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Amended by Act No. 1237, Dec. 29, 1962
Act No. 1250, Dec. 31, 1962
Act No. 1668, Dec. 31, 1964
Act No. 2200, Jun. 18, 1970
Act No. 3051, Dec. 31, 1977
Act No. 3723, Apr. 10, 1984
Act No. 4199, Jan. 13, 1990
Act No. 5431, Dec. 13, 1997
Act No. 5454, Dec. 13, 1997
Act No. 6544, Dec. 29, 2001
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Act No. 8435, May 17, 2007
Act No. 8720, Dec. 21, 2007

PART I GENERAL PROVISIONS

CHAPTER I COMMON PROVISIONS

Article 1 (Source of Law)

If there is no provision in Acts applicable to certain civil affairs, customary law shall apply, and if there is no applicable customary law, sound reasoning shall apply.

Article 2 (Trust and Good Faith)

- (1) The exercise of rights and the performance of duties shall be in accordance with the principle of trust and good faith.
- (2) No abuse of rights shall be permitted.

CHAPTER II PERSONS

SECTION 1 Capacity

Article 3 (Duration of Legal Capacity)

All persons shall be subjects of rights and duties throughout their lives.

Article 4 (Majority)

Majority is attained upon the completion of twenty full years of age.

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Article 5 (Capacity of Minor)

(1) A minor shall obtain the consent of his agent by law to perform any juristic act: *Provided*, That exceptions shall be made in a case where the juristic act concerned is one merely to acquire rights or to be relieved from obligations.

(2) Any act done in violation of the provision of the preceding paragraph is voidable.

Article 6 (Property Permitted to Dispose of)

A minor, in regard to property of which he has been permitted by his agent by law to dispose of within the scope specified by the latter, may dispose of it at his will.

Article 7 (Cancellation of Consent and Permission)

Before a minor performs any juristic act, his agent by law may cancel the consent and permission given under the preceding two Articles.

Article 8 (Permission on Business)

(1) A minor who has been permitted to carry on a specific business by his agent by law shall have in relation to such a specific business the same capacity as a person of full age.

(2) A agent by law may cancel or qualify the permission under the preceding paragraph: *Provided*, That the cancellation or qualification cannot be set up against a third person acting in good faith.

Article 9 (Adjudication of Quasi-Incompetency)

A feeble minded person or a spendthrift who may bring poverty to himself or his family, shall be adjudged a quasi-incompetent by a court on the application of the person himself, his spouse, any relative within the fourth degree of relationship, guardian or a public prosecutor. <Amended by Act No. 4199, Jan. 13, 1990>

Article 10 (Capacity of Quasi-Incompetent Person)

The provisions of Articles 5 through 8 above shall apply *mutatis mutandis* to the quasi-incompetent persons.

Article 11 (Rescission of Adjudication of Quasi-Incompetency)

When the cause for quasi-incompetency has ceased to exist, a court shall rescind the adjudication on the application of any of the persons mentioned in Article 9.

Article 12 (Adjudication of Incompetency)

A person in a habitual condition of mental unsoundness may be adjudged incompetent by a court on the application of any of the persons mentioned in Article 9.

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Article 13 (Capacity of an Incompetent)

Juristic acts done by incompetents are voidable.

Article 14 (Rescission of Adjudication of Incompetency)

The provision of Article 11 shall apply *mutatis mutandis* to incompetents.

Article 15 (Right of Peremptory Notice of Other Party to Person under Disability)

(1) The other party to an act performed by a person under disability may, after the latter has become a person of full capacity, give a peremptory notice to the latter requesting a definite answer within a period, which shall not be less than one month, as to whether the latter ratifies the voidable act or not. If the person who was under disability, fails to dispatch a definite answer within such period, the act is deemed to have been ratified.

(2) Before the person under disability has become a person of full capacity, the notice under the preceding paragraph may be given to his legal representative, and when his agent by law fails to dispatch a definite answer within such period, the act is deemed to have been ratified.

(3) Any act for which special formalities are required shall be deemed to have been avoided if a definite answer in compliance with such formalities is not dispatched within the aforesaid period.

Article 16 (Withdrawal and Refusal Rights of Other Party to Person under Disability)

(1) The other party to a contract concluded by a person under disability may withdraw his declaration of intention (toward the contract) until it has been ratified, unless the other party knew, at the time of formation of the contract, that the latter was a person under disability.

(2) The other party to a unilateral act performed by a person under disability may refuse to comply with the act until it has been ratified.

(3) The declaration of intention of the withdrawal or refusal under the preceding two paragraphs may be forwarded to the person under disability.

