and defenses based on a lack of conformity are prescribed by the lapse of two years from the notification given according to the preceding Articles.
- (2) However, the buyer retains, as a defense against an action for payment, the power to invoke his right to a reduction in the price in accordance with Article 1792 or his right to reparation of damage, except for loss of profit.

*B. - Obligations of Buyer.*

**Art. 1763. - General Provision.**

The buyer must pay the price for the things and take delivery of them as required by the contract and this Chapter.

*i. - Payment of the Price*

**Art. 1764. - Obligation to Pay the Price.**

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

**Art. 1765. - Open-price Contracts.**

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such things sold under comparable circumstances in the trade concerned.

**Art. 1766. - Price Determined By Weight.**

If the price is fixed according to the weight of the things, in case of doubt it is to be determined by the net weight.

**Art. 1767. - Place of Payment.**

If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business or, in the absence thereof, at the place where the seller is domiciled; or
- (b) if the payment is to be made against the handing over of the things or of documents, at the place where the handing over takes place.

**Art. 1768. - Date of Payment.**

- (1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the things or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Chapter. The seller may make such payment a condition for handing over the things or documents.
- (2) If the contract involves carriage of the things, the seller may dispatch the things on terms whereby the things, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.
- (3) The buyer is not bound to pay the price until he has had an opportunity to examine the things, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

**Art. 1769. - Payment Due Without Request.**

The buyer must pay the price on the date fixed by or determinable from the contract and this Chapter without the need for any request or compliance with any formality on the part of the seller.

**Art. 1770. - Credit Sale.**

Where the contract relates to a sale on credit and no date of payment is fixed, the buyer shall pay the price as soon as the seller demands it after the date when delivery is to be made.

ii. - Taking Delivery

**Art. 1771. - Buyer's Obligation to Take Delivery.**

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the things.

*C. - Common Obligations of Seller and Buyer*

i. - Expenses

**Art. 1772. - Expenses of Contract.**

The expenses of a contract of sale shall be borne by the buyer.

**Art. 1773. - Expenses of Payment.**

- (1) The expenses of the payment shall be borne by the buyer.
- (2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business or, in the absence thereof, by a change in his place of domicile subsequent to the conclusion of the contract.

**Art. 1774. - Expenses of Delivery.**

- (1) The expenses of delivery shall be borne by the seller.
- (2) Such expenses shall include the cost of counting, measuring and weighing the thing.

**Art. 1775. - Expenses after Delivery.**

Any expense arising after delivery shall be borne by the buyer.

**Art. 1776. - Expenses of Transport.**

- (1) The expenses of transport shall be borne by the buyer where the thing sold has to be sent to another place than the place of delivery.

- (2) Such expenses shall however be borne by the seller where delivery is to be carriage-free.
- (3) Where the transport of the thing is interrupted by an event beyond the control of either party, the additional transport expenses shall be borne by the party who bears the risk.

**Art. 1777. - Customs Duties.**

- (1) Where import custom duties or other duties charging the imported thing are to be paid by the seller and such duties increase after the contract is made, such increase shall be added to the price.
- (2) Where however, a delivery bearing such duties has been delayed by the act of the seller or of a person for whom the seller is liable, the additional duties shall be paid by the seller whenever the buyer can show that the increase would not have been due, had the delivery been made at the time fixed in the contract or provided by law.
- (3) Whenever there is a decrease in customs duties, the price shall be reduced accordingly.

*ii. - Passing of Risk*

**Art. 1778. - Principle.**

Loss of or damage to the things after the risk has passed to the buyer does not release him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

**Art. 1779. - General Rules.**

- (1) Except as provided in Article 1780 and 1781, the risk passes to the buyer when he takes over the things or, if he does not do so in due time, from the time when the things are placed at his disposal and he commits a breach of contract by failing to take delivery.
- (2) However, if the buyer is bound to take over the things at a place other than a place of business of the seller or, in

the absence thereof, the place where the seller is domiciled, the risk passes when delivery is due and the buyer is aware of the fact that the things are placed at his disposal at that place.

- (3) If the contract relates to things not then identified, the things are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

**Art. 1780. - Risk When Contract Involves Carriage.**

- (1) If the contract of sale involves carriage of the things and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the things are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale.
- (2) If the seller is bound to hand the things over to a carrier at a particular place, the risk does not pass to the buyer until the things are handed over to the carrier at that place.
- (3) The fact that the seller is authorized to retain documents controlling the disposition of the things does not affect the passage of the risk.
- (4) Nevertheless, the risk does not pass to the buyer until the things are clearly identified to the contract, whether by markings on the things, by shipping documents, by notice given to the buyer or otherwise.

**Art. 1781. - Sale of Things During Transit.**

- (1) The risk in respect of things sold in transit passes to the buyer from the time of the conclusion of the contract.
- (2) However, if the circumstances so indicate, the risk is assumed by the buyer from the time the things were handed over to the carrier who issued the documents embodying the contract of carriage.
- (3) Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known



that the things had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

**Art. 1782. - Risk When Seller in Breach.**

If the seller has committed a fundamental breach of contract, Art. 1779, 1780 and 1781 do not impair the remedies available to the buyer on account of the breach.

**Art. 1783. - Provision Relating to Expenses.**

Any provision relating to expenses stipulated by the parties, in particular a provision whereby expenses are to be borne by the seller, shall not in itself transfer the risks.

**Art. 1784. - Things Shipped in common.**

Where things are shipped in common with others, the risks shall be allocated to each of the buyers in proportion to his share from the day when delivery has taken place by the things having been handed over to the carrier, where the seller has sent to the buyer the bill of lading or other document showing that the shipment has taken place.

**Paragraph 3. - Non-Performance of Contract**

**Art. 1785. - Fundamental Breach.**

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

**Art. 1786. - Declaration of Termination.**

A declaration of termination of the contract is effective only if made by notice to the other party.

*A. - Remedies for Breach of Contract by the Seller*

**Art. 1787. - Remedies Available to Buyer.**

- (1) If the seller fails to perform any of his obligations under the contract or this Chapter, the buyer may:
  - (a) exercise the rights provided in Article 1788 to 1795; and/or
  - (b) claim damages as provided in Article 1805 to 1808.
- (2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the seller by a Court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

**Art. 1788. - Buyer's Right to Compel Performance.**

- (1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.
- (2) If the things do not conform with the contract, the buyer may require delivery of substitute things only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute things is made either in conjunction with notice given under Article 1758 or within a reasonable time thereafter.
- (3) If the things do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under Article 1758 or within a reasonable time thereafter.

**Art. 1789. - Buyer's Notice Fixing Additional Time.**

- (1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.
- (2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

**Art. 1790. - Cure After Delivery.**

- (1) Subject to Article 1791, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Chapter.
- (2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
- (3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding sub-Article, that the buyer make known his decision.
- (4) A request or notice by the seller under sub-Article (2) or (3) of this Article is not effective unless received by the buyer.

**Art. 1791. - Buyer's Right to Terminate the Contract.**

The buyer may terminate the contract:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Chapter amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the things within the additional period of time fixed by the buyer in accordance with sub-Article (1) of Article 1789 or declares that he will not deliver within the period so fixed.

**Art. 1792. - Loss of Right to Terminate.**

- (1) In cases where the seller has delivered the things after the date for delivery, the buyer loses the right to terminate the contract unless he does so within a reasonable time after he has become aware that delivery has been made.
- (2) In cases where the seller has delivered the things but has breached the contract other than by late delivery, the buyer loses the right to terminate the contract unless he does so within a reasonable time:
  - (a) after he knew or ought to have known of the breach;
  - (b) after the expiration of any additional period of time fixed by the buyer in accordance with Article 1789 (1), or after the seller has declared that he will not perform his obligations within such an additional period; or
  - (c) after the expiration of any additional period of time indicated by the seller in accordance with Article 1789 (2), or after the buyer has declared that he will not accept performance.

**Art. 1793. - Reduction of Price.**

If the things do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the things actually delivered had at the time of the delivery bears to the value that conforming things would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with Article 1755 or Art. 1790 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

**Art. 1794. - Partial Delivery.**

- (1) If the seller delivers only a part of the things or if only a part of the things delivered is in conformity with the contract, Art. 1788 to 1793 apply in respect of the part which is missing or which does not conform.
- (2) The buyer may terminate the contract in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

**Art. 1795. - Early Delivery. Excess Quantity.**

- (1) If the seller delivers the things before the date fixed, the buyer may take delivery or refuse to take delivery.
- (2) If the seller delivers a quantity of things greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

*B. - Remedies for Breach of Contract by the Buyer*

**Art. 1796. - Remedies Available to Seller.**

- (1) If the buyer fails to perform any of his obligations under the contract or this Chapter, the seller may:
  - (a) exercise the rights provided in Article 1797 to 1801;

- (b) claim damages as provided in Article 1805 to 1808.
- (2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the buyer by a Court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

**Art. 1797. - Seller's Right to Compel Performance.**

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

**Art. 1798. - Seller's Notice Fixing Additional Time.**

- (1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
- (2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

**Art. 1799. - Seller's Right to Terminate the Contract.**

The seller may terminate the contract:

- (a) if the failure by the buyer to perform any of his obligations under the contract or this Chapter amounts to a fundamental breach of contract; or
- (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with sub-Article (1) of Article 1798, perform his obligation to pay the price or take delivery of the things, or if he declares that he will not do so within the period so fixed.

**Art. 1800. - Loss of Right to Terminate the Contract.**

- (1) In cases where the buyer has paid the price after the date payment was due, the seller loses the right to terminate the contract unless he does so before he has become aware that performance has been rendered.
- (2) In cases where the buyer has paid the price but has breached the contract other than by late payment, the seller loses the right to terminate the contract unless he does so within a reasonable time:
  - (a) after he knew or ought to have known of the breach; or
  - (b) after the expiration of any additional period of time fixed by the seller in accordance with Article 1797, or after the buyer has declared that he will not perform his obligations within such an additional period.

**Art. 1801. - Missing Specifications.**

- (1) If under the contract the buyer is to specify the form, measurement or other features of the things and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
- (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

*C. - Provisions Common to Seller and Buyer*

*i. - Anticipatory Breach and Installment Contracts*

**Art. 1802. - Suspension of Performance.**

- (1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:
  - (a) a serious deficiency in his ability to perform or in his creditworthiness; or
  - (b) his conduct in preparing to perform or in performing the contract.
- (2) If the seller has already dispatched the things before the grounds described in the preceding sub-Article become evident, he may prevent the handing over of the things to the buyer even though the buyer holds a document which entitles him to obtain them. The present sub-Article relates only to the rights in the things as between the buyer and the seller.
- (3) A party suspending performance, whether before or after dispatch of the things, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

**Art. 1803. - Anticipatory Breach.**

- (1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may terminate the contract.
- (2) If time allows, the party intending to terminate the contract must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.



- (3) The requirements of the preceding sub-Article do not apply if the other party has declared that he will not perform his obligations.

#### **Art. 1804. - Installment Contracts.**

- (1) In the case of a contract for delivery of things by installments, if the failure of one party to perform any of his obligations in respect of any installment constitutes a fundamental breach of contract with respect to that installment, the other party may terminate the contract with respect to that installment.
- (2) If one party's failure to perform any of his obligations in respect of any Installment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future Installments, he may terminate the contract for the future, provided that he does so within a reasonable time.
- (3) A buyer who terminates the contract in respect of any delivery may, at the same time, declare it terminated in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

#### ii. - Damages

#### **Art. 1805. - General Provisions.**

- (1) Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach.
- (2) Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

### **Art. 1806. - Damages Established by Substitute Transaction.**

If the contract is terminated and if, in a reasonable manner and within a reasonable time after termination, the buyer has bought things in replacement or the seller has resold the things, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under Article 1805.

### **Art. 1807. - Damages Based on Current Price.**

- (1) If the contract is terminated and there is a current price for the things, the party claiming damages may, if he has not made a purchase or resale under Article 1806, recover the difference between the price fixed by the contract and the current price at the time of termination as well as any further damages recoverable under Article 1805. If, however, the party claiming damages has terminated the contract after taking over the things, the current price at the time of such taking over shall be applied instead of the current price at the time of termination.
- (2) For the purposes of the preceding sub-Article, the current price is the price prevailing at the place where delivery of the things should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the things.

### **Art. 1808. - Mitigation of Damages.**

A party who invokes a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

#### *iii. - Interest*

### **Art. 1809. - Interest.**

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under Article 1805.

iv. - Exemptions

**Art. 1810. - Exemptions.**

- (1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- (2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
  - (a) he is exempt under the preceding sub-Article; and
  - (b) the person whom he has so engaged would be so exempt if the provisions of that sub-Article were applied to him.
- (3) The exemption provided by this Article has effect for the period during which the impediment exists.
- (4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.
- (5) Nothing in this Article prevents either party from exercising any right other than to claim damages under this Chapter.

**Art. 1811. - Failure of Performance Caused by Other Party.**

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

V. - Effects of Termination

**Art. 1812. - Effect of Termination.**

- (1) Termination of the contract releases both parties from their obligations under it, subject to any damages which may be due.
- (2) Termination does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the termination of the contract.
- (3) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract.
- (4) If both parties are bound to make restitution, they must do so concurrently.

**Art. 1813. - Buyer's Inability to Restore Things.**

- (1) The buyer loses the right to terminate the contract or to require the seller to deliver substitute things if it is impossible for him to make restitution of the things substantially in the condition in which he received them.
- (2) The preceding sub-Article does not apply:
  - (a) if the impossibility of making restitution of the things or of making restitution of the things substantially in the condition in which the buyer received them is not due to his act or omission;
  - (b) if the things or part of the things have perished or deteriorated as a result of the examination provided for in Article 1756; or
  - (c) if the things or part of the things have been sold in the normal course of business or have been consumed or transformed by the buyer in the

course of normal use before he discovered or ought to have discovered the lack of conformity.

**Art. 1814. - Preservation of Other Remedies.**

A buyer who has lost the right to terminate the contract or to require the seller to deliver substitute things in accordance with Article 1813 retains all other remedies under the contract and this Chapter.

**Art. 1815. - Restitution of Benefits Received.**

- (1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.
- (2) The buyer must account to the seller for all benefits which he has derived from the things or part of them:
  - (a) if he must make restitution of the things or part of them; or
  - (b) if it is impossible for him to make restitution of all or part of the things or to make restitution of all or part of the things substantially in the condition in which he received them, but he has nevertheless terminated the contract or required the seller to deliver substitute things.

*vi. - Preservation of the Things*

**Art. 1816. - Seller's Duty to Preserve Things.**

If the buyer is in delay in taking delivery of the things or, where payment of the price and delivery of the things are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the things or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

**Art. 1817. - Buyer's Duty to Preserve Things.**

- (1) If the buyer has received the things and intends to exercise any right under the contract or this Chapter to

reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

- (2) If things dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the things on his behalf is present at the destination. If the buyer takes possession of the things under this sub-Article, his rights and obligations are governed by the preceding sub-Article.

#### **Art. 1818. - Deposit in warehouse.**

A party who is bound to take steps to preserve the things may deposit them, when necessary, in a warehouse.

#### **Art. 1819. - Sale of the Things.**

- (1) A party who is bound to preserve the things in accordance with Article 1816 or 1817 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the things or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.
- (2) If the things are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the things in accordance with Article 1816 or 1817 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.
- (3) A party selling the things has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the things and of selling them. He must account to the other party for the balance.

## **Section 2. - Various Forms of Sale**

### **Paragraph 1. - Sale on Trial**

#### **Art. 1820. - Definition.**

A sale on trial is a contract of sale concluded subject to the suspensive condition that the thing satisfy the buyer.

#### **Art. 1821. - Time for Acceptance.**

- (1) If the sale has been made upon trial, the buyer shall, within the period fixed in the contract, declare whether he accepts or refuses the thing.
- (2) If no period is fixed in the contract, the seller may give the buyer a reasonable period of time to decide.

#### **Art. 1822. - Silence of Buyer.**

If the buyer fails to inform the seller of his decision within the period provided in Article 1821, the sale shall be deemed to have been concluded at the time the fixed or reasonable period elapses.

#### **Art. 1823. - Implied Acceptance.**

The sale shall be deemed to be concluded if the buyer pays without reservation all or part of the price or disposes of the thing otherwise than is necessary to try it.

#### **Art. 1824. - Risk of Loss or Damage.**

Notwithstanding that the thing has been delivered to the buyer, the seller shall bear the risk of loss or damage until the buyer accepts the thing.

### **Paragraph 2. - Sale by Installments**

#### **Art. 1825. - Definition**

The sale is by Installments where the thing has been sold and delivered on the condition that the price will be paid by Installments.

### **Art. 1826. - Right of Option of the Seller.**

Where the sale is by Installments and the buyer is in arrears with one of the part payments, the seller may proceed to recover the unpaid Installment or, where such right has been expressly reserved to him, terminate the contract.

### **Art. 1827. - Termination of Contract.**

- (1) Where the contract is terminated, the seller and the buyer shall return the payments which they have made to each other
- (2) The seller may however claim a fair rent and an indemnity for the wear and tear of the thing.
- (3) Any stipulation imposing more onerous obligations on the buyer shall not be binding on him.

### **Art. 1828. - Exigibility of Balance.**

- (1) Where the exigibility of the balance of the claim has been stipulated in the case of default of payment of an Installment, the seller may not avail himself of this stipulation unless the buyer is in arrears for two consecutive payments representing together not less than one tenth of the price of the sale.
- (2) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

### **Paragraph 3. - Sale with Ownership Reserved**

### **Art. 1829. - Definition.**

Where a sale is intended to reserve to the seller the ownership of the thing which is placed under the control of the buyer, until the price is paid, the seller is presumed to obligate himself to the transfer of the ownership of the thing to the buyer under a suspensive condition of payment of the price.



**Art. 1830. - Termination of Contract.**

- (1) Where the contract is terminated, the seller shall return to the buyer all partial payments which he received.
- (2) The seller may however claim a fair rent and an indemnity for the tear and wear of the thing.
- (3) Any stipulation imposing more onerous obligations on the buyer shall not be binding on him.

**Paragraph 4. - Sale with Right of Redemption**

**Art. 1831. - Definition.**

A sale with the right of redemption is a contract of sale which includes an express term by which the seller reserves to himself the right to redeem within a given period of time the thing which he sold to the buyer.

**Art. 1832. - Time for Redemption.**

Unless the parties have agreed to a shorter period, the period for exercising the right of redemption is two years. Notwithstanding any stipulation to the contrary, any longer period shall be reduced to two years.

**Art. 1833. - Prohibition.**

The buyer may not transfer the thing to which the right of redemption extends.

**Art. 1834. - Notice of Intent to Redeem.**

- (1) A seller who wishes to exercise his right of redemption shall notify the buyer of his intent to do so not less than one month before exercising his right.
- (2) The seller shall notify any third person known to him who has acquired an interest in the thing subject to the right of redemption not less than one month before exercising his right.

**Art. 1835. - Obligations of Seller.**

- (1) The seller who exercises his right of redemption shall refund to the buyer the price which he has received and the expenses of the contract of sale.
- (2) Unless otherwise agreed, the provisions of this Code relating to Undue Payment and Unlawful Enrichment shall apply as regards the expenses incurred by the buyer on the thing.

**Art. 1836. - Securing a Loan.**

If the purpose of the right to redeem is to secure a loan, the seller is deemed to be a borrower and the buyer is deemed to be a pledgee.

Paragraph 5. - Sale by Auction

**Art. 1837. - Definition.**

- (1) An auction sale is a sale by which property is offered for sale to several persons through the intermediary of an auctioneer, and declared sold to the last and highest bidder, where the seller has expressed no contrary intention.
- (2) The seller himself may be auctioneer.

**Art. 1838. - Voluntary and Forced Auctions.**

- (1) An auction sale is either voluntary or forced.
- (2) Forced sales are subject to the provisions of the Civil Procedure Code and to consistent provisions of this paragraph.

**Art. 1839. - Conditions of Sale.**

- (1) The seller may fix a reserve price or any other conditions of sale.
- (2) The conditions of sale may not be invoked against the successful bidder unless the seller or auctioneer

communicates the conditions to the persons present at the auction before receiving bids.

**Art. 1840. - Disclosure of Seller's Identity.**

- (1) The seller may refuse to disclose his identity at the auction.
- (2) If a seller does not disclose his identity to the successful bidder, the auctioneer is bound personally by all the obligations of the seller.

**Art. 1841. - Obligations of Bidder.**

- (1) The bidder shall be bound by his offer on the terms of the conditions of sale.
- (2) At no time may a bidder withdraw his bid.
- (3) Unless otherwise provided he shall be released where a higher bid is made or his offer is not accepted immediately after the usual calls.

**Art. 1842. - Completed Sale.**

- (1) Unless otherwise provided by the conditions of sale, the auctioneer shall have authority to knock down the thing to the highest bidder.
- (2) An auction sale is completed when the auctioneer declares the property sold to the last bidder.

**Art. 1843. - Payment in Cash.**

- (1) Unless otherwise provided by the conditions of sale, the successful bidder shall be bound to pay cash.
- (2) The seller who is not paid cash or according to the conditions of sale may forthwith terminate the contract.

**Art. 1844. - Failure to Pay Price.**

- (1) If the successful bidder fails to pay the price, the auctioneer may, in addition to the ordinary remedies of a seller, resell the property by auction.
- (2) The bidder who failed to pay may not bid at a subsequent auction of the property.
- (3) He shall be liable for the difference between the price at which the thing was sold to him and the resale price, if lesser, but is not entitled to claim any excess amount.

**Art. 1845. - Warranty Due By Seller.**

- (1) In a voluntary sale by auction, the seller shall be deemed to give the same warranties as in an ordinary sale.
- (2) In a forced auction, the seller gives no warranty but shall be liable for any fraud on his part.

**Section 3. - Sale to Consumers**

**Art. 1846. - Consumer Sales.**

- (1) The sale of a thing by a seller acting in the course of his trade to a natural person who buys for personal, family or household purposes is a consumer sale.
- (2) The provisions of this Section derogate from the provisions of Section 1 of this Chapter to the extent they are inconsistent with them.

**Art. 1847. - Prohibited Terms.**

Unless otherwise permitted by law, any term in a consumer sale shall not be binding on the buyer if it purports to exclude or limit:

- (a) warranties as to the transfer of ownership or against defects in the things; or
- (b) the remedies of the buyer.

**Art. 1848. - Claim for Costs.**

The seller in a consumer sale may claim costs for acts he or a mandatary performs in connection with the sale only to the extent that the seller, at the time of the conclusion of the contract, has disclosed to the buyer these costs or the basis for calculating them.

**Art. 1849. - Use of Vending Machines.**

- (1) If things are distributed by the use of vending machines, the possessor of the machine shall ensure that the following information is provided to the buyer: the name and address of the seller, the actions necessary to receive things, and the address to which complaints should be sent.
- (2) A contract of sale shall be deemed to be concluded at the time when the buyer takes the actions necessary to receive the things.
- (3) If the buyer does not receive the things paid for, the seller shall provide the things to the buyer upon request or refund the amount paid.

**Art. 1850. - Termination.**

- (1) Except as provided in sub-Article (2), the buyer in a consumer sale may reject the things and terminate the contract if the things sold do not conform with the contract or with the warranties provided by law.
- (2) The seller is not liable for any lack of conformity if at the time of the conclusion of the contract the buyer knew of the lack of conformity.

**Section 4. - Sale of Cattle and Other Living Animals**

**Art. 1851. - Warranty against Contagious Diseases.**

- (1) Notwithstanding any provision to the contrary in the contract of sale, the seller shall guarantee that at the time the animal is delivered it does not suffer from any of the following diseases:

- (a) Rabies in all species of animals, Rinderpest in all ruminants, Pleuro-pneumonia of cattle (Contagious Bovine Pleuro-Pneumonia), Glanders, Farcy, Dourine and Epizootic Lymphangitis of horses and their crosses (Mules), Anthrax and Piroplasmiasis of horses, cattle, sheep and goats;
  - (b) Foot-and-Mouth Disease of cattle, sheep, goats, pigs and camels;
  - (c) Blackquarter or Malignant Oedema and Tuberculosis of cattle;
  - (d) Sheep Pox, and Scabies of sheep and pigs, Swine Fever, Pneumo-enteritis and pox of pigs, Tuberculosis of pigs;
  - (e) Trypanosomiasis of equines, donkeys and their crosses and in camels;
  - (f) Spirillosis of horses, donkeys and their crosses;
  - (g) Oesophagostomiasis of sheep;
  - (h) Brucellosis of cattle, sheep and goats;
  - (i) Rickettsiosis, infectious anaemia of equines;
  - (j) Psittacosis, contagious diseases of bees; or
  - (k) Isle of Wile Disease, Nosema.
- (2) The proper authority may designate other diseases as contagious within the meaning of this Article.

### **Section 5. - Sale of Immovables**

#### **Art. 1852. - Independent Work Relating to Immovables and Sale.**

A contract whereby one of the parties undertakes to deliver to the other party a house, a flat or another building which does not yet exist, is a contract of independent work relating to immovables and not a contract of sale.

**Art. 1853. - Form of Contract.**

A contract of sale of an immovable shall be of no effect unless it is made in writing.

**Art. 1854. - Registration in Registers of Immovable Property.**

The sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situated.

**Art. 1855. - Cooperation of Seller.**

- (1) The seller shall furnish to the buyer all the documents necessary to enable the buyer to cause the transfer of the immovable to be registered in the registers of immovable property.
- (2) Such obligation shall be deemed to be an essential stipulation of the contract of sale.

**Art. 1856. - Seller to Declare Certain Rights.**

- (1) The seller shall declare to the buyer the rights which third parties have on the immovable sold where such rights may be set up against the buyer independently of a registration in the registers of immovable property.
- (2) The contract may compel the seller to declare to the buyer the rights which third parties have on the immovable notwithstanding that such rights are entered in the registers of immovable property.

**Art. 1857. - Registered Rights and Burdens.**

- (1) The buyer shall be deemed to know all the rights and burdens affecting the immovable which have been registered in the registers of immovable property in the place where the immovable is situated.
- (2) In respect of those rights and burdens, the buyer may not avail himself of the provisions concerning the warranty against dispossession, unless the seller has warranted that

such rights did not exist. Such warranty may only result from an express provision in the contract of sale.

- (3) The buyer may avail himself of the provisions concerning the warranty against dispossession where the immovable is attached and sold at the request of a creditor who has a hypothec.

**Art. 1858. - Sale of Immovable Belonging to Others.**

- (1) The provisions concerning the warranty against dispossession shall apply where the sale relates to an immovable which, in whole or in part, did not belong to the seller.
- (2) The buyer may avail himself of the provisions relating to the warranty against dispossession without waiting until he has been dispossessed.
- (3) He may not avail himself of such provisions where, at the time when the Court is to make its decision, such dispossession is no longer to be feared.

**Art. 1859. - Lesion.**

A sale of an immovable may not be terminated by the buyer or the seller on the ground of lesion.

**Art. 1860. - Warranty of Area.**

- (1) The seller shall guarantee the area of the immovable sold where such area has been indicated in the contract.
- (2) Where the true area is smaller than that which as been indicated, the buyer may require that the price be reduced accordingly.
- (3) He may require the termination of the contract where the true area is smaller by at least one-tenth than that which has been indicated or where it renders the immovable unsuitable for the use which the buyer intended to make of it and such use was known to the seller.



**Art. 1861. - Conditions and Time.**

The action of the buyer based on the warranty of area shall be subject to the same conditions and be instituted within the same time as an action based on the warranty against defects.

**Art. 1862. - Rights of Seller.**

- (1) The seller may not require an increase of price where the true area is larger than that indicated in the contract.
- (2) The provisions of sub-Article (1) shall not apply where the error of the seller is due to fraud on the part of the buyer.

**Art. 1863. - Compulsory Execution of Contract.**

- (1) The buyer of an immovable shall be deemed to have a particular interest in the specific performance of the contract.
- (2) He may accordingly demand such execution.
- (3) The buyer shall lose the right to demand the specific performance of the contract where he fails to demand it within one year after he has ascertained the delay of the seller.

**Art. 1864. - Sale with Right of Redemption.**

- (1) The seller may, in the contract of sale, reserve to himself the right to purchase the immovable from the buyer during a certain period.
- (2) The provisions of the Title of this Code relating to Usufruct and Other Rights *in Rem* concerning the promise of sale shall apply to such stipulation.

## **Section 6. - Contracts Similar to Sale**

### **Art. 1865. - Reference.**

The provisions of this section shall apply to contracts relating to immovables.

#### **Paragraph 1. - Exchange**

### **Art. 1866. - Definition.**

- (1) Exchange is a contract by which the parties bind themselves to transfer ownership of things to each other.
- (2) Except as provided in this Section, the provisions on Sale in the current Chapter shall apply to exchange.

### **Art. 1867. - Obligations of Parties.**

- (1) Each of the exchangers shall, as regards the things to be exchanged, have the same rights and obligations as a seller.
- (2) The exchanger who is bound by the exchange contract to pay a balance shall, as regards the payment of the balance, have the same obligations as a buyer.
- (3) Unless otherwise agreed, the exchangers shall share equally in the expenses of the exchange contract.

#### **Paragraph 2. - Transfer of Rights Other than Ownership.**

### **Art. 1868. - Transfer of Usufruct.**

- (a) If he transfers the usufruct of a thing, the obligation of the seller to transfer the ownership of the thing is replaced by the obligation to transfer the usufruct of the thing.
- (b) The provisions on "Sale" in the current Chapter shall apply where a person transfers for consideration the usufruct of a thing.

### **Art. 1869. - Transfer of Incorporeal Property.**

- (1) The provisions on "Sale" in the current Chapter shall, as far as possible and without prejudice to the provisions of special laws, apply where a person transfers for consideration incorporeal property.
- (2) The transfer of incorporeal property shall be subject to the provisions of Book V of this Code on the "Assignment of Claims".

### **Paragraph 3. - Leasing**

#### **Art. 1870. - Definition.**

A contract of leasing is a contract by which the lessor agrees that the lessee shall become the owner of the thing leased upon a given number of installments.

#### **Art. 1871. - Scope.**

- (1) Except as provided hereafter, the provisions on Sale in the current Chapter shall apply to contracts of leasing.
- (2) In the case of a leasing of an immovable, the lessee may register in the registers of immovable property in the place where the immovable is situated the right of contractual pre-emption resulting from the contract.

#### **Art. 1872. - Termination of Contract.**

The lessee may at any time terminate the contract by returning the thing to the lessor.

#### **Art. 1873. - Effect of Termination of Contract.**

- (1) Where the contract is terminated or avoided, the lessor shall return to the lessee the rents he received.
- (2) The lessor may however claim a fair rent and an indemnity for the wear and tear of the thing.

- (3) Any provision imposing more onerous obligations on the lessee shall not be binding on him.

#### Paragraph 4. - Supply Contract

##### **Art. 1874. - Definition.**

A supply contract is a contract in which one party undertakes for a price to make in favor of the other party periodic or continuous deliveries of things.

##### **Art. 1875. - Object of Contract.**

- (1) If the quantity to be supplied has not been fixed by the contract, the supplier shall supply such quantity as corresponds to the normal needs of the other party to the contract as of the time when the contract was concluded.
- (2) If the parties have only fixed a maximum and a minimum limit for the whole of the supplies or for each delivery, the person with whom the supplier contracted may fix, within these limits, the quantity to be supplied to him.
- (3) If the quantity is to be fixed according to his needs, the person with whom the supplier contracted shall take all he needs, notwithstanding that this quantity exceeds the minimum fixed in the contract.

##### **Art. 1876. - Price.**

Unless otherwise agreed, if the supplies are to be delivered periodically, the price for each delivery shall be the price generally charged for such things sold under comparable circumstances in the trade concerned at the time of the delivery.

##### **Art. 1877. - Time of Payment.**

- (1) If the supplies are to be delivered periodically, the price for an installment is due at the time that installment is delivered.
- (2) If supplies are to be continuous, the price is due at the usual dates for exigibility.

**Art. 1878. - Time of Performance.**

- (1) The time fixed for each installment is presumed to have been fixed in the interest of both parties.
- (2) If the person with whom the supplier contracted is allowed to fix the time when each installment is to be delivered, he shall give the supplier reasonable advance notice of that time.

**Art. 1879. - Non-performance of Contract.**

- (1) Where one of the parties fails to carry out his duties regarding a given performance, the contract may be terminated where the failure is of importance and capable of destroying the confidence in the regularity of future obligations.
- (2) The supplier may only terminate the contract or suspend its performance after having given reasonable notice to his contracting party.
- (3) Any provision to the contrary shall be of no effect.

**Art. 1880. - Preference Clause.**

- (1) The parties may agree that the person with whom the supplier has contracted shall prefer the supplier when acquiring certain supplies.
- (2) A person who has agreed to prefer the supplier shall promptly notify the supplier of the terms offered to him by third parties and the supplier shall, under pain of the loss of right, declare promptly whether he intends to avail himself of the preference.
- (3) An agreement to prefer the supplier shall not be effective for more than three years.
- (4) It shall be reduced to three years where it has been made for a longer period.

**Art. 1881. - Exclusive Clause in Favor of Supplier.**

- (1) If the parties have agreed that the person with whom the supplier has contracted shall acquire certain supplies exclusively from the supplier, that person may not, while the contract remains in effect, receive from third parties supplies of things of the nature provided in the contract.
- (2) Unless otherwise agreed, the person with whom of the supplier has contracted may not himself manufacture or produce things of the nature covered by the contract.

**Art. 1882. - Exclusive Clause in Favor of Buyer.**

- (1) If the parties have agreed that the supplier shall supply his products only to the other party, the supplier may not, in the area provided in the contract and while the contract remains in effect, directly or indirectly supply third parties with things of the nature provided in the contract.
- (2) If the person with whom of the supplier has contracted undertakes to develop, in the area provided in the contract, the sale of the things to be supplied to him, he is liable if he fails to carry out this obligation, notwithstanding that he sells the minimum quantity provided in the contract.

**Art. 1883. - Contract for Indefinite Term.**

If the duration of the supply contract has not been fixed in the contract, each party may terminate the contract by giving notice as provided in the contract or, if the contract is silent, by giving reasonable advance notice.

**Chapter 2. - Gifts**

**Art. 1884. - Definition. Limitation on Gifts *Inter Vivos*.**

- (1) A gift is a contract by which a person, the donor, transfers without compensation his property or assumes an obligation with the intention of gratifying another person, the donee.

- (2) Notwithstanding the provisions of sub-Article (1), where the donor has descendants, he may, in case of gifts that take effect during the lifetime of the donor, not make a gift in excess of two-thirds of the total of his property.
- (3) A gift exceeding two-thirds of the total property of the donor under the conditions prescribed in sub-Article (2) shall be reduced to that amount by the application of any one of his descendants.
- (4) The application for reduction under sub-Article (3) shall be made within two years of the date the gift was made.
- (5) An application for reduction made under sub-Article (3) shall be denied if the applicant was unworthy at the time the application was made under the provisions specified in the Book of this Code relating to Succession.
- (6) For purposes of this Article, the value of the property shall be that which the property had at the time the gift was made.

**Art. 1885. - Gift *Mortis Causa*.**

A gift made to take effect after the death of the donor shall be subject to the provisions of the Title of this Code regarding Wills.

**Art. 1886. - Endowment and Trust.**

The donor may constitute an endowment or trust in accordance with the provisions of the Title of this Code regarding Bodies Corporate and Property with a Specific Destination.

**Art. 1887. - Gift on the Occasion of Marriage.**

- (1) A gift made on the occasion of a marriage shall be subject to the provisions of this Chapter regarding other gifts.
- (2) It shall in no case be considered as made for consideration.
- (3) Nothing in this Article shall affect the special provision regarding a gift made on the occasion of a marriage.

**Art. 1888. - Gratuitous Services.**

Rendering gratuitous services is not a gift.

**Art. 1889. - Renunciation.**

Renouncing rights in an inheritance, refusing a legacy or failing to fulfill a condition on which the acquisition or preservation of a right depends is not a gift.

**Art. 1890. - Imperative Moral Obligations.**

Performance of an imperative moral obligation is not a gift.

**Art. 1891. - Reward.**

A payment made in accordance with usage to reward services rendered to the donor or to his family is not a gift.

**Art. 1892. - Personal Nature of Gift.**

- (1) A gift is an act purely personal to the donor.
- (2) Authority given to another to make a gift shall be of no effect unless it specifies the property to be donated and the donee.

**Art. 1893. - Promise to Make a Gift.**

- (1) A promise to make a gift shall give rise to no obligation.
- (2) If such promise is broken, the promisor shall reimburse the other party for those expenses made in good faith in reliance on such promise.

**Art. 1894. - Acceptance by Donee.**

- (1) A contract of gift shall not be complete until the donee has expressed his intention to accept the gift.
- (2) An acceptance shall not be effective if it is expressed after the death of the donor or his having become incapable.



- (3) A gift may be accepted on behalf of the donee by his legal representative but not by his heirs.

**Art. 1895. - Donor of Unsound Mind.**

A gift may not be invalidated on the ground that the donor was of unsound mind at the time of the gift unless:

- (a) the donor was interdicted at the time of the gift and the gift was not regularly made by his tutor;
- (b) an application for the interdiction of the donor was made during his life and the donor died before the application was decided on by the Court; or
- (c) the insanity of the donor can be inferred from the terms of the contract of gift.

**Art. 1896. - Unlawful Motive.**

A contract of gift shall be of no effect if it was exclusively or principally inspired by an immoral or unlawful motive that can be inferred from the contract of gift or other documents written by the donor.

**Art. 1897. - Undue Influence. - 1. *Référence to Successions.***

- (1) A Court may reduce or invalidate a gift on the same conditions as it may reduce or invalidate a testamentary provision.
- (2) An application for reduction or invalidation may be made notwithstanding that the donee is a relative by consanguinity or affinity or the spouse of the donor.
- (3) In cases of a gift made to a guardian or tutor, the age of the donor shall not be taken into account.

**Art. 1898. - 2. *Gift in Consideration of a Dispute.***

An application for the invalidation of a gift may be made if such gift had as its purpose to cause the donee or some other person to use his influence or give his assistance for the settlement of a dispute

affecting the interests of the donor or the spouse, cohabitee or a relative of the donor.

**Art. 1899. - 3. Application How Made.**

- (1) An application for the reduction or invalidation of a gift shall, under pain of loss of right, be made within two years from the date of the gift.
- (2) After the death of the donor, it may only be made by the persons who are authorized by law to require the invalidation of a testamentary provision on the ground of undue influence.