Article 17 (Fraudulent Means by Person under Disability)

(1) If a person under disability has used fraudulent means to induce the belief that he is a person of full capacity, he cannot avoid his act.

(2) The above paragraph shall apply to cases where a minor or a quasi-incompetent person has used fraudulent means to induce the belief that he has obtained the consent of his agent by law.

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SECTION 2 Domicile

Article 18 (Domicile)

- (1) The base and center of living of each person shall be his domicile.
- (2) A person may have two or more domiciles at the same time.

Article 19 (Temporary Domicile)

If the domicile is unknown, the temporary domicile shall be deemed to be the domicile.

Article 20 (Temporary Domicile)

The temporary domicile in Korea of a person having no domicile in Korea shall be deemed to be his domicile.

Article 21 (Temporary Residence)

In case a temporary residence is determined concerning a certain act, this shall be deemed to be the domicile with regard to the act.

SECTION 3 Absence and Disappearance

Article 22 (Management of Property of Absentee)

- (1) If a person has left his domicile or temporary domicile without appointing an administrator for his property, a court shall, on the application of any person interested or a public prosecutor, order such steps necessary for the management of his property. The same shall apply when the authority of an administrator has come to an end during the absence of his principal.
- (2) If the principal subsequently appoints an administrator, the court shall cancel its order on the application of the principal, administrator, any person interested, or of a public prosecutor.

Article 23 (Replacement of Administrator)

In a case where the absentee has appointed an administrator, and it is unknown whether the absentee is alive or dead, a court may, on the application of the administrator, any person interested, or of a public prosecutor, appoint another administrator in his stead.

Article 24 (Duties of Administrator)

- (1) An administrator appointed by a court shall prepare an inventory of the property which he is to manage.
- (2) The court may order the administrator appointed by the court to take such steps necessary for preservation of an absentee's property.

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(3) If it is not known whether an absentee is alive or dead, and an application has been made by a person interested or by a public prosecutor, the court may order the administrator appointed by the absentee to take the steps under the preceding two paragraphs.

(4) In case of the preceding three paragraphs, expenses thereof shall be defrayed out of the property of the absentee.

Article 25 (Authority of Administrator)

If the administrator appointed by the court finds it necessary to perform functions in excess of the powers specified in Article 118, he shall obtain the consent of the court. The same shall apply in a case where an administrator appointed by the absentee finds it necessary to perform functions in excess of the powers fixed by the absentee, and it is unknown whether the absentee is alive or dead.

Article 26 (Security by Administrator and Remuneration for Administrator)

(1) The court may require an administrator appointed by the court to furnish reasonable security for the management and return of the property.

(2) The court may award the administrator appointed by the court reasonable remuneration out of the property of the absentee.

(3) The above two paragraphs shall apply *mutatis mutandis* to an administrator appointed by an absentee in a case where it is unknown whether the absentee is alive or dead.

Article 27 (Judicial Declaration of Disappearance)

(1) If it is uncertain for five years whether an absentee is alive or dead, the court shall, on the application of any person interested or of a public prosecutor, make a judicial declaration of disappearance.

(2) The provisions of the preceding paragraph shall also be applicable where the survival or death of a person who was on a battlefield, aboard a sunken vessel or a downed aircraft, or encountered any other peril that might be a cause of death, is not known distinctly for one year after the termination of the war, the sinking of the vessel or the crash of the aircraft, or the end of any other peril. <Amended by Act No. 3723, Apr. 10, 1984>

Article 28 (Effect of Judicial Declaration of Disappearance)

A person against whom a judicial declaration of disappearance has been made is deemed to have died at the expiration of the period mentioned in the preceding Article.

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Article 29 (Annulment of Judicial Declaration of Disappearance)

(1) If it has been proved that a person against whom a judicial declaration of disappearance has been made, is alive or dead at a time different from that specified in the preceding Article, the court shall, on the application of the person himself, any person interested, or a public prosecutor, annul the judicial declaration of disappearance: *Provided*, That such annulment shall not affect the validity of acts done in good faith, after the judicial declaration of disappearance and prior to its annulment.

(2) When a judicial declaration of disappearance has been annulled, a person who has acquired property by the direct result of the judicial declaration of disappearance shall be liable to return such property only to the extent that he is still enriched, in a case where he acquired the property in good faith. In a case where he acquired the property in bad faith, he shall return such property with interest, and if there has been any damage, he shall pay for the damage.

Article 30 (Simultaneous Death)

In case two or more persons died of the same peril, it is presumed that they died at the same time.

CHAPTER III JURISTIC PERSONS

SECTION 1 General Provisions

Article 31 (Rule to Formation of Juristic Person)

No juristic person can come into existence other than in accordance with the provisions of the Acts.

Article 32 (Incorporation of Non-profit-making Juristic Person and Permission thereof)

An association or foundation relating to science, religion, charity, art, social intercourse, or otherwise relating to enterprises not engaged for profit or gain, may be formed as a juristic person subject to the permission of the competent authorities.

Article 33 (Registration for Incorporation of Juristic Person)

A juristic person shall come into existence by making registration for Incorporation at the seat of the principal office of the juristic person.

Article 34 (Legal Capacity of Juristic Person)

A juristic person shall be a subject of rights and duties, in accordance

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with the provisions of Acts, and within the scope of its objects as determined by the Articles of incorporation.

Article 35 (Capacity of Juristic Person to Assume Responsibility for Unlawful Act)

(1) A juristic person shall be liable for any damages done to other persons by its directors or other representatives in the performance of their duties. This liability of a juristic person shall not relieve the directors or other representatives of their own liabilities for damages sustained thereby.

(2) If any damage has been caused to other persons as a result of an *ultra-vires* act of a juristic person, those members, directors, and other representatives who have supported a resolution for such *ultra-vires* act, or have carried it out, shall be joint and severally liable for the damages caused thereby.

Article 36 (Domicile of Juristic Person)

The domicile of a juristic person shall be regarded to be located in the seat of its principal office.

Article 37 (Inspection and Supervision over Business of Juristic Person)

The business of a juristic person shall be inspected and supervised by the competent authorities.

Article 38 (Cancellation of Permission for Incorporation of Juristic Person)

In a case where a juristic person operates such business outside the scope of its purpose, violates such conditions attached to the permission for its incorporation, or does acts harming public interests, the competent authorities may cancel the permission.

Article 39 (Profit-making Juristic Person)

(1) An association which aims at profit-making may be made a juristic person in accordance with the conditions prescribed for the formation of trading companies.

(2) All the provisions concerning business companies shall apply *mutatis mutandis* to the incorporated association under the preceding paragraph.

SECTION 2 Incorporation

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Article 40 (Articles of Incorporated Association)

The founder of an incorporated association shall draw up Articles of incorporation containing the following matters, and shall sign and seal it:

1. Objective;
2. Name;
3. Seat of Office;
4. Provisions concerning assets;
5. Provisions concerning appointment and removal of directors;
6. Provisions concerning the acquisition and loss of qualification for membership; and
7. Period for duration or cause of dissolution, if any.

Article 41 (Restriction on Power of Representation of Directors)

No restriction placed on the power of representation of any director has effect unless the restriction is stated in the Articles of incorporation.

Article 42 (Alteration in Articles of Incorporated Association)

(1) The Articles of an incorporated association may be altered only with the consent of two thirds or more of all the members: *Provided*, That other provisions concerning the quorum are stipulated in the Articles of incorporation, such provisions shall apply.

(2) Any alteration in the Articles of incorporation shall not be effective unless it is permitted by the competent authorities.

Article 43 (Articles of Incorporated Foundation)

The founder of an incorporated foundation shall endow a certain property, and draw up Articles of incorporation containing the particulars mentioned in subparagraphs 1 through 5 of Article 40, and sign and seal it.

Article 44 (Supplement for Articles of Incorporated Foundation)

If the founder of an incorporated foundation died without determining the name, seat of office, or method of appointment and removal of its directors of the foundation, the court shall, on the application of any person interested or of a public prosecutor, determine those.

Article 45 (Alteration in Articles of Incorporated Foundation)

(1) The Articles of an incorporated foundation may be altered only in a case where the method of alteration thereof is stipulated in the Articles

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of incorporation.

(2) If it is necessary to alter the articles of incorporation for the purpose of achieving the objective of an incorporated foundation, or for the preservation of its property, its name or its seat of office may be altered, regardless of the provisions of the preceding paragraph.

(3) Article 42 (2) shall apply *mutatis mutandis* to the preceding two paragraphs.

Article 46 (Alteration in Objectives, etc. of Incorporated Foundation)

If it is impossible to achieve the objectives of an incorporated foundation, the founder or directors may alter the objectives or other particulars of the articles of incorporation, taking into consideration the purposes of the formation, subject to the permission of the competent authorities.

Article 47 (Application of Provisions Relating to Gift and Testamentary Gift)

(1) If an incorporated foundation is formed by a disposition *inter vivos*, the provisions relating to gifts shall apply *mutatis mutandis*.

(2) If an incorporated foundation is formed by a will, the provisions relating to testamentary gift shall apply *mutatis mutandis*.