**Art. 1900. - Mistake or Fraud.**

- (1) The heirs of the donor may not apply to invalidate the gift on the ground of a mistake committed by the donor except on the conditions on which they may apply for the invalidation of a testamentary provision on the ground of mistake.
- (2) The heirs may not apply for the gift to be invalidated on the ground of fraud.
- (3) The heirs may in any case continue proceedings for the invalidation of the gift on the ground of mistake or fraud which have been instituted by the donor during his life.

**Art. 1901. - Publication.**

In case of gifts that take effect during the lifetime of the donor, gift of properties which are required to be registered by law shall be published in a local newspaper within three months of the making of the gift.

**Art. 1902. - Form. - 1. Immovable Things, Movable Things and Bearer Instruments.**

- (1) A gift relating to a right in an immovable shall be of no effect unless it is made in the form governing the making of a public will.

- (2) Movable things and bearer instruments may be donated by mere delivery.
- (3) They may also be donated in the form governing the gift of a right in immovables.

**Art. 1903. - 2. Other Rights and Credits.**

- (1) Other rights and credits may be donated in the form governing their transfer for value.
- (2) A gift may be made by forgiving the donee's debt to the donor.
- (3) It may also be made by naming the donee as beneficiary of a stipulation for a third party contained in a contract made between the donor and another person.

**Art. 1904. - Disguised Gift.**

- (1) A gift may be made in the form of an act made for consideration.
- (2) The substantive rules governing gifts shall apply to disguised gifts.

**Art. 1905. - Proof of Gift.**

- (1) The person who alleges that a gift has been made shall prove its existence.
- (2) The possession of movable things or bearer instruments shall not be proof of the existence of a gift unless such possession is unequivocal.

**Art. 1906. - Revocation for Ungratefulness. - 1. By the Donor.**

- (1) Notwithstanding any provision to the contrary, a gift may be revoked on the ground of ungratefulness of the donee if the donee has committed an act which would make him unworthy to succeed the donor.
- (2) The gift may not be revoked if the donor has forgiven the donee.

- (3) Notwithstanding any evidence to the contrary, such forgiveness shall be deemed to have been granted if the donor has not informed the donee of his intention to revoke the gift within one year from his becoming aware of the possible ground for revocation.

**Art. 1907. - 2. *By the Heirs of the Donor.***

A gift may not be revoked by the heirs of the donor unless:

- (a) the donor, before his death, unequivocally informed the donee of his intention to revoke the gift;
- (b) the donee has intentionally caused the death of the donor;
- (c) the alleged act of ungratefulness occurred after the death of the donor; or
- (d) the donee prevented the donor from exercising his right of revocation.

**Art. 1908. - Birth of Child.**

Unless otherwise provided in the contract of gift, a gift may not be revoked if a child is subsequently born to the donor.

**Art. 1909. - Object of Gift.**

- (1) A gift may be made only of property belonging to the donor on the day of the gift.
- (2) A gift shall be of no effect to the extent that it relates to future property.

**Art. 1910. - Disputed Property.**

A gift shall be of no effect to the extent that it relates to property which, on the day of the gift, is the subject matter of a dispute.

**Art. 1911. - Usufruct Reserved.**

The donor may reserve for himself the usufruct of property donated by him.

**Art. 1912. - Gift of Periodic Payments.**

Unless otherwise expressly provided, a gift relating to periodic payments shall lapse on the death of the donor.

**Art. 1913. - Conditions or Charges.**

- (1) A gift may be made subject to a condition or charge.
- (2) The provisions of the Book of this Code relating to Successions which concern conditions or charges in respect of legacies shall apply to conditions and charges in respect of gifts.

**Art. 1914. - Impossible or Unlawful Condition or Charge.**

- (1) If the donor has made the gift subject to a condition or charge which is impossible or contrary to law or morals, such condition or charge shall be deemed not to have been imposed.
- (2) The gift shall not be null and void in such case, notwithstanding that the condition or charge was essential to the donor.

**Art. 1915. - Limitations on Alienation.**

- (1) A limitation on the right of the donee to alienate a thing given to him is effective only if it is temporary and justified by a serious and legitimate interest of the donor.
- (2) In any event, a Court may authorize a donee to alienate the thing if the interest justifying the limitation has disappeared or that interest is outweighed by a more serious interest.

**Art. 1916. - Hardship.**

A donee may apply to a Court for revision of the conditions and charges if, as a result of changed circumstances, the performance of these conditions and charges has become seriously burdensome to the donee.

**Art. 1917. - Gift on the Occasion of Marriage.**

- (1) A gift to a future spouse shall be subject to the condition that the marriage be celebrated. So shall a gift made, on the occasion of a marriage, to the father, mother or other relatives of one of the future spouses.
- (2) The effect of the cancellation or dissolution of the marriage on such gift shall be as prescribed in the Title of this Code relating to Family Relationship.

**Art. 1918. - Duty to Support Donor.**

- (1) Unless otherwise expressly provided, the gift shall be subject to a charge compelling the donee to provide support to the donor, should the donor be in need.
- (2) The donor may in his discretion require support from the donee or from other persons legally bound to supply him support.

**Art. 1919. - Charge for the Payment of Debts.**

A charge compelling the donee to pay the debts of the donor shall not be enforceable unless it specifies the amount of the debts to be paid by the donee.

**Art. 1920. - Returning Donated Property.**

- (1) The donor may stipulate that property donated by him shall be returned to him if the donee should die before him.
- (2) Unless otherwise expressly provided, a stipulation for the return of property may not be enforced if the deceased donee has left descendants.
- (3) A stipulation for the return of property shall have the same effect as a provision prohibiting transfer of ownership and shall be subject to the same formalities.

**Art. 1921. - Substitution.**

- (1) The donor may stipulate that the donee shall keep the property donated and transmit it, on his death or on the expiry of a given period of time or on the fulfillment of a given condition, to one or more persons who shall substitute themselves for the donee.
- (2) Such stipulation shall be effective on the conditions and subject to the formalities laid down in this Code in respect of Substitution made by will.

**Art. 1922. - Specific Performance of Charge.**

- (1) The donor may demand that the charge stipulated in the contract of gift be specifically performed.
- (2) Performance may also be demanded by the person in whose favor the charge was stipulated, by the person appointed for this purpose by the donor or by the heirs of the donor.
- (3) The duty of the donee to perform the charge shall be restricted to the value of the property donated as on the day of the gift.

**Art. 1923. - Avoidance for Failure to Execute Charge.**

- (1) A gift may, on the application of any of the persons mentioned in Article 1922, be avoided on the ground that the donee has failed to execute the charge.
- (2) It may not be terminated on the application of the heirs of the donor unless the donor made an express provision to this effect and regulated the effect of such termination.
- (3) The conditions on which a gift may be terminated and the effect thereof shall be as prescribed by the Title of this Code relating to Contracts in General.

**Art. 1924. - Warranty against Dispossession.**

- (1) The donor shall warrant the donee against dispossession if he has expressly given such warranty or dispossession is due to his default or a fraud committed by him.
- (2) Such warranty shall be subject to the provisions of the Chapter on "Sale" regarding the warranty against dispossession.
- (3) The donee who has been dispossessed may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the gift and as have not been compensated by the acquisition of the fruits of the property donated.

**Art. 1925. - Warranty against Defects.**

- (1) The donor shall not warrant the donee against defects in the property donated unless he has expressly given such warranty or he has committed fraud.
- (2) Such warranty shall be subject to the provisions of the Chapter on "Sale" regarding the warranty against defects.
- (3) The donee may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the defects and as have not been compensated by the acquisition of the fruits of the property donated.

**Art. 1926. - *Actio Pauliana*.**

- (1) The creditors of the donor may apply for the avoidance of any gift made by him in fraud of their rights.
- (2) The provisions of the Title of this Code relating to Contracts in General shall apply in such case.

**Art. 1927. - Creditors for Support. - 1. Principle.**

Any person who has a claim for support against the succession of a deceased donor may, if such succession is insufficient, claim against any



person who has received a gift from the deceased within three years before his death.

**Art. 1928. - 2. *Value to be Taken into Account.***

- (1) The donee shall be liable to the extent of the value of the property given to him.
- (2) Such value shall be assessed as on the day of the gift.
- (3) If appropriate, the value of the charges to which the gift was made subject shall be deducted.

**Art. 1929. - 3. *Plurality of Gifts.***

- (1) If the deceased made several gifts within three years before his death, each donee shall be liable to satisfy claims for support in proportion to the value of the property given to him.
- (2) The date on which each gift was made shall not be taken into account.

**Chapter 3. - Loan of Money and Other Fungible Things**

**Art. 1930. - Definition.**

The loan of money and other fungible things is a contract by which a party, the lender, undertakes to deliver to the other party, the borrower, a certain quantity of money or other fungible things and to transfer to him the ownership thereof on the condition that the borrower will return to him as much of the same kind and quality.

**Art. 1931. - Proof of Loan.**

- (1) If the sum lent exceeds 5,000 Nakfas the contract of loan may only be proved by a written instrument.
- (2) The repayment of any sum exceeding 1,000 Nakfas shall also be proved by a written instrument.

**Art. 1932. - Relations between Bankers and their Clients.**

- (1) The provisions of Article 1931 shall not apply to the relations between persons or business organizations authorized to carry on banking business and their clients.
- (2) The contract of loan or the repayment of the loan may in such cases be proved by witnesses or presumptions.

**Art. 1933. - Obligations of Lender and Rights of Borrower.**

- (1) The provisions of the Chapter on "Sale" regarding the obligations of the seller shall apply to the lender.
- (2) If the loan is made gratuitously, the lender shall only warrant such defects of the thing as are known to him.
- (3) If the lender fails to perform his obligation to lend, the borrower only has the right to claim damages.

**Art. 1934. - Insolvency of Borrower.**

- (1) The lender may refuse to deliver the promised thing if the borrower has become insolvent after the contract of loan is concluded.
- (2) The lender may do so notwithstanding that the borrower was insolvent at the time he concluded the contract of loan if the lender knew of this insolvency only after the contract of loan is concluded.

**Art. 1935. - Preservation of thing Lent.**

- (1) The provisions of the Chapter on "Sale" regarding the obligations of the parties relative to preservation of the things shall apply to the loan.
- (2) In this respect, the lender shall assume the obligations of the seller and the borrower, those of the buyer.

**Art. 1936. - Risk of Loss or Damage.**

The borrower becomes the owner of the money or thing which is the object of the loan. Unless otherwise agreed, the borrower shall bear

the risk of loss or damage from the time when the money or thing is delivered to him.

**Art. 1937. - Interest. - 1. *Obligation to Pay.***

The borrower shall not owe interest to the lender unless the payment of interest has been stipulated in the contract of loan.

**Art. 1938. - 2. *Rate of Interest.***

- (1) Unless otherwise authorized by law, the parties may not stipulate a rate of interest exceeding the bank interest.
- (2) The borrower shall owe interest at the rate of the bank interest if a rate exceeding the bank interest has been stipulated.
- (3) If it has been agreed that the loan will bear interest but a higher rate has not been fixed in writing, the borrower shall owe the bank interest.

**Art. 1939. - 3. *When Payment Due.***

Unless otherwise agreed, interest shall be paid at the end of each year reckoned from the date the contract of loan is concluded.

**Art. 1940. - Compound Interest.**

- (1) Unless otherwise agreed by traders, the lender and borrower may not agree in advance that interest owed over a period less than a year will be added to capital and itself produce interest.
- (2) Nothing shall affect the rules for the calculation of compound interest on current accounts.

**Art. 1941. - Time for Restitution. - 1. *Agreed Time.***

- (1) The borrower shall return at the time agreed the money or thing lent in the same quantity and quality.
- (2) If the loan does not bear interest, the borrower may return the money or thing before the time agreed after

having informed the lender of his intention to restore them to him.

**Art. 1942. - 2. *Absence of Agreed Time.***

- (1) If no time has been fixed for the return of the money or thing, the borrower may return it to the lender one month after having informed the latter of his intention to restore it to him.
- (2) In any event, if no time has been fixed, the borrower shall return the money or thing lent not later than one month after the day when the lender claims the restitution of them from him.

**Art. 1943. - 3. *Special Stipulation.***

If it has been agreed that the borrower will repay when he can or when he has the means to do so, the Court shall fix a time for payment, according to the circumstances, which cannot exceed six months.

**Art. 1944. - Object of Restitution. - 1. *Sum in Nakfas.***

- (1) If the thing lent is a sum of money expressed in Nakfas, the borrower shall perform his obligation by paying an equal numerical sum in notes or cash being legal tender in Eritrea on the day of payment.
- (2) No regard shall be had to variations in the purchasing power of this sum since the date the contract of loan was concluded.
- (3) No regard shall be had to any change which may have occurred in the definition of the Nakfas since the date of the loan.

**Art. 1945. - 2. *Sum in Foreign Currency.***

- (1) If the thing lent is a sum of money expressed in a foreign currency, the borrower shall perform his obligation by paying a sum numerically equal to the same sum in foreign currency in notes or cash being legal tender on the day of payment in the country of this currency.

- (2) The borrower may, at his option, perform his obligation by paying the equivalent on the day of payment of this sum in Nakfas.

**Art. 1946. - 3. Commodities or Ingots.**

- (1) If the thing lent consists of commodities or ingots, the borrower shall perform his obligation by returning the same quantity and quality.
- (2) No regard shall be had to variations in the price of such commodities or ingots since the date the contract of loan was concluded.
- (3) If it is impossible for the borrower to restore the thing or this restitution is very difficult for a reason beyond his control, the borrower shall perform his obligation by paying the lender the value of the thing as estimated on the day and at the place where the restitution should take place.

**Art. 1947. - Delay of Borrower. - 1. Termination of Contract.**

- (1) In the case of non-payment of interest, the creditor may not demand the repayment of the loan unless the borrower is in arrears for two consecutive payments representing together at least one-tenth of the capital lent.
- (2) The provisions of sub-Article (1) shall apply if it has been agreed that the capital lent shall be repaid by installments.
- (3) Any provision to the contrary shall be of no effect.

**Art. 1948. - 2. Damages.**

- (1) If the borrower is late in returning the thing lent or in paying the interest due by him, he shall pay interest at the rate provided by law.
- (2) Any provision in the contract of loan increasing the liability of the borrower shall be of no effect.

## **TITLE II - CONTRACTS FOR THE CUSTODY, USE OR POSSESSION OF THINGS**

### **Chapter 1. - General Provisions**

#### **Art. 1949. - Scope.**

The provisions of this Chapter are applicable to contracts which have as their object the transfer of the custody, use or possession of a movable or immovable, subject to the specific rules provided in subsequent Chapters of this Title.

#### **Art. 1950. - Extension.**

Where provided by law, the provisions of the current Title shall apply to the relations between the owner and holder of a movable regardless of any contract.

#### **Art. 1951. - Owner.**

- (1) For the purpose of this Title, the word "owner" means the person who has transferred the possession of the movable or immovable.
- (2) The provisions of this Title shall apply by analogy where the right which he has or claims to have on the movable or immovable is one other than ownership.
- (3) For the purpose of this Title, the holder shall be assimilated to the possessor.

#### **Art. 1952. - Obligation to Deliver.**

- (1) The owner shall deliver to the holder the thing and its accessories, in a state to serve for the use for which it is intended in terms of the contract or according to its nature.
- (2) The place and time of delivery shall be regulated in accordance with the provisions relating to sale.

**Art. 1953. - Defective Thing. - 1. Termination of the Contract.**

- (1) Where, at the time of delivery, the thing has defects of such nature that its normal use is appreciably diminished, or that make it more difficult or costly to preserve it, the holder may demand the termination of the contract.
- (2) The holder shall have the same right where the defect occurs or is discovered after the thing has been delivered to him.
- (3) A special use to the holder shall not be taken into consideration unless the owner knew or should have known thereof on the making of the contract.

**Art. 1954. - 2. Damages.**

- (1) Where the owner knew or should have known of the defect of the thing at the time of delivery and failed to inform the holder thereof, he shall be liable for the injury thereby caused to the holder.
- (2) The owner shall also be liable for the injury caused to the holder during the currency of the contract through the fault of the former.

**Art. 1955. - 3. Relation with Termination.**

- (1) The damages provided in Article 1954 are independent of the termination of the contract.
- (2) They may be awarded notwithstanding that the contract is not terminated.
- (3) They may be awarded in case of termination, in particular with a view to compensating the injury resulting from termination.

**Art. 1956. - 4. Holder Knowing of Defect.**

- (1) The holder may not exercise his right under the preceding Articles where the defect on which his claim is

based was apparent or where he knew or should have known of the defect on the making of the contract.

- (2) Any express warranty given by the owner in such case shall be of no effect.

**Art. 1957. - 5. *Dangerous Defect.***

- (1) Where the thing is in such a state as to constitute a serious danger to the life or health of the holder, or of a member of his household, or of his employees, the holder may terminate the contract notwithstanding that he knew of the defect of the thing on the making of the contract.
- (2) Any stipulation to the contrary shall be of no effect.

**Art. 1958. - 6. *Non-liability Clause.***

Any stipulation whereby the owner excludes or limits the liability which he incurs as a consequence of the defects of the thing shall be of no effect where the owner has in bad faith failed to mention the defects or the defects are such as to render the thing useless for the holder.

**Art. 1959. - *Contractual Warranty.***

- (1) The holder may terminate the contract and apply for compensation for the loss sustained by him where the thing does not possess or ceases to possess a quality the existence of which was expressly warranted by the owner.
- (2) The limitations made to such right by the preceding Articles may not be invoked by the owner.

**Art. 1960. - *Peaceful Possession.***

The owner shall guarantee the holder the peaceful possession of the thing during the currency of the contract.



**Art. 1961. - Modification to the Thing.**

During the currency of the contract, the owner may not make any modification to the thing that would render its possession less advantageous or more costly for the holder, unless the holder consents to the modification.

**Art. 1962. - Encumbrances and Taxes.**

Encumbrances and taxes on the thing shall be borne by the owner.

**Art. 1963. - Custody and Preservation of the Thing.**

- (1) The holder shall exercise all necessary care with the thing.
- (2) In particular, he may not make in the thing or in the mode of its exploitation any important alteration the effects of which extend beyond the period of the contract.

**Art. 1964. - Duty to Inform the Owner.**

The holder shall without delay inform the owner of all matters requiring his attention, such as urgent repairs, discovery of defects, encroachments, disturbances or injury caused by third parties to the thing.

**Art. 1965. - Cost of Preservation or Upkeep.**

- (1) Where the preservation or upkeep of the thing entails expenses which are not to be borne by the holder, the latter shall inform the owner accordingly.
- (2) The holder shall be entitled to the reimbursement of expenses he incurs in urgent cases, provided he immediately informs the owner accordingly.

**Art. 1966. - Owner's Verification.**

- (1) The owner may at any time satisfy himself that the holder complies with his obligations under the contract.

- (2) Such verification shall be exercised in a reasonable and non-vexatious manner without causing the holder undue trouble.

**Art. 1967. - Disturbance.**

- (1) The owner shall not be bound to guarantee the holder against disturbance of his possession by third parties who do not claim a right on the thing.
- (2) The holder may take action against such third parties in his own name.

**Art. 1968. - Claim by a Third Party to the Thing.**

- (1) Where a third party claims the ownership of, or a right on, the thing the holder shall immediately inform the owner thereof under penalty of damages.
- (2) Where the third party institutes legal proceedings, the holder may demand to be dismissed from the case and that the dispute be settled as between the third party and the owner.
- (3) In such case, the holder of a movable may release himself from his liability to return it by depositing it at the owner's expense under conditions fixed by the Court. The holder of an immovable is entitled to a proportional reduction of the price paid for possession of the thing, where he informed the owner of the claim.

**Art. 1969. - Obligation to Restore.**

- (1) The holder shall return it in the state in which he received it, and, in the case of a movable, at the place where he received it.
- (2) The holder of an immovable shall also restore in kind to the owner all the things which he has received with the immovable and which still exist in kind.

**Art. 1970. - Inventory.**

- (1) Where a statement showing the condition of the thing or an inventory has been made by the owner and the holder, the latter shall restore the thing as he has received it, according to such statement or inventory.
- (2) Failing such inventory, the thing shall be deemed to have been in good condition when the holder received it. In the case of an immovable, the thing shall be deemed not to have comprised any accessories. Evidence shall be admitted to rebut such presumptions.
- (3) Where a statement showing the condition of the thing or an inventory has been drawn up unilaterally by one of the parties and has not been approved by the other, the Court shall give to such statement or inventory the credit which, in the circumstances, it thinks it deserves.

**Art. 1971. - Dispossession of the Holder of a Movable.**

- (1) Where the holder has been dispossessed of the movable in consequence of an event for which he is not to blame, he shall be released from his obligation to return it.
- (2) He shall inform the owner immediately, under penalty of damages, of the event in consequence of which he ceased to be in possession of the movable.
- (3) The owner shall be entitled to anything which the holder receives in exchange for the movable as a result of the dispossession and shall be subrogated to the holder's rights.

**Art. 1972. - Loss or Deterioration of the Thing. - 1. Principle**

- (1) The holder shall be liable where the thing is lost or deteriorates after he has received it.
- (2) He shall also be liable for any loss or deterioration caused by a person whom he has authorized to make use of the thing, even temporarily.

- (3) However, where he derives no profit from the thing and he has taken charge of it in the sole interest of the owner, the holder shall not be liable for the loss or deterioration of the thing unless it is due to his own default or occurs after he has been summoned to return it. The holder shall not be at fault unless he exercised less care in keeping and preserving the thing than he exercises in the custody and preservation of his own property.

**Art. 1973. - 2. *Limit of Liability.***

- (1) The holder shall not be liable where he proves that the loss or deterioration is due to the fault of the owner or to a fortuitous event.
- (2) He shall not be liable where he shows that the loss or deterioration was due to the decay, dilapidation or other defect of the thing.
- (3) He shall not be liable where deterioration is due to the normal and authorized use of the thing.

**Art. 1974. - *Holder in Default.***

Where the holder has been summoned to return the thing, he shall not be liable where he shows that the thing would have been lost or deteriorated in like manner, had he returned it to the owner on the due date.

**Art. 1975. - *Improvements Made to a Movable.***

- (1) The holder shall not be entitled to any indemnity in respect of improvements he has made to the movable.
- (2) Where such improvements have been made with the owner's consent, the holder may however demand the reimbursement of the amount he has spent or of the surplus value of the movable at the time of its return, whichever is the less.
- (3) Even where the holder is not entitled to any indemnity, he may set off against any loss of value caused by deterioration for which he is liable but which is not due to

his default, any increase he has brought about in the value of the movable.

- (4) The holder may remove the improvements he has made to the movable, if this can be done without damaging it.
- (5) The provisions of the current article are applicable by analogy to the possession of an immovable under a gratuitous contract of loan for use.

#### **Art. 1976. - Priority on Movables.**

- (1) The holder may refuse to return the movable to the owner until the latter has paid any indemnities due under this Chapter.
- (2) He may not refuse to return the movable pending payment of a claim to which he is entitled on another ground.
- (3) Where he denies that he owes the holder an indemnity, the owner may demand that the movable be returned to him on his providing adequate security for the release of any liability he may have incurred.
- (4) The provisions of the current article are applicable by analogy to the possession of an immovable under a gratuitous contract of loan for use.

### **Chapter 2. - Lease**

#### **Section 1. - Lease of a Movable**

##### **Paragraph 1. - General Provisions.**

#### **Art. 1977. - Definition.**

- (1) A contract of lease is a contract whereby one party, the lessor, undertakes to transfer to the other party, the lessee, the possession of a movable in return for a consideration called the rent.
- (2) The term of a lease is fixed or indeterminate.

**Art. 1978. - Lease and Sale.**

- (1) The movable leased shall remain the property of the lessor to whom it shall be returned on the termination of the contract.
- (2) Where it is stipulated that, after a certain number of payments of the rent, the lessee shall become the owner of the movable, the contract shall constitute a contract of leasing, notwithstanding that the parties have termed it a contract of lease.

**Art. 1979. - Lease and Free Loans.**

Where no rent has been stipulated, the provisions relating to free loans shall apply.

**Art. 1980. - Wrongful Use.**

- (1) The lessor may terminate the contract where the lessee does not make use of the movable in accordance with the contract or usages and such use entails risk of irreparable injury to the movable leased.
- (2) Where the movable has already suffered injury or termination prejudices him in any way, the lessor shall in addition be entitled to damages.

**Art. 1981. - Upkeep of Object.**

- (1) The lessee shall maintain the movable.
- (2) The cost of upkeep shall be borne by the lessee.

**Art. 1982. - Payment of Rent.**

- (1) The lessee shall pay the rent on the agreed or customary dates.
- (2) In, the absence of any stipulation or custom to the contrary, the rent shall be paid as it falls due, at the end of each quarter.

**Art. 1983. - Arrears of Payment.**

- (1) Where the lessee is in arrears with a payment of the rent, the lessor may grant him ten days' grace, notifying him at the same time that in default of payment, the contract will be terminated upon the expiration of that period.
- (2) The period of grace shall run from the day on which the lessee receives the lessor's notification.

**Art. 1984. - Sub-Lease.**

Unless otherwise agreed, the lessee may not sublet the movable leased or assign the contract without the consent of the lessor.

**Art. 1985. - Termination of Contract.**

- (1) A contract of lease concluded for a fixed term shall terminate on the date agreed upon by the parties.
- (2) Unless otherwise provided, the contract shall not be terminated by the death or incapacity of one or both of the parties.
- (3) Where the lessee becomes bankrupt, the lessor may terminate the contract unless he is provided, within a reasonable time, with security for the rent or lease in arrears and the rent falling due in the future.

**Art. 1986. - Indeterminate Contracts.**

- (1) Where the duration of the contract of lease has not been fixed, either party may terminate the contract at any time.
- (2) In such case, the other party shall be entitled to a reasonable period within which to perform his obligation to return the movable leased or to take delivery of it.

**Art. 1987. - Delay in Return.**

- (1) Where the lessee fails to return the movable when summoned to do so, he shall pay the rent until it is returned.

- (2) He shall in addition compensate the lessor for any injury caused to him by the delay.

**Art. 1988. - Extension of the Contract.**

- (1) Where, on the expiration of a contract of lease entered into for a fixed term, the lessee remains in possession of the movable leased and the lessor does not claim its return, the contract of lease shall be deemed to have been extended by the parties for an indeterminate period on the same terms as the original contract.
- (2) In such case, third parties who have guaranteed the performance of the original contract shall be released from their liabilities.

**Paragraph 2. - Lease of Cattle.**

*A. - Cattle Included in Lease of Agricultural Undertaking.*

**Art. 1989. - Scope of this Paragraph.**

Unless otherwise agreed by the parties, the provisions of the following Articles shall apply where an agricultural undertaking leased to a lessee, the farmer, includes cattle.

**Art. 1990. - Sale of Cattle. - 1. Rights of Farmer.**

- (1) The farmer may sell the cattle included in the undertaking.
- (2) He shall however keep on the land cattle equivalent in species, number and quality to that which he received.
- (3) The lessor may not compel the farmer to sell cattle, notwithstanding that the cattle have increased in number.

**Art. 1991. - 2. Rights of Lessor.**

- (1) The lessor may not sell the cattle included in the undertaking.



- (2) He may compel the farmer to prepare every year an inventory of the cattle to be found within the undertaking.
- (3) He may terminate the contract where it appears that the cattle are reduced in number by more than one quarter for reasons attributable to the farmer.

**Art. 1992. - Products of Animals. - 1. Principle.**

- (1) Without prejudice to the provisions of the following Articles, the farmer may freely dispose of the products of the animals, of their hides, skins and increase.
- (2) He shall account for his management to the lessor, where the rent consists of a share of these products or is fixed having regard thereto.

**Art. 1993. - 2. Wool.**

- (1) Only the farmer may sell the wool of sheep and ewes where he manages the undertaking or the flock consists of less than fifty heads.
- (2) Only the lessor may sell such wool where he manages the undertaking or the flock consists of more than fifty heads.

**Art. 1994. - 3. Manure.**

Manure from animals shall be used exclusively for the exploitation of the land.

**Art. 1995. - 4. Increase from Breeding.**

Animals which perish or are slaughtered shall be replaced in proportion to the increase from breeding.

**Art. 1996. - Duty to Return Cattle.**

- (1) The farmer shall, at the end of the contract, return cattle equivalent in species, number and quality to that which he received.

- (2) The provisions of sub-Article (1) shall apply notwithstanding that the cattle were valued in the contract.

**Art. 1997. - Deficit. - 1. Loss Borne by the Lessor.**

- (1) Where there is a deficit, the loss shall be borne by the lessor where the rent consists of a given share in the profits or of certain products of the animals.
- (2) The farmer shall not be liable for such deficit unless the loss of the animals is due to his fault or that of a person for whom he is liable.

**Art. 1998. - 2. Loss Borne by the Farmer.**

The farmer shall be liable to repay the value of animals not returned by him where the rent is fixed independently of the profits of the animals.

**Art. 1999. - 3. Extent of Liability.**

- (1) The value of animals not returned shall be fixed having regard to the valuation made by the parties.
- (2) Failing such valuation, the farmer shall repay their value as on the day of the termination of the contract.

*B. - Cattle Principal Object of the Contract.*

**Art. 2000. - Scope.**

- (1) The provisions of the following Articles shall apply where the main object of the contract consists in cattle or other animals the breeding of which is of an agricultural or commercial interest.
- (2) Nothing in the following Articles shall affect contrary usages.

**Art. 2001. - Model Contracts.**

- (1) Model contracts may be drawn up by the Ministry of Agriculture to serve as a basis for individual contracts

regarding certain kinds of animals or contracts, to be executed in certain regions.

- (2) Individual contracts relating to the animals or regions specified in model contracts shall be deemed to be made on the conditions laid down in such model contracts.
- (3) The parties may by express provisions depart from the terms of model contracts.

**Art. 2002. - Duration of Contract.**

- (1) Unless otherwise expressly agreed, the contract shall be deemed to be made for four years.
- (2) The period of four years shall be reckoned from the day of the making of the contract.

**Art. 2003. - Notice to Landholder.**

- (1) Where cattle is given to another person's farmer, notice shall be given to the holder of a land which is exploited by such farmer.
- (2) Where notice is not given, the holder may, notwithstanding any custom to the contrary, seize or retain the animals with a view to obtaining payment of his claims against the farmer.
- (3) It may not be alleged that he knew or should have known that the animals did not belong to his farmer.

**Art. 2004. - Inventory of Animals.**

- (1) The ownership of animals shall not be transferred to the farmer as a result of an inventory of the animals having been made in the contract.
- (2) Such inventory has as its sole purpose to permit of establishing whether there is a profit or loss at the end of the contract.

**Art. 2005. - Upkeep of Animals.**

- (1) The farmer shall preserve and maintain the animals with the care required by custom.
- (2) He shall bear the costs arising therefrom.

**Art. 2006. - Increase from Breeding.**

Increase from breeding shall be co-owned by the lessor and the farmer.

**Art. 2007. - Products of Animals.**

Only the farmer shall be entitled to the dairy products, manure and work of the animals.

**Art. 2008. - Wool.**

- (1) The wool of sheeps and ewes shall be divided equally between the lessor and farmer.
- (2) The farmer shall inform the lessor of the day when the shearing will take place.

**Art. 2009. - Sale of Animals.**

- (1) The farmer may not, without the consent of the lessor, dispose of any animal of the flock or of the increase from breeding.
- (2) The lessor may not dispose thereof without the consent of the farmer.

**Art. 2010. - Loss of Animals.**

- (1) The farmer shall not be liable for the loss of animals unless it is due to his fault.
- (2) The lessor shall prove that the farmer is at fault.
- (3) The farmer shall account for the hides of animals which have died.

**Art. 2011. - Accounts.**

- (1) The lessor may demand that the farmer submit every year an inventory of the animals together with his annual accounts.
- (2) He may terminate the lease where it appears that the animals have reduced in number by more than one quarter for reasons attributable to the farmer.

**Art. 2012. - Termination of Contract.**

- (1) The contract shall terminate on the expiry of the period agreed by the parties or prescribed by law.
- (2) A party who intends to terminate the contract shall give the other party at least six months' notice in advance.

**Art. 2013. - Death of Parties.**

- (1) The contract shall not be terminated by the death of either party.
- (2) The heirs of the deceased farmer may however terminate the contract by giving notice to the lessor within six months from the death of the farmer.
- (3) In such case, the contract shall terminate on the first of March which follows but not less than three months after the lessor has received notice from the heirs of the farmer.

**Art. 2014. - Settlement of Accounts.**

- (1) Where the contract comes to an end or is terminated by a party, a new inventory of the animals shall be made.
- (2) The lessor may take animals of each species to the extent shown in the first inventory made.
- (3) What remains shall be divided equally between the lessor and the farmer.

**Art. 2015. - Insufficient Number of Animals.**

- (1) Where the animals are reduced below the number shown in the first inventory, the lessor shall take what remains and the parties shall bear the loss equally.
- (2) The farmer shall not be liable for the loss unless it is due to his fault or that of a person for whom he is liable.

**Art. 2016. - Usages or Stipulations Null and Void.**

- (1) Any usage or stipulation to the effect that the farmer shall be liable where all the animals are lost as a result of a fortuitous event and without his fault shall be of no effect.
- (2) Any usage or stipulation to the effect that the share of the farmer in the loss shall be greater than his share in the profits shall be of no effect.
- (3) Any usage or stipulation to the effect that the lessor may, at the end of the contract, take more animals than he supplied shall be of no effect

**Section 2. - Lease of Immovable**

**Paragraph 1. - General Provisions**

**Art. 2017. - Definition.**

- (1) The lease of an immovable is a contract whereby one of the parties, the lessor, undertakes to ensure to the other party, the lessee, in return for a rent the use and enjoyment of an immovable, for a certain time.
- (2) Nothing shall affect the provisions of the Commercial Code or of particular laws concerning the lease of immovables in which a business or other industry is carried out.

**Art. 2018. - Lease and Sale.**

Where it is agreed that the lessee shall become the owner of the immovable after the payment of a certain number of terms of rent, the

Contract shall constitute a sale, notwithstanding that the parties have termed it as a contract of lease.

**Art. 2019. - Proof of Contract.**

- (1) So long as the performance of the contract has not begun, the proof that an immovable has been leased may be made only by a written instrument or by an admission made in Court.
- (2) No other means of evidence shall be admitted to prove the existence of such contract.
- (3) Where the performance of a contract of lease has begun, it may be proved by witnesses or presumptions.

**Art. 2020. - Entry in Registers of Immovable Property.**

- (1) Leases made for a period exceeding five years shall not affect third parties until they are entered in the registers of immovable property at the place where the immovable is situated.
- (2) Leases made for a period exceeding five years which have not been entered in the registers of immovable property shall, where their date is certain, affect third parties during five years from the day when such third parties have registered their rights on the immovable.
- (3) In other cases, such leases shall be deemed to have been made for an undetermined period of time.

**Art. 2021. - State of Land and Inventory. - 1. Principle.**

- (1) On the request of either of the parties and as soon as such request is made, there shall be drawn up a statement showing the condition of the land as well as an inventory with a valuation of the movable property, accessory to the immovable given on lease, the use and enjoyment of which have been given to the lessee.
- (2) Any stipulation to the contrary shall be of no effect.

**Art. 2022. - 2. Expenses.**

- (1) The inventory and the statement showing the condition of the land shall be made at common expense.
- (2) Where the lessee has advanced the expenses, he may deduct the amount due by the lessor from the rent due by him to the latter.

**Art. 2023. - 3. Sanctions.**

- (1) Where one of the parties does not take part in the drawing up of the statement and inventory together with the other party, such other party may draw them up or cause them to be drawn up at his expense, and communicate them to the other contracting party.
- (2) Where the latter fails to make known his objections and his reservations within a reasonable period, the statement and inventory shall be deemed to have been approved by him.
- (3) The objections and reservations shall not be taken into consideration unless the contracting party causes a statement showing the condition of the land and an inventory to be drawn up at his expense within six months from his having received the communication under sub-Article (1).

**Art. 2024. - Repairs. - 1. Duties of Lessor.**

The lessor shall maintain the immovable in good condition and make therein during the currency of the lease such repairs as are necessary and are not repairs incumbent upon the lessee.

**Art. 2025. - 2. Duty to Give Notice to Lessor.**

Where the immovable leased requires, for its preservation or maintenance, expenses which are not incumbent upon the lessee, the latter shall inform the lessor of such requirement.



**Art. 2026. - 3. Duty to Suffer Repairs.**

Where, during the currency of the lease, the immovable leased requires repairs which cannot be delayed until the expiration of the lease, the lessee shall suffer them, whatever the inconvenience which they cause him and notwithstanding that he may be deprived of a part of the immovable leased during their execution.

**Art. 2027. - 4. Limitation of Duty to Lessor.**

The lessor may not be compelled to carry out the repairs which are at his charge, where their cost is higher than the rent which he is to receive from the immovable in the course of three years of lease.

**Art. 2028. - 5. Sanction of Duties of Lessor.**

- (1) Where repairs which are necessary to ensure the enjoyment and which are at the charge of the lessor are not executed without delay by the latter, the lessee may have them executed at his expense and retain their cost, with legal interest thereon, from the rent payable by him.
- (2) The lessee may, where he prefers to do so, according to circumstances, claim damages from the lessor and, where appropriate, the termination of the lease.

**Art. 2029. - Payment of Rent.**

- (1) The lessee shall pay the rent at the times fixed by the contract.
- (2) In default of a stipulation in the contract, he shall pay it at times fixed by the law.

**Art. 2030. - Right of Retention of Lessor. - 1. Principle.**

The lessor shall have a right of retention on the movables which furnish the immovable leased and which serve either for its fitting up or for its use, as a security for the rent in respect of the year which has elapsed and of the current period of six months.

**Art. 2031. - 2. Movable Affected.**

- (1) The right of retention shall not affect those things which the lessor has known or should have known not to be the property of the lessee.
- (2) Where the lessor comes to know only during the currency of the lease that some movables brought by the lessee are not the property of the latter, his right of retention on such movables shall lapse unless he gives notice for the termination of the contract for the next following term of the lease.

**Art. 2032. - 3. Effect.**

- (1) By virtue of his right of retention, the lessor may, with the authorization of the Court, compel the lessee to leave in the immovable leased as many movables as are necessary to provide security for the rent.
- (2) The things taken away secretly or with violence shall continue to be subject to the settlement of the preferential claims of the lessor, where the latter attaches them within ten days after they have been removed.

**Art. 2033. - Duration of Contract.**

- (1) The lease of an immovable may be made for a determinate or an indeterminate period.
- (2) It may not be made for more than sixty years.
- (3) A lease of an immovable made for a period of more than sixty years shall be deemed to have been made for sixty years.

**Art. 2034. - Death of Lessor or Lessee.**

- (1) A contract of lease shall not terminate upon the death of the lessor or lessee or upon either of them becoming incapable.