Article 48 (Time of Belonging of Property Given by Endowment)

(1) In a case where the incorporated foundation is formed through a disposition *inter vivos*, the property given by way of endowment shall become the property of the juristic person as from the time when the juristic person is incorporated.

(2) In a case where the incorporated foundation is formed through a will, the property so given shall be deemed to have vested in the juristic person as from the time when the will became effective.

Article 49 (Particulars to be Registered)

(1) When the incorporation of a juristic person is permitted, the juristic person shall register its incorporation at the seat of its principal office within three weeks from the date of the permission.

(2) The particulars to be registered under the preceding paragraph shall be as follows:

1. Objective;
2. Name;
3. Office;
4. Date of permission for incorporation;
5. Period of duration or causes of dissolution, if any;
6. Total value of the assets;
7. Method of effecting contributions, if any;
8. Full names and domiciles of directors; and

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9. Any restriction in a case where restriction is placed upon the power of representation of directors.

Article 50 (Registration for Establishment of Branch Office)

(1) When a juristic person establishes a branch office, the establishment shall be registered within three weeks at the seat of the principal office. At the seat of the branch office, the particulars under paragraph (2) of the preceding Article, shall be registered within the same period. At the seat of other branch offices, the establishment shall be registered within the same period.

(2) In a case where the branch office is newly established within the jurisdiction of a register office which exercises jurisdiction over the seat of the principal office, or the established branch office, only the establishment shall be registered within the period under the preceding paragraph.

Article 51 (Registration for Transfer of Office)

(1) In a case where the juristic person has transferred its office, such transfer shall be registered at the seat of the former office within three weeks, and the particulars mentioned in Article 49 (2) shall be registered at the seat of the new office within the same period.

(2) In a case where an office has been transferred from one place to another within the jurisdiction of the same register office, only the transfer shall be registered.

Article 52 (Registration for Alteration)

In a case where any alteration has occurred in any of the particulars mentioned in Article 49 (2), the registration thereof shall be made within three weeks.

Article 52-2 (Registration of Provisional Disposition Such as Suspension of Exercise of Duties)

Where the exercise of director's duties is suspended, where a provisional disposition of appointing a proxy for duties is made, or where the provisional disposition is altered or cancelled, the registration thereof shall be made at the registry in the place where a principal office or branch office is located.

[This Article Newly Inserted by Act No. 6544, Dec. 29, 2001]

Article 53 (Reckoning of Period for Registration)

If any of the particulars to be registered in accordance with the provisions of the preceding three Articles requires the permission of the authorities, the period for registration shall be computed from the date of the arrival of the permit in question.

Article 54 (Effect of Registration Other than That for Incorporation and Public Notice of Particulars Registered)

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(1) Particulars to be registered in this Section other than that for incorporation purposes cannot be set up against a third party until such particulars are registered.

(2) The court shall immediately give public notice of the particulars registered.

Article 55 (Inventory of Assets and List of Members)

(1) A juristic person shall, at the time of its formation and within three months of every year, prepare an inventory of assets and keep the same in its office. In a case where the special business term is fixed, the inventory shall be made at the time of its formation and at the end of the business term.

(2) An incorporated association shall keep a list of members and revise the list whenever an alteration takes place in its membership.

Article 56 (Prohibition of Assignment and Inheritance of Membership)

The membership of an incorporated association shall not be assigned nor inherited.

SECTION 3 Organization

Article 57 (Directors)

A juristic person shall have one or more directors.

Article 58 (Execution of Affairs by Directors)

(1) Directors shall execute the affairs of a juristic person.

(2) In a case where there are two or more directors, the affairs of a juristic person shall be decided by a majority of the directors, unless it is otherwise provided for by the articles of incorporation.

Article 59 (Power of Representation of Directors)

(1) The directors shall each represent the juristic person in all its affairs: *Provided*, That they shall not contravene the purport provided for in the articles of incorporation. An incorporated association shall also comply with the resolutions of general meetings of the members.

(2) In regard to the representation of a juristic person, the provisions relating to agency shall apply *mutatis mutandis*.

Article 60 (Requisite for Setting up against Restriction on Power of Representation of Director)

No restriction placed on the power of representation of any director can be set up against a third person unless such restriction is registered.

Article 60-2 (Authority of Proxy for Duties)

(1) A proxy for duties under Article 52-2 shall not perform the acts not belonging to the regular affairs of a juristic person, except as otherwise prescribed in the order for a provisional disposition: *Provided*, That the same shall not apply to the case where a permission from the court has

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been obtained.

(2) Even where a proxy for duties has performed any acts which violate the provisions of paragraph (1), the juristic person shall be liable to a *bona fide* third person.

[This Article Newly Inserted by Act No. 6544, Dec. 29, 2001]

Article 61 (Directors' Duties of Care)

Directors shall execute their duties with such care as is required of good managers.

Article 62 (Appointment of Agent for Directors)

Directors may have other persons act as agents for specified acts only when such acts are not forbidden by the articles of incorporation or by a resolution of the general meeting.

Article 63 (Appointment of Provisional Directors)

If a vacancy has occurred in the post of directors, or there is no director, and there is a reason to believe that damage will ensue therefrom, the court shall appoint a provisional director on the application of any person interested, or of a public prosecutor.

Article 64 (Appointment of Special Representative)

Directors shall have no power of representation with respect to matters in which the interests of the juristic person and their own interests conflict with each other. In such cases a special representative shall be appointed in accordance with the provisions of the preceding Article.

Article 65 (Neglect of Duties of Director)

In a case where any director neglects his duties, he shall be jointly and severally liable to the juristic person for the damages.

Article 66 (Auditor)

A juristic person may, by its articles of incorporation or by a resolution of the general meeting, have auditors.

Article 67 (Duties of Auditor)

The duties of an auditor shall be as follows:

1. To inspect the financial status of the juristic person;
2. To inspect the manner in which its affairs are executed by the directors;
3. To report to a general meeting or to the competent authorities, if any irregularities are discovered in the financial status or the execution of affairs; and
4. To convene a general meeting, if it is necessary to do so for making the report mentioned in the preceding subparagraph.

Article 68 (Power of General Meeting)

All the affairs of an incorporated association, except for those delegated to the directors or other officers by the articles of incorporation, shall

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be decided by a resolution of the general meeting.

Article 69 (Regular General Meeting)

The directors of an incorporated association shall convene a regular general meeting at least once a year.

Article 70 (Special General Meeting)

(1) The directors of an incorporated association may convene a special general meeting whenever they deem it necessary to do so.

(2) The directors shall convene a special general meeting, when a demand stating the purpose of the meeting has been made by one fifth or more of the members. This quorum may be increased or decreased by the Articles of incorporation.

(3) In a case where the directors have not taken necessary procedures for convocation of a general meeting within two weeks after the demand under the preceding paragraph was made, the members who made the demand may convene the meeting with the permission of the court.

Article 71 (Convocation of General Meeting)

The convocation of a general meeting shall be done by dispatching notice at least a week in advance, indicating the object of the meeting, in a manner as stipulated by the Articles of incorporation.

Article 72 (Resolutions by General Meeting)

Except as otherwise provided in the Articles of incorporation, resolutions may be adopted at a general meeting only with regard to matters of which advance notice has been given in accordance with the preceding Article.

Article 73 (Vote of Member)

(1) Each member shall have equal vote.

(2) Members may vote in writing or by proxy.

(3) The preceding two paragraphs shall not apply, if it is otherwise provided in the Articles of incorporation.

Article 74 (Members who Have No Right to Vote)

In a case where a resolution is to be voted on concerning the relations between the incorporated association and one of its members, such member shall have no right to vote.

Article 75 (Method of Resolutions at General Meeting)

(1) Unless otherwise provided in this Act or in the Articles of incorporation, the attendance of a majority of all the members, and the votes of a majority of the members present, shall be necessary for the resolutions

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of a general meeting.

(2) In the case of Article 73 (2), the members concerned shall be deemed to have attended the meeting.

Article 76 (Minutes of General Meeting)

(1) A minutes for the proceedings of a general meeting shall be maintained.

(2) The minutes shall state the development, outline, and result of the proceedings, and the chairman and directors present shall sign and seal it.

(3) The directors shall keep the minutes at its principal office.

SECTION 4 Dissolution

Article 77 (Causes for Dissolution)

(1) A juristic person shall be dissolved upon the expiration of the period of its duration, the completion of the undertaking which forms the object of the juristic person, or the impossibility of such completion, the happening of any cause of dissolution specified in the Articles of incorporation, bankruptcy, or the annulment of the permission for incorporation.

(2) An incorporated association shall be dissolved in the case where no member remains, or by a resolution of a general meeting.

Article 78 (Resolution for Dissolution of Incorporated Association)

Unless otherwise provided in the Articles of incorporation, an incorporated association shall not adopt a resolution for dissolution, except with the approval of at least three fourths of all the members.

Article 79 (Application for Bankruptcy)

If a juristic person has become incapable of discharging its obligations in full, the directors shall immediately file a petition for bankruptcy.

Article 80 (Reversion of Surplus Assets)

(1) The assets of a juristic person which has been dissolved shall revert to the persons designated in the Articles of incorporation.