- (2) Nothing shall affect the special provisions relating to the lease of lands and those of the Commercial Code relating to the bankruptcy of the lessee.

**Art. 2035. - Loss of Immovable Leased.**

- (1) Where, during the currency of the lease, the immovable leased is totally destroyed by fortuitous event, the lease shall terminate as of right.
- (2) Where the immovable is only partly destroyed, the lessee may, according to circumstances, require a reduction of the rent or the termination of the lease.
- (3) No compensation shall be payable in either case.

**Art. 2036. - Lessor Failing to Fulfill his Obligations.**

- (1) The lessee may require the termination of the lease, where the lessor fails to fulfill his obligations in such a manner that the use or enjoyment of the immovable is thereby notably diminished.
- (2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfillment of obligations on the part of the lessor causes to him.

**Art. 2037. - Lessee Failing to Fulfill his Obligations.**

- (1) The lessor may require the termination of the lease, where the lessee fails to fulfill his obligations so that the rights of the lessor are endangered.
- (2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfillment of obligations on the part of the lessee causes to him.

**Art. 2038. - Case of Termination Attributable to the Lessee.**

The lessee, where termination is caused by his fault, shall pay the rent during the time required to re-lease the immovable without prejudice to the damages which may have been caused by the abuse.

**Art. 2039. - Lease Set Up against Purchaser of Immovable.**

*- 1. Principle.*

- (1) Unless otherwise expressly agreed between the lessor and the lessee, a contract of lease may be set up against a third party who acquires the ownership or usufruct of the immovable given on lease after the delivery of the immovable to the lessee.
- (2) Nothing shall affect the case where the immovable has been expropriated by the authorized bodies.

**Art. 2040. - 2. Lease not registered in Registers of Immovable Property.**

- (1) The person who acquires the immovable may regard the lease as having been made for an indeterminate period, where it has not been registered in the registers of immovable property in the place where the immovable is situate.
- (2) Where the date of the lease is certain, the lessee may set it up against the purchaser during five years from the purchaser having registered his contract in the registers of immovable property.

**Art. 2041. - Stipulation Relating to such Case. - 1. Effect.**

- (1) Where the lessor and the lessee have agreed that the person who acquires the immovable may terminate the lease, the person acquiring the immovable shall, within three months from the lessee having required him to do so, inform the latter whether or not he intends to terminate the lease.
- (2) The person who acquires the immovable shall lose such right where he fails to exercise it within such period.

**Art. 2042. - 2. Sale with Reservation of Right of Redemption.**

The person who acquires an immovable subject to a right of redemption may not make use of the right to expel the lessee until such time as he becomes the absolute owner by the expiry of the period fixed for the redemption.

**Art. 2043. - Restoration: Amount of Damages.**

- (1) Where the things which are not restored have been valued conjointly by the parties, the lessee shall be bound by the amount of such valuation.
- (2) The lessor may obtain additional damages where he proves that the lessee has alienated such things at a price higher than the amount of the valuation.
- (3) The provisions of sub-Article (2) shall not apply where the alienation of the thing by the lessee amounted to an act of management according to the common intention of the lessor and lessee at the time of the conclusion of the contract of lease.

**Paragraph 2. - Special Rules Regarding the Lease of Houses**

**Art. 2044. - Scope of this Paragraph.**

- (1) The provisions of this Paragraph shall apply where the contract of lease relates to a house, furnished or unfurnished, a flat, a room or some other dwelling or part of a dwelling.
- (2) Nothing shall affect the provisions governing contracts relating to hotels in the Title of this Code relating to Contracts for the Performance of Services.

**Art. 2045. - Model Contracts.**

- (1) Model contracts for the lease of houses or flats situated within the territory of a particular commune may be drawn up by the municipal authorities.
- (2) Individual contracts relating to such houses or flats shall be deemed to have been made on the terms laid down in such model contracts.
- (3) They may depart from such terms by express stipulations.

**Art. 2046. - Lease of Part of Immovable. - 1. Duties of Lessor.**

- (1) Where part only of an immovable is given on lease to a lessee, the lessor shall, on giving on lease the other part of the immovable, take into consideration the interests of the lessee according to custom and the nature of the immovable.
- (2) The lessor shall comply with the provisions of sub-Article (1) as regards both the selection of the other lessees and the provisions to be included in the contracts made with them.

**Art. 2047. - 2. Duties of Lessee.**

- (1) The lessee shall have the consideration which is due to the other persons who dwell in the house a part of which has been given to him on lease.
- (2) The lessor may require the termination of the lease where the lessee or other persons living with him or whom he admits to the immovable, behave in such a manner that they disturb the other lessees in the enjoyment of the immovable.
- (3) Nothing shall affect the right of such other lessees or of the lessor to claim damages in compensation of the injury caused to them.

**Art. 2048. - Duty to Furnish Immovable Given on Lease.**

- (1) The lessee shall furnish the immovable given on lease in conformity with its nature and according to the custom of the place.
- (2) The provisions of sub-Article (1) shall not apply where the lessee has taken on lease furnished premises or paid a term of rent in advance or given a security or other guarantee for such payment.

**Art. 2049. - Amount of Rent.**

- (1) The amount of the rent shall be fixed freely by agreement between the parties.

- (2) In case of doubt, it shall be fixed in conformity with the tariffs established by municipal authorities or, failing such tariffs, in conformity with the custom of the place.

**Art. 2050. - When the Rent Falls Due.**

- (1) Unless otherwise agreed, the rent shall be paid at the end of each quarter where the lease has been made for one or more years.
- (2) It shall be paid at the end of each month, where the lease is of a shorter duration or made for an indeterminate period.
- (3) The rent shall in all cases be paid on the expiry of the lease.

**Art. 2051. - Delay of Lessee.**

- (1) Where the lessee is late in paying a term of rent which has fallen due, the lessor may give him a period of thirty days where the lease is for a year or more, and a period of fifteen days where the lease is for a shorter period, informing him that, in default of payment, the contract shall be terminated at the end of that period.
- (2) The period shall run from the day when the lessee has received the notice of the lessor.
- (3) Any stipulation reducing such periods or giving to the lessor the right to terminate the lease forthwith on account of a failure in the payment of rent shall be of no effect.

**Art. 2052. - Repairs Incumbent upon Lessee. - 1. Duties of Lessee.**

The lessee shall carry out at his expense the repairs which are incumbent upon him.

**Art. 2053. - 2. Which Repairs are Incumbent upon Lessee.**

- (1) The repairs which in the contract of lease are placed at the charge of the lessee shall be deemed to be repairs incumbent upon him.

- (2) Unless otherwise agreed, repairs necessary to the doors, windows, floorboards, tiling, taps and water-drains shall be deemed to be repairs incumbent upon the lessee.
- (3) The work of cleaning and maintenance which are made necessary by the enjoyment of the thing shall also be deemed to be repairs incumbent upon the lessee.

**Art. 2054. - Old Age or *Force Majeure*.**

- (1) No repairs which are deemed to be incumbent upon the lessee shall be at the charge of the lessee where they are occasioned only by old age or *force majeure*.
- (2) The contract of lease may derogate from such rule by an express stipulation.

**Art. 2055. - Deprivation of Enjoyment Due to Repairs.**

- (1) Where the repairs which the lessor carries out on the immovable during the lease take more than fifteen days, the rent shall be reduced in proportion of the time and to the portion of the thing leased of which the lessee is deprived.
- (2) Where the repairs are of such a nature as to render uninhabitable what is necessary for the accommodation of the lessee and his family, the lessee may require the termination of the lease.

**Art. 2056. - Sub-Lease. - 1. *Principle*.**

- (1) The lessee may sublet all or part of the immovable leased to him.
- (2) Prior to subletting, he shall give notice of his intention to the lessor and ask him whether he has any objection to such sub-lease.

**Art. 2057. - 2. *Objection by Lessor*.**

- (1) The lessor may object to such sub-lease where it is contrary to contractual undertakings made by him in



favor of other lessees of the same immovable or is of such nature as to cause to him injury for any other reason.

- (2) The lessee may in such case terminate the contract.
- (3) Nothing shall affect the right of the lessor to claim damages where the reason of his opposition was known or should have been known by the lessee on the making of the contract.

**Art. 2058. - 3. *Provision Restricting Right to Sublet.***

- (1) A contract of lease may prohibit the sub-lease of the immovable or make such sub-lease conditional on the acceptance of the sub-lessee by the lessor.
- (2) Where, under the contract of lease, the sub-lease of an immovable is made conditional on the acceptance of the sub-lessee by the lessor, the lessee may demand the termination of the lease where the lessor arbitrarily refuses his consent to the sub-lease.

**Art. 2059. - 4. *Duties of Lessee.***

- (1) A lessee who has sublet all or part of the immovable shall remain bound, in his relations with the lessor, by all the obligations which, by virtue of the contract of lease, have to be performed by him.
- (2) The provisions of sub-Article (1) shall apply notwithstanding that the lessor has given his consent to the sub-lease.
- (3) The lessee shall not be released from such obligations unless such release has been expressly stipulated between the lessor and himself.

**Art. 2060. - 5. *Duties of Sub-Lessee.***

- (1) The sub-lessee shall comply with the provisions of the principal lease concerning the enjoyment of the immovable given on lease.

- (2) The lessor may take action directly against the sub-lessee to enforce compliance with such provisions.
- (3) Where the sub-lessee did not know of such provisions or was dispensed by the lessee from observing them, he shall have recourse against the lessee.

**Art. 2061. - 6. *Direct Action of Lessor.***

- (1) The sub-lessee shall be liable only up to the amount of rent payable in respect of what has been sublet to him.
- (2) The lessor may require the sub-lessee to pay rent directly to him.
- (3) The sub-lessee may not set up against the lessor the payment made by him in advance, with the exception of the payments made in respect of the current term of the principal lease.

**Art. 2062. - 7. *Right of Retention.***

The right of retention of the lessor may be exercised by the lessor and by the lessee on the movables brought in the immovable by the sub-lessee.

**Art. 2063. - 8. *Termination of Principal Lease.***

- (1) The termination of the principal lease shall bring the contract of sub-lease to an end.
- (2) Where the lessor has expressly consented to the sub-lease, the sub-lessee may substitute himself for the lessee for the execution of the principal lease.

**Art. 2064. - *Termination of Contract of Lease for a Determinate Period.***

A contract of lease made for a determinate period shall terminate as of right on the expiration of the period agreed upon without the necessity of giving notice.

**Art. 2065. - Termination of Lease for an Indeterminate Period.**

- (1) Where the contract of lease has not been made for a determinate period, notice may be given by the lessor to the lessee or by the lessee to the lessor.
- (2) In such case, the contract shall terminate on the day when, under the contract or the law, the second term of rent becomes or would have become exigible, had notice of termination not been given.

**Art. 2066. - Person Acquiring the Immovable.**

- (1) Where a person who acquires the immovable wishes to terminate the lease, in the case where such right has been reserved to him, he shall observe the period laid down in Article 2065.
- (2) Any stipulation to the contrary shall be of no effect.

**Art. 2067. - Renewal of Contract.**

- (1) Where, at the expiration of the lease, the lessee continues in the enjoyment of the thing with the knowledge and without the opposition of the lessor, the contract of lease shall be renewed for an indeterminate period.
- (2) The rights and duties of the parties for the further duration of the lease shall be governed by the provisions of the previous contract.
- (3) The security given for the original lease shall however be released.

**Art. 2068. - Retaking of Immovable by Lessor.**

- (1) Unless otherwise agreed, the lessor may not terminate the lease, notwithstanding that he declares that he himself wants to occupy the house leased.
- (2) Where it has been agreed in the contract of lease that the lessor may occupy the house, he shall give to the lessee notice to quit and shall observe the period laid down in Article 2064.

**Art. 2069. - Fire on Immovable. - 1. Principle**

The lessee shall be liable for fire to the lessor unless he proves that the fire was due to *force majeure* or a defect of construction or started in a neighboring house.

**Art. 2070. - 2. Several Lessees.**

- (1) Where there are several lessees, they shall all be liable, in case of fire, in proportion to the rental value of the part of the immovable which they occupy.
- (2) Where it is proved that the fire has started in the dwelling of one of them, he alone shall be liable for it.
- (3) Where some lessees prove that the fire could not have started in their dwellings, such lessees shall not be liable for it.

**Art. 2071. - 3. Immovable Partly Inhabited by Lessor.**

- (1) The provisions of Article 2070 shall also apply where the lessor dwells in a part of the immovable which has caught fire.
- (2) In such case, the lessor shall be treated as though he himself were the lessee on that part of the immovable.

**Art. 2072. - Improvements Made in Immovable. - 1. Right to Indemnity.**

- (1) The lessee shall not be entitled to compensation for improvements which he has made in the immovable without the consent of the lessor.
- (2) Where the improvements have been made with the consent of the lessor, the lessee may claim the reimbursement of the lesser sum between the amount of expenses made by him and the increase in the value of the immovable, as at the time of the restoration.

**Art. 2073. - 2. Set-off and Right of Removal.**

- (1) Even where the lessee is not entitled to compensation, he may set off the increase in value procured by him to the

immovable against the decrease in value that such immovable has sustained as a consequence of deteriorations for which he is liable but which have been caused without any fault on his part.

- (2) The lessee may also remove the improvements which he has made in the immovable where this can be done without injury to the immovable.

### Paragraph 3. - Special Rules Regarding the Lease of Lands

#### **Art. 2074. - Scope of this Section.**

- (1) The provisions of this Section shall apply where the contract of lease relates to a piece of land which the lessee undertakes to exploit.
- (2) The parties may in their contract derogate from such rules unless such derogation is expressly prohibited by law.

#### **Art. 2075. - Model Contracts.**

- (1) Model contracts may be drawn up by the Ministry of Agriculture, concerning lands intended for certain kinds of cultivation or lands situated in certain areas of Eritrea.
- (2) Individual contracts regarding the lands to which such model contracts relate shall be deemed to have been made on the terms laid down in such model contracts.
- (3) They may derogate from them by express stipulations.

#### **Art. 2076. - Direction of Exploitation. - 1: To Whom it Pertains.**

- (1) The direction of the exploitation shall be ensured in accordance with the agreement of the parties.
- (2) Unless otherwise agreed, it shall pertain to the lessee where the rent consists, exclusively or principally, of a sum of money which is to be paid in cash to the lessor.

**Art. 2077. - 2. Rights of Other Party.**

- (1) The other party shall be consulted where the decisions which are contemplated are of such a nature that their effects shall continue after the end of the lease.
- (2) Such party may and shall take a decision instead of the other contracting party where the latter has not informed him of his decision in good time and such decision may not be delayed without serious inconvenience.

**Art. 2078. - Obligation of Exploiting.**

- (1) A farmer-tenant shall exploit the land and keep it in a good state of productivity.
- (2) The lessor may require the termination of the lease where the farmer-tenant does not fulfill such obligation.

**Art. 2079. - Nature and Manner of Cultivation.**

The contracting party who has the direction of the exploitation shall decide on the nature and manner of the cultivation to be undertaken.

**Art. 2080. - Time of Works.**

The farmer-tenant shall in any case decide on the time when he will do the works of cultivation or other works.

**Art. 2081. - Expenses of Exploitation.**

- (1) The ordinary expenses arising from the exploitation shall be borne by the farmer-tenant.
- (2) Where the rent consists of a part of the products or determinate products of the land, the lessor shall advance to the farmer-tenant such expenses, without interest, where the latter is unable to meet such expenses.
- (3) The advance so made shall be reimbursed to the lessor out of the products of the next crop.

**Art. 2082. - Repairs and Maintenance.**

- (1) The farmer-tenant shall make on premises to be used as dwellings, barns, stables and other buildings given to him on lease such repairs as are incumbent upon the lessee under Paragraph 2 of this Section.
- (2) He shall maintain according to local custom the roads, wells, fences, ditches, canals and dikes included in the land given on lease.

**Art. 2083. - Old Age or *Force Majeure*.**

- (1) The repairs referred to in Article 2082 shall be made by the farmer-tenant notwithstanding that they are caused by old age or *force majeure*.
- (2) The farmer-tenant shall replace the implements or tools of small value which have perished by old age or *force majeure*.

**Art. 2084. - Extraordinary Expenses.**

The farmer-tenant shall not be bound to make extraordinary expenses for the purpose of reconstructing the land following an exceptional disaster.

**Art. 2085. - Exchange of Parcels of Lands.**

- (1) The party who has the direction of the exploitation may, in order to facilitate such exploitation, exchange parcels of land with other holders or farmer-tenants.
- (2) Where such exchanges are made by the farmer-tenant, they shall affect only the enjoyment of such parcels.
- (3) They shall as of right cease to have effect at the end of the lease, unless they have been decided upon by the lessor or the lessor has given his consent thereto.

**Art. 2086. - Management of Land.**

The farmer-tenant may destroy the slopes, trenches or fences which are an obstacle to the rational exploitation of the land given on lease.

**Art. 2087. - Kinds of Rent.**

- (1) The rent may consist of a fixed sum of money, or of a fixed quantity of agricultural products, or of a sum of money which varies according to the current price of certain agricultural products.
- (2) The rent may also consist of a fixed share of the agricultural products or of various agricultural products of the land given on lease.

**Art. 2088. - Amount of Rent.**

The amount of the rent shall be fixed by agreement between the parties.

**Art. 2089. - Legal Presumptions.**

- (1) Unless otherwise provided by custom, the rent shall consist of one half of the agricultural products of the land given on lease.
- (2) Unless otherwise provided by custom, the products shall be shared in kind between the lessor and the farmer-tenant.
- (3) Before any partition, the farmer-tenant may retain the seeds necessary for the next crop.

**Art. 2090. - Legal Maximum.**

- (1) The share of the products due to the lessor may in no case exceed three fourths.
- (2) Where a greater share has been stipulated, such stipulation shall be of no effect and the products shall be divided equally between the lessor and the farmer-tenant.

**Art. 2091. - Products Necessary for Subsistence. - 1. Principle.**

- (1) The farmer-tenant may in any case keep such part of the products as is necessary for his subsistence and that of the persons living with him.



- (2) The provisions of sub-Article (1) shall not apply where the products are equally necessary for the subsistence of the lessor and of those who live with him.
- (3) In such case, the products shall be divided equally between the lessor and the farmer-tenant.

**Art. 2092. - 2. Reservation of Rights of Lessor.**

Where, by applying the provisions of Article 2091, the lessor has not received the whole part which is due to him, he shall exercise his rights on the next crop.

**Art. 2093. - Crops.**

- (1) Where the rent consists of a portion of the crops or is fixed having regard to such crops, the farmer-tenant shall, as far as possible, inform the lessor, before gathering the crops.
- (2) He shall ensure the custody and preservation of such crops until such part thereof as is under the contract to be given to the lessor has been delivered to him.

**Art. 2094. - Rent when to be Paid. - 1. Principle.**

- (1) The rent shall be paid at the end of each year of lease where it consists of an amount of money or of a predetermined quantity of agricultural products.
- (2) The year of the lease shall begin on the day when the lessor has delivered the immovable to the farmer-tenant.

**Art. 2095. - 2. Default of Farmer-Tenant.**

- (1) Where the farmer-tenant is late in the payment of a term fallen due, the lessor may give him a period of sixty days, informing him that, in default of payment, the contract shall terminate at the end of that period.
- (2) Such period shall run from the day when the farmer-tenant has received the notice of the lessor.

- (3) Any stipulation or custom reducing such period or giving to the lessor the right to terminate the lease immediately by reason of failure in the payment of rent shall be of no effect.

**Art. 2096. - 3. Rent Consisting of Products.**

- (1) Where the rent consists of a determinate share of the products, or of determinate products of the land given on lease, the part due to the lessor shall be delivered to him upon his requiring so, after the products have been separated from the ground.
- (2) Nothing shall affect any custom to the contrary.

**Art. 2097. - Revision of Rent. - 1. Principle.**

- (1) Where the rent consists of a sum of money or of a quantity of agricultural products determined beforehand, the farmer-tenant may require a remission of part of his debt or time for the payment of such debt where, in consequence of an invasion of locust, an exceptional drought or other extraordinary accidents or disasters of the same nature, the yield of a given year has diminished by at least one half in comparison with the normal yield.
- (2) Any stipulation or custom to the contrary shall be of no effect.

**Art. 2098. - 2. Exceptions.**

- (1) The farmer-tenant may not obtain any remission where the loss of the crops takes place after they have been separated from the ground.
- (2) The farmer-tenant may not require a remission where the cause of the injury existed and was known on the making of the contract.
- (3) He may not require a remission where the injury suffered by him is covered by insurance or otherwise.

**Art. 2099. - 3. Amount of Remission.**

- (1) For the purpose of fixing the amount of the remission which the farmer-tenant may require, regard shall be had to the usual yield and the importance of the loss which has been sustained.
- (2) Regard shall also be had to the profits which the farmer-tenant made on the crops of the preceding years or which he can expect to make during the years of the lease which are still to run.
- (3) The Court shall not alter the terms of the contract unless equity so requires and to the extent necessary to enable the farmer-tenant and his family to live and to continue the exploitation.

**Art. 2100. - Sub-Lease. - 1. Principle.**

- (1) Unless otherwise provided by custom, the farmer-tenant may not sublet without the consent of the lessor.
- (2) He may require the termination of the lease where the lessor arbitrarily refuses to consent to the sub-lease.

**Art. 2101. - 2. Exception.**

- (1) The farmer-tenant may sublet buildings which appertain to the immovable given on lease, where no change prejudicial to the lessor arises therefrom.
- (2) The provisions of Paragraph 2 of this Section concerning sub-leases shall apply in such case as well as where the lessor agrees to the sub-lease.

**Art. 2102. - Termination of Contract. - 1. Principle.**

Unless otherwise provided by custom, a contract of lease shall terminate at the expiration of the period fixed, provided that notice has been given by one party to the other at least six months before that date.

**Art. 2103. - 2. *Renewal of Lease.***

- (1) Unless otherwise provided by custom, the contract of lease shall be renewed for four years where notice as provided in Article 2101 has not been given or where, notwithstanding such notice, the farmer-tenant remains in the enjoyment of the immovable with the knowledge and without opposition of the lessor.
- (2) The rights and obligations of the parties under the renewed contract shall be settled in accordance with the previous contract.
- (3) The security given for the original lease shall however be released.

**Art. 2104. - 3. *Contracts of Long Duration.***

- (1) Where the contract of lease has been made for a lifetime or for a period exceeding ten years, the farmer-tenant may unilaterally alter such provision as to time where ten years have elapsed from the land having been delivered to him.
- (2) In such case, the contract of lease shall terminate on the first day of March, four years after the lessor has received notice of the intention of the farmer-tenant to terminate the contract.
- (3) Any stipulation or custom to the contrary shall be of no effect.

**Art. 2105. - 4. *Lease for an Indeterminate Period.***

Unless otherwise provided by custom, a lease made without an indication of its duration shall be deemed to have been made for four years to be reckoned from the day when the farmer-tenant entered in possession of the land.

**Art. 2106. - 5. *Transfer of Immovable.***

- (1) Where a person becoming the holder of right of use of the immovable intends to terminate the lease, such right

having been reserved in his favor, he shall give notice to the farmer-tenant within three months from the acquisition made by him.

- (2) The lease shall terminate on the first day of March which follows but not less than three months from the day when such notice has been given.
- (3) Any stipulation or custom to the contrary shall be of no effect.

**Art. 2107. - 6. *Right of Farmer-Tenant.***

- (1) The farmer-tenant to whom notice has been given may advance the day on which the contract terminates by giving notice of his intention to the lessor or to the person who has become the holder of right of use of the immovable.
- (2) In such case, the contract shall terminate on the day fixed by the farmer-tenant a month, at the earliest, after the lessor or the person who has acquired the immovable has received notice of the intention of the farmer-tenant.

**Art. 2108. - *Death of Farmer-Tenant or Lessor.***

- (1) In case of death of the farmer-tenant, his heirs may terminate the contract of lease by giving notice to the lessor within six months from the death.
- (2) In case of death of the lessor, the farmer-tenant may terminate the contract of lease by giving notice to the heirs of the lessor within six months from the death of the latter, where the direction of the exploitation has been reserved to the lessor by the contract of lease.
- (3) In the cases mentioned in sub-Article (1) and (2), the contract shall terminate on the first day of March which follows but not less than three months after the lessor or his heirs have received the notice from the farmer-tenant or from the heirs of the farmer-tenant.

**Art. 2109. - Illness of Farmer-Tenant. - 1. *Right of Farmer-Tenant.***

- (1) The farmer-tenant may terminate the lease before the time fixed by the contract or by law where an illness affecting him or a member of his family prevents him from continuing the exploitation in a normal manner.
- (2) The farmer-tenant shall not be liable to pay compensation where he avails himself of such right.
- (3) The contract shall terminate six months after the lessor has received the notice from the farmer-tenant.

**Art. 2110. - 2. *Right of Lessor.***

- (1) Where the rent consists of a determinate share of the products, or of determinate products of the land, the lessor may terminate the lease before the time fixed by the contract or by law, where an illness affecting the farmer-tenant or a member of the family of the farmer-tenant prevents him from continuing the exploitation in a normal manner.
- (2) Where the lessor avails himself of such right, he shall pay to the farmer-tenant compensation equal to half of the average rent of one year.
- (3) The contract shall terminate six months after the farmer-tenant has received the notice of the lessor.

**Art. 2111. - Fire.**

The provisions of Paragraph 2 of this Section regarding the destruction or deterioration by fire of the thing leased shall apply to the dwelling places and other buildings which form part of the immovable leased to the farmer-tenant.

**Art. 2112. - Settlement at the End of the Contract. - 1. *Stable-Litter, Forage and Manure.***

- (1) The outgoing farmer-tenant shall leave the stable-litter, forage and manure of the last year, in the quantity required for the normal exploitation of the land.

- (2) Where, on entering in possession of the land, he received a smaller quantity, he shall be entitled to compensation in respect of the difference.
- (3) Unless otherwise provided by custom, he shall pay compensation in respect of the difference where he received more.

**Art. 2113. - 2. Seeds.**

Unless otherwise provided by custom, the outgoing farmer-tenant shall not be bound to leave seeds for the next crop.

**Art. 2114. - 3. Expenses of Cultivation.**

- (1) The farmer-tenant shall not be entitled to the fruits which, at the termination of the contract, are still undetached.
- (2) The Court may, where equity so requires, grant him compensation for the expenses of cultivation incurred by him.
- (3) Such compensation may not exceed the value of the fruits from which the lessor derives a benefit.

**Art. 2115. - Improvements Made in Land. - 1. Principle.**

- (1) Whatever the reason for the termination of the lease, the lessee who, by his work or at his expense, has made improvements in the land leased shall be entitled to compensation at the end of the lease.
- (2) The farmer-tenant shall also be entitled to compensation where he has erected constructions on the land given on lease.
- (3) Any stipulation or custom to the contrary shall be of no effect.

**Art. 2116. - 2. Amount of Compensation.**

- (1) The compensation due shall be equal to the increase in the rental value of the land for nine years resulting from the improvements or constructions.
- (2) The Court may grant the lessor a period of time for the payment of such compensation.

**Art. 2117. - 3. Right of Removal.**

The farmer-tenant may, where he so prefers, remove the improvements or destroy the constructions which he has made, where this can be done without damaging the immovable.

**Chapter 3. - Loan for Use or Free Loan**

**Art. 2118. - Definition.**

- (1) A loan for use, or free loan, is a contract whereby one party, the lender, undertakes to transfer a movable to the other party, the borrower, for temporary gratuitous use.
- (2) The provisions of this Chapter shall apply *mutatis mutandis* where the use or possession of an immovable is given to another free of charge.

**Art. 2119. - Gratuitousness of the Contract.**

- (1) The free loan is essentially gratuitous.
- (2) Where it is stipulated that the lender shall receive a remuneration, the rules of the contract of lease shall apply.

**Art. 2120. - Ownership of Movable.**

- (1) The lender shall retain the ownership of the movable loaned.
- (2) The borrower shall return the movable to the lender on the termination of the contract.



**Art. 2121. - Upkeep of Movable.**

- (1) The borrower shall maintain the movable.
- (2) The cost of normal upkeep shall be borne by the borrower.
- (3) The lender must reimburse to the borrower all costs other than normal costs of maintenance and upkeep.

**Art. 2122. - Use of Movable.**

- (1) The borrower may use the movable loaned only for the purpose defined in the contract or, failing such stipulation, for a purpose in keeping with its nature.
- (2) He may not allow a third party to make use of the movable without the lender's consent.

**Art. 2123. - Return of Movable.**

- (1) The borrower shall return the movable at the agreed time.
- (2) Where no time has been agreed and the use for which the movable has been lent itself implies no such time, the borrower shall return the movable within a reasonable time after the lender's request.

**Art. 2124. - Premature return. - 1. Borrower's Right.**

The borrower may return the movable before the agreed time unless such return causes injury to the lender.

**Art. 2125. - 2. Lender's Right.**

The lender may claim the return of the movable before the time at which it should normally have been returned where the borrower makes an uncovenanted use thereof, deteriorates it or allows a third party to make use of it or where the lender himself is, due to a change of circumstances, in urgent and unforeseen need of it.

**Art. 2126. - Death of Borrower.**

Where the borrower dies, the lender may require his heirs to return the movable to him immediately.

**Art. 2127. - Wrongful Use.**

- (1) The borrower shall be liable for the loss or deterioration of the movable, even due to *force majeure*, where he puts the object to an unauthorized use or improperly allows a third party to make use of it.
- (2) In such case, he shall not be released from his liability unless he can prove that the movable would have been lost or deteriorated, had he not violated his obligation.

**Art. 2128. - Avoidable Loss.**

The borrower shall be liable for the loss of the movable through *force majeure* where he could have averted the loss by using a movable of his own or, being unable to save both his own movable and that lent to him, chose to save his own.

**Art. 2129. - Contractual Valuation.**

Where the movable was valued on the making of the contract, the borrower shall be liable for its loss in all cases.

**Chapter 4. - Deposit**

**Section 1. - General Provisions**

**Art. 2130. - Definition.**

A contract of deposit is a contract whereby one person, the depositary, undertakes to receive for a certain time a movable from another, the depositor, and to keep it on the latter's behalf and to return it to him.

**Art. 2131. - Deposit, Conditional Sale and Lease of Services.**

- (1) Where the depositary has the option of retaining the movable on the expiration of the contract, on paying its

price, the rules of conditional sale shall apply and not those of deposit.

- (2) Where the depositary undertook to repair the movable or to transform it, the rules of lease of services shall apply and not those of deposit.

**Art. 2132. - Ownership of Movable.**

- (1) The depositor shall retain the ownership of the deposited movable.
- (2) The depositary shall return the movable to him on the termination of the contract.

**Art. 2133. - Deposit of Money or Consumable Movables.**

- (1) Where the movable entrusted to the depositary is a sum of money or a certain quantity of consumable goods and the depositary has been authorized to make use of them, the rules relating to loans of money and other fungibles shall apply.
- (2) Where the movable entrusted to the depositary is a sum of money which has been handed over to the depositary unsealed and unclosed, the depositary shall be deemed to be authorized to make use of it.

**Art. 2134. - Use of Deposited Movable.**

- (1) Where the deposit consists of other movables, the depositary may not make use of them without the depositor's authorization.
- (2) Where he violates this rule, the rules governing the contract of lease shall apply to his detriment.
- (3) The depositor may in particular demand payment of a rent the amount of which shall be fixed equitably.

**Art. 2135. - Gratuitous or Paid Deposit.**

- (1) Deposit shall be gratuitous where it is not apparent that the parties intended to provide for a remuneration to the depositary.

- (2) In this regard, the professional standing of the depositary and all other relevant circumstances shall be taken into account.

**Art. 2136. - Modification of Circumstances of Deposit.**

- (1) Where urgent circumstances so require, the depositary may keep the movable under conditions other than those agreed upon and may in particular entrust the movable to a third party or alienate it, where it is in imminent danger of loss or deterioration.
- (2) He shall inform the depositor as soon as possible of these events.

**Art. 2137. - End of Deposit. - 1. Depositor's Right.**

- (1) The depositary shall return the movable to the depositor as soon as the latter claims it, unless a fixed term has been provided in favor of the depositary.
- (2) The depositor shall indemnify the depositary for expenses he has incurred in consideration of the agreed term.

**Art. 2138. - 2. Depositary's Right.**

- (1) The depositary may at any time require the depositor to take the movable back, unless a fixed term has been provided in favor of the depositor.
- (2) Where no such term has been agreed, the Court may grant the depositor a reasonable period within which to take the movable back.

**Art. 2139. - Several Depositors.**

- (1) Where the movable has been entrusted to the depositary by several depositors who are unable to agree upon the conditions on which the movable is to be returned, the Court shall fix such conditions.

- (2) The provisions of sub-Article (1) shall apply where the depositor dies leaving several heirs and the movable is indivisible.

**Art. 2140. - Deposit in the Interest of Third Party.**

Where the deposit was made in the interest of a third party and such third party has informed the depositor and depositary of his agreement, the latter shall not return the movable to the depositor without the third party's consent.

**Art. 2141. - Return of Movable.**

- (1) Where it has been agreed that the depositary shall keep the movable in a certain place, it shall be returned in that place, unless the parties have agreed another place.
- (2) The expense and risk of the return of the movable shall in all cases be borne by the depositor.

**Art. 2142. - Return of Profits.**

The depositary shall return to the depositor the profits he has collected from the movable gained in the period between its receipt and its return.

**Art. 2143. - Restitution to Whom Made.**

The depositary shall return the movable to the depositor or to the person designated by him.

**Art. 2144. - Depositor's Duties.**

- (1) The depositor shall pay the depositary the agreed remuneration.
- (2) He shall indemnify him for all expenses incurred for the preservation of the movable.
- (3) He shall compensate him for all injury the deposit may have caused him, unless such injury is due to the depositary's default or that of a person for whom the depositary is liable.

**Art. 2145. - Lien.**

The depositary may retain the movable until all monies due to him in consequence of the deposit have been paid in full.

**Art. 2146. - Depositary's Heir.**

- (1) Where he has alienated the movable in good faith and in ignorance of the deposit, the depositary's heir shall only repay the price he has received.
- (2) Where the price has not yet been paid, the depositor shall be subrogated to the heir's claim against the buyer.

**Section 2. - Deposit on Trust**

**Art. 2147. - Definition.**

There shall be deposit on trust where a movable, the legal position of which is in dispute or uncertain, is entrusted to a third party, the trustee, who keeps it and returns it to its lawful owner when the doubt has been resolved.

**Art. 2148. - Appointment and Dismissal of Trustee.**

- (1) The trustee shall be appointed by agreement between the parties to the dispute.
- (2) Failing such agreement, he shall be appointed by the Court.
- (3) The trustee may not be dismissed before he has completed his function, except where the parties so agree or for good cause.

**Art. 2149. - Return of the Movable.**

The trustee may not return the movable except with the agreement of all the interest parties or upon an order of the Court.

### **Section 3. - Deposit in Distress**

#### **Art. 2150. - Definition.**

There shall be deposit in distress where a person is compelled by urgent necessity to entrust to another the custody of movables belonging to himself, in order to preserve them from imminent danger.

#### **Art. 2151. - Special Rules for Deposit in Distress.**

- (1) The person to whom the movables are offered may not refuse to accept them without good cause.
- (2) He may demand a remuneration where the deposit lasts for more than one week.
- (3) The Court may reduce the amount of the remuneration required by him at the time of deposit.

#### **Art. 2152. - Forms and Proof.**

- (1) Deposit in distress shall not be subject to any special form.
- (2) It may be proved by any means.

### **Section 4. - Movables Found, or Deposited with a Person Without his Knowledge**

#### **Art. 2153. - Finder's Rights and Obligations.**

- (1) Whosoever has found a movable and taken possession of it shall, by virtue of the law, be in the same position as a depositary.
- (2) Nothing shall affect the provisions of the Book of this Code relating to Property.

#### **Art. 2154. - Deposit Without the Knowledge or against the Will of Another.**

- (1) The rules of deposit shall not apply where movables have been deposited with a person without his knowledge or against his will.

- (2) The person with whom movables are thus deposited shall incur no liability as a consequence of the deposit.

### **Chapter 5. - Warehousing**

#### **Art. 2155. - Definitions.**

A contract of warehousing is a contract whereby one party, the warehouseman, being duly licensed for the purpose by the public authorities, undertakes to receive and store goods on behalf either of another party, the depositor, who may be the owner, or the purchaser of the goods or a person who received them in pledge.

#### **Art. 2156. - Loss or Deterioration of Goods.**

- (1) The warehouseman shall be liable for the preservation of the goods he has received.
- (2) He shall not be liable where he shows that the loss or deterioration of the goods is due to *force majeure*, or to the nature or defects of the goods or their packing.

#### **Art. 2157. - Duty to Inform Depositor.**

The warehouseman shall inform the depositor where the goods undergo changes which seem to call for further measures.

#### **Art. 2158. - Return of Goods.**

- (1) The warehouseman shall store the goods until the expiration of the agreed period.
- (2) He may not avail himself of circumstances as a result of which a depositary would be authorized to return the goods before the due date because of unforeseen events.

#### **Art. 2159. - Mixing Goods.**

- (1) The warehouseman may not mix fungible goods with other goods of the same kind and quality without express authority.
- (2) The depositor may claim out of goods thus mixed such quantity as corresponds to his share thereof.



- (3) The warehouseman may return this share without the cooperation of the other depositors.

**Art. 2160. - Sale of Goods.**

- (1) After giving the depositor due notice, the warehouseman may sell the goods where they are not removed by the depositor on the date stipulated in the contract.
- (2) Where no definite term has been fixed for the storage, he may sell the goods after one year from the date of deposit.
- (3) He may in any case sell the goods whenever they are in danger of decay.

**Art. 2161. - Disposal of Proceeds.**

After deduction of the expenses entailed by the sale and other sums due to the depositary, the proceeds of the sale shall be held at the disposal of the persons entitled to them.

**Art. 2162. - Receipt and Voucher.**

- (1) Where the depositor so requires, the warehouseman shall give him a receipt for the goods warehoused.
- (2) The receipt shall be accompanied by a voucher containing the same information as the receipt.
- (3) The receipt and voucher shall be taken from the same counterfoil register. The counterfoil shall be retained by the warehouseman.

**Art. 2163. - Particulars in Receipt and Voucher.**

The receipt and voucher shall state:

- (a) the first name and double patronymic or family name, or trade name, and address of the depositor; and
- (b) the place of storage; and
- (c) the kind and quantity of the goods stored and any other information necessary to identify them; and

- (d) whether customs duties have been paid on the goods and whether they are insured.

**Art. 2164. - Beneficiaries of Documents of Title.**

- (1) The receipt and voucher may be made out in the name of the depositor or in that of a third party designated by him.
- (2) They may be transferred, either together or separately, by endorsement.

**Art. 2165. - Rights of Holder of Both Titles.**

- (1) A person in possession both of the receipt and of the voucher may demand that the goods stored be handed over to him.
- (2) He may also require that the goods be divided up into a number of lots at this expense and that the warehouseman give him a receipt and voucher for each separate lot in exchange for the original titles.

**Art. 2166. - Rights of Holder of Voucher.**

A person in possession of the voucher alone shall have a right of pledge on the goods detained by the warehouseman.

**Art. 2167. - Transfer of Voucher.**

- (1) Where the voucher alone has been endorsed for the first time, the amount of the debt and interest thereon, and the date on which payment falls due, shall be stated on it.
- (2) The endorsement and the above information shall be entered on the receipt and countersigned by the beneficiary of the endorsement.

**Art. 2168. - Absence of Required Information.**

- (1) Where the endorsement on the voucher fails to state the amount of the debt guaranteed, the goods stored shall be secured to their full value to guarantee the debt.

- (2) Where he has paid a sum that was not due, the person in whose name the receipt is made out, or the holder of the receipt, may recover from the first endorsee and from any person holding the voucher in bad faith.

**Art. 2169. - Rights of Holder of Receipt.**

- (1) A person in possession of the receipt only may inspect the goods stored and take the customary samples.
- (2) He may not remove the goods stored unless he deposits with the warehouseman or trustee the sum due at exigibility to the pledgee.

**Art. 2170. - Sale by Pledgee.**

- (1) Where he is not paid on the date of exigibility and he has drawn up a protest in accordance with the provisions of the Commercial Code regarding bills of exchange, the holder of the voucher may cause the goods to be sold eight days after payment becomes due.
- (2) An endorser who has of his own free will paid the holder of the voucher shall be subrogated to the holder's rights.
- (3) He may cause the goods to be sold eight days after the debt has become due.

**Art. 2171. - Sale of Goods Stored.**

Where the goods stored have to be sold, either by the warehouseman or by the creditor holding the voucher, the relevant provisions of the chapter on pledges shall apply to the sale.

**Art. 2172. - Redress against Endorsers.**

- (1) The person holding the voucher may not bring an action against the endorser before he has caused the goods to be sold.
- (2) The time-limits for actions for recovery against successive endorsers shall be as prescribed in the Commercial Code regarding bills of exchange.

- (3) They shall run from the date on which the goods were sold.

**Art. 2173. - Non-compliance with Required Formalities.**

- (1) The holder of the voucher shall lose his right to recover from the endorsers where he fails to draw up his protest upon exigibility or fails to institute, within fifteen days from the date of the protest, proceedings to have the goods sold.
- (2) He shall however retain his right to recover from the endorsers of the receipt and from the debtor.
- (3) Such right of recovery shall be barred after three years.

# **TITLE III - CONTRACTS FOR THE PERFORMANCE OF SERVICES**

## **Chapter 1. - Employment**

### **Section 1. - General Provisions**

#### **Art. 2174. - Definition.**

A contract of employment is a contract entered into by an employee and employer, for a determined or undetermined period, by which the employee agrees to render services of a physical or intellectual nature to the employer, under the latter's direction and control, for agreed wages payable by the employer.

#### **Art. 2175. - Relation to Special Legislation.**

Special legislation governing the rights and obligations of employers and employees in Eritrea may override the provisions of this Chapter.

#### **Art. 2176. - State Employees.**

The provisions of this Chapter shall not apply to the following:

- (a) members of the military, police, and security forces;
- (b) members of the Eritrean civil services; and
- (c) judges and prosecutors.

#### **Paragraph 1. - Formation of Contract**

#### **Art. 2177. - Capacity.**

- (1) Any person fourteen years of age or older has the capacity to enter into a contract of employment.
- (2) No contract of employment shall be enforceable against a person younger than eighteen years of age if it is prejudicial to that person. If the contract is prejudicial, the young person shall not be liable for any damages arising from the contract.

**Art. 2178. - Form of Contract.**

- (1) A contract of employment may be oral or written, except that any contract of employment concluded for more than a year shall be made in writing.
- (2) If a contract of employment is written, the employer and employee shall sign or place their marks on the written contract. The employee shall do so before two witnesses, who shall sign or place their marks beside the signature or mark of the employee.
- (3) The rights of an employee are not affected by the failure to conclude a written contract of employment.

**Art. 2179. - Negotiated Contract Terms.**

- (1) A contract of employment shall stipulate clearly the respective rights and obligations of the employer and employee.
- (2) A contract of employment shall specify the duration of the contract, the date of employment, the type of work, the place of work, and the rate and method of payment of wages.
- (3) The contract may include other contract terms.

**Art. 2180. - Contract Terms Incorporated by Reference.**

- (1) The contract of employment may incorporate written work rules in force in an undertaking only if the contract specifically mentions that these rules are part of the contract.
- (2) Any penalties inflicted by the employer on the employee, by virtue of these rules, may be modified by the Court where they are contrary to law or equity.
- (3) Conditions of work, including conditions on entitlement to sick leave and compensation, laid down in a collective agreement which are advantageous to the employee shall

be deemed to be incorporated in the contract of employment.

**Art. 2181. - Terms Unfavorable to the Employee.**

- (1) Terms in a contract of employment which are less favorable to the employee than the provisions of this Title shall not be valid unless they are expressly authorized by law.
- (2) Those terms are of no effect unless they are made in writing.

**Art. 2182. - Collective Agreements.**

- (1) Employers or associations of employers, on the one hand, and associations of employees, on the other hand, may lay down, in collective agreements, the rights, obligations, conditions of work, and benefits which shall be included in all individual contracts of employment subject to the authority of such collective agreements.
- (2) The procedure for collective bargaining, the form and content of a collective agreement, and the duration of the agreement shall be determined by special legislation.

**Art. 2183. - Duration of Contract of Employment.**

The duration of a contract of employment may be for an indefinite period, a definite period, a period required to carry out a definite piece of work, or intermittent periodical work.

**Art. 2184. - Probation Period.**

- (1) An employer may engage an employee for a probation period not to exceed ninety consecutive days.
- (2) An employee on probation has all the rights and obligations of an employee but is not entitled to sick leave and to compensation for termination of the contract during the probation period.

- (3) An employee on probation who successfully completes the probation period shall be entitled to continue to work under the contract of employment.

**Art. 2185. - Termination of a Trial Contract.**

- (1) During the trial period, either party may terminate the contract without being required to give notice or to pay compensation.
- (2) Where the trial is fixed for a minimum time, the right to terminate the contract may however not be exercised before that minimum time has elapsed.

**Art. 2186. - Renewal of Contract of Employment.**

- (1) A contract of employment for a definite period shall be deemed renewed for an indefinite period where the employee continues work after the termination of the definite period.
- (2) Either the employer or the employee may terminate a contract of employment renewed under sub-Article (1) without notice at any time within three months from the date of renewal.

**Paragraph 2. - Obligations of Employer and Employee**

*A. - Obligations of Employer*

**Art. 2187. - In General.**

- (1) An employer shall provide work for the employee in accordance with the contract of employment.
- (2) The employer shall respect the employee's dignity.
- (3) The employer shall not discriminate against a person with regard to employment or wages solely because of that person's race, color, nationality, language, sex, religion, lineage, pregnancy, marital status, family responsibility, disability, political orientation or economic or social status.



**Art. 2188. - Tools and Materials.**

- (1) Unless the contract of employment provides otherwise, the employer shall provide the employee the tools and materials necessary for the performance of his work.
- (2) Where the employee provides them himself in whole or in part without being compelled to do so, the employer shall compensate him for them.

**Art. 2189. - Training.**

An employer shall take steps to ensure the training of the employee in the work for which he is employed.

**Art. 2190. - Health and Safety.**

- (1) An employer shall take steps to ensure the health and safety of the employee.
- (2) The employer shall bear the cost of a medical examination when the examination is required by law.
- (3) The employer shall provide the employee with personal protective equipment, and other necessary protective materials and instruct him in their use.

**Art. 2191. - Notice of Work Rules.**

At the time of employment the employer shall take steps to inform the employee about the work rules, including the disciplinary procedures.

*B. - Obligations of Employee*

**Art. 2192. - In General.**

- (1) The employee shall perform the work for which he has been employed.
- (2) Unless the contract or circumstances require otherwise, the employee shall personally carry out the work to be undertaken.

**Art. 2193. - Instructions.**

An employee shall implement instructions given by the employer in accordance with the contract of employment and work rules, unless to do so endangers the employee or other employees.

**Art. 2194. - Due Care.**

- (1) An employee shall handle with due care all working tools and raw materials and return unused raw materials.
- (2) An employee shall abstain from activities which cause physical and mental incapacity during working hours.

**Art. 2195. - Health and Safety Precautions.**

- (1) An employee shall implement all health and safety instructions issued by an employer or by a concerned governmental authority.
- (2) An employee shall use appropriately and with care any appliance or device provided for the protection of the health and safety of himself and other employees.
- (3) If it can be done without endangering himself, an employee shall render assistance, when an accident occurs or an imminent danger threatens other employees or the employer's property.

**Art. 2196. - Change of Work.**

- (1) Unless otherwise agreed, the employer may at any time, where the interest of the undertaking so requires, assign a different work to the employee, provided that this entails for the employee no reduction in his wages nor a substantial change in his rank.
- (2) Where the new work carries a wage higher than that for which the employee has been engaged, the employee shall be entitled to that wage.

**Art. 2197. - Inventions of the Employee.**

- (1) Inventions made by the employee shall belong to him notwithstanding that they have been made during the work done by him in the service of his employer.
- (2) They shall however belong to the employer where the employee has been expressly engaged for conducting research or creating inventions.

**Art. 2198. - Information Concerning the Undertaking.**

- (1) The employee shall, even after the termination of the contract of employment, keep the secrets of the employer of which he has learnt in the course of his work.
- (2) He may not make use, to the detriment of his employer, of information he has obtained in the course of his work.

**Paragraph 3. - Wages Due to Employee**

**Art. 2199. - Right to Wages.**

- (1) Any work shall be deemed to be done in consideration of wages, unless it is the custom that the work should be done without payment or the work falls within the professional duties of the person who carries it out.
- (2) Wages shall be paid only for work done except that an employee is entitled to wages where he is ready but unable to work for reasons not attributable to him.
- (3) If, in the case provided for in sub-Article (2), the employee is entitled to wages which are not to be paid at time-rate, regard shall be had to the average wages paid to employees who, in the undertaking, are doing the same work. Regard shall be had also to the average wages paid to the employee in the month preceding his cessation of work.
- (4) The employer may deduct from the wages the savings which the employee has made by not doing his work.

**Art. 2200. - Rate of Payment.**

- (1) The contract of employment shall determine the wages to be paid an employee except that the wages may not be less than the minimum wages fixed by special legislation or an applicable collective agreement.
- (2) An employer shall pay equal starting wages for the same type of work.
- (3) An employer shall pay for overtime work and for work on a public holiday at a rate not less than the rate fixed by special legislation or an applicable collective agreement.

**Art. 2201. - Form of Payment.**

Wages may be paid in any one of the following forms:

- (a) time rate (for example, in hours, a day, a week, a fortnight, or a month), where the wages are paid on the basis of a unit of time without particular regard to the result of the work done;
- (b) lump sum, where wages are paid for a definite piece of work without regard to the time required to complete it;
- (c) piece-rate, where regard is had to the quantity and quality of the work;
- (d) combined piece and time rate, where regard is had to the quantity and quality of the work done within a given period of time;
- (e) job rate, where the wages are paid for a specific amount of work done within a specific period; or
- (f) commission, where an employee receives an agreed percentage or amount for each operation performed or a variety of operations, including a share in the profits or gains made or a percentage of the turnover.

**Art. 2202. - Time of Payment.**

- (1) An employer shall pay wages to the employee or his legal representative on the day and at place agreed upon by the parties or on the habitual day and at the habitual place of payment.
- (2) If the payment date falls on a Sunday or a public holiday, payment shall be effected on the preceding working day. If payment is not effected on the due date, the wages shall be paid no later than the following working day.

**Art. 2203. - Payment of Commission Wages.**

- (1) Wages in the form of a commission are earned as soon as an operation is complete.
- (2) If commissions are payable for a variety of operations, the parties may agree on a schedule of payment.
- (3) The employer shall provide the employee, after each assessment, with an account of what he owes him.
- (4) The employee may demand that the account so provided be verified by a third party appointed by agreement between the parties or, failing such agreement, by the Court.

**Art. 2204. - Deduction from Wages.**

- (1) Unless otherwise provided by law or by a Court order, an employer may not make deductions from or set off claims against the wages of an employee.
- (2) A collective agreement or an express written agreement with an employee may provide that an employer may make deductions or set off specified claims against the employee.
- (3) In no case may the aggregate deductions or set offs in any one month exceed one-fifth of the wages due to the employee in that month.

**Art. 2205. - Record of Payment.**

- (1) The employer shall keep a written record of the wages paid to each employee with sufficient detail to indicate how the employer calculated these wages.
- (2) The employer shall make available and explain the record to any employee who so requests.
- (3) An employee does not waive his right to any part of the wages due to him merely by accepting without protest the amount indicated in the employer's record.

**Art. 2206. - Payment for Extraordinary Expenses.**

- (1) An employer who assigns an employee to travel and work temporarily outside his place of employment shall pay for the employee's travel, food, and lodging.
- (2) Payment may be in the form of reimbursement of expenses or a per diem allowance.
- (3) If the employee travels and works temporarily in areas designated by the government as hardship areas, the employer shall pay the employee an extra allowance which shall in no case be less than the allowance established by the government.

**Art. 2207. - Attachment or Assignment of Wages.**

- (1) The wages of an employee may not be attached by his creditors except on the conditions laid down in the Civil Procedure Code.
- (2) The wages may not be assigned or pledged by the employee to a third party, except on the same conditions.

**Art. 2208. - Advance on Wages.**

- (1) The employer shall grant advances to an employee in need according to the work which has already been done, where the employer can do so without detriment to himself.

- (2) He may not grant an advance to the employee for work which has not yet been done unless the wages of the employee may be transferred by the employee.

#### Paragraph 4. - Working Conditions

#### **Art. 2209. - Regular Hours of Work.**

Regular hours of work may not exceed eight hours a day or forty-eight hours a week.

#### **Art. 2210. - Scheduling of Work Hours.**

- (1) The employer shall normally spread an employee's hours of work evenly over the working days of a week.
- (2) No work run by shifts may exceed eight hours per shift.

#### **Art. 2211. - Special Arrangements.**

- (1) Where the nature of the work so requires, the employer may shorten the hours worked in any one working day and distribute the difference over the remaining days of the week provided that no worker shall work more than ten hours on any one day.
- (2) If the hours of work cannot be distributed evenly over a week, the employer may distribute the average weekly hours of work over a longer period than one week provided that the average number of hours worked over a four-week or shorter period may not exceed eight hours per day or forty-eight hours per week.

#### **Art. 2212. - Break for Meals and Relaxation.**

- (1) An employee is entitled to one meal break and to short periodic breaks for relaxation during each working day.
- (2) The employer shall determine the length and timing of the break taking into consideration the nature and place of work.

- (3) The breaks for relaxation, but not the meal break, shall be part of the regular hours of work.

**Art. 2213. - Overtime Work.**

- (1) An employer may require an employee to work overtime, but may not require more than two hours of overtime on any one day.
- (2) An employee is required to work overtime in the following situations:
  - (a) during an accident, actual or threatened;
  - (b) where the work is urgent;
  - (c) where *force majeure* occurs; or
  - (d) where the employee is a substitute for an absent employee assigned to work which is continuous.

**Art. 2214. - Minimum Rest During Week.**

- (1) An employee is entitled to a minimum weekly rest of twenty-four consecutive hours in the course of each seven-day period.
- (2) The weekly rest period shall normally be Sunday.
- (3) Undertakings that work on Sundays may replace the weekly rest period by another suitable day.

**Art. 2215. - Public Holidays.**

- (1) All public holidays recognized by law shall be paid as public holiday.
- (2) An employee who is paid on a weekly basis may not be subject to reduction for not working on a public holiday.
- (3) The question of payment of wages on a public holiday to an employee other than one paid on a monthly basis shall



be determined by his contract of employment or by collective agreement. .

- (4) An employee who works on a public holiday shall be paid for each hour of work at twice the regular hourly rate.
- (5) Where a public holiday falls on a rest designated by law, the employee shall only be entitled to one payment for working on such day.

**Art. 2216. - Annual Leave.**

- (1) An employee is entitled to uninterrupted annual leave with pay for the following minimum periods:
  - (a) fourteen working days for the first year of service; and
  - (b) fourteen working days plus one working day for each additional year of service.
- (2) Annual leave may not exceed thirty five working days.
- (3) The employee shall take the leave at a convenient time taking into consideration the interests of both the employer and the employee.
- (4) The employee is entitled to an advance of wages for the period of the leave.

**Art. 2217. - Postponement of Annual Leave.**

- (1) Unless the employer agrees otherwise, an employee may not postpone an annual leave except to make up for unforeseen shortage or to adjust break downs or when an employee becomes sick during his leave.
- (2) The provisions of Article 2224 shall apply where an employee becomes sick during his annual leave.
- (3) The employee shall take his leave after the cause of the postponement ceases to exist.

**Art. 2218. - Annual Leave in Parts.**

- (1) Unless the employer agrees otherwise, an employee may not divide the annual leave into parts.
- (2) An annual leave may be interrupted under the same circumstances provided in Article 2217.
- (3) The employee shall take his leave after the cause of the interruption ceases to exist.

**Art. 2219. - Recall from Annual Leave.**

- (1) An employer may recall an employee on leave only when unforeseen circumstances require his return to work.
- (2) A recalled employee shall be entitled to a payment covering the remainder of his leave, excluding the time lost for the trip.
- (3) The employer shall pay the transport expenses and daily food and lodging allowances of the recalled employee.

**Art. 2220. - Terminated Employees.**

- (1) An employee whose contract of employment has been terminated shall be entitled to wages in lieu of annual leave not taken.
- (2) An employee who has completed his probation period but not a year of service shall be entitled to wages in lieu of annual leave not taken proportionate to the length of time he has worked during the year.

**Art. 2221. - Leave for Family Events.**

- (1) An employee shall be entitled to leave with pay for three working days where he marries or where his spouse, an ascendant, a descendant or any other relative, whether by affinity or consanguinity up to the second degree, dies.

- (2) An employee shall be entitled to leave without pay for five consecutive days in cases where he encounters exceptional and serious occurrences.

**Art. 2222. - Educational Leave.**

A collective agreement or work rules shall determine the manner in which educational or training leave is to be granted and the form and extent of the financial assistance to be given.

**Art. 2223. - Leave for Special Purposes.**

- (1) An employee shall be entitled to leave with pay for the time used to exercise his civil rights or duties or to appear before bodies competent to hear labor disputes.
- (2) Employee association leaders shall be entitled to leave with pay for the purpose of carrying out their duties in accordance with the terms of a collective agreement.

**Art. 2224. - Sick Leave.**

- (1) An employee who has completed his probation shall be entitled to sick leave where he becomes incapable as a result of sickness resulting other than from an employment injury.
- (2) Sick leave may not exceed six months counted consecutively or separately in any twelve-month period from the first day of the employee's sickness.
- (3) Where he absents himself from work because of sickness, the employee shall notify the employer no later than the day following his absence and shall present a valid medical certificate.

**Art. 2225. - Wages During Sick Leave.**

The employer shall pay wages to a sick employee at the following rates:

- (a) 100% of his wages for the first month;

- (b) 50% of his wages for the next two months; and
- (c) no wages for the next three months.

**Art. 2226. - Pregnancy.**

- (1) Where she has presented an employer with a valid medical certificate, a pregnant employee shall be entitled to leave with pay for medical examinations connected with her pregnancy.
- (2) The working conditions of a pregnant employee shall be fixed by special legislation.

**Art. 2227. - Maternity Leave.**

- (1) A pregnant employee shall be entitled to maternity leave with pay for no less than sixty consecutive days.
- (2) The employee may choose to take her maternity leave in two parts, one preceding her anticipated confinement and the other after delivery.
- (3) Maternity leave is distinct from sick leave.

**Art. 2228. - Working Conditions of Young Employee.**

The working conditions of an employee younger than eighteen years old shall be fixed by special legislation.

**Paragraph 5. - Injuries to Employees**

**Art. 2229. - Responsibility for Injuries to Employees.**

- (1) The employer shall be responsible, irrespective of fault, for compensating an employee where the employee sustains an injury during or in connection with his work as a consequence of an employment accident or an occupational disease.
- (2) An employer shall not be responsible for any injury which an employee intentionally causes to himself.

**Art. 2230. - Required Insurance.**

An employer shall cover his employees with workers' compensation insurance where he uses fixed machinery or engages in dangerous or hazardous activities such as mining, quarrying, transporting heavy burdens, extensive deforestation, construction and explosive work.

**Art. 2231. - Employment Accidents. - 1. Principle.**

An employment accident is any organic injury or functional disorder sustained by an employee as a result of any cause extraneous to the injured employee or any effort he makes during or in connection with the performance of his work.

**Art. 2232. - 2. Specific Cases.**

Employment accidents include, but are not limited to, the following:

- (a) any injury sustained by an employee while carrying out the employer's orders, whether at or away from the work place or during or outside his regular hours of work;
- (b) any injury sustained by an employee, before or after his working hours, because of obligations related to his work, or during any interruption of work while in the work place, or while proceeding to or from the work place in a vehicle provided by the employer; and
- (c) any injury sustained by an employee as a result of his violating work rules, the employer's orders or other similar directives to prevent an accident, to save life or to safeguard the employer's interest.

**Art. 2233. - Occupational Diseases.**

- (1) An occupational disease is any pathological condition, whether caused by physical, chemical or biological agents, which arises as a consequence of the type of work performed by the employee or the surroundings in which he works.

- (2) Occupational diseases do not include endemic or epidemic diseases which are prevalent and contracted in the area where the work is done, except in the case of an employee exclusively engaged in combating such diseases by reason of his occupation.

**Art. 2234. - Date of Injury.**

- (1) The date from which compensation is due for an employment accident is the day an employee is injured by his accident.
- (2) The date from which compensation is due for an occupational disease is the day the disease first becomes clearly known.

**Art. 2235. - First Aid and Funeral Expenses.**

An employer shall, at his own expense, provide the following:

- (a) prompt first aid to an injured employee;
- (b) reasonable and adequate transportation of an injured employee to a health center; and
- (c) a coffin, burial ground, and transportation of the remains of an employee who dies as a result of an employment injury.

**Art. 2236. - Medical Expenses.**

Where an employee sustains an employment injury, the employer shall pay or reimburse the expenses of the following medical services:

- (a) hospital and pharmaceutical care;
- (b) general and special medical and surgical care; and
- (c) any necessary prosthetic or orthopedic appliances.

**Art. 2237. - Compensation for Employment Injuries.**

An employee who has sustained an employment injury shall be entitled to the following compensation:

- (a) periodic payments while he is temporarily disabled; and
- (b) disability compensation where he is permanently or partially disabled.

**Art. 2238. - Periodic Payments.**

- (1) Periodic payments shall be made monthly for no more than twelve months.
- (2) The amount of the payment shall not be less than seventy-five percent of the employee's last monthly wage, increased by five percent of this monthly wage for each year of service, provided however that the employee shall not receive more than one hundred percent of the monthly wage.

**Art. 2239. - Suspension of Periodic Payments.**

- (1) Periodic payments may be suspended where the injured employee:
  - (a) refuses or neglects to submit to a medical examination or in any way intentionally obstructs or unnecessarily delays such an examination;
  - (b) behaves in a manner calculated to delay his recovery; or
  - (c) violates directives issued by a public authority that are applicable to injured employees.
- (2) The suspension shall cease as soon as the circumstances which cause the suspension cease.
- (3) The injured employee shall in no event be entitled to payments for the period during which payment was suspended.

**Art. 2240. - Cessation of Periodic Payments.**

Periodic payments shall cease when one of the following events occurs:

- (a) when a medical authority certifies that the injured employee is no longer disabled;
- (b) when the injured employee receives disablement compensation; or
- (c) twelve months from the date the employee stopped work.

**Art. 2241. - Assessment of Disability.**

- (1) A physician or other medical authority shall assess the degree of the disability of an injured employee.
- (2) They shall apply, where relevant, any standards promulgated by law or issued by a competent public authority.

**Art. 2242. - Disability Compensation.**

- (1) An employee who is permanently disabled as a consequence of an employment injury shall be entitled to the following compensation:
  - (a) where the disability is total, a sum equal to six times his annual wages; and
  - (b) where the disability is partial, a sum equal to the percentile of disability times six times his annual wages.
- (2) The employer is responsible for payment of these sums but may deduct any amount received by the disabled employee from workers' compensation insurance or other insurance obtained by the employer on behalf of his employees.



**Art. 2243. - Payments on Death of Injured Employee.**

- (1) The heirs of an employee who dies as a consequence of an employment injury shall be entitled to a sum equal to five times the employee's annual wages.
- (2) This sum shall not be less than fifteen thousand Nakfas.
- (3) The employer is responsible for payment of this sum.

**Art. 2244. - Disability and Death of Apprentices.**

Where the injured or disabled employee is an apprentice, the sums due on account of the employment injury shall be calculated on the basis of the wages he would have qualified for after his apprenticeship.

Paragraph 6. - Termination

**Art. 2245. - Contracts of Fixed Duration.**

- (1) A contract of employment made for a fixed period shall expire at the end of the agreed term.
- (2) A contract concluded for the carrying out of a definite piece of work shall expire when the agreed work has been accomplished.
- (3) Unless otherwise agreed, no notice shall be required to terminate the contract.

**Art. 2246. - Maximum Duration of Contract.**

- (1) No person may commit his services for more than five years.
- (2) A contract of employment made for the life of one of the parties or for a period exceeding five years shall bind the parties for five years only.

**Art. 2247. - Renewal of Contract.**

An employer is not obligated to renew a contract made for a fixed period but it shall be deemed to be renewed for an indefinite time

where, after the elapsing of the agreed term, the employee continues his work without objection by the employer.

**Art. 2248. - Contract of Indefinite Duration.**

- (1) Where the duration of a contract has not been fixed and does not result either from the nature of the work to be done or from any other circumstance, either party may at any time terminate the contract.
- (2) The exercise of the right to terminate the contract shall be subject to advance notice being given by the employer or employee.
- (3) The employer shall inform the employee in writing, where the latter so requests, of the reason for terminating a contract of employment of indefinite duration.

**Art. 2249. - Termination *Ipsa Facto*.**

- (1) A contract of employment terminates if the employee dies.
- (2) A contract of employment shall not terminate on the death of the employer, unless his person has been a material element in making it.

**Art. 2250. - Termination by Agreement.**

- (1) The parties may agree to terminate the contract of employment at any time.
- (2) The agreement to terminate shall be of no effect unless it is in writing.
- (3) Any waiver of a right by the employee in the agreement to terminate shall be of no effect.

**Art. 2251. - Termination by Employee.**

- (1) An employee may terminate the contract of employment at any time.

- (2) Where he is hired for a fixed period of time, the employee is liable for any damages caused if he terminates the contract before the expiration of that time.

**Art. 2252. - Termination by Employer.**

The employer may terminate the contract of employment if:

- (a) the employee fails to perform his obligations as defined by this Chapter and by the contract of employment;
- (b) the employee has used forged documents or given false information to obtain employment by the employer;
- (c) the employee commits a breach of trust, theft, or any other crime related to his employment;
- (d) the employee absents himself from work for more than six months because of a sickness unrelated to his employment;
- (e) the employee absents himself from work without good cause for five consecutive days or for a total of ten or more days within a twelve-month period;
- (f) the employee does not show the technical knowledge, speed, honesty, interest and reliability that could be reasonably be expected;
- (g) the employee becomes redundant as a result of the reduction of the volume of work or the introduction of new technology and it is not possible to transfer the employee to another section of the undertaking; and
- (h) the undertaking in which the employee is employed ceases to function for any reason.

**Art. 2253. - Prohibited Grounds.**

An employer may not terminate the contract of employment on any of the following grounds:

- (a) an employee's race, color, nationality, language, sex, religion, lineage, pregnancy, marital status, family responsibility, disability, political orientation or economic or social status;
- (b) the absence of the employee if that absence is due to the employee's participation in legally-required public service, including National Service, or to an medically certified illness or injury;
- (c) participation of the employee in legally-sanctioned activities as an employee representative or as a member of an association of employees;
- (d) submission by the employee of a labor grievance against the employer or participation in a legal proceeding against his employer; and
- (e) refusal to work on a dangerous assignment ordered by the employer.

**Art. 2254. - Unjustified Termination.**

Unless otherwise provided by law, an attempted termination on a prohibited ground shall be of no effect and the employee thus dismissed shall be reinstated in his work.

**Art. 2255. - Notice of Termination.**

- (1) Where an employer or employee terminates the contract on a ground permitted by this Chapter, he shall give notice of the termination to the other party.
- (2) Except as provided in sub-Article (3), the employer shall inform the employee in writing, where the latter so requests, of the reason for terminating the contract.
- (3) Where the contract of employment relates to confidential matters which require special qualifications, the employer need not reveal the reasons for which he has terminated the contract.

**Art. 2256. - Advance Notice.**

- (1) Unless otherwise expressly agreed, advance notice of termination shall be given as follows:
  - (a) seven days before termination where the employee has been employed for less than one year;
  - (b) fourteen days before termination where the employee has been employed for more than one year and less than two years;
  - (c) twenty-one days before termination where the employee has been employed for more than two years and less than five years; and
  - (d) thirty days before termination where the employee has been employed for more than five years.
- (2) An employer may, in lieu of notice, pay the employee a sum equal to the wages the employee would earn during the period of notice.

**Art. 2257. - Advance Notice Excused.**

- (1) Advance notice is not required where the termination is automatically terminated, where the parties agree to terminate, or where the employer terminates.
- (2) The employee is excused from giving advance notice where:
  - (a) his employer fails to fulfill his obligations as defined by this Chapter;
  - (b) his employer commits an offence against the employee punishable under the Penal Code;
  - (c) he and his dependents are exposed to a great danger or a disease which was not foreseen when the contract of employment was concluded; or
  - (d) payment of wages has been delayed for more than a week.

**Art. 2258. - Right to Compensation on Termination.**

An employee shall be entitled to compensation for his service upon termination irrespective of the grounds for termination.

**Art. 2259. - Calculation of Compensation. - 1. *Justified Termination.***

- (1) Where an employee has completed at least one year of service his right to compensation shall be calculated as follows:
  - (a) two weeks of wages for each of the first five years of employment;
  - (b) three weeks of wages for each year after the fifth year up to an including the tenth year; or
  - (c) four weeks of wages for each year after the tenth year.
- (2) Where an employee has completed less than one year of service he shall be entitled to a proportionate amount of two weeks wages.
- (3) The wages used for calculations under this Article shall be the last wages earned by the employee at the time of termination.

**Art. 2260. - Calculation of Compensation. - 2. *Unjustified Termination.***

- (1) An employee who has been unjustly terminated shall be entitled to compensation which shall not exceed a sum equal to wages for six months.
- (2) Where he has completed less than two years of uninterrupted service, the employee shall be entitled to the wages for one day for each month of service at a rate determined by the daily rate for his last month of service.
- (3) Where he has completed uninterrupted service of two years or more, the employee shall be entitled to the wages for one month for each year of service at a rate

determined by the average monthly wages for the last twelve months of service.

**Art. 2261. - Transfer, Amalgamation, Division of Ownership or Organizational Change of Undertaking.**

- (1) The transfer, amalgamation, division of ownership or organizational change of an undertaking may not have the effect of modifying a contract of employment.
- (2) An employee's status, seniority, wages and any other privileges acquired through his contract of employment may be renegotiated after the transfer, amalgamation, division of ownership or organizational change of the undertaking.
- (3) The employer or owner of the undertaking shall have the responsibility of ensuring that all the rights of the employees are maintained during the transfer, amalgamation, division of ownership or organizational change of the undertaking.

**Art. 2262. - Providing Certificate of Work.**

- (1) The employee may demand at the end of his contract that the employer shall give him a certificate showing only the nature of his work and the length of his service, as well as the name and address of the employer.
- (2) The certificate shall not include a testimonial concerning the quality of the work done or the conduct of the employee, unless the employee expressly requires his employer to give this testimonial.

**Paragraph 7 - Restraint of Trade**

**Art. 2263. - Principle.**

- (1) Where the work given to the employee enables him to meet the clients of the employer or enter into the secrets of his business, the parties may provide that the employee shall not, after the termination of the contract, enter into competitive business with his employer or engage in any

way whatsoever in an undertaking which would compete with the employer.

- (2) Such provision shall be of no effect unless it is express and made in writing.

**Art. 2264. - Restriction.**

- (1) Provisions under Article 2263 shall not be valid unless they are necessary for the protection of the legitimate interests of the employer and do not impede, in a inequitable manner, the economic future of the employee.
- (2) They shall not be valid, in particular, unless they are limited as to time, place and business forbidden to the employee.

**Art. 2265. - Penalties.**

- (1) Whosoever infringes a provision made under Article 2263 shall be liable for the damage resulting from such infringement.
- (2) Where the provision contains a penalty, the employee may, unless otherwise stipulated, be released of his obligation by paying the employer the amount of the penalty fixed.
- (3) Provided it is expressly agreed in writing, the employer may, in addition to damages, obtain an injunction restraining the contravention, where such action is justified by the importance of the interests which are injured or threatened by the conduct of the employee.

**Art. 2266. - Lapsing of Provision.**

- (1) A provision under Article 2263 shall lapse where it is proved that the employer has no material interest in its maintenance.
- (2) The employer may not avail himself of such provision where he has terminated the contract of employment or



refused to renew it, without the employee having given him good cause so to do.

- (3) Nor may he avail himself thereof where he has himself given to the employee good cause for canceling the contract.

## **Section 2. - Contract of Apprenticeship**

### **Art. 2267. - Definition.**

The contract of apprenticeship is a contract of employment under which the employer agrees to undertake the professional training of the apprentice employee.

### **Art. 2268. - Obligations of Employer.**

An employer who employs an apprentice undertakes the following obligations:

- (a) to give the apprentice the training required by the contract;
- (b) to assign the apprentice only to the vocational training specified in the contract of employment;
- (c) to give directives to an apprentice and to take necessary precautions to protect him from employment injury;
- (d) to take all reasonable steps to safeguard the health and moral well-being of the apprentice; and
- (e) to give the apprentice an appropriate certificate at the completion of the apprenticeship training.

### **Art. 2269. - Obligations of Apprentice.**

An apprentice undertakes to follow diligently the instructions and directives of the employer and to complete his training successfully.

### **Art. 2270. - Form of Contract.**

The contract of apprenticeship shall be of no effect unless made in writing.

**Art. 2271. - Content of Contract.**

The written contract shall set out the following terms:

- (a) the vocational training the apprentice will receive;
- (b) the duration of the apprenticeship;
- (c) whether pocket money is to be paid to the apprentice and, if so, the amount of pocket money; and
- (d) the expenses to be incurred in the training of the apprentice.

**Art. 2272. - Working Conditions.**

- (1) The working conditions for an apprentice shall comply with the provisions of Section 1 of this Chapter and with special legislation governing working conditions.
- (2) An employer may not assign an apprentice to work alone at hazardous work.

**Art. 2273. - Termination.**

- (1) In addition to the general grounds for termination of a contract of employment, the employer may terminate the contract of apprenticeship when, in the opinion of the employer, the apprentice is incompetent.
- (2) The provisions on notice of termination of a contract of employment shall apply.
- (3) The apprentice shall not be entitled to compensation for service upon termination.

**Section 3. - Contract for Domestic Employment**

**Art. 2274. - Definition.**

- (1) A contract for the domestic employment is a contract of employment under which the employee undertakes to perform household tasks, including the maintenance of

the house and the care and comfort of members of the household.

- (2) Domestic employees include gardeners, guards, and drivers.

**Art. 2275. - Health and Moral Well-Being of Employee.**

Where the employee lives with the employer's family, the employer shall in regard to living-quarters, food, times of work and rest, take all reasonable steps to safeguard the health and moral well-being of the employee.

**Art. 2276. - Obligation to Look After the Employee. - 1. Principle.**

- (1) Where an employee who is living with the family of the employer and being fed by the latter falls sick, the employer shall, during the currency of the contract, provide any care which the illness of the employee requires, either by way of medical attendance at his house or by sending the employee to a hospital.
- (2) This obligation shall be limited to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract.
- (3) The employer may set off any expenses which he thus incurs against the wages that become due during the period of illness.

**Art. 2277. - 2. Exceptions.**

- (1) The employer shall be relieved of the obligations laid down in Article 2276 where the employee intentionally contracts the illness.
- (2) The employer shall also be relieved where the employee goes into a hospital under a scheme of compulsory health insurance.
- (3) The employer may not relieve himself of the obligations laid down in Article 2276 by terminating the contract on the ground of the illness of his employee.

**Art. 2278. - Payment of Wages.**

- (1) Unless the contract of employment provides for a shorter term, the wages of the employee living in the employer's household shall be paid every three months, with the expiry of the term.
- (2) In any event, the employer shall pay all wages due at the time the contract terminates.

**Section 4. - Contract for Agricultural Work**

**Art. 2279. - Definition.**

A contract for agricultural work is a contract of employment under which the employee undertakes to perform agricultural tasks, including the care of animals and the planting and harvesting of crops.

**Art. 2280. - Principle.**

- (1) Contracts for agricultural work shall be subject to the provisions of this Section and, where appropriate, the provisions of the other Sections of this Chapter.
- (2) Special legislation governing agricultural work may derogate from these provisions:

**Art. 2281. - Contract for Undefined Period of Time.**

- (1) A contract made for an undefined period of time may not be terminated by the employer except on giving three months' notice.
- (2) The period fixed in sub-art (1) shall be increased by one month for each year spent by the employee in the service of the employer or which the employee spent, during his minority, in the undertaking of the employer.

## **Chapter 2. - Independent Work**

### **Section 1. - General Provisions**

#### **Art. 2282. - Definition.**

A contract of independent work is a contract whereby one party, the contractor, undertakes to produce a given result, under his own responsibility, in consideration of a remuneration that the other party, the client, undertakes to pay him.

#### **Art. 2283. - Implied Acceptance.**

- (1) If a person has publicly offered to execute a specified type of work or where the performance of this work is within his professional duties, a contract of independent work shall be concluded where such person, having received an offer, does not immediately refuse to perform the work requested.
- (2) The same rule shall apply where a person is appointed by the public authorities to perform a certain task and does not immediately refuse to do so.