(2) If no person to whom the assets are to be reverted is designated in the Articles of incorporation, or if the method by which such person is to be determined is not specified therein, the directors or the liquidators may, with the permission of the competent authorities, dispose of the assets for the purposes similar to those of the juristic person: *Provided*, That in the case of an incorporated association, a resolution of a general meeting is required.

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(3) Any property which is not disposed of in accordance with the provisions of the preceding two paragraphs shall revert to the National Treasury.

Article 81 (Juristic Person in Liquidation)

A juristic person which has been dissolved shall have the rights and duties only within the scope of liquidating purpose.

Article 82 (Liquidator)

When a juristic person has been dissolved, the directors shall become the liquidators except in the case of bankruptcy: *Provided*, That this shall not apply, if otherwise prescribed in the Articles of incorporation, or by the resolution of a general meeting.

Article 83 (Appointment of Liquidator by Court)

If there exists no person to become a liquidator under the preceding Article, or if there is any possibility that damage may ensue because of a vacancy among the liquidators, a court may appoint liquidators on the application of any person interested, or of a public prosecutor, or *ex officio*.

Article 84 (Removal of Liquidators by Court)

Where any grave reason exists, the court may remove a liquidator *ex officio*, or on the application of any person interested, or of a public prosecutor.

Article 85 (Registration for Dissolution)

(1) Except in the case of bankruptcy, liquidators shall effect the registration of the cause and date of dissolution, their full names, domiciles, and any restriction in a case where restriction is placed upon the power of representation of the liquidators, at the seats of the principal and branch offices within three weeks after their inauguration.

(2) The provisions of Article 52 shall apply *mutatis mutandis* to the registration under the preceding paragraph.

Article 86 (Report on Dissolution)

(1) Except in the case of bankruptcy, liquidators shall report to the competent authorities on the matters under paragraph (1) of the preceding Article within three weeks after their inauguration.

(2) Liquidators inaugurated during the course of liquidation shall report only their full names and domiciles.

Article 87 (Duties of Liquidators)

(1) The duties of liquidators shall be as follows:

1. Winding up of pending business;
2. Recovery of claims and discharge of obligations; and

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3. Distribution of surplus assets.

(2) Liquidators may do all acts necessary for performing the duties specified in the preceding paragraph.

Article 88 (Public Notice to Obligee)

(1) Liquidators shall, within two months from the day on which they assumed office, give at least three public notices to obligors calling upon them to report their claims within a specified period, which shall not be less than two months.

(2) A statement shall be included in the public notice under the preceding paragraph that the claims of obligees who do not report their claims within the period will be excluded from liquidation.

(3) The public notice under paragraph (1) shall be given in the same manner as that of particulars to be registered to the court.

Article 89 (Notice to Present Claims)

Liquidators shall give a separate notice to each obligee known to them to report his claim. Obligees known to liquidators shall not be excluded.

Article 90 (Prohibition of Discharge of Obligation within Period to Report Claims)

Liquidators shall not discharge obligation to obligees within the period under Article 88 (1): *Provided*, That the juristic person, shall not be exempt from liability for paying damages accruing from the delay.

Article 91 (Special Case in Discharge of Obligation)

(1) The juristic person which is in the course of liquidation may discharge those obligations which are not yet due.

(2) In the case of the preceding paragraph, in regard to the claims with conditions, claims with indefinite period of duration, and other claims whose amount is not determined, they shall be discharged at the amount as appraised by an appraiser appointed by the court.

Article 92 (Claims Excluded from Liquidation)

Obligees excluded from liquidation may claim against such property only as has not yet been delivered to the persons to whom the property is to revert after the liabilities of the juristic person have been fully satisfied.

Article 93 (Bankruptcy in Liquidation)

(1) When it has become clear in the course of liquidation that the assets of the juristic person are insufficient to fully satisfy his liabilities, the

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liquidators shall immediately file a petition for bankruptcy and give a public notice thereof.

(2) The duties of the liquidators shall come to an end when they hand over the affairs to the bankruptcy trustee.

(3) The provisions of Article 88 (3) shall apply *mutatis mutandis* to the public notice under paragraph (1).

Article 94 (Registration and Report on Completion of Liquidation)

When the liquidation has been completed, liquidators shall register it within three weeks thereafter, and make a report thereon to the competent authorities.

Article 95 (Inspection and Supervision of Dissolution and Liquidation)

The dissolution and liquidation of a juristic person shall be subject to the inspection and supervision of the court.

Article 96 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 58 (2), 59 through 62, 64, 65, and 70 shall apply *mutatis mutandis* to liquidators.

SECTION 5 Penal Provisions

Article 97 (Penal Provisions)

Directors, auditors, or liquidators of a juristic person shall be liable for a fine for negligence of not more than 5,000,000 won in any of the following cases: <Amended by Act No. 8720, Dec. 21, 2007>

1. If they have neglected to effect any of the registrations prescribed in this Chapter;
2. If they have contravened the provisions of Article 55, or have made false statements in the inventory of assets or in the list of the members;
3. If they have obstructed inspection and supervision prescribed in Articles 37 and 95;
4. If they have made false statements to, or have concealed facts from, the competent authorities or a general meeting;
5. If they have violated the provisions of Articles 76 and 90;
6. If, in violation of the provisions of Articles 79 and 93, they have neglected to file a petition for bankruptcy; or
7. If they have neglected to give any of the public notices prescribed in Articles 88 and 93, or have given a false public notice.

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CHAPTER IV THINGS

Article 98 (Definition of Things)

Things mentioned in this Act shall mean corporeal things, electricity, and other natural forces which can be managed.

Article 99 (Immovables and Movables)

- (1) Land and things firmly affixed thereto shall be immovables.
- (2) All things other than immovables shall be movables.

Article 100 (Principal Thing and Accessory)

- (1) If the owner of a thing has attached thereto another thing owned by him in order to permanently facilitate the use of such thing, the thing so attached shall be an accessory.
- (2) An accessory shall follow the disposition of the principal thing.

Article 101 (Natural Fruits and Legal Fruits)

- (1) Products derived from a thing in conformity with the use for which the thing is intended shall be natural fruits.
- (2) Money and other things accruing as consideration for the use of a thing shall be legal fruits.

Article 102 (Acquisition of Fruits)

- (1) Natural fruits shall belong to the person who has the right to take them at the time of their severance from the principal thing.
- (2) Legal fruits shall accrue in proportion to the number of days during which the right to acquire them continues to exist.

CHAPTER V JURISTIC ACTS

SECTION 1 General Provisions

Articles 103 (Juristic Acts Contrary to Social Order)

A juristic act which has for its object such matters as are contrary to good morals and other social order shall be null and void.

Article 104 (Unfair Juristic Act)

A juristic act which has conspicuously lost fairness through strained circumstances, rashness, or inexperience of the parties shall be null and void.

Article 105 (Optional Provisions)

If the parties to a juristic act have declared an intention which differs from any provisions of Acts or subordinate statutes, which are not concerned with good morals or other social order, such intention shall prevail.

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Article 106 (*De Facto* Custom)

If there is a custom which differs from any provisions of Acts or subordinate statutes which are not concerned with good morals or other social order, and if the intention of the parties to a juristic act is not clear, such custom shall prevail.

SECTION 2 Declaration of Intention

Article 107 (Declaration of Untrue Intention)

(1) A declaration of intention shall be valid, even if the declarant has made it with the knowledge that such declaration is different from his true intention: *Provided*, That such declaration of intention shall be void if the other party was aware, or should have been aware, of the real intention of the declarant.

(2) The nullity of a declaration of intention as mentioned in the preceding paragraph cannot be set up against a third person acting in good faith.

Article 108 (Fictitious Declaration of Intention in Collusion)

(1) A fictitious declaration of intention made in collusion with any other party shall be null and void.

(2) The nullity of a declaration of intention as mentioned in the preceding paragraph cannot be set up against a third person acting in good faith.

Article 109 (Declaration of Intention under Mistake)

(1) A declaration of intention may be voidable if made under a mistake in regard to any essential elements of the juristic act: *Provided*, That if there has been gross negligence on the part of declarant, he shall not claim it to be voidable.

(2) The voidance of a declaration of intention as mentioned in the preceding paragraph cannot be set up against a third person acting in good faith.

Article 110 (Declaration of Intention by Fraud or Duress)

(1) A declaration of intention made by fraud or duress may be voidable.

(2) If a third person has been guilty of fraud or duress in respect to a declaration of intention made to any other party, such declaration of intention may be voidable only in a case where the other party was aware, or should have been aware, of the fact.

(3) The voidance of a declaration of intention under the preceding two paragraphs cannot be set up against a third person acting in good faith.

Article 111 (Time to be Effective of Declaration of Intention)

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(1) A declaration of intention made to another party shall be effective as from the time when notice thereof has reached him.

(2) The validity of a declaration of intention shall not be effected, even if the declarant dies or loses his capacity to act after he has sent the notice.

Article 112 (Capacity of Receiving Declaration of Intention)

If a party to whom a declaration of intention has been made is a person under disability at the time when he receives it, the declaration of intention cannot be set up against him until his agent by law becomes aware of the receipt.