#### **Art. 2284. - Materials and Tools.**

Unless otherwise agreed, the contractor shall provide at his own expense the materials and tools necessary for the performance of the task.

#### **Art. 2285. - Materials Provided by Contractor.**

- (1) The contractor shall be liable for the good quality of the materials provided by him.
- (2) He shall give the same warranties as a seller.
- (3) There shall be a contract of sale and not a contract of work where the work which a party undertakes to do has a character of secondary importance in relation to the value of the materials which the party provides.

**Art. 2286. - Materials Provided by Client.**

- (1) Where the materials are provided by the client, the contractor shall use them with care.
- (2) He shall render an account to the client of the use which he has made of them and restore to him what remains after the execution of the work.
- (3) Where the materials provided to him by the client are defective, the contractor shall be liable for any damage which may result from the use of the materials unless he immediately gives notice of the defects to the client, upon receipt of the materials.

**Art. 2287. - Independence of Contractor.**

- (1) The contractor shall perform his task as he wishes.
- (2) Unless otherwise agreed, he shall not be bound to comply with the orders of the client.

**Art. 2288. - General Obligations of Contractors.**

- (1) The contractor is bound to act in the best interests of his client, conscientiously and in conformity with the practice and rules of his profession or trade.
- (2) Where a contractor is bound to produce results, he shall be liable for failure to produce the result except when prevented from doing so by *force majeure*.

**Art. 2289. - Performance of Work.**

- (1) Unless the contract was entered into specifically in view of his personal qualities or unless the nature of the contract prevents it, the contractor may employ a third person to perform the work.
- (2) If a third person performs the contract, the contractor shall supervise the work and shall remain responsible for its proper execution.

**Art. 2290. - Duty to Inform Clients.**

As far as circumstances permit, the contractor shall provide the client before concluding the contract with any useful information concerning the nature of the task which the contractor is to undertake and the materials and time required.

**Art. 2291. - Delay in Performance of Work.**

- (1) Where the contractor delays beginning to perform his task so that it becomes evident that he cannot accomplish it in the time fixed in the contract, the client may fix him a reasonable time limit to begin performance of the task.
- (2) Where the contractor, after this time limit, has not begun the task or has interrupted it in bad faith, the client may terminate the contract without waiting for the expiry of the period laid down for the completion of the task.
- (3) The client may also claim liquidated damages amounting to one per mill of the contract price for every day of delay, provided that this may not exceed 10 per cent of the contract price.

**Art. 2292. - Where No Time Limit Has Been Fixed.**

- (1) Where no time limit has been fixed in the contract, the contractor shall immediately begin performance of his task and complete it within a reasonable time in accordance with custom.
- (2) The provisions of Article 2291 shall apply where the contractor does not immediately begin the performance of his task or where he interrupts work on the task.

**Art. 2293. - Defective Performance of the Task.**

- (1) Where it appears, during the currency of the contract, that the contractor is performing the task in a defective manner or contrary to the contract, the client may fix a reasonable time limit for the contractor to correct his defective or inadequate performance.

- (2) If, when this limit expires, the contractor has not corrected the defective or nonconforming performance, the client may terminate the contract immediately.
- (3) The client may also claim, in such a case, damages from the contractor.

**Art. 2294. - Putting Work at Client's Disposal.**

- (1) When the contractor has finished his task, he shall put the result at the disposal of the client at the place fixed in the contract.
- (2) If the contract has not fixed a place, the contractor shall tender the result at his place of business or, in the absence of such a place, at his habitual residence.
- (3) The client shall take over the work immediately in accordance with custom.

**Art. 2295. - Warranty against Defects.**

- (1) The contractor shall guarantee to the client that the work conforms to the contract and is not defective.
- (2) The provisions of the Chapter of this Code relating to Sale shall apply to the warranty given by the contractor to the client.

**Art. 2296. - Time for Payment.**

- (1) The price shall be paid to the contractor when the work has been completed and has been accepted by the client.
- (2) The work is completed when it is ready to be used for its intended purpose.
- (3) Where partial deliveries and payments have been agreed, the price attaching to each part of the work shall be paid at the time of the delivery and acceptance of that part.



**Art. 2297. - Acceptance with Reservation.**

- (1) If the client accepts the work with reservation, he may deduct from the price, until the repairs or corrections are made to the work, a sufficient amount to satisfy the reservations which he made as to the apparent defects or poor workmanship that existed when he accepted the work.
- (2) The client may not exercise this right if the contractor furnishes him with sufficient security to guarantee the performance of his obligations.
- (3) When the repairs or corrections are made and accepted, the client shall pay the remaining price.

**Art. 2298. - Price Fixed in Advance.**

- (1) Where the price has been fixed in advance, the client shall pay that price.
- (2) The contractor may not claim an increase on the ground that the work has required more effort or expense than had been foreseen.
- (3) The client may not claim a reduction on the ground that the work has required less effort or expense than had been foreseen.

**Art. 2299. - Changes in the Agreed Work.**

- (1) The price fixed in advance for the work shall remain the same notwithstanding that changes have been made by a new agreement between the parties in the conditions under which the execution of the work was originally to have been carried out.
- (2) Such changes shall not give rise to an increase or decrease in price unless such has been agreed.

**Art. 2300. - Price Not Fixed in Advance.**

- (1) Where the price has not been fixed by the contract, it shall be fixed by the contractor in accordance with professional rates and usages.
- (2) In the absence of professional rates and usages, it shall be fixed by reference to the value of the materials provided by the contractor, the work normally necessary to perform it and the expenses of the contractor.

**Art. 2301. - Price Estimates.**

- (1) Where an estimate of the price has been fixed at the time the contract was concluded, the contractor shall give the reasons for any increase in the price.
- (2) The client shall pay the increased price only to the extent that it results from work, labor or expenses that the contractor could not foresee at the time the contract was entered into.
- (3) In any event, if the increase in price is more than twenty per cent of the estimate, the client is bound to pay the original price and no more than the additional twenty per cent.

**Art. 2302. - Accounting for Progress.**

Where the price is fixed according to the work performed, the contractor shall, at the request of the client, account for the progress of the work at the time of the request.

**Art. 2303. - Right of Retention.**

- (1) The contractor shall have, as security for the obligations that the client owes him under the contract, a right of retention over those movable goods belonging to the client that he has made or repaired and that are in his possession.
- (2) Where the things which the client has entrusted to him belong to a third party, the contractor may set up his

right of retention against the third party unless he knew or should have known that the things were entrusted to him without the knowledge or against the will of the third party.

**Art. 2304. - Risks.**

- (1) Where the materials necessary for the execution of the work have perished by *force majeure*, their loss shall be borne by the party who has provided them.
- (2) The provisions of the Chapter of this Code relating to Sale shall apply as regards the transfer of risks.

**Art. 2305. - Death of Client.**

The death of the client shall not terminate the contract unless its performance thereby becomes impossible or useless.

**Art. 2306. - Death of Contractor.**

- (1) If the contract was made on the basis of the personal capacities of the contractor, the contract shall terminate when the contractor dies or is prevented by *force majeure* from completing the work.
- (2) The client shall accept those parts of the work already completed which he can use and shall pay that portion of the agreed price which these parts represent.
- (3) He may demand that the materials and plans prepared for performing the work be delivered to him against fair payment.

**Art. 2307. - Termination by Client.**

- (1) The client may at any time terminate the contract.
- (2) The contractor shall in this case be entitled to the price that had been fixed.
- (3) From this price there shall however be deducted savings made by the contractor in consequence of the termination

of the contract and any advantages that he may have gained by employing his work elsewhere or that he failed thus to gain by reason of his bad faith.

**Art. 2308. - Termination by Contractor.**

- (1) The contractor may not terminate the contract except for a serious reason and never at an inopportune time for the client.
- (2) If he terminates the contract, the contractor shall do all that is immediately necessary to prevent loss to the client.
- (3) If the contractor terminates the contract when not entitled to do so or fails to prevent loss, he shall be liable for any damages caused by his termination or failure.

**Section 2. - Contract of Independent Work Relating to Immovables**

**Art. 2309. - Applicable Provisions.**

- (1) The provisions of this Section shall apply to contracts of independent work relating to work to be done in connection with the building, repair or installation of immovables.
- (2) Notwithstanding sub-Article (1) the general provisions of Section 1 shall apply where the total cost of the work to an immovable does not exceed five thousand Nakfas.
- (3) The general provisions of Section 1 shall also apply where they are not inconsistent with those of the current Section.

**Art. 2310. - Making and Proof of Contract.**

- (1) The contract shall be complete where the parties have agreed on the work to be done and on the price.
- (2) There shall be evidence of the contract where the contractor has undertaken work to the knowledge of the client or received an advance from the client.

**Art. 2311. - Work to be Done.**

- (1) The work to be done may be described by means of a plan, scheme or other document. The contractor shall in such case comply with the indications given in such documents.
- (2) Where the work to be done has been described in a general manner, the contract shall be construed in a restrictive manner as regards the importance of such work.
- (3) Prior to undertaking a work, the contractor shall, whenever this appears reasonable, satisfy himself that the client agrees to the work to be undertaken.

**Art. 2312. - Delivery and Payment.**

- (1) Payment of the price shall raise the presumption that the work has been examined and accepted by the client.
- (2) The provisions of sub-art (1) shall not apply where the sums paid are to be regarded as installments on the price.

**Art. 2313. - Partial Delivery and Payment.**

- (1) Where it has been agreed that the work would be carried out by stages, such work shall be examined and delivered on completion of each of such stages.
- (2) The contractor may require that part of the price corresponding to the work completed be paid to him on completion of each of such stages.
- (3) Before doing so, he is bound to furnish the client with a statement of the amounts paid to the subcontractors, to the person having supplied the materials and to any other person having participated in the work, and of the amounts he still owes them for the completion of the work.

**Art. 2314. - Alterations Required by Client. - 1. Rights of Client.**

The client may demand that alterations be made in the work as originally planned where such alterations can technically be made and are not such as to impair the solidity of the work.

**Art. 2315. - 2. Effect.**

- (1) The client may require a reduction in the price as originally agreed where the alterations required by him reduce the expenses of the contractor.
- (2) The contractor may require an increase in the price and his remuneration as originally agreed, where the alterations required by the client increase his expenses, work or liability.
- (3) Where the parties do not agree, such reduction or increase shall be settled by arbitrators appointed by the parties or, failing such, by the Court.

**Art. 2316. - 3. Contractor Refusing Alterations.**

- (1) The contractor may refuse the alterations required by the client where such alterations affect plans, schemes or other documents on which the parties had agreed.
- (2) The contractor may also refuse the alterations where they are of such a nature or importance that they constitute a work absolutely different to the agreed work.
- (3) The work shall be deemed to be absolutely different to the agreed work where it implies an alteration exceeding by twenty per cent the value at which the original work was or could have been estimated.

**Art. 2317. - Alternations Required by Contractor.**

- (1) Where it appears necessary for technical reasons to make alterations in the work as originally agreed, the contractor shall, except in urgent cases, give notice thereof to the client.

- (2) The contractor shall give such notice notwithstanding that the proposed alterations do not result in the client having to pay an increased price.

**Art. 2318. - Examination of Work.**

At any time during the construction or renovation of an immovable, the client, provided he does not interfere with the work, may examine the progress of the work, the quality of materials used and of the work performed, and the statement of expenses incurred so far.

**Art. 2319. - Liability for Loss. - 1. Principle.**

Unless they can be relieved from liability, the contractor, the architect, and the engineer who, as the case may be, directed or supervised the work, and the subcontractor with respect to work performed by him, are solidarily liable for the loss of the work occurring within ten years after the work was completed, whether the loss results from faulty design, construction or production of the work, or the unfavorable nature of the ground.

**Art. 2320. - 2. Relief from Liability.**

- (1) The architect or the engineer may be relieved from liability only by proving that the defects in the work or in the part of it completed do not result from any erroneous or faulty expert opinion or plan he may have submitted or from any failure to direct or supervise the work.
- (2) The contractor may be relieved from liability only by proving that the defects result from an erroneous or faulty expert opinion or plan of the architect or engineer selected by the client. The subcontractor may be relieved of liability only by proving that the defects result from decisions made by the contractor or from the expert opinions or plans furnished by the architect or engineer.
- (3) They may, in addition, be relieved from liability by proving that the defects result from decisions imposed by the client in selecting the land or materials, or the subcontractors, experts, or construction methods.

**Art. 2321. - Warranty against Poor Workmanship.**

The contractor, the architect and the engineer, in respect of work they directed and supervised, and where applicable, the subcontractor, in respect of work he performed, are solidarily liable to warrant the work for one year against poor workmanship existing at the time of acceptance or discovered within one year after acceptance.

**Art. 2322. - Defect or Error in Plans or Expert Opinions.**

An architect or an engineer who does not direct or supervise work is liable only for the loss occasioned by a defect or error in the plans or in the expert opinions furnished by him.

**Art. 2323. - Claims by Sub-Contractors or Workmen.**

- (1) At the time of payment, the client may deduct from the price of the contract an amount sufficient to pay the claims of independent contractors or workmen employed under a contract of independent work and who have given him notice of their contract with the contractor in respect of the work performed or the materials or services after such notice was given.
- (2) The deduction is valid until such time as the contractor gives the client an acquittance of such claims.
- (3) The client may not exercise the right set out in sub-Article (1) if the contractor furnishes him with sufficient security to guarantee the claims.

**Art. 2324. - Promoter Who Sells the Work.**

For the purposes of this chapter, the promoter who sells the work which he has built or caused to be built, even after its completion, is deemed to be a contractor.



### **Section 3. - Contract of Intellectual Work**

#### **Art. 2325. - Provisions Applicable.**

- (1) A contract relating to the performance of services of an intellectual character shall be subject to the provisions of the following Articles.
- (2) The general provisions of the Section 1 shall also apply in so far as they are consistent with these provisions and the relationship involved.
- (3) Nothing in this Section shall affect the provisions of special laws relating to the exercise of certain professions.

#### **Art. 2326. - Personal Nature of Obligation.**

- (1) Whosoever undertakes to provide intellectual work shall carry out his obligations personally.
- (2) He may however employ assistants, under his control and on his own responsibility, where such collaboration is allowed by the contract or usual practice and is not incompatible with the object of the contract.

#### **Art. 2327. - Advances by Client.**

- (1) The client shall make an advance payment to the other contracting party for the expenses necessary to carry out the work.
- (2) He shall also grant him, where it is the practice, installments on his remuneration.

#### **Art. 2328. - Excessive Payment.**

The remuneration agreed by the parties may be reduced by the Court where it is so excessive as to be contrary to the etiquette of the profession of the person hiring out his work.

#### **Art. 2329. - Required Care and Responsibility.**

- (1) Whosoever undertakes to provide intellectual work shall carry it out in the best interest of his client,

conscientiously and in conformity with the practice and rules of his profession.

- (2) He shall not be liable to his client, unless he commits a fault, having regard to the rules of his profession.
- (3) The error may consist in an omission or an act detrimental to his client.

**Art. 2330. - Termination of Contract. - 1. *By the Client.***

- (1) The client may at any time terminate the contract.
- (2) He shall in this case compensate the other party for his expenses and pay him a fair remuneration for the work that he has completed.

**Art. 2331. - 2. *By the Other Party.***

- (1) Whosoever undertakes to provide intellectual work may terminate the contract at any time.
- (2) He shall in such case return to the client any advances that he has received on account of his remuneration and expenses.
- (3) The termination of the contract shall be effected, under pain of damages, in such a way that the client will suffer the least possible prejudice thereby.

**Section 4. - Medical or Hospital Contracts**

**Art. 2332. - Definition of Medical Contract.**

A medical contract is a contract by which a member of the medical profession undertakes to provide a person with medical care and to do his best to maintain him in good health or cure him, in consideration of payment of a fee.

**Art. 2333. - Medical Professions.**

- (1) The rules relating to a medical contract shall apply to physicians, surgeons, dentists, psychiatrists, radiologists, midwives, nurses and other persons who are members of similar professions concerned with the medical art.
- (2) In this Chapter, a reference to "physician" shall include a reference to other members of the medical professions.

**Art. 2334. - Definition of Contract of Hospitalization.**

A contract of hospitalization is a contract by which a medical institution undertakes to provide a person with medical care from one or several members of the medical profession, in connection with a given illness.

**Art. 2335. - Formation of Contract.**

- (1) The contract may be made directly between the person in need of medical care and the member of the medical profession or the medical institution.
- (2) It may also be made with the member of the medical profession or medical institution by a third party, on behalf of the person in need of medical care.
- (3) The contract shall be concluded where the member of the medical profession or medical institution, having received an offer, does not immediately refuse to provide medical care.

**Art. 2336. - Obligation of Patient.**

Where a contract has been made on his behalf by a third party, the patient shall pay the fee of the physician or the medical institution where:

- (a) the person who had made the contract on the patient's behalf is his father, mother or some other person bound by law or contract to care for his health; or

- (b) he was not capable at the time of the contract of expressing his wishes and it was at that moment essential to provide him with treatment.

**Art. 2337. - Obligation of Person Calling upon Physician.**

Whosoever makes a contract with a physician or a medical institution on behalf of another shall be liable for the fees of the physician or medical institution where:

- (a) he is bound by law or contract to care for the health of the person to whom the treatment has been given; or
- (b) he has expressly agreed to the physician or medical institution that he shall be personally liable.

**Art. 2338. - Reimbursement.**

Where a person has paid a physician or medical institution, he shall have a right of reimbursement from the patient who has been cared for.

**Art. 2339. - Fees.**

- (1) The fees of the physician and the medical institution shall be fixed by the contract.
- (2) Where not fixed by the contract, they shall conform to usages.
- (3) The Court may revise the amount of fees fixed in the contract where they are so excessive as to be contrary to the etiquette of the medical profession.

**Art. 2340. - Liability of Physician.**

- (1) A physician shall not be liable to the person to whom he is bound under the contract unless he commits a fault, having regard to the rules of his profession.
- (2) The fault may consist in an omission or an act detrimental to the patient.

- (3) The physician shall be liable in particular where he abandons without good cause the patient he has undertaken to care for and fails to arrange for a substitute physician in accordance with usages.

**Art. 2341. - Guarantee of Cure.**

A physician shall not guarantee the success of his treatment unless he has expressly assumed this obligation in writing.

**Art. 2342. - Personal Nature of Obligation.**

- (1) A physician who undertakes to treat a person shall carry out his obligations personally.
- (2) He may however use assistants under his control on his own responsibility.
- (3) If he does use assistants, he shall be liable for any damage caused to the patient by the fault of one of his assistants.

**Art. 2343. - Liability to Third Parties.**

- (1) In the case of a mortal accident due to the fault of the physician, only the husband or wife of a sick person or his ascendants or descendants may claim compensation from the physician for the loss which they have suffered as a consequence of the death of the sick person.
- (2) Compensation shall not be due on account of the moral loss suffered by these persons unless the death of the sick person has been due to the intentional act of the physician.
- (3) No other persons may claim compensation in their own right by reason of the death of the sick person, notwithstanding that they are able to prove that the latter rendered them material assistance or that they were maintained by him.

**Art. 2344. - Liability of Medical Institution. - 1. Medical Treatment.**

- (1) The medical institution shall be liable for the damage caused to a sick person by the fault of the physician or auxiliary staff which it employs.
- (2) The liability of the medical institution to third persons is subject to the same limitations on who may recover from a physician as provided in Article 2342.

**Art. 2345. - 2. Board and Lodging.**

Where the sick person, for purposes of his treatment, is lodged and fed by the medical institution, that institution shall, as regards its obligations and responsibility arising from that lodging and feeding, be subject to the Chapter of this Title relating to "Contract of hotelkeeper".

**Chapter 3. - Contract of Hotelkeeper**

**Art. 2346. - Definition.**

- (1) A hotelkeeper's contract is a contract by which a person who exercises the occupation of hotelkeeper undertakes to lodge a guest for one or several nights.
- (2) Where the lodging is provided for one month or more, there shall be a contract of lease and not a hotelkeeper's contract.
- (3) Special legislation regulating the classification of persons who provide lodging and related services may derogate from the provisions of this Chapter.

**Art. 2347. - Establishments Similar to Hotels.**

The provisions of this Chapter shall govern, where applicable by analogy, to the management of medical institutions, convalescent homes, public places of entertainment, bathing establishments, boarding houses, restaurants, sleeping-cars, public stables and other establishments of a similar nature.

**Art. 2348. - Duration of Contract.**

A hotelkeeper's contract may be concluded for a determined time or an indeterminate period.

**Art. 2349. - Contract for Indeterminate Period.**

- (1) A hotelkeeper's contract concluded for an indeterminate period shall be deemed to be concluded on a day-to-day basis.
- (2) The hotelkeeper or the guest may terminate the contract by notifying the other of his intention to do so before midday.

**Art. 2350. - Contract for Approximate Time.**

- (1) A hotelkeeper's contract concluded for an approximate period of time shall be deemed to be concluded for a determined period of time.
- (2) The termination date shall be the earliest date or shortest time mentioned in the period defined.

**Art. 2351. - Period of Time Room Engaged.**

- (1) Unless otherwise agreed, hotel rooms shall be engaged from midday to midday.
- (2) A guest shall vacate the room by midday of the day of termination.

**Art. 2352. - Renewal of Contract.**

A room occupied by a guest shall be deemed to have been engaged for an additional day where the guest or the hotelkeeper has not expressed before midday his intention not to extend the contract.

**Art. 2353. - Failure to Provide Lodging.**

- (1) The hotelkeeper shall be liable for the damage actually suffered by the guest to the extent that he fails to provide the lodging and services agreed upon.

- (2) He nevertheless shall be released from liability to the extent that, with the consent of the guest, he procures for him equivalent lodging and services at the same locality.
- (3) If substitute lodging is accepted, the hotelkeeper shall reimburse the guest's reasonable expenses, including the cost of transport, which the substitution entails.

**Art. 2354. - Failure to Occupy Room.**

- (1) A guest who has engaged a room for a specified day and who has received from the hotelkeeper notice that the room has been reserved for him shall pay the price of this room for that day, even where, on account of *force majeure*, he has not occupied it.
- (2) He shall not be relieved of this obligation unless he has notified the hotelkeeper a reasonable time in advance that he has renounced the contract and the hotelkeeper, after receiving the notice, was able to let to a third person the room that had been reserved.
- (3) Unless otherwise agreed, compensation shall be due for one day only, notwithstanding that the room had been reserved for several days and payment agreed by the week or month.

**Art. 2355. - Termination for Failure to Occupy.**

- (1) Where the room has been engaged for several days, the contract shall terminate if the guest does not occupy it on the first day fixed by him.
- (2) The hotelkeeper shall not be liable where, in this case, he lets the room to another person, unless he has received notice from the guest, or anyone acting on his behalf, that the guest wants the room to be kept.
- (3) Where the hotelkeeper has received an advance, he shall put the room at the disposal of the client in so far as he is covered by this advance.



**Art. 2356. - Required Behavior.**

- (1) The hotelkeeper and the guest shall behave in a manner and show the consideration which the other could reasonably expect.
- (2) The guest shall, in particular, observe those reasonable rules of behavior established by the hotelkeeper and brought to the attention of the guest.
- (3) In the event that either party seriously or persistently breaches his obligations under this article, the other party shall be entitled to terminate the contract.

**Art. 2357. - Furnishing and Material Resources.**

In addition to the room engaged, the hotelkeeper shall provide the guest with furniture and material resources necessary for lodging, such as light and heating, in accordance with the class of the hotel and usages.

**Art. 2358. - Force Majeure.**

- (1) A hotelkeeper's contract shall be terminated before or during the occupation of the room by the guest when, as a consequence of *force majeure*, it is impossible for the hotelkeeper to provide, or for the guest to occupy, the room.
- (2) If the contract is terminated under sub-Article (1), no damages are payable except that a party relying on the *force majeure* shall be liable for any damage caused to the other party by his failure to take all reasonable steps to notify that party of the termination.

**Art. 2359. - Advance Payment.**

- (1) If the hotelkeeper receives a sum of money or credit in advance, it shall be considered to be an advance payment towards the price of the lodging and services to be provided under the contract.

- (2) The hotelkeeper may apply the advance payment to any liability owed to him by the guest under the contract or the provisions of this Chapter.
- (3) He shall return the advance payment to the extent it exceeds the amount due him.

**Art. 2360. - Liability for Death or Personal Injury. - 1. General.**

- (1) The hotelkeeper shall be liable for the loss or damage resulting from the death of, or any personal injuries to, a guest caused by an event occurring on the premises of the hotel or in any other place under the supervision of the hotelkeeper.
- (2) However, he shall not be liable where he proves that the loss or damage was due to a cause beyond his control which he could not reasonably be expected to resist or avoid.

**Art. 2361. - 2. Consumption of Food and Drink.**

The hotelkeeper shall be liable for any loss or damage resulting from death or any personal injury caused by the consumption of food or drink provided to the guest unless the hotelkeeper proves that the food or drink was fit for human consumption.

**Art. 2362. - 3. Fault of Guest.**

Where the hotelkeeper is liable under the provisions of Article 2360 and 2361, the compensation due to the guest shall be reduced to the guest to the extent that the hotelkeeper proves that the loss or damage was caused by the fault of the guest.

**Art. 2363. - Care of Luggage.**

The hotelkeeper shall receive the guest and look after his luggage, without a right to additional payment, from the morning when the room is engaged until the evening of the day when it is to be vacated.

**Art. 2364. - Custody of Valuables.**

- (1) The hotelkeeper shall provide for the safe custody of the guest's valuable articles unless these articles are excessively valuable or cumbersome.
- (2) The hotelkeeper may inspect the articles tendered by the guest and may require that the valuable items be put in a fastened or sealed container.

**Art. 2365. - Right of Retention.**

- (1) The hotelkeeper may retain the property brought into the hotel by the guest until the total payment due to him on account of the guest's stay at the hotel has been made.
- (2) He shall have in relation to such property the rights and benefits of a pledgee.

**Art. 2366. - Principle of Liability.**

- (1) The hotelkeeper shall have the same liability as a paid depositary for the things that his guests have brought into the hotel or any other place under the supervision of the hotelkeeper.
- (2) Evidence that the things had been brought into the hotel by a guest may be adduced by any means.

**Art. 2367. - Limitation of Liability.**

The liability of the hotelkeeper for the loss or damage to the guest's property shall be limited to fifty times the charge for the lodging and services provided under the contract.

**Art. 2368. - Unlimited Liability. - 1. *Fault or Actual Deposit.***

The liability of the hotelkeeper shall however be unlimited where:

- (a) the loss or damage is due to the fault of the hotelkeeper or a member of his family, or a member of his staff; or

- (b) the loss or damage occurs to valuable articles which the guest has especially deposited with the hotelkeeper.

**Art. 2369. - 2. Refusal of Deposit.**

- (1) The liability of the hotelkeeper shall also be unlimited where the loss or damage occurs to property that the hotelkeeper has refused, without good cause, to have deposited with him.
- (2) There shall be good cause where the goods are excessively valuable or are cumbersome.

**Art. 2370. - Non-Liability.**

- (1) The hotelkeeper shall not be liable if he can prove that the loss or damage to property was due to the fault of the guest himself, or persons who have visited or accompany him or are employed by him.
- (2) He shall also be released from liability where the loss or damage was due to the nature of or a defect in the thing or to *force majeure*.

**Art. 2371. - Obligation to Give Notice.**

- (1) The guest shall notify the hotelkeeper as soon as is reasonably possible after the guest learns of the loss or destruction of the property.
- (2) If the guest fails to notify him, the hotelkeeper shall be released from liability unless the guest proves that the damage was caused by the hotelkeeper's negligent or intentional act or omission.

**Art. 2372. - Provision of Non-Liability.**

Any contractual term excluding or limiting the liability of a hotelkeeper for the loss of or damage to a guest's property shall be of no effect.

**Art. 2373. - Scope of the Law.**

- (1) The provisions of this Chapter shall apply from the time when the things enter the hotel, unless the guest, having sent them in advance, does not arrive.
- (2) They shall also apply to things, such as motor vehicles or live animals, accommodated in premises adjacent to the hotel or put at the disposal of the guests by the hotel.

**Chapter 4. - Mandate**

**Section 1. - General Provisions**

**Art. 2374. - Definition.**

- (1) Mandate is a contract whereby one party, the mandatary, binds himself toward the other party, the mandator, to perform one or more juridical acts on account of the mandator without there being a relationship of employment.
- (2) The contract may oblige the mandatary to act in his own name; it may also oblige him to act in the name of the mandator.

**Art. 2375. - Granting of Mandate.**

- (1) Mandate can be granted expressly or tacitly.
- (2) Where the juridical act to be performed by the mandatary is under the law to be made in a prescribed form, such form shall be complied with in granting mandate.
- (3) When a juridical act has been performed in the name of another person, the other party who, on the basis of a declaration or conduct of that other person, has presumed and in the given circumstances could reasonably presume the existence of a sufficient mandate, may not have invoked against him the inaccuracy of this presumption.
- (4) If a mandate, which has been made public pursuant to law or usage, contains restrictions which are so unusual that

the other party should not have anticipated their existence, they cannot be invoked against such party, unless he had actual knowledge of them.

**Art. 2376. - General and Special Mandate.**

- (1) A general mandate is the mandate which applies to all affairs of the mandator and to all juridical acts, with the exception of that which has been unequivocally excluded.
- (2) A general mandate does not extend to acts of disposition, unless this has been unequivocally provided in writing.
- (3) A special mandate which has been granted in general terms does not extend to acts of disposition, unless this has been unequivocally provided. Nevertheless a mandate granted for a specific purpose extends to all acts of management and disposition which can serve to attain this purpose.

**Art. 2377. - Incapacity.**

- (1) The fact that a person is incapable of performing juridical acts for himself does not make him incapable of acting as a mandatary.
- (2) A juridical act performed by a mandatary pursuant to a mandate granted by an incapable is valid, void or avoidable just as it would have been, had it been performed by the incapable person himself.

**Art. 2378. - Two or More Persons.**

- (1) If a mandate has been entered into with two or more mandataries, each of them is empowered to act independently, unless it has been provided otherwise.
- (2) The mandataries are solidarily liable toward the mandator.

**Art. 2379. - Complete Mandate.**

- (1) A mandator is bound by the juridical act which has been performed in his name by the mandatary acting within the limits of his power.
- (2) To the extent that the existence of intent, or defects of consent or the awareness of certain facts, or the absence of these factors are relevant to the validity or to the effects of a juridical act, consideration is given to those factors as they relate to the mandator, the mandatary or both, according to the part which each of them has played in the formation of the juridical act and in the determination of its content.

**Art. 2380. - Applicability *Mutatis Mutandis*.**

- (1) The provisions of this Chapter apply *mutatis mutandis* to contracts other than mandate and pursuant to which one party is obliged or entitled to perform juridical acts on account of the other party, to the extent that this is not contrary to the necessary implication of the provisions involved, in connection with the nature of the contract.
- (2) The preceding sub-Article does not apply to contracts to transport persons or things, or to have them transported.

**Section 2. - Relationship between the Parties and with Third Parties**

**Paragraph 1. - Obligations of the Mandatary to the Mandator**

**Art. 2381. - Reasonable Care.**

In his activities the mandatary must exercise the care of a reasonable and prudent person.

**Art. 2382. - Instructions.**

- (1) The mandatary must follow timely and justifiable instructions regarding the performance of the mandate.

- (2) The mandatary who, upon reasonable grounds, is not willing to perform the mandate according to the instructions given to him, may, where the mandator nevertheless holds him to those instructions, terminate the contract for serious reasons.

**Art. 2383. - Information and Account.**

- (1) The mandatary must keep the mandator informed of his activities in performing the mandate, and he must notify him without delay of the completion of the mandate, if the mandator is unaware thereof.
- (2) The mandatary must render account to the mandator of the manner in which he has performed his mandate. Where, in performing the mandate, he has disbursed moneys at the expense of the mandator, or has received moneys to the latter's benefit, he must render account thereof.

**Art. 2384. - Substitution.**

Unless otherwise provided, a mandatary may grant his mandate to another person only in the following cases:

- (a) where the power to delegate flows necessarily from the nature of the juridical acts to be performed or is in conformity with usage;
- (b) where the delegation of the mandate is necessary in the interest of the mandator who is unable to act himself;
- (c) where the mandate concerns property which is situated outside the country in which the mandatary has his domicile.
- (d) where mandate has been granted with consideration to a person who exercises a profession or a business with the mandator or in his service, to the extent that it results from the mandate itself that he may have it performed by others under his responsibility. The foregoing is without prejudice to the liability of the mandatary.



**Art. 2385. - Conflicting Interests.**

- (1) If a juridical act performed by a mandatary involves the mandatary in a conflict of interests of which the other party knew or could not have been unaware, the mandator may annul the juridical act.
- (2) There is presumed to be a conflict of interest if:
  - (a) the mandatary also acted as a mandatary for the other party; or
  - (b) the juridical act was with himself in his personal capacity.
- (3) However, the mandator may not annul the juridical act if:
  - (a) he had consented to or could not have been unaware of the mandatary's so acting; or
  - (b) the mandatary had disclosed the conflict of interest to him and he had not objected within a reasonable time.
- (4) A mandatary is not entitled to remuneration in his relationship with the mandator in respect of whom he acts in violation of the provisions of the preceding sub-Articles, and this without prejudice to the mandatary's obligation to repair the damage suffered by that mandator as a consequence thereof. There may be no derogation from this provision to the detriment of a mandator.

**Art. 2386. - Mandatary Acting as Co-Contracting Party of Mandator.**

- (1) A mandatary can only act as co-contracting party of the mandator, if the content of the juridical act is so precisely determined that conflict of interests between them is excluded.
- (2) A mandatary who may only act in his own name can nevertheless act as co-contracting party of the mandator, if the content of the juridical act is so precisely

determined that conflict of interests between them is excluded.

- (3) If the mandator is a natural person who has granted the mandate otherwise than in the course of a profession or business, his written permission is required, upon pain of annulment, for a juridical act in which the mandatary acts as co-contracting party of the mandator.
- (4) The mandatary who acts as the co-contracting party of the mandator, in accordance with the preceding sub-Articles, retains his right to remuneration.

#### Paragraph 2. - Obligations of the Mandator to the Mandatary

##### **Art. 2387. - Remuneration.**

- (1) The mandator owes remuneration to the mandatary, if the latter has entered into the contract in the course of his profession or business.
- (2) If remuneration is owed but if the amount has not been fixed by the parties, the mandator owes remuneration as calculated in the habitual manner or, in the absence thereof, a reasonable remuneration.

##### **Art. 2388. - Reimbursement of Expenses.**

To the extent that they are not included in the remuneration, the mandator must reimburse the mandatary for the expenses connected with the performance of the mandate.

##### **Art. 2389. - Ratification.**

- (1) A juridical act entered into by a person acting, without power or outside the scope of his power, as mandatary in the name of another, may be ratified by the latter and the juridical act will then have the same effect as if it had been performed pursuant to a mandate.
- (2) Where a particular formality is required for the granting of a mandate to perform a juridical act, the same formality shall apply to the ratification.

- (3) Ratification has no effect, if at the time it is done, the third party has already let it be known that he considers the act to be invalid for want of mandate, unless this third party understood or under the circumstances ought to have understood, at the time of his acting, that no sufficient mandate had been granted.
- (4) A person who is directly interested can determine a reasonable period for ratification by the person in whose name the act has been performed. He does not have to accept a partial or conditional ratification.
- (5) Rights granted by the mandator to third persons before the ratification, are respected.

### Paragraph 3. - Rights and Obligations of Third Parties

#### **Art. 2390. - Disclosure of the Mandator.**

- (1) A person who enters into a contract in the name of a mandator yet to be named must disclose the mandator's name within the period provided for by law, contract or usage or, in the absence thereof, within a reasonable period.
- (2) When he does not disclose the name of the mandator in a timely fashion, he is deemed to have entered into the contract for himself, unless the contract produces a different result.

#### **Art. 2391. - Liability of the Mandatary.**

- (1) A mandatary who acts without power or who acts outside the scope of his power, failing ratification, is liable to pay the third party such compensation as will place the third party in the same position as he would have been in if the mandatary had acted with power and within the scope of his power.
- (2) The mandatary shall not be liable, however, if the third party knew or ought to have known that the mandatary had no power or was acting outside the scope of his

power, or if the mandatary had fully communicated the content of the mandate to the other party.

**Art. 2392. - Proof of Mandate.**

- (1) A party may refuse to accept a declaration made by a mandatary, if he has forthwith asked the mandatary for proof of the mandate and he does not receive without delay proof in writing of the mandate nor confirmation thereof by the mandator.
- (2) Proof of mandate cannot be required if the mandator has informed the other party of the mandate, if it has been made public in a manner determined by law or usage, or if it results from an appointment known to the other party.

**Art. 2393. - Damage of Mandator.**

If, in his own name, a mandatary has entered into a contract with a third person who fails in the performance of his obligations, the third person must, with respect to the mandatary and within the bounds of what otherwise results from the law with respect to his obligation to repair damage, also repair the damage which the mandator has suffered through the failure.

**Art. 2394. - Transfer of Rights of Mandatary to Mandator.**

- (1) If a mandatary who has entered into a contract with a third person in his own name, does not perform his obligations with respect to the mandator or goes bankrupt, the mandator can have those rights of the mandatary with respect to the third person which are susceptible of transfer, transferred to him by a written declaration to both of them, except to the extent that these rights belong to the mandatary in his mutual relationship with the mandator.
- (2) The mandator has the same power if the third person does not perform his obligations with respect to the mandatary, unless the latter satisfies the mandator as if the third person had performed his obligations.

- (3) In the cases referred to in this article, the mandatary must inform the mandator, upon his request, of the name of the third person.

**Art. 2395. - Rights of third Person Exercised against Mandator.**

- (1) If a mandatary who has entered into a contract with a third person in his own name, does not perform his obligations with respect to the third person or goes bankrupt, the third person can exercise against the mandator the rights resulting from the contract after written notification to the latter and the mandatary, to the extent that the mandator is correspondingly obliged toward the mandatary at the time of the notification.
- (2) In the cases referred to in this article, the mandatary must inform the third person, upon his request, of the name of the mandator.

**Paragraph 4. - Termination of the Mandate**

**Art. 2396. - Termination of the Contract by Mandatary or Mandator.**

- (1) The mandatary may terminate the contract at any time.
- (2) The mandatary who has entered into the contract in the course of a profession or business, may only terminate the contract for serious reasons, if it is valid for an indefinite duration and if it is not terminated by accomplishment.
- (3) Without prejudice to article 2388, a natural person who has granted a mandate otherwise than in the course of a profession or business, owes no reparation of damage with respect to a termination. There may be no derogation from this provision.

**Art. 2397. - Other Causes of Termination.**

- (1) In addition to a termination pursuant to the preceding Article, mandate is terminated by:

- (a) the death, the judicial interdiction or the bankruptcy of the mandator, upon the proviso that the death or the judicial interdiction terminates the contract at the time when the mandatary becomes aware thereof.
  - (b) Revocation by the mandatary.
  - (c) the death, the judicial interdiction or the bankruptcy of the mandatary.
- (2) Where the contract involves the performance of a juridical act in the interest of the mandatary or of a third person, it may be provided that it cannot be terminated by the mandator, or that it will not terminate upon his death or judicial interdiction. The former provision includes the latter, unless a different intention is evident. Where the contract contains such a provision, the other party may assume that the requirements for the validity of that provision have been fulfilled, unless the contrary must be obvious to him. The Court, upon the request of the mandator, an heir or the guardian of the mandator may, for serious reasons, modify or render inoperative a provision as referred to in this sub-Article.
- (3) Where the mandate is terminated by the death or the judicial interdiction of the mandator, the mandatary must nevertheless do all that is required by the circumstances in the interest of the other party.
- (4) Where the mandate is terminated by the death of the mandatary, the heirs must do all that is required by the circumstances in the interest of the other party, if they have knowledge of the succession and the mandate. Those in whose service or with whom the mandatary exercised a profession or business have an analogous obligation.

**Art. 2398. - Authority after Termination by Death, Judicial Interdiction or Renunciation.**

- (1) Notwithstanding the death or the judicial interdiction of the mandator, the mandatary remains empowered to per-

form juridical acts which are necessary for the management of a business.

- (2) Notwithstanding the death or the judicial interdiction of the mandator, the mandatary remains empowered to perform juridical acts which cannot be postponed without causing prejudice. The same applies if the mandatary has renounced the mandate.

**Art. 2399. - Documents Evidencing a Mandate.**

- (1) After termination of the mandatary, the mandatary, upon demand, must either give back the documents which are evidence of the mandate or allow the mandator to note on them that the mandate has been terminated. Where a mandate is granted by notarial deed, the notary who is in possession of the minute notes upon the request of the mandator, the termination of the mandate on that minute.
- (2) A mandator who has reason to believe that a mandatary will make use of a mandate despite its termination, may request that the registrar of the Court determine the manner of publication of the termination of the mandate; this termination is opposable to all upon publication.

**Art. 2400. - Entitlement to Remuneration in Case of Termination.**

- (1) If the contract is terminated before the mandate has been accomplished or the time for which it has been granted has lapsed, and if the indebtedness for remuneration is dependent upon the accomplishment or upon the lapse of that time, the mandatary is entitled to part of the remuneration to be determined according to reasonableness. In this determination, one takes account of, amongst others, the activities already performed by the mandatary, the benefit which the mandator derives therefrom, and the ground upon which the contract has been terminated.
- (2) In the case referred to in sub-Article (1), the mandatary is only entitled to full remuneration if the termination of the contract can be imputed to the mandator, and if full remuneration is reasonable taking into account all the

circumstances of the case. The savings which result for the mandatary from the premature termination, are deducted from the amount of the remuneration.

- (3) There may be no derogation from this provision to the detriment of a mandator who is a natural person who has granted a mandate otherwise than in the course of a profession or business.

#### **Art. 2401. - Limitation of Right of Action to Remit Documents.**

A right of action against the mandatary to remit documents which he has obtained with respect to the mandate, is prescribed by the lapse of five years from the beginning of the day following the one on which his endeavours have terminated.

#### **Art. 2402. - The End of Mandate in Relation to an Unknowing Other Party.**

- (1) An event which has terminated the mandate may only be invoked against the other party who had no actual knowledge of the termination of the mandate nor of the event in the following circumstances:
  - (a) If the termination of the mandate or the event which has terminated it has been communicated to the other party or has been made public in a manner which, by virtue of law or common opinion, justifies that the mandator can set up the termination of the mandate against the other party;
  - (b) If the death of the mandator was generally known;
  - (c) If the appointment or employment that gave rise to the mandate has been terminated in a fashion apparent to third persons;
  - (d) If the other party has obtained knowledge of the mandate solely by means of a declaration by the mandatary.



- (2) A mandatary who continues to act in the name of the mandator in the circumstances described in sub-Article (1) is liable to pay damages to the other party who had no actual knowledge of the termination of the mandate. The mandatary is not liable if he did not know nor ought to have known that the mandate had been terminated.

**Art. 2403. - Heirs of the Mandator.**

A valid juridical act, performed pursuant to the mandate and despite the death of the mandator, binds the heirs of the mandator and the other party as if the act had been performed during the lifetime of the mandator.

**Section 3. - Commission**

**Paragraph 1. - Commission to Buy or to Sell**

**Art. 2404. - Definition.**

The commission to buy or to sell is a contract of mandate whereby the mandatary, called the commission merchant, undertakes to buy or to sell in his own name but on behalf of another person, called the principal, goods, securities or other fungible things.

**Art. 2405. - Measures of Preservation.**

- (1) The commission merchant shall take all necessary steps for the preservation of the goods sent to him on behalf of the principal and safeguard the latter's rights against the carrier when the goods seem to have been damaged or their arrival has been delayed.
- (2) He shall forthwith notify these incidents to the principal, as well as the fact that the goods have not arrived.
- (3) Such duties shall be carried out by a person notwithstanding that he has not accepted the commission, where the commission falls within his professional activity.

**Art. 2406. - Sale of Goods.**

Where there is a risk that the goods consigned for sale will quickly deteriorate, the commission merchant may and, where it is in the interest of the principal, shall have them sold with the assistance of the competent authorities at the place of their location.

**Art. 2407. - Anticipated Payment.**

The commission merchant shall act at his own risk where, without the principal's consent, he pays the seller before delivery has taken place.

**Art. 2408. - Sale on Credit.**

- (1) The commission merchant may grant time for payment to the buyer where such is the custom of trade at the place of sale and the principal has not given him contrary instructions.
- (2) The commission merchant who grants time for payment shall inform the principal as to the person of the buyer and the period of time granted for payment.
- (3) Failing such notification by the commission merchant, the transaction shall be deemed to be made on a cash basis and the provisions of the following Article shall apply.

**Art. 2409. - Unauthorized Credit.**

- (1) Where the commission merchant grants time for payment contrary to the instructions of the principal or usage, the principal may demand immediate payment.
- (2) In such a case, the commission merchant may retain the benefits he received in granting time for payment.

**Art. 2410. - Guarantee Given by Commission Merchant.**

- (1) The commission merchant shall be liable to the principal for the payment or the performance of other obligations

by the persons with whom he contracted where he acted as *del credere* commission merchant.

- (2) Unless otherwise agreed, a commission merchant entrusted with the purchase or sale of securities shall be deemed to be a *del credere* commission merchant.
- (3) A commission merchant entrusted with the purchase or sale of goods shall be deemed to be a *del credere* commission merchant where such is the custom of trade in the place where he resides or where he guaranteed the solvency of the persons with whom he contracted.

**Art. 2411. - *Del Credere* Commission Merchant.**

- (1) The *del credere* commission merchant is a guarantor jointly liable with the person with whom he contracted.
- (2) He shall in all cases be liable to the principal for the performance of the contract he entered into unless non-performance was due to the principal's default.

**Art. 2412. - Insurance.**

The commission merchant shall not be bound to insure the goods unless the principal instructed him to do so.

**Art. 2413. - Remuneration of Commission Merchant.**

- (1) Where the remuneration of the commission merchant has not been agreed upon between the parties, it shall be fixed in accordance with the custom of the place where the contract was entered into by the commission merchant.
- (2) Failing such custom, the Court shall fix it on the basis of equity having regard to the work performed by the commission merchant, the expenses he incurred and the risks he assumed.
- (3) Where he acted as *del credere* commission merchant, the commission merchant shall be entitled to a special

remuneration to be fixed under the terms of the contract or in accordance with usage or equity.

**Art. 2414. - When Remuneration is Due.**

- (1) The commission merchant shall be entitled to his remuneration for a specific transaction entrusted to him where the transaction is completed or where failure to complete it is due to a reason attributable to the principal.
- (2) He shall not be entitled thereto where the transaction was not completed for other reasons, subject to any contrary usage in the place of his professional activity.

**Art. 2415. - Forfeiture of Right to Remuneration.**

- (1) The right to remuneration shall be forfeited where the commission merchant acts dishonestly towards the principal.
- (2) It shall be forfeited in particular where he pretends that he purchased at a higher price or sold at a lower price than he actually did.

**Art. 2416. - Outlays and Advances.**

- (1) The commission merchant shall be entitled to be reimbursed with interest all outlays and advances made by him in good faith to carry out the transactions entrusted to him by the principal.
- (2) Unless otherwise agreed, such reimbursement shall be due to him notwithstanding that the transaction entrusted to him could not be effected.

**Art. 2417. - Priority.**

- (1) The commission merchant shall have a priority for the payment of the sums due to him by the principal.
- (2) He may exercise this right on all goods in his possession which he was instructed to buy or to sell on behalf of the principal.

- (3) He may exercise it on the monies he received from a buyer for the principal.

**Art. 2418. - Dealings on Own Account.**

- (1) The commission merchant entrusted with the sale or purchase of goods quoted on the stock exchange or having a market value may, in the absence of contrary instructions by the principal, effect the transaction as a third party on his own account and conclude the contract with himself.
- (2) In such a case, he shall remain entitled to the remuneration agreed upon or resulting from usage.
- (3) The price fixed for the transaction may not be less than the price intimated to him by the principal nor than the price quoted on the stock exchange or the market price.

**Art. 2419. - Presumption.**

Where the commission merchant who is himself entitled to act as buyer or seller notifies the principal of the carrying out of a transaction without naming the person with whom he contracted, he shall be deemed to have assumed the obligations of buyer or seller on his own account.

**Art. 2420. - Termination of Commission.**

The commission shall not terminate where the principal or the commission merchant dies, becomes incapable or is declared absent where the heirs or representative of the principal or commission merchant continue his commercial activity.

**Paragraph 2. - Forwarding Contract**

**Art. 2421. - Forwarding Contract.**

- (1) The forwarding contract is a contract whereby the one person, called the commission merchant, shipper or forwarder, undertakes to enter in his own name but on behalf of another person, called the principal, into a contract for the forwarding of goods.

- (2) The rules governing the contract of commission to buy or to sell shall apply to this contract.

**Art. 2422. - Insurance and Dealings on Own Account.**

- (1) Unless otherwise agreed, the forwarder shall not be bound to insure the goods.
- (2) He may himself undertake to effect their transport.
- (3) In such a case, he shall have the same rights and duties as a carrier.

**Chapter 5. - Publishing Contract**

**Art. 2423. - Definition.**

A publishing contract is a contract whereby a party, called the author, assigns in whole or in part his incorporeal property rights in a literary or artistic work to the other party, called the publisher, who undertakes to reproduce or produce the work and to distribute it to the public.

**Art. 2424. - Obligation to Disclose.**

Where all or part of the work has already been assigned to another publisher or has to the author's knowledge been otherwise published, the author shall inform the publisher of this before the contract is concluded.

**Art. 2425. - Form of Contract.**

A publishing contract is of no effect unless the author expressly authorizes the publisher to reproduce or produce his work.

**Art. 2426. - Assignment of Future Works. - 1. Conditions.**

- (1) The assignment by the author of a work which he has not yet executed shall be valid where it relates to a work or works, sufficiently well-defined, which, in the estimation of a reasonable person, the author can complete within a period not exceeding two years.

- (2) Where the author has assigned his rights in future works beyond this limit, he may at any time, notwithstanding any provision to the contrary, terminate the contract and retain the payments made to him by the publisher.

**Art. 2427. - 2. *Publisher's Prior Right.***

- (1) An author who has terminated his contract shall be bound to assign his rights to the publisher in preference to any other person for a period not exceeding five years from the date of termination of the contract.
- (2) He shall inform the publisher of such conditions as are proposed to him by third parties for the acquisition of these rights.
- (3) Unless the publisher notifies the author within a reasonable period whether he intends to avail himself of his prior right the right shall lapse.

**Art. 2428. - Effect.**

- (1) The contract shall transfer to the publisher the author's copyright in his work insofar as the transfer is necessary for the performance of the contract.
- (2) In cases of doubt, the provisions of the contract shall be interpreted in favor of the author.

**Art. 2429. - Restrictive Interpretation.**

The authorization given to the publisher to deal with the work in a certain manner shall be interpreted restrictively.

**Art. 2430. - Authorized Methods of Dealing with Work.**

- (1) However general the terms of the contract, the publisher shall acquire the right to deal with the work only by those methods the parties had in view or ought to have had in view when concluding the contract.
- (2) In this respect, regard shall be had to the estimation of a reasonable person.

**Art. 2431. - Modification and Translation.**

Unless otherwise agreed, an authorization to reproduce or produce a work is not an authorization to adapt it, to modify it or to authorize its translation.

**Art. 2432. - Reproduction in another Medium.**

- (1) Unless otherwise agreed, an authorization to reproduce or produce a work in one medium is not an authorization to reproduce or produce the work in another medium.
- (2) Unless otherwise agreed, an authorization to broadcast a work does not imply an authorization to record, by means of a machine involving the fixation of sounds or image, the work broadcast.
- (3) Unless otherwise agreed, an authorization to print a work does not imply an authorization to reproduce and publish the text in a digital form by such means as a computer disk, a CD-ROM, or the internet.

**Art. 2433. - Separate and Complete Works.**

- (1) The right to publish the works of an author separately shall not imply the right to publish them in the form of a complete edition.
- (2) The right to publish the complete works of an author, or a certain class of these works, shall not confer upon the publisher the right to publish the single works separately.

**Art. 2434. - Author's Warranty.**

The author shall warrant the publisher that he possesses and has the right to assign the literary or artistic copyright which he transfers to the publisher under the publishing contract.

**Art. 2435. - Rights Transferred to the Publisher.**

- (1) So long as the editions which the publisher has the right to issue are not out of print, the author may not dispose



of the work or any part thereof to the publisher's prejudice.

- (2) Contributions to a collective work, or articles, may not be republished by the author before the expiration of three years from the date when the first publication was completed.

**Art. 2436. - Conflict between Two Publishers.**

- (1) Where the author, having assigned his rights to a publisher, assigns the same rights to another publisher, the contract concluded with the latter publisher shall be valid unless that publisher knew of the first contract.
- (2) The author shall make good the damage done to each publisher.

**Art. 2437. - Reproduction of the Work.**

- (1) The publisher shall reproduce the work in an appropriate form, without abridgements, additions or modifications.
- (2) He shall ensure publicity for the work and take the usual steps to ensure its distribution.
- (3) He shall fix the selling price.

**Art. 2438. - Author's Corrections.**

- (1) The author may at any time make corrections or improvements to his work, provided that they do not prejudice the publisher's interests or increase his liability.
- (2) Where these corrections or improvements involve the publisher in expense, the author shall indemnify him for it.

**Art. 2439. - New Edition.**

Before issuing a new edition or a new impression, the publisher shall give the author an opportunity to correct or to improve his work.

**Art. 2440. - Authorized Editions and Impressions.**

- (1) Unless otherwise agreed, the publisher shall have the right to publish only one edition of the work.
- (2) Where the contract fails to specify how many copies an edition shall comprise, the publisher shall determine the size of the impression.

**Art. 2441. - Edition Out of Print.**

- (1) Where the contract authorizes the publisher to publish several editions or all the editions of a work, the author may, when the last edition of the work goes out of print, allow the publisher a period of one year within which to issue a new edition.
- (2) The publisher shall forfeit his rights if he fails to publish a new edition within this period.
- (3) Any provision to the contrary shall be of no effect.

**Art. 2442. - Effect in the Case of Successive Editions.**

- (1) Where the publisher is entitled to issue several editions, the conditions agreed upon for the first edition shall be deemed to apply to each subsequent edition.
- (2) The provisions of sub-Article (1) shall apply in particular to the conditions relating to the author's remuneration.

**Art. 2443. - Author's Remuneration. - 1. Principle.**

- (1) A person assigning a work for publication shall be entitled to a remuneration unless there are circumstances justifying the assumption that he agreed to forego any remuneration.
- (2) In the absence of agreement between the parties, the remuneration due to the author shall be fixed by the Court in accordance with equity.

**Art. 2444. - 2. Free Copies.**

- (1) The author shall be entitled to free copies.
- (2) The number of free copies shall be that determined by the publishing contract or by custom.
- (3) In the absence of a contractual term or custom, the Court shall fix the number in an equitable manner.

**Art. 2445. - 3. Payment.**

- (1) The author's remuneration shall be due as soon as the work is ready for sale.
- (2) Where the parties have agreed that the author's remuneration shall depend either wholly or partly on the expected sales, the publisher shall submit proofs of sale to the author at agreed intervals.
- (3) Failing any agreement, the publishers account shall be rendered to the author during the first month of each year.

**Art. 2446. - Loss of work. - 1. Before Publication.**

- (1) Where, after its delivery to the publisher, the work is accidentally lost or destroyed before publication, the publisher shall pay the author his remuneration.
- (2) Where the author has a copy of the lost work, he shall place it at the publisher's disposal.
- (3) In other cases, he shall do the work again, against reasonable compensation, if this can be easily done and the publisher so requests.

**Art. 2447. - 2. After Publication.**

- (1) Where the edition made ready by the publisher is accidentally lost or destroyed, wholly or partly, the publisher may replace the lost copies at his own expense.

- (2) The publisher shall replace the lost copies where he can do so without unreasonable expense.

**Art. 2448. - Lapse of Contract.**

- (1) A publishing contract shall lapse where the author dies or becomes incapable before the work is completed or where, without his fault, he is prevented from completing it.
- (2) The death or incapacity of the publisher shall not terminate the contract.
- (3) Where insolvency proceedings have been opened against the publisher, the author may entrust the work to another publisher, unless he is given security for the performance of those of the publisher's obligations which have not been performed at the time when the insolvency proceeding was opened.

**Art. 2449. - Work Planned by Publisher.**

- (1) Where several authors contribute to a work in accordance with a plan laid before them by the publisher, they may only claim the compensation agreed on.
- (2) The copyright belongs to the publisher.

## **TITLE IV - CONTRACTS FOR THE PROVISION OF SECURITY**

### **Chapter 1. - Suretyship**

#### **Art. 2450. - Principle.**

Suretyship is a contract by which a person, the surety, binds himself towards the creditor to perform the obligation of the debtor if he fails to fulfill it.

#### **Art. 2451. - Consent of Debtor.**

A suretyship may be given without any request from the debtor for whom it is undertaken or without his knowledge.

#### **Art. 2452. - Form.**

- (1) A suretyship shall not be presumed.
- (2) It shall be express and may not be extended beyond its contractual limits.
- (3) The contract of suretyship shall be of no effect unless it specifies the maximum amount for which the suretyship is given.

#### **Art. 2453. - Principal Obligation Void.**

- (1) A suretyship may not be given except in respect of a valid obligation.
- (2) An obligation resulting from a contract which, owing to mistake or incapacity, is not binding on the debtor, may validly be the object of a suretyship where the surety, on undertaking the suretyship, was aware of the defect pertaining to the debtor which vitiated the contract.

#### **Art. 2454. - Limits of a Suretyship.**

- (1) A suretyship may not exceed the amount owed by the debtor, nor be contracted on more burdensome terms.

- (2) It may be contracted in respect of part only of the obligation and subject to less burdensome terms.
- (3) A suretyship which exceeds the amount of the obligation, or which has been contracted on more burdensome terms, is not void but merely reducible to the amount of the primary obligation.

**Art. 2455. - Future or Conditional Obligations.**

- (1) A suretyship may be undertaken in respect of future or conditional obligations.
- (2) Where the time during which the surety is to be bound has not been stipulated in the instrument creating the suretyship, the surety may put an end to his undertaking so long as the primary obligation is not yet due.

**Art. 2456. - Extinction of Primary Obligation.**

- (1) The surety shall be released when the primary obligation is extinguished for any reason whatsoever.
- (2) The surety may set up against the creditor all the defenses available to the debtor, and the fact that the principal debtor might have waived them cannot be set up against him.
- (3) The fact that the obligation of the principal debtor is null by reason of a defect in the latter's consent or of his incapacity shall not affect the surety, where he bound himself with full knowledge of these circumstances.

**Art. 2457. - Substituted Performance.**

The voluntary acceptance by the creditor of an immovable or of any other asset in satisfaction of the primary obligation shall extinguish the suretyship even though the creditor may subsequently be evicted.

**Art. 2458. - Variation of Primary Obligation.**

- (1) Contracts entered into between the creditor and the principal debtor after the making of the contract of suretyship may not increase the liabilities of the surety.

- (2) The surety shall be released where the creditor, without his being expressly authorized to do so, allows time for payment to the debtor.

**Art. 2459. - Prescription.**

Proceedings instituted against the principal debtor shall interrupt the period of prescription as regards the surety.

**Art. 2460. - Interest.**

Unless otherwise agreed, where the obligation bears interest, the suretyship shall secure the payment of the interest within the limits of the maximum amount stated in the instrument of suretyship.

**Art. 2461. - Legal Costs.**

The surety shall be liable, even beyond the limits of the maximum amount stated in the instrument of suretyship, for the costs of any actions brought against the principal debtor, provided he received sufficient notice thereof enabling him to forestall them by performing the obligation.

**Art. 2462. - Exigibility of the Obligation.**

- (1) The surety may not be required to pay prior to the time fixed for the performance of the primary obligation notwithstanding that the obligation became exigible at an earlier date owing to the bankruptcy of the debtor.
- (2) Where the primary obligation is exigible only after previous notice is given to the debtor; such notice shall also be given to the surety.
- (3) The period of notice shall run as regards the surety from the day he was notified.

**Art. 2463. - Joint Suretyship.**

- (1) Where the person undertaking the suretyship described himself as joint surety, co-debtor, or used equivalent terms, the creditor may sue him without previously demanding payment from the debtor or realizing his securities.

- (2) The relevant provisions of this Chapter shall apply to joint suretyship.

**Art. 2464. - Simple Suretyship.**

- (1) Apart from the case mentioned in Article 2463, a surety shall not pay the creditor unless the principal debtor fails to perform his obligation.
- (2) The surety may demand that the creditor, before requiring him to pay, should discuss the principal debtor's assets and, in particular, realize the real securities available.

**Art. 2465. - Benefit of Discussion.**

- (1) The creditor shall not discuss the principal debtor unless the surety so requires as soon as he is first proceeded against.
- (2) The surety may not claim the benefit of discussion where the insolvency of the debtor has been judicially established.

**Art. 2466. - Assets to be Discussed.**

- (1) A surety requiring discussion shall indicate the debtor's assets to the creditor and advance sufficient money for the costs of their discussion.
- (2) He may indicate such debtor's properties as are subject to litigation, or situated outside the country of payment, or hypothecated as security for the obligation but no longer in the debtor's possession.

**Art. 2467. - Failure to Proceed.**

Where the surety has indicated the assets as provided in Article 2466 and has supplied sufficient money for their discussion, the creditor is answerable to the surety, up to the value of the assets thus indicated, for an insolvency of the principal debtor due to the creditor's failure to proceed.



**Art. 2468. - Summons to Proceed.**

- (1) Where the primary obligation has fallen due, the surety may demand that the creditor sue the principal debtor within six weeks for the enforcement of his rights.
- (2) The surety shall be released where the creditor fails to comply with this summons or to continue the proceeding with reasonable diligence.

**Art. 2469. - Tender of Payment.**

- (1) Where the primary obligation has fallen due, the surety may require that the creditor accepts the payment from him.
- (2) The surety shall be released where the creditor does not accept such payment or refuses to transfer to the surety the securities he enjoys.

**Art. 2470. - Surety's Indemnity Claim.**

- (1) The surety who has paid shall be indemnified by the principal debtor, whether the suretyship had been given with or without the latter's knowledge.
- (2) Such indemnity claim shall apply to the principal, interest and costs incurred.
- (3) The surety may claim to be refunded with such costs only as he incurred since he notified the principal debtor of the proceedings directed against himself.

**Art. 2471. - Damages.**

- (1) The surety may claim damages from the debtor where it was owing to the latter's fault or negligence that the surety had to pay the creditor.
- (2) The amount of such damages shall be fixed in accordance with the general rules on contract.

**Art. 2472. - Lapse of Indemnity Claim.**

- (1) The surety has the right and the duty to set up against the creditor all the defenses available to the principal debtor unless they are excluded by the nature of his suretyship.
- (2) The surety who fails to set up such defenses loses his indemnity claim in so far as these defenses would have relieved him of payment.
- (3) The provisions of sub-Article (2) shall not apply where the surety can prove that he was in ignorance thereof without his fault.

**Art. 2473. - Second Payment.**

- (1) The surety shall lose his indemnity claim where the debtor pays a second time because the surety failed to inform him of his own payment.
- (2) He may claim from the creditor what the latter unduly received from the debtor.

**Art. 2474. - Subrogation.**

- (1) ~~The surety shall be subrogated to the rights of the creditor to the extent of his payment to him.~~
- (2) The benefit of such subrogation may not be waived in advance.

**Art. 2475. - Duties of Creditor.**

The creditor shall hand over the documents of title to the surety who pays him and perform such formalities as will enable the surety to exercise his remedy and realize the securities available to the creditor.

**Art. 2476. - Impossibility of Subrogation.**

The surety shall be released of his obligation towards the creditor where the surety's subrogation to the rights, hypothecs and priorities of

the creditor can no longer be effected owing to the creditor's act or omission.

**Art. 2477.- Debtor's Bankruptcy.**

- (1) Where the debtor becomes bankrupt the creditor shall prove in the bankruptcy.
- (2) He shall inform the surety of the bankruptcy as soon as he is aware of it.
- (3) Where the creditor fails to comply with these rules, he shall lose his rights against the surety to the extent of the latter's loss resulting from such failure.

**Art. 2478. - Securities Due to Surety.**

The surety, even before he has paid, may take action against the debtor and demand securities from him where:

- (a) the debtor has been given notice to perform his obligation;
- (b) the debtor has been declared bankrupt; or
- (c) either by reason of the losses the debtor has suffered or as result of a fault committed by him the surety runs a considerably greater risk than when he undertook the suretyship.

**Art. 2479. - Counter-Surety.**

The counter-surety secures towards the surety the effectiveness of his indemnity claim against the principal debtor.

**Art. 2480. - Secondary Surety.**

- (1) A person may stand surety not only for the principal debtor but also for his surety.
- (2) The secondary surety shall be in the same position towards the surety as a simple surety is towards the principal debtor.

- (3) Merger between the principal debtor and the surety shall not extinguish the creditor's right of action against the secondary surety.

**Art. 2481. - Plurality of Sureties.**

- (1) Where several persons became at the same time sureties of the same debtor in respect of the same obligation, each of them shall be liable as simple surety for his share and as secondary surety for the shares of the others.
- (2) Where the sureties entered into their undertakings by successive acts, he who bound himself in the second place shall be held liable as secondary surety of the surety who bound himself before him.
- (3) Where the sureties expressly bound themselves as joint sureties either with the principal debtor or as between themselves, each of them shall be answerable for the whole debt, subject to contribution from the others proportionate to their shares.

**Chapter 2. - Contracts of Pledge**

**Section 1. - Contracts of Pledge in General**

Paragraph 1. - Conditions for the Validity of the Contract

**Art. 2482. - Definition.**

A contract of pledge is a contract whereby a debtor, the pledger, undertakes to deliver a thing, called the pledge, to his creditor, the pledgee, as security for the performance of an obligation.

**Art. 2483. - Person Furnishing the Pledge.**

- (1) A contract of pledge may be made between the creditor and a third party to secure the obligation of another person.
- (2) This third party is liable for depreciation of the pledge to the extent that the security of the creditor is endangered

by this depreciation and that he or a person for whom he is responsible can be blamed therefore.

**Art. 2484. - Obligation Secured.**

- (1) A contract of pledge may be made in order to secure a future or conditional obligation.
- (2) The obligation for which pledge is given must be sufficiently determinable.

**Art. 2485. - Form of Contract.**

- (1) The amount of the obligation secured or, when this amount has not yet been determined, the maximum amount for which recourse may be taken against the pledge shall in all cases be specified in the contract of pledge or the contract shall be void.
- (2) Where the amount exceeds 5,000 Nakfas, the contract of pledge shall not be valid except where it is evidenced by writing and as from the day when such deed acquires undisputed date.

**Art. 2486. - Pledge.**

- (1) The pledge may consist of a movable thing, a totality of effects, a claim or another right relating to movable property.
- (2) It must be susceptible of transfer.

**Art. 2487. - A Share in Property.**

A right of pledge on a share in property is established *mutatis mutandis* in the same fashion and with the same effects as those provided for the establishment of a contract of a right of pledge on that property.

**Art. 2488. - Creditor's Possession.**

- (1) The creditor shall be deemed to be in possession of the pledge where the document of title without which the pledge cannot be disposed of has been delivered to him.

- (2) The provisions of sub-Article (1) shall apply in particular where a voucher for goods warehoused, or the bill of lading or way-bill in the case of goods in transport, has been endorsed in his favor.

**Art. 2489. - Possession by an Agreed Third Party.**

- (1) The parties may agree that the pledge be delivered to a third party acceptable to them both.
- (2) The rights and duties of such third party shall be as prescribed by the provisions relating to the deposit of movables or warehousing.

**Art. 2490. - Debtor's Possession.**

- (1) The furnishing of a pledge without dispossession of the debtor may be made in such cases only as are expressly provided by law.
- (2) In all other cases, the contract shall be of no effect where it stipulates that the pledge shall remain with the debtor.

**Art. 2491. - Regulation of Contract of Pledge.**

- (1) The rules governing contracts of pledge are to be found, in addition to this Chapter, in the special laws relating to particular cases and forms of pledging or to the institutions authorized to lend against security.
- (2) The special rules governing the committal of goods in warehouses are given above in the Chapter on warehousing.

**Paragraph 2. - Rights and Duties of Pledger**

**Art. 2492. - Ownership of Pledge.**

- (1) The pledger shall retain his rights on the pledge, save for the restrictions arising out of the contract of pledge.
- (2) He may dispose freely of his rights and may in particular alienate the pledge or re-pledge it subsequently.

**Art. 2493. - Cost of Maintaining and Preserving the Pledge.**

- (1) The pledger must reimburse the pledgee for the expenses which the latter has paid for preservation and maintenance, including charges attached to the pledge that he has paid for; the pledge also serves as security for the reimbursement.
- (2) The pledgee cannot claim from the pledger other expenses which he has incurred for the benefit of the pledge, unless he has made them with the consent of the pledger;
- (3) the foregoing is without prejudice to the pledger's liability arising from management of the affairs of another or from unjustified enrichment.

**Art. 2494. - Abuse by Pledgee.**

Where the pledgee fails to observe the provisions of the law in respect of the pledge, the pledger may demand that it be delivered to a trustee.

**Art. 2495. - Premature Payment of the Obligation.**

- (1) The pledger may at any time demand the return of the pledge by paying the obligation secured by it.
- (2) Any stipulation to the contrary shall be of no effect.

**Art. 2496. - Pledge Furnished by a Third Party.**

- (1) Where the pledge has been furnished by a third party, no contract between the creditor and the debtor made subsequently to the furnishing of the pledge may impair the third party's position.
- (2) The pledger may set up against the creditor all the defenses the debtor himself could have raised, without it being possible to set up against him the fact that the debtor had waived them.

### Paragraph 3. - Rights and Duties of Pledgee

#### Art. 2497. - General Principle.

- (1) The pledgee shall have on his debtor's property the rights of a creditor.
- (2) He shall in addition have on the pledge the particular rights deriving from this Chapter.

#### Art. 2498. - Use of the Pledge.

The pledgee may not make use of the pledge without the pledger's consent, except where such use is necessary for its preservation.

#### Art. 2499. - Repledging.

A pledgee is not entitled to repledge the property pledged to him, unless this power has been unequivocally granted to him.

#### Art. 2500. - Fruits.

- (1) Where the pledge produces fruits, the creditor, or the custodian of the pledge, shall collect them.
- (2) The fruits shall become the property of the pledgee.
- (3) The value of the fruits produced by the pledge shall be applied successively to the expenses incurred for the custody and preservation of the pledge, to interest and to the capital of the obligation secured.

#### Art. 2501. - Action for Possession.

- (1) The pledgee as well as the pledger are entitled to institute actions against third persons to protect the pledged property, provided that the one who does so ensures that the other is joined in the action in a timely manner.
- (2) The custodian of the pledge shall inform the pledgee and the pledger without delay of circumstances requiring the institution of such actions.



**Art. 2502. - Third Party's Claim to the Pledge.**

The pledgee may exercise the rights deriving from the contract of pledge notwithstanding that the pledge has been delivered to him by a person who was not authorized to dispose of it.

**Art. 2503. - Exception.**

- (1) The owner of the pledge may take it back where he shows that the pledgee knew or should have known, on the making of the contract, that the other party was not authorized to pledge the thing.
- (2) He may also take the pledge back by performing the obligation secured by it.

**Art. 2504. - Possibility of Reclaiming Stolen Property.**

- (1) The owner from whom the pledge was stolen may reclaim it from the pledgee in good faith.
- (2) Such claim shall be barred if it is not made within three years from the time when the theft occurred.

**Art. 2505. - Return of Pledge.**

- (1) The creditor shall return the pledge to the pledger or to the person designated by him, where the contract of pledge is extinguished by payment of the obligation or for any other reason.
- (2) Until the pledge is returned, he shall be liable for the loss of or damage to the pledge in accordance with the provisions of Article 1972.

**Art. 2506. - Priority.**

The pledgee may retain the pledge until monies due to him under the provisions of this Chapter have been paid in full.

**Art. 2507. - Loss or Deterioration of the Pledge.**

Where the pledge has been entrusted to his keeping, the pledgee shall be liable for its loss or deterioration as provided in Article 1972 and 1973 of this Code.

**Art. 2508. - Subrogation to Property Rights.**

Where the pledge is lost or damaged for any reason whatsoever, the pledgee's rights shall apply to the compensation due for its replacement from the person liable for the loss or deterioration or from the insurer.

Paragraph 4. - Extinction of Contract of Pledge

**Art. 2509. - Accessory Character of the Contract.**

The contract of pledge shall be extinguished and the pledge shall be returned where the obligation it secured is extinguished.

**Art. 2510. - Indivisibility of pledge.**

The creditor may not be compelled to return the pledge or part thereof until he has been paid in full, notwithstanding that the obligation or pledge is divisible.

Paragraph 5. - Sale of Pledge

**Art. 2511. - *Commissoria Lex*.**

- (1) Any agreement, even subsequent to the furnishing of the pledge, authorizing the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by law shall be of no effect.
- (2) It may however be agreed, after the obligation has become due, that the debtor shall make over the pledge to the creditor in settlement of the obligation. Where the pledge is encumbered with another right of pledge or is under attachment, the cooperation of the other pledgee or of the attachor is also required.

**Art. 2512. - Effect on Third Parties.**

- (1) The contract of pledge shall not affect third parties unless the pledge is in the possession of the pledgee, or the person designated for the purpose by the parties, at the time when the pledgee invokes the contract.
- (2) The contract of pledge shall be of no effect where at that time the pledge is still in the debtor's possession or it has returned to his possession with the pledgee's consent or it is in the possession of a third party from whom the creditor cannot demand its return.

**Art. 2513. - Default.**

- (1) Before causing the pledge to be sold, the pledgee shall, unless otherwise stipulated, call upon the pledger to perform his obligation and give him, to the extent that this reasonably possible, due notice that, upon default, he will cause the pledge to be sold.
- (2) Similar notice shall be given to the third party who has furnished the pledge.
- (3) The notice must also be given to other pledgees or attachors of the pledge.
- (4) The notice must indicate, as accurately as possible, the sum for which the pledge may be redeemed. Redemption can take place up to the time of sale, provided that the costs of execution which have already been incurred are also paid.

**Art. 2514. - Sale of Pledge.**

- (1) Where, within eight days from the notice provided in Article 2513, no objection has been raised or the objection is dismissed, the pledgee may cause the pledge to be sold by public auction.
- (2) A pledgee or attachor with a lower rank can only sell the pledged property subject to the higher ranking rights of pledge.

- (3) Where the pledge is quoted on the market or at an exchange or has a current price, the pledgee may cause it to be sold by private contract through the intermediary of a person authorized to make such sales.

**Art. 2515. - Limitation by the Court.**

The Court may, on the application of the pledger, limit the creditor's right to the sale of one of the pledges which is sufficient to pay off the pledgee.

**Art. 2516. - Sale of Debtor's Property at First.**

- (1) If property of both the debtor and a third person has been pledged to secure one and the same debt, the third person can demand from the creditor who proceeds to execution that the property of the debtor be included in the sale as well and that it be sold first.
- (2) Where for one and the same obligation two or more items of property have been pledged, one of which is encumbered with another pledge which the creditor does not have to respect in the execution, the other pledgee has *mutatis mutandis* the same right as the one referred to in sub-Article (1).
- (3) If the creditor refuses to comply with a demand based upon sub-Article (1) and (2), the Court may rule upon this refusal, at the request of any interested party. The request suspends execution.

**Art. 2517. - Assignment of Pledge to the Pledgee.**

The pledgee may apply to the Court to order that the pledge be given to him in payment, to the extent of the amount due to him, according to an expert valuation or the current price of the pledge, where it is quoted on the market or at an exchange.

**Art. 2518. - Priority Right.**

- (1) The pledgee may be paid out of the proceeds of the sale of the pledge before all other creditors.

- (2) In addition to the obligation specified in the contract of pledge, the pledge shall secure the contractual interest and legal interest on the obligation and the expenses incurred for the custody, preservation or sale of the pledge.

**Art. 2519. - Limitation of Creditor's Rights.**

- (1) The pledgee may not enforce his priority right arising out of the contract of pledge beyond the maximum amount specified therein.
- (2) The pledgee may not enforce his priority right to obtain security for another debt, even if incurred subsequently to the contract of pledge, owed to him by the debtor or pledger.

**Art. 2520. - Disposal of Proceeds.**

- (1) The proceeds shall be attributed to the creditor to the amount of the obligation due to him and shall be deemed to have been paid by the pledger.
- (2) The balance of the proceeds shall be handed over to the pledger.

**Art. 2521. - Several Pledgees.**

- (1) Where the pledge is encumbered with several rights of pledge, the creditors shall be paid according to their rank.
- (2) The rank shall be determined by the dates on which the various pledges were entered into.

**Art. 2522. - Purchaser's Rights.**

The purchaser of the pledge shall acquire the ownership thereof free of any encumbrance.

**Art. 2523. - Creditor's Liability.**

A creditor who sells a thing belonging to a third party which has been duly pledged shall not be liable unless he knew or should have

known, on the making of the contract, that it belonged to the third party.

## Section 2. - Pledging of Claims or other Intangibles

### **Art. 2524. - Relation of Pledger and Debtor.**

The provisions governing the relations of a surety and principal debtor shall apply to the relations between a third party who has furnished a pledge and the principal debtor.

### **Art. 2525. - Claims Not Established by Title.**

- (1) The pledging of claims which are not established by a title shall, regardless of the amount of the sum secured, be executed in the form of a document specifying the claim pledged and the maximum amount of the obligation secured.
- (2) The pledging shall be notified, under pain of being declared void, to the debtor of the claim which has been pledged, or shall be accepted by him in a document of undisputed date.

### **Art. 2526. - Rights Not Established by Title.**

- (1) The pledging of rights which are not rights of claims and which are not established by a title shall be executed in the forms prescribed for the transfer of the said rights.
- (2) A document of undisputed date, and adequately specifying the right pledged and the obligation secured, shall be required in all cases, under pain of nullity.
- (3) Nothing shall affect such special provisions as may govern the pledging of some of such rights.

### **Art. 2527. - Acknowledgment of Debt.**

- (1) Where the claim or right pledged is established by an acknowledgment of debt or by another non-negotiable instrument, such instrument shall be delivered to the

pledgee or the third party named in the contract of pledge.

- (2) The pledging of claims and rights established by negotiable instruments shall be carried out in accordance with the provisions of the Commercial Code.

**Art. 2528. - Claims Producing Periodical Income. - 1. Extent of Pledge.**

- (1) A pledge founded on a claim yielding interest or other periodical income, such as a dividend, shall, unless otherwise provided, apply only to current benefits to the exclusion of those previously due.
- (2) Where such accessory benefits are represented by separate titles, they shall not be included in the pledge unless themselves committed in the form required by law.

**Art. 2529. - 2. Rights and Duties of Pledgee.**

- (1) The pledgee shall collect the interest on the claim pledged with him and all other periodical payments due from the debtor under his claim.
- (2) He shall apply the proceeds successively to the expenses due to himself, to interest and to the capital of the obligation secured.
- (3) The pledger may not object to such payment.

**Art. 2530. - Preservatory Measures.**

The pledgee shall take such steps as are necessary to prevent the extinction of the claim or right pledged with him.

**Art. 2531. - Pledged Shares.**

Pledged shares shall be represented at the annual general meeting of the company by the shareholder himself and not by the pledgee.

**Art. 2532. - Rights of Debtor of Claim Pledged.**

- (1) The debtor of the claim which has been pledged may set up against the pledgee the defenses he is entitled to raise against his own creditor.
- (2) Where he has accepted the pledging without reservation, he may however not oppose the setting-off of a counter-claim which arose against his own creditor before his acceptance.

**Art. 2533. - Collection of Obligation Pledged.**

- (1) The pledgee shall collect the obligation pledged with him when it falls due.
- (2) However, where the pledger objects to such payment, the debtor may obtain his release only by depositing the sum or the goods due from him.
- (3) Sums of money or other fungible things received in payment shall be deposited in the place agreed upon by the parties or, in the absence of such agreement, in a place fixed by the Court.

**Art. 2534. - Sale of Claim or Right Pledged.**

Where the obligation secured has become due, the pledgee may cause the obligation or right pledged with him, or the goods received from the debtor in payment, to be sold as provided in Section 1 of this Chapter.

**Art. 2535. - Reference to Preceding Section.**

Anything relating to the pledging of claims or intangibles that is not governed by this Section shall be governed by the provision of Section 1 of this Chapter.



## **Chapter 3. - Immovable Hypothecs**

### **Section 1. - Creation of Hypothec**

#### **Art. 2536. - Creation of Immovable Hypothec.**

A hypothec may result from the law or a judgment or be granted by a contract or other private agreement.

#### **Art. 2537. - Legal Hypothec of Seller of Immovable.**

Whosoever sells an immovable shall have a legal hypothec on such immovable as a security for the payment of the agreed price and for the performance of any other obligation laid down in the contract of sale.

#### **Art. 2538. - Legal Hypothec of Co-Partitioner.**

- (1) A co-partitioner shall have a legal hypothec on the immovables allotted to his co-partitioners in accordance with the act of partition.
- (2) Such hypothec shall secure the payment of any compensation in money that may be due to him or such other compensation as may be due by the co-partitioners where he is dispossessed of any property allotted to him.

#### **Art. 2539. - Judicial Hypothec.**

- (1) A Court or arbitration tribunal may secure the execution of its judgments, orders or awards by granting one party a hypothec on one or more immovables the property of the other party.
- (2) The judgment or award shall specify the amount of the claim secured by hypothec and the immovable or immovables to which such hypothec applies.

#### **Art. 2540. - Instrument Granting Hypothec.**

- (1) The contract or other agreement granting a hypothec shall be of no effect unless it is made in writing.

- (2) It shall be of no effect unless it specifies the amount of the obligation secured or, when this amount has not yet been determined, the maximum amount for which recourse may be taken against the hypothec.
- (3) In the instrument creating hypothec the hypothecary creditor must elect domicile in Eritrea.

**Art. 2541. - Claim Secured by Hypothec.**

- (1) A hypothec may be granted to secure any claim whatsoever, whether existing, future, conditional or contingent.
- (2) The obligation for which hypothec is granted must be sufficiently determinable.

**Art. 2542. - Property Liable to Hypothec.**

- (1) A hypothec may charge an immovable only.
- (2) Nothing shall affect the provisions of this Code or special laws whereby certain kinds of movables may be hypothecated.

**Art. 2543. - Hypothecated Immovable.**

- (1) The act granting the hypothec shall clearly specify the immovable that is hypothecated.
- (2) Such act shall specify in particular the commune in which the immovable is situated, the nature of the immovable and, where appropriate, the number of the immovable in the cadastral survey plan.
- (3) Where the immovable is situated in an area where there is no cadastral survey plan, not less than two of its boundaries shall be specified.

**Art. 2544. - Conditions for Granting a Hypothec.**

- (1) A hypothec may be granted by the debtor or by a third person in favor of the debtor.

- (2) A person may not secure his obligation by hypothec unless he is entitled to dispose of the immovable for consideration.
- (3) A third person may secure the obligation of another by hypothec where he is entitled to dispose of the immovable gratuitously.

**Art. 2545. - Sanction.**

- (1) A hypothec shall be of no effect where it is granted by a person who is not entitled to dispose of the immovable as provided in Article 2544.
- (2) It shall not become valid where the grantor subsequently acquires the right to dispose of the immovable.
- (3) A hypothec shall be of no effect where it relates to future immovables.

**Art. 2546. - Ownership Evidenced by Title Deed.**

- (1) A hypothec shall be valid where it is granted by a person who is the owner of the immovable under a title deed issued to him by the competent authorities.
- (2) It shall be valid notwithstanding that the title deed was issued on the basis of an act which is annulled, unless the person who avails himself of the hypothec is shown to be in bad faith.
- (3) In such cases, the owner who discharged the hypothec shall be compensated by an insurance fund created, in accordance with administrative regulations, by means of the fees charged on delivery of title deeds.

**Art. 2547. - Registration Necessary.**

A hypothec, however created, shall not produce any effects except from the time when it is entered in the registers of immovable property at the place where the hypothecated immovable is situated.

**Art. 2548. - Manner of Making Registration.**

Registration of hypothec shall be made according to the laws issued in the Proclamation of Registration.

**Art. 2549. - Costs of Registration.**

- (1) Unless otherwise stipulated, the costs of granting a hypothec and registration shall be borne by the grantor.
- (2) Whosoever has caused a hypothec to be registered for useful purposes and has advanced the costs of registration shall be refunded by the grantor.

**Art. 2550. - Reduction of Claim.**

- (1) Where the debtor or grantor has paid one fourth of the debt, he may apply for the entry to be corrected accordingly.
- (2) The creditor shall give his consent to the correction.
- (3) The fact that part of the obligation has been paid shall not enable the grantor to require that part of the hypothecated immovable be released.

**Art. 2551. - Increase of Claim.**

- (1) The amount of the claim as specified in the original entry may not be increased by way of a correction made to such entry.
- (2) A new entry shall be required to secure such part of the claim as is not covered by the original entry.

**Art. 2552. - Time for Making Entry.**

- (1) An entry relating to a hypothec shall be of no effect where it is made after a third party who is not liable for the payment of the obligation has acquired the immovable and registered his rights in the registers of immovable property.

- (2) An entry relating to an immovable shall be of no effect where it is made after an action for the attachment of the immovable has been brought and entered in the registers of immovable property or after the grantor has been declared bankrupt.

**Art. 2553. - Effect of Registration.**

- (1) The registration of a hypothec shall be effective for ten years from the day when the entry was made.
- (2) The effect of such registration shall continue where, prior to the expiry of the period of ten years, a new entry is made with a view to renewing the first registration.
- (3) In such case, the first registration shall be effective for ten years from the day when the new entry was made.

**Section 2. - Effect of Hypothec**

**Art. 2554. - Principle.**

- (1) Where the hypothecated immovable is attached by the creditors of the grantor, the hypothecary creditor may demand to be paid, out of the proceeds of the sale of the immovable, in priority to any other creditor.
- (2) Where the immovable has been sold by the grantor, the hypothecary creditor may attach it in the hands of the purchaser whose rights have been registered subsequently to the registration of the hypothec.
- (3) The hypothecary creditor shall in addition have all the rights of an ordinary creditor.

**Art. 2555. - Prohibited Provisions.**

- (1) Any provision whereby the hypothecary creditor may, after the obligation has become due, appropriate or sell the immovable without due regard for the conditions prescribed by law shall be of no effect, notwithstanding that such provision was made after the creation of the hypothec.

- (2) Provisions may however be made to the effect that the grantor shall, after the obligation has become due, transfer the ownership of the immovable to the hypothecary creditor.

**Art. 2556. - Jurisdiction.**

Any action relating to the registration of a hypothec or the sale of the hypothecated immovable shall fall within the exclusive jurisdiction of the Court of the place where such immovable is situated.

**Art. 2557. - Address for Service.**

- (1) The debtor and the hypothecary creditor shall, on the request of any interested party, specify an address for service at the place where the sittings of the Court having jurisdiction are held.
- (2) Where they fail to specify such address within thirty days from having been required to do so, the Court shall specify the place where service shall validly be made.

**Art. 2558. - Curator.**

The Court may, on the application of any interested party, appoint a curator to a creditor whose name or domicile is unknown, where the personal appearance of such creditor is required by law and urgent decisions are to be made.

**Paragraph 1. - Preferential Rights of Hypothecary Creditor**

*A. - Property to which Rights Extend*

**Art. 2559. - Integral Parts.**

- (1) The hypothec shall charge the hypothecated immovable together with its integral parts.
- (2) The hypothecary creditor may not enforce his rights on such intrinsic elements or accessories of the hypothecated immovable as have been separated therefrom and transferred to a third party.

- (3) In such case, he may only exercise the rights vested in him by Articles 2565, 2566 and 2601 of this Code.

**Art. 2560. - Improvements and Buildings.**

- (1) The hypothec shall apply to any improvement made on the hypothecated immovable after the creation of the hypothec and to the buildings, plantations and crops made on such immovable.
- (2) Where the grantor was not under an obligation to make these changes or additions serve as additional security for the claim, he has the right to remove them, provided that he restore the thing to its original condition and that, until this has been done, he provide security for the depreciation upon demand.
- (3) The contractors who built the buildings or made the improvements and the suppliers who supplied the materials, plants, seeds or fertilizers used in the improvements, buildings, plantations or crops shall have priority over hypothecary creditors on such part of the proceeds of the sale of the hypothecated immovable as is necessary to cover the costs of the improvements, buildings, plantations or crops made by them.
- (4) In cases of dispute, the Court shall settle the amount to be paid in priority.
- (5) Where appropriate, the Court shall settle how such amount shall be distributed among contractors and suppliers.

**Art. 2561. - Rent.**

- (1) Where the hypothecated immovable is leased, the hypothec shall apply to the rent having run from the day when the immovable was attached.
- (2) The lessees and farmer-tenants may not validly pay the rent to the owner of the hypothecated immovable after they have been notified of the attachment of the immovable.

**Art. 2562. - Indemnities Charged by Hypothec. - 1. Principle.**

- (1) The hypothecary creditor's right entails a right of pledge upon all claims for compensation which take the place of the hypothecated immovable, including claims against the person liable for loss or deterioration, against the insurer or against the authority which has expropriated it.
- (2) This right of the pledge has preference over any other right of pledge established on the claim.

**Art. 2563. - 2. Consent of Creditors to Payment.**

- (1) Insurance or expropriation compensation, compensation for damages and other compensation which take the place of the hypothecated immovable may not be paid to the grantor unless all the hypothecary creditors who have a registered claim on the immovable agree to such payment. The insurer, the expropriating authority and the person who is under the obligation to pay compensation must consult the registers of immovable property.
- (2) The grantor to whom such compensation is due shall inform all registered creditors of the amount of and reason for compensation and of the name and address of the person liable to pay it.
- (3) The creditors shall be deemed to agree to the compensation being paid to the grantor where they fail to declare their objection to the payment within thirty days from having received information as provided in sub-Article (2).
- (4) The grantor may demand that any compensation not exceeding one thousand Nakfas be paid to him.
- (5) He may demand that any compensation be paid to him where he undertakes to use it to rebuild or repair the immovable and offers to furnish sureties or securities sufficient to guarantee that he will comply with his undertaking.



- (6) He may in any case require that compensation be paid into the hands of a trustee appointed by the Court.

**Art. 2564. - Hypothec of Bare Ownership.**

A hypothec charging the bare ownership of an immovable shall, upon the extinction of the usufruct, extend to the full ownership of such immovable.

**Art. 2565. - Reduction in Value of Immovable. - 1. Due to Grantor.**

- (1) Where the grantor who is himself the debtor, or a person for whom he is responsible, intentionally or by negligence reduces or endangers the value of the hypothecated immovable, the hypothecary creditor may demand new securities.
- (2) Where the grantor fails to furnish such securities within the period of time reasonably fixed to him by the hypothecary creditor, the hypothecary creditor may demand that an adequate part of the obligation be performed.

**Art. 2566. - 2. Due to Third Party Acquiring the Immovable.**

The hypothecary creditor may exercise against the grantor the rights mentioned in Article 2565 where the value of the hypothecated immovable is reduced or endangered by a third party who has acquired such immovable from the grantor.

**Art. 2567. - 3. Other Cases.**

The hypothecary creditor may not demand new securities nor that part of the obligation be performed where the actual or possible reduction in the value of the hypothecated immovable is due to causes other than those specified in Articles 2565 and 2566.

*B. - Priority of Hypothecs*

**Art. 2568. - Capital of Claim.**

The hypothec shall secure the payment to the hypothecary creditor, in priority to other creditors, of the registered amount of claim.

**Art. 2569. - Interest.**

- (1) Unless the contract of hypothec stipulates otherwise, a hypothec securing one or more specifically determined claims also serves as security for three years interest owing on these claims by law.
- (2) A stipulation that a hypothec to secure one or more specifically determined claims also serves as security for interest for a period exceeding three years, without reference to a maximum amount, is null.

**Art. 2570. - Necessary Expenses and Insurance Premiums.**

The hypothec shall secure the repayment to the hypothecary creditor, in priority to other creditors, of the necessary expenses made by him for the preservation of the hypothecated immovable and of the insurance premiums due by the owner and which have been paid by the hypothecary creditor.

**Art. 2571. - Costs of Attachment Proceedings.**

The hypothec shall secure the repayment to the hypothecary creditor, in priority to other creditors, of the normal costs arising from proceedings instituted by him for the attachment of the immovable.

**Art. 2572. - Interest.**

- (1) Interest shall run on the sums specified in Articles 2568-2571 from the day when the immovable was attached.
- (2) The hypothec shall secure the payment of such interest until the immovable is sold by auction following attachment.

*C. - Plurality of Hypothecary Creditors*

**Art. 2573. - Principle.**

- (1) Where several creditors have a registered claim on the same immovable, they shall rank according to the time on which they have registered their claim.

- (2) No regard shall be had to the time on which the claims became certain or exigible.

**Art. 2574. - Creditors Registered at the Same Time.**

Creditors whose claims have been registered at the same time shall rank equally and be paid in proportion to the amount of their claims.

**Art. 2575. - Subrogation.**

- (1) Any hypothecary creditor may pay a creditor having priority with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- (2) The creditor who has paid shall be subrogated to the rights of the creditor whom he has paid.

**Art. 2576. - Change of Rank.**

- (1) A deed entered in the registers may stipulate that a hypothec will have a higher rank in respect of one or more hypothecs upon the same property than would result from the time of its registration, provided that the deed show that the title-holders of the other hypothec or hypothecs consent to it.
- (2) Applying sub-Article (1) *mutatis mutandis*, it may also be stipulated that a hypothec and another right *in rem* are deemed to have been created in respect of each other in an order different from the one which actually occurred.

Paragraph 2. - Right to Follow Immovable

*A. - General Provisions*

**Art. 2577. - Right to Transfer Ownership of Hypothecated Immovable.**

- (1) He whose immovable is hypothecated shall retain the right to transfer the ownership thereof.

- (2) Any provision to the contrary shall be of no effect.

**Art. 2578. - Right of Hypothecary Creditor.**

The hypothecary creditor who has registered his hypothec prior to the registration of the deed evidencing the transfer may attach the immovable in the hands of the person who acquired it.

**Art. 2579. - Effect on Original Debtor.**

- (1) The transfer of the hypothecated immovable shall bring no change in the obligations of the original debtor.
- (2) The original debtor shall however be released where the person who acquired the immovable has undertaken to pay the debt, unless the hypothecary creditor informed the original debtor in writing that he would continue to hold him liable.
- (3) Such information shall, under pain of loss of right, be given within one year from the hypothec having been informed of the agreement made between the original debtor and the person who acquired the immovable.

**Art. 2580. - Indivisibility of Hypothec.**

- (1) A hypothec is indivisible.
- (2) Where part of the hypothecated immovable is alienated or such immovable is divided, each part shall secure the full payment of the obligation.
- (3) Where the obligation which the hypothec secures has two or more creditors or debtors and the obligation is divided between them, recourse against the whole immovable remains possible.

**Art. 2581. - Creation of Rights *in Rem* on Hypothecated Immovable.**

- (1) He whose immovable is hypothecated shall retain the right to charge it with an usufruct, servitudes, hypothecs or other rights *in rem*.

- (2) Any provision to the contrary shall be of no effect.

**Art. 2582. - Rights of Creditor.**

- (1) Registered rights *in rem* on a hypothecated immovable shall not affect the hypothecary creditor where such rights have been registered after the hypothecary creditor has registered his hypothec.
- (2) The hypothecary creditor may cause the immovable to be sold as though such rights had not been created.
- (3) Where the immovable is attached, the beneficiary of the right *in rem* may demand that the value of such right be paid to him in priority to creditors whose hypothec has been registered subsequently to his own right being registered.

*B. - Position of Person Acquiring the Immovable*

**Art. 2583. - Attachment of Immovable. - 1. Assimilation to Suretyship.**

He who acquires a hypothecated immovable may, in his relations with the hypothecary creditor, avail himself of the rights vested in the surety by the provisions governing the contract of suretyship.

**Art. 2584. - 2. Improvements or Buildings.**

- (1) He who has acquired a hypothecated immovable and has increased its value by making thereon improvements, buildings, plantations or crops, may require to be paid, out of the proceeds of the sale, an amount corresponding to the increase in the value of the immovable since the day when the transfer of ownership was registered.
- (2) Servitudes and other rights *in rem* which the person who acquired the immovable had on such immovable prior to acquiring it shall give rise to compensation, where they cannot revive.

**Art. 2585. - 3. *Loss of Deterioration of Immovable.***

- (1) He who acquires a hypothecated immovable shall not be liable to the hypothecary creditor for the loss or deterioration of the immovable.
- (2) He shall however be liable where such loss or deterioration is due to his fault or negligence and occurs after he has been informed that proceedings have been instituted for the attachment of the immovable.

**Art. 2586. - 4. *Fruits.***

- (1) He who acquires a hypothecated immovable shall not account for the fruits he has collected prior to attachment.
- (2) He shall cease to be the owner of such fruits on the day when the immovable is attached in his hands.

**Art. 2587. - 5. *Action for Warranty.***

- (1) Where the immovable is attached in the hands of the person who acquired it, such person may bring an action for warranty against the person from whom he acquired the immovable.
- (2) He may bring such action notwithstanding that he acquired the immovable gratuitously.
- (3) An action for warranty may not be brought where it is expressly prohibited in writing by the deed evidencing the transfer of ownership.

**Art. 2588. - 6. *Subrogation.***

- (1) Where the immovable is attached in the hands of the person who acquired it, such person shall be subrogated to the rights of the hypothecary creditor.
- (2) He may not avail himself of such subrogation to the detriment of third parties who have acquired for consideration, from the grantor or surety, an immovable intended to secure the obligation.

**Art. 2589. - 7. Appointment of Curator.**

- (1) He who acquired the immovable may, where he is not personally liable for the payment of the obligation under the hypothec, demand that proceedings for attachment instituted against him be discontinued.
- (2) In such case, he may appoint or cause to be appointed by the Court a curator against whom the proceedings shall be continued.
- (3) The curator shall reside or specify an address for service at the place where the sittings of the Court of competent jurisdiction are held.

**Art. 2590. - Voluntary Performance of Obligation.**

- (1) He who acquires a hypothecated immovable may pay a creditor having a registered claim on such immovable with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- (2) In such case, he shall be subrogated to the rights of such creditor and merger may not be raised against him.

**Art. 2591. - Redemption of Hypothec. - 1. When Possible.**

He who acquires a hypothecated immovable may redeem the hypothec where he is not personally liable for the payment of the obligation under the hypothec.

**Art. 2592. - 2. Offer to Redeem.**

He who intends to redeem the hypothec shall serve on the registered creditors and on the person from whom he acquired the immovable a document specifying:

- (a) the nature and time of the title by virtue of which he acquired the immovable and the time on which he registered his rights; and

- (b) any particulars necessary for identifying the immovable, such as the place where such immovable is situated and its number in the cadastral survey plan;
- (c) the price he paid for the immovable or its estimate value, where he acquired it gratuitously;
- (d) an offer to pay such price or value;
- (e) a list of the hypothecs registered on the immovable together with the name of the registered creditors, the amount of the claims and the time of registration of the hypothecs; and
- (f) his address for service at the place where the sittings of the Court of competent jurisdiction are held.

**Art. 2593. - 3. Offer May Not be Withdrawn.**

- (1) He who offered to redeem the hypothec shall be bound by his offer for a period of sixty days.
- (2) He may not withdraw his offer during this period unless all the persons to whom such offer was made agree to the withdrawal.

**Art. 2594. - 4. Offer Accepted.**

- (1) The creditors shall be deemed to accept the offer where they do not reject it within sixty days from the day when it was made.
- (2) The amount offered shall in such case be distributed among the creditors according to their rank.

**Art. 2595. - 5. Offer Rejected.**

- (1) Where a creditor refuses the offer, the immovable shall be sold by public auction.
- (2) The creditors who have refused the offer shall advance the costs of such sale by auction.



**Art. 2596. - 6. Costs of Sale by Auction.**

- (1) The costs of the sale shall be borne by the purchaser, where the immovable is sold at a price exceeding by ten per cent the price offered under Article 2592.
- (2) In other cases, such costs shall be borne by the creditors who rejected the offer of redemption.

**Art. 2597. - 7. Time for Making Offer.**

No offer to redeem the hypothec may be made after proceedings for attachment have been instituted and an entry to this effect has been made in the registers of immovable property.

**Art. 2598. - Sale of Grantor's Property at First.**

- (1) If immovable property of both the grantor and the person who has acquired immovable property has been hypothecated to secure one and the same debt, the person who has acquired property can demand from the hypothecary creditor who proceeds to execution that the property of the grantor be included in the sale as well and that it be sold first.
- (2) Where for one and the same obligation two or more items of immovable property have been hypothecated, one of which is encumbered with another right *in rem* which the hypothecary creditor does not have to respect in the execution, the holder of that right *in rem* has *mutatis mutandis* the same right as the one referred to in sub-Article (1).
- (3) If the hypothecary creditor refuses to comply with a demand based upon sub-Article (1) and (2), the Court may rule upon this refusal, at the request of any interested party.

*C. - Special Provisions Applicable to Surety*

**Art. 2599. - Presumption.**

He who has hypothecated his immovable to secure the obligation of another person shall be presumed not to have bound himself on his other property.

**Art. 2600. - Position of Surety.**

Without prejudice to the provisions of Article 2601 and 2602, the surety shall be assimilated to the person who acquires a hypothecated immovable.

**Art. 2601. - Loss or Deterioration of Immovable.**

- (1) Where the surety or a person for whom he is responsible intentionally or by negligence reduces or endangers the value of the immovable hypothecated, the hypothecary creditor may require him to produce new securities.
- (2) The hypothecary creditor shall have the same right where the value of the immovable is intentionally or negligently reduced or endangered by a third party who acquired the immovable from the surety.

**Art. 2602. - Other Differences.**

- (1) Where the immovable is attached in his hands, the surety may not bring an action against the person from whom he acquired the immovable.
- (2) He may not require that proceedings for attachment instituted against him be discontinued.
- (3) He may not offer to redeem the hypothec.

**Section 3. - Cancellation of Hypothec in the Registers**

**Art. 2603. - Grounds for Cancellation.**

Any interested party may require the registration to be cancelled in the registers of immovable property, inter alia where:

- (a) the claim secured by the hypothec is extinguished;
- (b) the hypothecary creditor has renounced his hypothec;
- (c) the immovable hypothecated has been sold by auction and the proceeds of the sale have been distributed among the creditors; or
- (d) the amount accepted by the creditors in cases of an offer of redemption has been distributed among the creditors.

**Art. 2604. - Hypothec of Usufruct.**

- (1) Any interested party may require the cancellation of the registration of the hypothec of an usufruct, where such usufruct is extinguished.
- (2) The usufructuary may not renounce the usufruct to the detriment of the hypothecary creditor.

**Art. 2605. - Renunciation of Hypothec.**

- (1) Where the creditor renounces his hypothec, such renunciation shall be of no effect unless it is made expressly and in writing.
- (2) Unless otherwise agreed, such renunciation shall not imply that the hypothecary creditor renounces his claim.

**Art. 2606. - Creditor Making Subrogation Impossible.**

Where the hypothec applies to an immovable which is not the property of the debtor, the cancellation of the registration may be sought where the creditor makes it impossible for the owner of such immovable to be subrogated to the rights of the creditor.

**Art. 2607. - Conditions for Cancelling Registration.**

- (1) No registration shall be cancelled unless the Court so orders.
- (2) The Court shall order cancellation where the creditor agrees in writing to the cancellation.

**Art. 2608. - Effect of Cancellation.**

- (1) Where the registration is cancelled, such cancellation shall benefit the creditors having registered their claims after the entry which is cancelled.
- (2) The owner may not grant a new hypothec to replace the hypothec the registration of which has been cancelled.

**Art. 2609. - Cancellation Made Without Good Cause.**

- (1) Where a registration has been cancelled, such registration shall in no case revive, notwithstanding that the cancellation was made without good cause.
- (2) The hypothec which has been cancelled without good cause shall be registered again and shall be effective from the day of the new registration.
- (3) Nothing shall affect the liability of the person who caused the registration to be cancelled without good cause.

## TITLE V- ALEATORY CONTRACTS

### Chapter 1. - Annuities

#### **Art. 2610. - Definition.**

A contract for the constitution of an annuity is a contract by which a person, the debtor, undertakes, gratuitously or for the alienation of a thing or the assignment of capital, to make periodical payments to another person, the annuitant, for a certain time.

#### **Art. 2611. - Instrument Evidencing the Debt.**

- (1) A contract for the constitution of an annuity shall be evidenced by a written instrument.
- (2) The annuitant may compel the debtor to supply him with a new instrument evidencing the contract for the constitution of an annuity if nine years have elapsed since the date of the instrument which he possesses.
- (3) The new instrument shall be drawn up at the expense of the annuitant.

#### **Art. 2612. - Types of Annuity.**

The annuity may be set up in perpetuity, for life, or for a fixed term.

#### **Art. 2613. - Beneficiaries of Annuity.**

- (1) An annuity may be constituted for the benefit of a person other than the person who furnishes the thing or capital to the debtor.
- (2) In such a case, the contract is not subject to the forms required for gifts even though the annuity is received gratuitously by the annuitant.

#### **Art. 2614. - Payment of Arrears.**

Unless otherwise agreed, the arrears of annuities shall be paid at the end of each year calculated from the conclusion of the contract.

**Art. 2615. - Reference to Rules Governing Loans.**

The provisions of this Code on loan of money and other fungible things shall apply, *mutatis mutandis*, to the contract for the constitution of an annuity.

**Art. 2616. - Saving Clause.**

Nothing in this Chapter shall affect the rules concerning Government loans or loans issued by other public bodies.

**Art. 2617. - Annuities Constituted other than by Contract.**

- (1) An annuity may be constituted not only by contract but also by will, judgment or law.
- (2) The provisions of this Chapter shall apply, *mutatis mutandis*, to such annuities.

**Section 1. - Perpetual Annuity**

**Art. 2618. - Power to Redeem.**

- (1) The debtor may redeem an annuity set up in perpetuity notwithstanding any provision to the contrary.
- (2) The parties may however agree that the redemption shall not take place before the death of the annuitant or the expiration of a period not to exceed ten years.
- (3) They may also agree that the redemption shall only take place after notice of one year given to the annuitant.
- (4) If longer periods of time have been agreed, the maximum periods provided in sub-Article (2) and (3) shall be substituted therefor.

**Art. 2619. - Obligation to Redeem.**

The debtor of an annuity set up in perpetuity may be compelled to redeem it if:

- (a) he ceases to fulfill his obligations for two years; or

- (b) he fails to furnish the lender with the security promised by the contract or new security equivalent to that which has failed; or
- (c) an insolvency proceeding has been opened for the debtor.

**Art. 2620. - Capital Due in Case of Redemption.**

- (1) In the case of redemption of the annuity, the debtor shall pay the annuitant a sum corresponding to the capitalization of the annuity effected on the basis of the rate of the legal interest.
- (2) Any stipulation increasing the liability of the debtor in this respect shall be of no effect.

**Section 2. - Annuity for Life or Fixed Term**

**Art. 2621. - Scope of the Contract.**

- (1) A life annuity is an annuity payable for a duration limited to the lifetime of one or several persons.
- (2) A fixed term annuity is an annuity payable for a duration determined otherwise.

**Art. 2622. - Life of a Person.**

- (1) The life annuity may be set up on the life of the annuitant, of the debtor or of a third party..
- (2) Unless otherwise agreed, it shall be deemed to be set up on the life of the annuitant.

**Art. 2623. - Lives of Several Persons.**

- (1) A life annuity may be set up on the lives of several persons.
- (2) It may also be stipulated to be revertible, on the death of the annuitant, upon the life of another person.

- (3) A life annuity constituted for the benefit of spouses is presumed, on the death of either spouse, to be revertible upon the life of the surviving spouse.

**Art. 2624. - Case of Nullity.**

- (1) The contract setting up a life annuity shall be of no effect if none of the persons on whose lives the annuity is set up is alive on the day the contract is concluded.
- (2) The revertibility clause shall be of no effect unless the person on whose life the annuity is stipulated to be revertible is alive on the day the contract is concluded.

**Art. 2625. - Transmissibility.**

Unless otherwise agreed, the annuity set up on the life of the debtor or of a third party shall pass to the heirs of the annuitant.

**Art. 2626. - Usurious Rate of Arrears.**

- (1) If the life annuity is set up in exchange for payment of a capital sum, the arrears due by the debtor shall not exceed twenty per cent of this capital.
- (2) They shall be at the rate of twelve per cent if a higher rate has not been fixed in writing or a rate exceeding twenty per cent has been fixed.

**Art. 2627. - Avoidance of Contract.**

The annuitant may avoid the contract if the debtor does not give him the security stipulated for its performance.

**Art. 2628. - Non-Payment of Arrears.**

- (1) Mere failure in the payment of arrears of the annuity is not a ground for the annuitant to require the repayment of the capital or the return of the things alienated by him.
- (2) In addition to a claim for any amount due, the annuitant is only entitled to seize and sell the property of his debtor, and to require or order the setting aside of a



sufficient amount, from the proceeds of the sale, to ensure payment of the annuity or to require that the debtor be replaced by an authorized insurer.

**Art. 2629. - Absence of Power to Redeem.**

- (1) The debtor may not perform his obligation to pay the annuity by offering to repay the capital and by renouncing to claim the recovery of the arrears paid.
- (2) He shall pay the annuity during the whole life of the person or of the persons on whose life or lives the annuity has been set up, whatever the length of the life of these persons and however onerous the payment of the annuity may become.

**Art. 2630. - Substitution of Insurer.**

- (1) The debtor may appoint an authorized insurer to replace him, by paying him the value of the annuity.
- (2) The annuitant may not object to the substitution, but he may require that the purchase of the annuity be made with another insurer, or he may contest the determined capital value or the value of the annuity arising from that capital.

**Art. 2631. - Accrual of Arrears.**

- (1) The life annuity shall accrue to the annuitant in proportion to the number of days that the person on whose life it is set up has lived.
- (2) If it has been agreed that it will be paid in advance, the arrears shall accrue from the day when the payment was to be made.

**Art. 2632. - Assignment and Attachment.**

- (1) Unless otherwise agreed, the annuitant may assign his rights.
- (2) He who sets up an annuity gratuitously in favor of a third party may stipulate at the time when he sets up the

annuity that it cannot be seized by the creditors of such third party.

**Art. 2633. - Proof of Claim.**

The annuitant of a life annuity may only demand the arrears by proving his existence or that of the person on whose life it has been set up.

**Art. 2634. - Annuity Due by Virtue of Insurance.**

Nothing shall affect the rules governing the contract of insurance, if the life annuity is due by virtue of a contract of insurance.

**Chapter 2. - Insurance**

**Section 1. - General Provisions**

**Art. 2635. - Definitions.**

- (1) A contract of insurance is a contract whereby an insurer undertakes against payment of one or more premiums to pay to the insured or other beneficiary a sum of money if a specified risk materializes.
- (2) The contract of insurance shall be evidenced by a document called an insurance policy.
- (3) A person with an insurable interest who enters into a contract of insurance is a subscriber to the policy.

**Art. 2636. - Scope of this Chapter.**

- (1) The provisions of this Chapter govern the insurance against loss, damages to properties, liabilities and insurance of persons.
- (2) This Chapter does not cover credit insurance or contracts for reinsurance.
- (3) The relevant provisions of the Maritime Code govern any contract of insurance having as its principal object to guarantee a maritime risk, including collateral risks.

**Art. 2637. - State Insurance Business.**

Except as otherwise provided by law, insurance business required or administered by the State shall be governed by the provisions of this Chapter.

**Art. 2638. - Persons Engaged in Insurance Business.**

The conditions on which natural persons or business organizations may carry on insurance business as principals or agents shall be provided by law.

**Art. 2639. - Insurance Not a Game or Wager.**

The provisions of the Chapter on "Games and Wagers" shall not apply to contracts of insurance covered by this Chapter.

**Section 2. - Provisions Applicable to all Forms of Insurance**

**Paragraph 1. - Formation and Content of Insurance Contract**

**Art. 2640. - Formation of Insurance Contract.**

- (1) Unless the policy provides otherwise, a contract of insurance shall come into force on the day when the insurer signs the policy.
- (2) The policy may provide that the contract of insurance shall not come into force until the first premium has been paid.

**Art. 2641. - Evidence of Insurance Contract.**

- (1) A contract of insurance is not enforceable unless the contract is evidenced by a written insurance policy.
- (2) The policy may only be varied by written documents called endorsements.
- (3) An insurer may not invoke representations or conditions not written in the policy or an endorsement.

**Art. 2642. - Provisional Coverage.**

If the insurer issues receipt of the payment of premium, this shall be considered as evidence of provisional coverage of insurance.

**Art. 2643. - Information to be supplied by Insurer.**

Before the contract of insurance is concluded the insurer shall provide to the applicant a written statement of the rates and the insurance coverage, together with a copy of the unsigned policy.

**Art. 2644. - Particulars in Insurance Policy.**

- (1) The insurance policy shall show:
  - (a) the place, date, and identifying number, if any, of the policy;
  - (b) the names and addresses of the parties to the contract of insurance;
  - (c) the names and addresses of the beneficiaries or, if they are not determined, a means to identify them;
  - (d) the person, property or liability insured;
  - (e) the nature of the risks insured;
  - (f) the amount of the coverage;
  - (g) the amount, time and manner of payment of the premiums;
  - (h) the time from which the risks are covered and the term of the coverage;
  - (i) territorial limits, if any, of the coverage; and
  - (j) the law applicable to the contract of insurance.
- (2) The insurance policy may contain other particulars.

**Art. 2645. - Effect Given to Certain Clauses in Policy.**

- (1) Any clause in a policy which excludes or reduces coverage is effective only to the extent that the clause is clearly stated under an appropriate heading.
- (2) Any clause which purports to release the insurer from his obligations if the law is violated is effective only to the extent the violation is an offence under the Penal Code.
- (3) Any clause by which the insured consents, in case of loss or damage, to assign the claim to the insurer is effective only to the extent the rights assigned are no greater than the insurer would have under the rules on subrogation as provided in the Civil Code.

**Art. 2646. - Delivery of Policy and Application.**

- (1) The insurer shall provide the signed policy to the insured, together with a copy of any written application form submitted by the insured or on his behalf.
- (2) If there is a discrepancy between the policy and the application form, the terms of the application prevail unless the insurer indicates the discrepancies to the insured in a writing delivered to the insured before or at the time the contract of insurance comes into force.

**Art. 2647. - Policy to Named Person or to Order.**

- (1) The policy may be in the name of a specified person or to order.
- (2) The insurer may set up against an assignee or endorsee the defenses which he could have set up against the insured.

**Art. 2648. - Modification or Renewal of Policy.**

- (1) A policy may be modified or renewed in the manner provided by the provisions of the policy.

- (2) Notwithstanding any provision to the contrary, a policy other than a life insurance policy shall be modified or renewed if the insurer does not reject a written application to modify or renew a policy within fifteen days after the insurer receives the application.
- (3) Any endorsement to the policy providing for a reduction of the insurer's liability or an increase in the insured's obligations, other than an increased premium, shall be of no effect unless the policy holder consents to the change in writing.

#### Paragraph 2. - Representations

#### Art. 2649. - Statements in Application for Insurance.

- (1) An applicant for insurance shall state material facts known to him and which are likely to assist the insurer to appreciate fully the risks he undertakes to insure.
- (2) An insurer may require any insured person, if different from the applicant, to make a similar statement.
- (3) An insurer may not invoke an imprecise response to a question expressed in general terms in an application form.

#### Art. 2650. - Concealment of Facts and False Statements.

- (1) The policy shall be of no effect if the insurer proves that the applicant or insured person knowingly concealed facts or made false statement and such concealment or false statements caused the insurer wrongly to appreciate the risks to be insured so that, had he known the truth, the insurer would not have entered into the policy or would have imposed terms less favorable to the applicant or insured person.
- (2) In cases covered by sub-Article (1), the insurer is entitled to retain all premiums paid.

**Art. 2651. - Counter-Evidence.**

- (1) Notwithstanding any provision to the contrary, the policy shall remain in force if the applicant or insured person proves that he acted in good faith.
- (2) If the insurer discovers the concealment or false statements before the risk materializes, he may terminate the policy by giving one month's notice or may maintain the policy and increase the premium.
- (3) If the insurer discovers the concealment or false statements after the risk has materialized, he may reduce the sum to be paid to account for the difference between the premiums actually paid and the premiums which ought to have been paid had the applicant or insured person not concealed the facts or made no false statements.

**Paragraph 3. - Rights and Duties of the Parties**

**Art. 2652. - Duty of Insurer to Pay Agreed Sum.**

- (1) When a risk materializes or payment is due under the contract of insurance, the insurer shall pay the agreed sum at the times specified in the policy.
- (2) The liability of the insurer under the contract of insurance shall not exceed the amount specified in the policy.
- (3) The insurer is solely responsible for the payment of the agreed sum even if the insurer has entered into a contract of reinsurance with respect to that policy.

**Art. 2653. - Payment of Premiums.**

- (1) The insured shall pay the agreed premium at the time specified in the policy.
- (2) Notwithstanding any provision to the contrary, the policy shall not terminate as of right when the premium is not paid in due time. The insurer shall demand payment.

- (3) Notwithstanding any provision to the contrary, the policy shall be suspended after one month from a demand under sub-Article (2) where the premium is not paid.
- (4) Where the period of one month has expired, the insurer may claim payment of the premium or require the termination of the policy.
- (5) Where the premium is paid, the policy shall re-enter into force on the day of payment.
- (6) The provisions of this Article shall not apply to life insurance.

**Art. 2654. - Material Increase of Risks.**

- (1) If the risks covered by the policy increase materially the insured shall notify the insurer not later than fifteen days after the occurrence increasing the risks, if the occurrence is caused by the insured, or not later than fifteen days after the insured learned about the occurrence. The policy may not shorten these periods.
- (2) Not later than fifteen days after being notified of the increase of risks, the insurer shall decide whether to terminate the policy or to maintain it with an increased premium. If the insurer does not decide within this period, the insurer shall be deemed to have decided to maintain the policy.
- (3) If the insured fails to notify the insurer, conceals facts or makes false statements, the provisions of Article 2650 and 2651 shall apply.
- (4) The risks shall be deemed to have increased materially if the insurer, had he known the facts at the time when he signed the policy, would not have entered into the contract of insurance or would have insisted on terms less favorable to the insured.
- (5) The provisions of this Article shall not apply to life insurance.



**Art. 2655. - Notification of Occurrence of Risk.**

Unless prevented by *force majeure* the insured shall notify the insurer of any occurrence of a risk covered by the policy not later than five days after the insured learns about the occurrence. The policy may not shorten this period.

**Art. 2656. - Insolvency.**

- (1) The contract of insurance shall not terminate automatically if an insolvency proceeding is opened with respect to an insured. The insolvency trustee shall be substituted as the beneficiary of the policy and shall be liable for the payment of premiums.
- (2) Either the insolvency trustee or the insurer may terminate the contract of insurance within three months after the insolvency proceeding is opened.
- (3) Unless otherwise provided by law, the contract of insurance shall terminate automatically one month after insolvency proceedings are opened with respect to the insurer.

Paragraph 4. - Prescription Period

**Art. 2657. - Prescription.**

- (1) Except as provided in sub-Article (2) and (3), any claim arising out of a contract of insurance shall be barred after two years from the day when the insured risk materialized.
- (2) In case of concealment of facts or false statements, the period of prescription shall run from the day when the insurer learned about the concealment or false statement.
- (3) In case of a claim, the period of shall run from the day when the claimant learned the insured risk had materialized if the claimant proves the date on which he learned about the claim.

- (4) The policy may not provide for shorter periods than those provided in this Article.

### **Section 3. - Insurance against Damages**

#### **Paragraph 1. - Property Insurance**

##### **Art. 2658. - Definition.**

- (1) A contract for property insurance is a contract of indemnity under which the insurer agrees to indemnify the insured if a specified risk of loss or damage to the property covered by the policy materializes.
- (2) The insurer's obligation to indemnify shall not exceed the lower of the market or insured value of the property covered by the policy on the day the loss or damage occurs.

##### **Art. 2659. - Insurable Interest.**

- (1) Any person interested in the preservation of the property may insure it. Any direct or indirect interest in a risk may be insured.
- (2) The insurable interest must exist at the time of the loss or damage but it need not exist throughout the duration of the contract of insurance.
- (3) The insurance of property in which the insured has no insurable interest is of no effect.

##### **Art. 2660. - Risks Covered.**

- (1) Unless the policy provides otherwise, the insurer shall indemnify the insured against risks arising from fortuitous events or from the negligence of the insured.
- (2) The insurer shall indemnify the insured against losses or damages due to the fault of persons for whom the insured is responsible regardless of the nature or gravity of the fault committed.

- (3) Notwithstanding any provision to the contrary, the insurer shall not indemnify against risks arising from the intentional fault of the insured.

**Art. 2661. - Risks Excluded.**

- (1) The insurer is not liable to indemnify for damage resulting from natural loss, diminution or losses sustained by the property caused by an inherent defect in or the nature of the property.
- (2) Unless the policy provides otherwise, the insurer is not liable to the extent that the insurer proves that the loss or damage was caused by an international or civil war (whether declared or not), terrorism, strikes, riots or civil commotion, spontaneous combustion, explosives, ionizing radiation, radio activity contamination, and any nuclear fuel or waste or nuclear weapons assemblies.

**Art. 2662. - Loss Caused by Risk Not Covered.**

The policy shall terminate automatically if the property insured is lost as a result of a risk not covered by the policy.

**Art. 2663. - Property Underinsured.**

Unless the policy provides otherwise, if on the day the loss or damage occurs the property insured is of a value greater than the amount for which it is insured, the insured shall be deemed to be his own insurer for the difference and shall share proportionately in the loss or damage.

**Art. 2664. - Property Overinsured.**

- (1) If the compensation provided in the policy exceeds the value of the property insured and there has been fraud on the part of either party, the other party may terminate the policy and may in addition claim damages.
- (2) If there has been no fraud, the policy shall remain in force but only to the extent of the actual value of the property insured.

- (3) If the insured reduces the insurance coverage, the insurer shall adjust the premiums to be paid to reflect the new coverage but he shall be entitled to retain all premiums paid prior to the reduction.

**Art. 2665. - Cumulative Insurance.**

- (1) When several insurers have insured the same property against the same risk so that the property is overinsured, each insurer may, if there has been fraud on the part of the insured, terminate the policy and may in addition claim damages.
- (2) If there has been no fraud, each insurer shall, when the risk materializes, pay compensation in proportion to the value insured by him.

**Art. 2666. - Nullity of Policy.**

- (1) The policy shall be of no effect if, at the time when the contract of insurance comes into force, the property has already been lost or is no longer exposed to a risk. The insurer shall refund the premiums paid to the insured.
- (2) Any party in bad faith may be liable for damages.

**Art. 2667. - Subrogation of Insurers.**

- (1) To the extent he has paid the agreed compensation, the insurer is subrogated to the claim of the insured against third parties who caused the damage.
- (2) If the insured makes subrogation under sub-Article (1) impossible, the insurer may be relieved in whole or in part of his liability to the insured.
- (3) Notwithstanding any provision to the contrary, the insurer may not claim against the ascendants, descendants, mandataries or employees of the insured nor against persons living with him, unless such persons have acted maliciously.

**Art. 2668. - Death of Insured.**

- (1) Notwithstanding any provision to the contrary, if the insured dies the policy shall continue with his heirs automatically substituted as parties to the policy.
- (2) Either the heirs or the insurer may terminate the policy within three months from the insured's death.

**Art. 2669. - Assignment of Property Insured.**

- (1) Notwithstanding any provision to the contrary, if the property insured is transferred the policy shall continue with the assignee automatically substituted as a party to the policy.
- (2) One month after the assignment the policy shall terminate automatically, unless within that month the new insured declares that he wants the policy to continue. In that case the insurer may terminate the policy within two months after that declaration, with a period of notice of one month.

**Art. 2670. - Rights of Secured Creditors.**

- (1) Notwithstanding any provision to the contrary, if pledged or hypothecated property is insured, the insurer shall pay compensation to the pledgee or hypothecary creditor.
- (2) The pledgee or hypothecary creditor may claim directly from the insurer who may set up the defenses which he could have set up against the insured.
- (3) Payments made in good faith by the insurer to the insured in ignorance of the pledge or hypothec shall extinguish the insurer's obligation.

## Paragraph 2. - Liability Insurance

### Art. 2671. - Definition.

- (1) A contract of liability insurance is a contract to indemnify the insured for the pecuniary consequences of his liability for damage to another person.
- (2) Civil liability, whether contractual or extra-contractual, may be covered by liability insurance.

### Art. 2672. - When Insurer Liable.

The insurer who insures a liability for damages shall not be obligated to pay compensation until a third person damaged by the insured makes a claim against the insured with a view to amicable or judicial settlement of the claim.

### Art. 2673. - Liability Admitted.

- (1) An insurer is not bound by an admission of liability or an offer of compromise made by the insured without the insurer's consent.
- (2) Admission of a fact does not amount to admission of liability.

### Art. 2674. - Direct Action against Insurer.

A third person damaged by the insured may bring an action directly against the insurer or the insured, or against both.

### Art. 2675. - Direction of Case.

- (1) A policy may provide that the insurer shall have the direction of any civil action brought by a damaged third person against the insured.
- (2) Any provision to the effect that the insurer shall have the direction of any criminal case originating from criminal proceedings instituted against the insured shall be of no effect. The insured may, in particular, exercise or refuse to exercise his right to appeal his case.

**Art. 2676. - Defenses Available to Insurer.**

The insurer may set up against the damaged third person any defenses he could have set up against the insured at the time of the damage.

**Art. 2677. - Compensation to be Paid to Damaged Person.**

Notwithstanding any provision to the contrary, an insurer shall not make payments to any other person until the insurer compensates the damaged third person to the extent provided in the policy or to the extent of any settlement with him.

**Section 4. - Insurance of Persons**

**Paragraph 1. - General Provisions**

**Art. 2678. - Insurance of Persons.**

- (1) Insurance of persons deals with the life, physical integrity or health of the insured person.
- (2) Insurance of persons may be insurance of an individual or insurance of a group of persons.

**Art. 2679. - Insurable Interest.**

- (1) A person has an insurable interest in his own life and health and in the life and health of his spouse, of his descendants and the descendants of his spouse, or of persons who contribute to his support.
- (2) A person also has an insurable interest in the life and health of his employees or of persons in whose life and health he has a pecuniary or moral interest.
- (3) A person with an insurable interest who enters into a contract of insurance is a subscriber to the policy.

**Art. 2680. - Insurance of Persons Not Contract of Indemnity.**

- (1) A contract for the insurance of persons is not a contract of indemnity.

- (2) The policy may freely fix the amount insured.
- (3) The insurer shall pay the amount due without regard to the damage suffered by the insured person.

**Art. 2681. - Insurer Not subrogated.**

Notwithstanding any provision to the contrary, the insurer who has paid the agreed amount is not subrogated to the claims of the policy holder, the insured person or the beneficiary against third persons who caused the damage.

Paragraph 2. - Life Insurance

**Art. 2682. - Definition.**

- (1) A contract of life insurance is a contract by which the insurer undertakes against payment of one or more premiums to pay to the subscriber or a beneficiary a specified capital or life interest:
  - (a) if the insured person is alive at a date fixed in the policy, or
  - (b) if the insured person dies.
- (2) An insurer may issue a combined policy in which he undertakes to pay under both paragraphs (a) and (b) of sub-Article (1).
- (3) Except as otherwise provided in Chapter 1 of this Title regarding "Annuities," the provisions of this Chapter on life insurance govern life or fixed-term annuities issued by insurers.

**Art. 2683. - Life Insurance made by Third Person.**

An insurance policy for the event of death may be made by a third party. Except in the case of group insurance, such policy shall be of no effect unless the insured person agrees in writing and indicates the amount insured.



**Art. 2684. - Particulars in Life Insurance Policy.**

In addition to the particulars required under Article 2644, a life insurance policy shall show:

- (a) the name and the date of birth of the insured person;
- (b) the name of the beneficiary or a means to identify him;
- (c) the occurrence on which the payment of the agreed amount depends;
- (d) the manner of calculating any reduction in value of the policy;
- (e) the manner of calculating the surrender value of the policy and the rights relating to the surrender value of or advances on the policy;
- (f) the conditions of reinstatement of a policy; and
- (g) the conditions of conversion of the policy, if applicable.

**Art. 2685. - Policy to Order.**

If the policy is to order, an endorsement of the policy shall be of no effect unless it is dated and shows the name of the person to whom the policy is endorsed.

**Art. 2686. - Pledge.**

A life insurance policy may be pledged by annexing an endorsement to this effect to the policy or by endorsing a policy to order and delivering the policy to the pledgee.

**Art. 2687. - Insured Person to Agree to Assignment or Pledge.**

The assignment, endorsement or pledge of the policy or the changing of the beneficiary named in the policy shall be of no effect unless the insured person agrees in writing.

**Art. 2688. - Murder by Beneficiary.**

An insurance policy covering the death of the insured person shall be of no effect in respect of whom a criminal Court convicts of intentionally attempting to kill or intentionally killing the insured person.

**Art. 2689. - Beneficiary of Life Insurance.**

- (1) An insurance policy covering the death of an insured person may be made to the benefit of specified beneficiaries.
- (2) The following persons shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name:
  - (a) the subscriber's spouse, even if the marriage took place after the policy was entered into;
  - (b) the subscriber's children, whether or not born at the time when the policy was entered into; and
  - (c) the subscriber's heirs.
- (3) If the policy does not specify the beneficiary or the beneficiary specified in the policy does not agree, the subscriber may name a beneficiary or substitute a beneficiary for another by will, by an endorsement to the policy, or by endorsing a policy to order.

**Art. 2690. - Beneficiary Must be Alive.**

- (1) Unless the policy provides otherwise, the benefit shall be payable only on the condition that the beneficiary be alive on the day when the capital or life interest is to be paid.
- (2) If the insured person and the beneficiary die at the same time or in circumstances which make it impossible to determine which of them died first, the insured is, for the purposes of the insurance, deemed to have survived the beneficiary.

- (3) If the insured person dies intestate and without an heir, the beneficiary is deemed to have survived the insured person.

**Art. 2691. - Agreement of Beneficiary.**

The allocation of the benefit of a policy to a specified beneficiary may not be revoked after the beneficiary has agreed to the policy.

**Art. 2692. - Effect on Insurer.**

The agreement of the beneficiary or the revocation of the beneficiary may not be invoked against the insurer unless the insurer knows of the agreement or revocation.

**Art. 2693. - Beneficiary Not Specified or Revoked or Not Live.**

If no beneficiary has been specified or he has been revoked or is not alive, the capital to be paid by the insurer shall be paid into the subscriber's succession.

**Art. 2694. - Rights of Beneficiary.**

- (1) The beneficiary may claim directly against the insurer.
- (2) The sums to be paid to a specified beneficiary shall not form part of, the insured person's succession. The beneficiary shall be deemed to be entitled thereto as from the day when the contract of insurance was entered into, notwithstanding that he agreed to the policy after the death of the insured person.
- (3) The sums to be paid to the policy holder's spouse shall be regarded as the personal property of that spouse.

**Art. 2695. - No Refund.**

The sums paid to the beneficiary shall not have to be refunded to the inheritance.

**Art. 2696. - Rights of Creditors.**

The creditors of the insured person have no right on the sums to be paid to the beneficiary.

**Art. 2697. - Premiums Not paid.**

- (1) The insurer may not bring an action for the payment of premiums due in respect of a contract of life insurance.
- (2) If a premium has not been paid at the due date on a policy on which less than three annual premiums have been paid, the insurer may demand payment. If payment is not made within thirty days from the date of the demand, the insurer may terminate the policy. The policy may not provide for a shorter period.
- (3) If a premium has not been paid at the due date on a policy on which at least three annual premiums have been paid and payment is not made within thirty days from the date of a demand for payment, the policy shall not lapse. The insurer may issue a paid-up policy or otherwise reduce the capital or life interest of the policy.

**Art. 2698. - Redemption of Policy.**

- (1) Notwithstanding any provision to the contrary, the insured person may, at any time after three annual premiums have been paid, ask to redeem an insurance policy covering his death.
- (2) The manner of calculating the price of redemption shall be specified in the policy.
- (3) The provisions of this Article shall not apply to provisional insurance policies covering death.

**Paragraph 3. - Accident and Health Insurance**

**Art. 2699. - Accident Insurance.**

- (1) A contract of insurance against accidents is a contract whereby the insurer undertakes to pay a specified sum to

the insured person if he is the victim of an accident during the period specified in the policy, or to the beneficiary named in the policy, if the insured person dies.

- (2) The insurer may limit his guarantee to specified accidents or specified consequences of an accident.
- (3) An accident includes any bodily injury arising out of an unexpected extraneous occurrence.

#### **Art. 2700. - Health Insurance.**

A contract of health insurance is a contract whereby the insurer undertakes to pay a specified sum to the insured person if he suffers of illness, certified by a medical doctor, during the period specified in the policy.

#### **Art. 2701. - Coverage of Disability.**

- (1) If a policy provides coverage against disability, the policy shall set out clearly the terms and conditions of payment and the nature and extent of the disability covered.
- (2) If the policy does not set out clearly the nature and extent of the disability covered, the inability to carry on, wholly or partially, one's usual occupation constitutes the disability.

#### **Art. 2702. - Disclosed Diseases or Condition.**

In accident or sickness insurance, the insurer may not, except in case of fraud, exclude or reduce the coverage by reason of a disease or ailment disclosed in the application except under a clause referring by name to the disease or ailment.

#### **Art. 2703. - Undisclosed Diseases or Condition.**

Except in the case of fraud, an insurer may not, by a general clause in the policy, exclude or reduce the coverage because of a disease or condition not disclosed in the application unless the disease or condition appears within the first two years of insurance.

**Art. 2704. - Medical Examination.**

In the case of a claim for disability, the insurer may require the insured person to submit to a medical examination.

**Art. 2705. - Relation to Life Insurance.**

Clauses of accident and health insurance which are accessory to a contract of life insurance and clauses of life insurance which are accessory to a contract of accident and health insurance shall be governed by the rules governing the principal contract.

**Paragraph 4. - Group Insurance**

**Art. 2706. - Group Insurance.**

- (1) A contract for group insurance of persons is a contract of insurance which covers the participants in a specified group and may also cover their families or dependents.
- (2) An employer may enter into a contract for group insurance which covers his employees.
- (3) Each participant covered by the policy is authorized to designate his beneficiary.

**Art. 2707. - Issuance of Policy.**

- (1) In the case of a policy of group insurance, the insured shall issue the master policy to the subscriber and shall deliver to him the individual certificates of insurance for distribution to the participants covered by the policy.
- (2) Participants and beneficiaries may examine and make copies of the policy at the subscriber's place of business.
- (3) In case of a discrepancy between the policy and the certificate, the participants may invoke the more favorable terms.

**Art. 2708. - Concealment of Facts and False Statements in Group Insurance.**

- (1) If a participant in group insurance conceals facts or makes false statements about age or risks, the concealment or false statements affects only the insurance of the persons who are the subject of the concealment or false statements.
- (2) The representations of a participant may be invoked against him only if the insurer has furnished him with a copy of the representations.

**Chapter 3. - Games and Wagers**

**Art. 2709. - Games and Wagers.**

- (1) The provisions relating to insurance shall not apply to operations which are in the nature of games and wagers.
- (2) Except as provided in Article 2710, games and wagers shall not give rise to valid claims for payment.
- (3) Where a person capable under civil law has spontaneously paid a debt arising out of a game or wager in which no fraud has been committed, such person cannot claim back the sum paid.

**Art. 2710. - Defense Based on Game Not Admissible.**

- (1) A defense based on the invalidity of games and wagers shall not be admissible in respect of stock exchange speculations, even where such speculations are liquidated by paying the differences, and regardless of the profession and intention of the parties and of the importance of the speculations.
- (2) A defense based on the invalidity of games and wagers shall not be admissible in respect of games or wagers connected with sporting activities but the Court may reduce the amount claimed where it thinks it to be excessive.

- (3) A defense based on the invalidity of games and wagers shall not be admissible in respect of any lottery or wagering authorized by the government.



## **TITLE VI - SETTLEMENT, CONCILIATION AND ARBITRATION**

### **Chapter 1. - Settlement**

#### **Art. 2711. - Definition.**

A settlement contract is a contract by which the parties, through mutual concessions, terminate an existing dispute or prevent a dispute from arising in the future, without prejudice to the provisions of special legislation.

#### **Art. 2712. - Matters Subject to Settlement.**

- (1) A settlement contract may be made to create, to modify or to extinguish legal obligations.
- (2) No settlement contract may be made with respect to the status or capacity of persons or to other matters contrary to public policy.

#### **Art. 2713 - Form.**

A settlement contract shall comply with the formal requirements for the creation, modification or extinction of these obligations.

#### **Art. 2714. - Interpretation.**

- (1) The terms of a settlement contract renouncing rights shall be interpreted restrictively.
- (2) Renunciation by one party of all his rights, actions and claims shall only extinguish those rights, actions and claims in respect of which the settlement has been reached.
- (3) Where a person who has made a compromise settlement on a right which he held in his own name subsequently acquires a similar right in the name of another person, the settlement shall not bind the newly-acquired right.

**Art. 2715. - Relative Effect.**

A settlement made by one interested party shall not be binding on the other interested parties and may not be set up by them.

**Art. 2716. - Force of *Res Judicata*.**

- (1) As between the parties, the settlement shall have the force of *res judicata* without appeal.
- (2) It may not be contested on the ground of a mistake made by one or both of the parties concerning the rights on which they have concluded the settlement.

**Art. 2717. - Fundamental Mistake. - 1. *Void or False Documents*.**

A settlement contract may be annulled on the ground of mistake where it relates to a void instrument or a false document unless, at the time the contract was concluded, the parties had taken into account the possibility that the instrument might be void or the document false.

**Art. 2718. - 2. *Unknown Judgment*.**

- (1) A settlement contract may be annulled where the dispute which it was intended to terminate has been settled by a judgment having the force of *res judicata* where one or both of the parties were unaware of the judgment.
- (2) Where an appeal lies from the judgment of which one or both of the parties are unaware, the settlement contract shall remain valid.

**Art. 2719. - 3. *General Settlement*.**

- (1) Where the parties have reached a general settlement with regard to all the matters outstanding between them, the settlement contract may not be annulled on the ground that documents unknown to one or both of the parties at the time the contract was concluded have subsequently been discovered.
- (2) The settlement contract may however be annulled in such a case where the documents in question were willfully

withheld by one of the parties at the time the contract was concluded.

**Art. 2720. - Warranties Due by Parties.**

Unless otherwise agreed, a party who renounces a right makes no warranty as to the right except that it is his right to compromise.

**Art. 2721. - Declaratory Effect of Settlement.**

The settlement contract shall have a declaratory effect as regards the rights which a party renounces therein.

**Chapter 2. - Conciliation**

**Art. 2722. - Agreement to Conciliate.**

The parties to a dispute may agree to entrust one or more third parties with the mission of bringing the parties together and, if possible, negotiating a settlement between them.

**Art. 2723. - Offer to Conciliate.**

- (1) A party may, at any time, offer to conciliate.
- (2) If the other party rejects the offer, there will be no conciliation proceedings.
- (3) If the other party does not accept the offer within thirty days after receiving it, the first party may elect to treat the non-acceptance as a rejection of the offer.

**Art. 2724. - Appointment of One or More Conciliators.**

- (1) The parties may appoint one or more conciliators.
- (2) The parties may ask an institution or a third party to appoint a conciliator.
- (3) A person appointed as a conciliator shall be free to accept or to refuse his appointment.

**Art. 2725. - Period of Appointment.**

- (1) The conciliator shall act as a conciliator for the period of time agreed to by the parties or, in the absence of any such limit, within six months from the date of his appointment.
- (2) During this period, a party may initiate or continue arbitral or judicial proceedings with respect to matters submitted to conciliation only if necessary to preserve his rights.

**Art. 2726. - Conciliation Procedure.**

- (1) The parties may agree on the procedure to be followed by the conciliator or conciliators. They may adopt rules of conciliation published by an institution.
- (2) If the parties do not agree on the procedure, the conciliator or conciliators may proceed in any manner consistent with the mission of negotiating a settlement between the parties.
- (3) Where the parties have appointed more than one conciliator, the conciliators shall, in principle, act jointly.

**Art. 2727. - Role of Conciliator.**

- (1) By agreeing to an appointment as conciliator, the conciliator agrees to assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) He shall be guided by principles of objectivity, fairness and justice.
- (3) He shall follow the procedures agreed to by the parties and give them an opportunity to state their views fully.

**Art. 2728. - Duties of Parties.**

- (1) The parties shall cooperate in good faith with the conciliator.

- (2) They shall provide the conciliator with all the information necessary for the performance of his duties.
- (3) They shall refrain from any act that would make the conciliator's task more difficult or impossible.

**Art. 2729. - Proposals for Settlement.**

- (1) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.
- (2) The parties shall not be bound by the terms of a proposed settlement unless they expressly undertake in writing to confirm the settlement.

**Art. 2730. - Application of Rules Regarding Settlement.**

A settlement reached by the parties through conciliation is a settlement contract governed by the provisions of Chapter 1 of this Title.

**Art. 2731. - Termination of Conciliation Proceeding.**

- (1) The parties terminate a conciliation proceeding when they expressly undertake in writing to confirm the settlement or when they sign a written memorandum stating that they have agreed to terminate the proceeding.
- (2) A conciliation proceeding is also terminated when each conciliator, after consulting with the parties, signs a written memorandum stating that further efforts at conciliation are not justified.
- (3) A proceeding terminates when the periods of appointment for all conciliators expire.

**Art. 2732. - Conciliator's Expenses and Remuneration.**

- (1) The parties shall reimburse the conciliator for any reasonable expenses he has incurred in the performance of his duties.

- (2) He is not entitled to remuneration unless otherwise expressly agreed.

**Art. 2733. - Confidentiality.**

- (1) The conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings.
- (2) They shall keep confidential any agreed settlement except if its disclosure is necessary for purposes of enforcement.

**Art. 2734. - Admissibility of Evidence in Other Proceedings.**

Unless all parties agree to the disclosure, evidence of anything said or of an admission made in the course of a conciliation proceeding is not admissible in any arbitral or judicial proceeding.

**Chapter 3. - Arbitration**

**Section 1. - General Provisions**

**Art. 2735. - Scope of Application.**

- (1) The provisions of this Chapter apply to arbitration, whether domestic or international, except to family arbitration.
- (2) The provisions of this Chapter, except articles 2742, 2743, 2772 and 2773, apply only if the place of arbitration is in the territory of Eritrea.
- (3) The provisions of this Chapter shall not affect any other law of Eritrea by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Chapter.

**Art. 2736.- Definitions and Rules of Interpretation.**

For the purposes of the provisions of this Chapter:

- (a). "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "Court" means a body or organ of the judicial system of Eritrea;
- (d) where a provision of this Chapter, except article 2765, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Chapter refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement; and
- (f) where a provision of this Chapter, other than in articles 2760 (a) and 2769 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defense, it also applies to a defense to such counter-claim.

**Art. 2737. - Receipt of Written Communications.**

- (1) Unless otherwise agreed by the parties:
  - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
  - (b) the communication is deemed to have been received on the day it is so delivered.

- (2) The provisions of this article do not apply to communications in Court proceedings.

**Art. 2738. - Waiver of Right to Object.**

A party who knows that any provision of this Chapter from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

**Art. 2739. - Extent of Court Intervention.**

In matters governed by the provisions of this Chapter, no Court shall intervene except where so provided in the provisions of this Chapter.

**Art. 2740. - Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision.**

The functions referred to in articles 2745 (3), 2745 (4), 2747 (3), 2748, 2751 (3) and 2771 (2) shall be performed by the High Court.

**Section 2. - Arbitration Agreement**

**Art. 2741. - Definition and Form of Arbitration Agreement.**

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by



another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

- (3) An arbitration agreement is also constituted by issuing of a bill of lading that expressly refers to an arbitration clause contained in a charter party.

**Art. 2742. - Arbitration Agreement and Substantive Claim before Court.**

- (1) A Court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in sub-Article (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the Court.

**Art. 2743. - Arbitration Agreement and Interim Measures by Court.**

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a Court an interim measure of protection and for a Court to grant such measure.

**Section 3. - Composition of Arbitral Tribunal**

**Art. 2744. - Number of Arbitrators.**

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

**Art. 2745. - Appointment of Arbitrators.**

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of sub-Articles (4) and (5) of this article.
- (3) Failing such agreement:
  - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Court or other authority specified in Article 2740; or
  - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the Court or other authority specified in Article 2740.
- (4) Where, under an appointment procedure agreed upon by the parties:
  - (a) a party fails to act as required under such procedure,
  - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
  - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the Court or other authority specified in Article 2740 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (5) A decision on a matter entrusted by sub-Article (3) or (4) of this article to the Court or other authority specified in Article 2740 shall be subject to no appeal. The Court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

#### **Art. 2746. - Grounds for Challenge.**

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

#### **Art. 2747. - Challenge Procedure.**

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of sub-Article (3) of this article.

- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 2746 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of sub-Article (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court or other authority specified in article 2740 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

**Art. 2748. - Failure or Impossibility to Act.**

- (1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the Court or other authority specified in article 2740 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If, under this article or article 2747 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 2746 (2).

**Art. 2749. - Appointment of Substitute Arbitrator.**

Where the mandate of an arbitrator terminates under article 2747 or 2748 or because of his withdrawal from office for any other reason or

because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

**Art. 2750. - Liability of Arbitrators.**

- (1) An arbitrator is not liable for negligence in respect of anything done or omitted to be done in the capacity of the arbitrator, except where his action or omission is attributable to malice or fraud.
- (2) An employee or mandatary of the arbitral tribunal is not liable for negligence in respect of anything done or omitted to be done in the capacity of employee or mandatary of the arbitral tribunal, except where his action or omission is attributable to malice or fraud.

**Section 4. - Jurisdiction of Arbitral Tribunal**

**Art. 2751. - Competence of Arbitral Tribunal to Rule on its Jurisdiction.**

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

- (3) The arbitral tribunal may rule on a plea referred to in sub-Article (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the Court specified in article 2740 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award. Unless the parties have agreed otherwise, the Court shall have jurisdiction to try the case if the arbitral tribunal rules that it has no jurisdiction on the ground that no valid arbitration agreement exists between the parties.

**Art. 2752. - Power of Arbitral Tribunal to Order Interim Measures.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.
- (2) Unless otherwise agreed by the parties, Articles 2771, 2772 and 2773 apply to orders made under Article 2752 (1).

**Section 5. - Conduct of Arbitral Proceedings**

**Art. 2753. - Equal Treatment of Parties.**

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

**Art. 2754. - Determination of Rules of Procedure.**

- (1) Subject to the provisions of this Chapter, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Chapter, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

**Art. 2755. - Place of Arbitration.**

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of sub-Article (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

**Art. 2756. - Commencement of Arbitral Proceedings.**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

**Art. 2757. - Language.**

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the

language or languages agreed upon by the parties or determined by the arbitral tribunal.

**Art. 2758. - Statements of Claim and Defense.**

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

**Art. 2759. - Hearings and Written Proceedings.**

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal



may rely in making its decision shall be communicated to the parties.

**Art. 2760. - Default of a Party.**

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with Article 2758 (1); the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defense in accordance with Article 2758 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

**Art. 2761. - Expert Appointed by Arbitral Tribunal.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal:
  - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or
  - (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

**Art. 2766. - Decision Making by Panel of Arbitrators.**

- (1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.
- (2) If the parties have agreed on an even number of arbitrators, the arbitrators shall, when a deadlock arises, appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal. Failing such agreement between the arbitrators in appointing the additional arbitrator, such arbitrator shall, unless the parties have agreed otherwise, be appointed, at the request of either party, by the Court.

**Art. 2767. - Settlement.**

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of Article 2768 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

**Art. 2762. - Court Assistance in Taking Evidence.**

The arbitral tribunal or a party with the approval of the arbitral tribunal may request the High Court assistance in taking evidence. The Court may execute the request within its competence and according to its rules on taking evidence.

**Art. 2763. - Intervention of Third Parties.**

- (1) The intervention of a third party or third proceedings may be authorized only by virtue of an arbitration agreement between the third party and the parties in dispute.
- (2) Furthermore such matters are subject to the competence of the arbitral tribunal.

**Art. 2764. - Consolidation.**

- (1) The parties are free to agree:
  - (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or
  - (b) that concurrent hearings shall be held on terms as may be agreed.
- (2) Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

**Section 6. - Making of Award and Termination of Proceedings.**

**Art. 2765. - Rules Applicable to Substance of Dispute.**

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. The designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

**Art. 2768. - Form and Contents of Award.**

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 2767.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 2755 (1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with sub-Article (1) of this article shall be delivered to each party.
- (5) The award may be made public only with the consent of both parties.

**Art. 2769. - Termination of Proceedings.**

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with sub-Article (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
  - (b) the parties agree on the termination of the proceedings;

- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 2770 and 2771 (4).

**Art. 2770. - Correction and Interpretation of Award: Additional Award.**

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award; or
  - (c) if the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.
- (2) The arbitral tribunal may correct any error of the type referred to in sub-Article (1) (a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under sub-Article (1) or (3) of this article.
- (5) The provisions of Article 2768 shall apply to a correction or interpretation of the award or to an additional award.

### **Section 7. - Recourse against Award**

#### **Art. 2771. - Application for Setting Aside as Exclusive Recourse against Arbitral Award.**

- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside in accordance with sub-Articles (2) and (3) of this article.
- (2) An arbitral award may be set aside by the Court specified in article 2740 only if:
  - (a) the party making the application furnishes proof that:
    - (i) a party to the arbitration agreement referred to in Article 2741 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Eritrea; or
    - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
    - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part

of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Chapter from which the parties cannot derogate, or, failing such agreement, was not, in accordance with provisions of this Chapter; or

(b) the Court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Eritrea; or

(ii) the award is in conflict with the public policy of Eritrea.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under Article 2770, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the same or a new arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(5) An award is in conflict with the public policy of Eritrea if the making of the award was induced or affected by fraud or corruption.

(6) As soon as a decision setting aside the award has become final, the jurisdiction of the same or a new arbitral

tribunal shall revive, unless the award has been set aside on the ground that a party to the arbitration agreement referred to in Article 2741 was under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Eritrea. The parties can agree otherwise.

## **Section 8. - Recognition and Enforcement of Awards**

### **Art. 2772. - Recognition and Enforcement.**

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to the provisions of this article and of Article 2773.
- (2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 2741 or a duly certified copy thereof. If the award or agreement is not made in an official language of Eritrea, the party shall supply a duly certified translation thereof into such language.
- (3) The provisions in the Civil Procedure Code on accelerated procedure shall apply where an application for the enforcement of an arbitral award is made to the extent that this Chapter does not contain provisions deviating therefrom.
- (4) If the High Court grants leave for enforcement, the means of recourse mentioned in Article 2771 shall be the only means of recourse available. The setting aside of an arbitral award causes by operation of law the annulment of any leave for enforcement.



**Art. 2773. - Grounds for Refusing Recognition or Enforcement.**

- (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
  - (a) at the request of the party against whom it is invoked, if that party furnishes to the competent Court where recognition or enforcement is sought proof that:
    - (i) a party to the arbitration agreement referred to in article 2741 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
    - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
    - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a Court of the country in which, or under the law of which, that award was made; or
- (b) if the Court finds that:
    - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Eritrea; or
    - (ii) the recognition or enforcement of the award would be contrary to the public policy of Eritrea.
- (2) If an application for setting aside or suspension of an award has been made to a Court referred to in sub-Article (1) (a) (v) of this article, the Court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.
- (3) An award is in conflict with the public policy of Eritrea if the making of the award was induced or affected by fraud or corruption.

## FINAL PROVISIONS

### **Art. 2774. - Repeals.**

Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.

### **Art. 2775. - Rights Acquired Under Repealed Legislation.**

- (1) Unless otherwise expressly provided, legal situations created prior to the coming into force of this Code shall remain valid notwithstanding that this Code modifies the conditions on which such situations may be created.
- (2) Unless otherwise expressly provided, this Code shall not affect the consequences having arisen out of such legal situations prior to the coming into force of this Code.

### **Art. 2776. - Legal Situations Not Finally Created.**

- (1) Unless otherwise expressly provided, where the conditions for the creation of a legal situation may or need be present at various times, the provisions of this Code shall only apply to such conditions as are not yet finally fulfilled on the coming into force of the this Code.
- (2) Such conditions shall be governed by such further requirements for the creation of a legal situation as are laid down in this Code.

### **Art. 2777. - Law Modifying a Period of Time.**

- (1) Where periods of time have expired prior to the coming into force of this Code, nothing in this Code shall revive them.
- (2) Where periods of time have been extended by this Code, the provisions of this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

- (3) Where periods of time have been shortened by this Code, the periods provided by the law repealed by this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

**Art. 2778. - Effect of Existing Legal Situations.**

- (1) Unless otherwise expressly provided, the provisions of this Code which specify the effects of extra-contractual legal situations shall forthwith apply to legal situations created prior to the coming into force of this Code.
- (2) Contracts existing on the coming into force of this Code shall be governed by the provisions of the law under which they have been made, unless the contract is avoidable on the ground of mistake, fraud, threat, gross disparity or as being unconscionable in such cases and within such time as are provided in this Code.

**Art. 2779. - Standard Terms Used vis-à-vis a Consumer.**

The Chapter on standard terms used vis-à-vis a consumer in Book V on Obligations shall have application one year after the coming into force of this Code.

**Art. 2780. - Equal Application.**

In this Code, unless the context in the specific provision dictates otherwise, references to any gender shall be interpreted to also equally apply to the opposite gender.