Article 113 (Service of Declaration of Intention by Publication)

In a case where the declarant, (without his negligence), is unable to name the other party or his whereabouts such declaration may be made by means of publication under the Civil Procedure Act.

SECTION 3 Agency

Article 114 (Effect of Acts by Agent)

(1) A declaration of intention made by an agent, within the scope of his authority while disclosing the fact that he is acting for a principal, shall be effective directly against the principal.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to a declaration of intention made by a third person to an agent.

Article 115 (Act without Disclosing Agency)

A declaration of intention made by an agent without disclosing that he is acting for a principal shall be deemed to have been made on his own behalf, but the provisions of paragraph (1) of the preceding Article shall apply *mutatis mutandis*, if the other party was aware, or should have been aware, that it was made on behalf of the principal.

Article 116 (Defective Acts by Agent)

(1) In a case where the validity of a declaration of intention is to be affected by reason of absence of intention, fraud, duress, or by reason of knowledge or negligent ignorance of certain circumstances, the existence or non-existence of such reasons shall be determined on the basis of the agent.

(2) In a case where an agent has been commissioned to do a specific juristic act and he has done such act in conformity with the principal's instructions, the principal cannot set up the agent's ignorance of any circumstances of

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which he himself was aware. The same shall apply if the principal was ignorant of such circumstances through his own negligence.

Article 117 (Capacity to Act of Agent)

An agent needs not be a person of full capacity.

Article 118 (Scope of Agent's Authority)

An agent whose authority is not specified has the authority to do only the following acts:

1. Acts of preservation; and
2. Acts of making use of, or improving the thing or the right which is the object of agency, but only in so far as the nature of such thing or right is not altered thereby.

Article 119 (Multiple Agency)

In case of two or more agents, each agent shall represent the principal unless provided otherwise in the Acts or in the delegation of authority.

Article 120 (Power of Appointment of Subagent by Agent in Fact)

An agent created by a juristic act shall not appoint a subagent, except in a case where he has obtained the consent of his principal or an unavoidable reason exists.

Article 121 (Responsibility for Appointment of Subagent by Agent in Fact)

(1) If, in the case mentioned in the preceding Article, the agent has appointed a subagent, he shall be responsible to the principal in respect of the appointment and supervision of the subagent.

(2) In a case where an agent has appointed a subagent as designated by the principal, he shall incur no responsibility, unless he knew such subagent to be unfit or untrustworthy and neglected to notify the principal thereof or to remove him.

Article 122 (Power of Appointment of Subagent by Agent by Law and Responsibility thereof)

An agent created by law may, on his own responsibility, appoint a subagent: *Provided*, That he shall incur only the responsibility specified in paragraph (1) of the preceding Article, in case an unavoidable reason exists.

Article 123 (Authority of Subagent)

(1) A subagent shall represent the principal in respect of acts within the scope of his authority.

(2) A subagent has the same rights and duties as the agent towards the principal or third persons.

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Article 124 (Representation on His Own Behalf, Representation of Both Parties)

Without the consent of the principal, an agent shall not perform a juristic act for the principal to which the agent himself is the other party, or shall not become agent of both parties to one juristic act: *Provided*, That this shall not apply in the performance of an obligation.

Article 125 (Apparent Representation by Indication of Conferment of Power of Representation)

A person who has indicated to a third person that he conferred certain power to another person shall be responsible for juristic acts done by such other person towards the third person within the scope of such power: *Provided*, That this shall not apply in a case where the third person was aware, or should have been aware, that such other person had no power of representation.

Article 126 (Apparent Representation in Excess of Authority)

If an agent has performed a juristic act in excess of his authority, and if a third person had justifiable reason to believe that the agent had authority to do such an act, the principal shall be responsible for the act.

Article 127 (Cause for Lapse of Power of Representation)

The power of representation shall lapse for the following causes:

1. Death of the principal; and
2. Death, adjudication of incompetency, or bankruptcy of the agent.

Article 128 (Lapse of Power of Representation in Fact)

The power of representation created by a juristic act shall lapse upon termination of the caused juristic relations in addition to the causes mentioned in the preceding Article. The same shall apply in a case where the principal withdraws the delegation of authority before the juristic relations are terminated.

Article 129 (Apparent Representation after Lapse of Power of Representation)

The lapse of power of representation cannot be set up against a third person acting in good faith, unless such third person was negligent in not knowing such lapse.

Article 130 (Unauthorized Representation)

If a person without power of representation concludes a contract as an

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agent of another, such contract shall not be effective against the principal, unless it is ratified by the principal.

Article 131 (Right of Peremptory Notice of Other Party)

In the case of a person without power of representation concluding a contract as an agent of another, the other party may give peremptory notice to the principal demanding a definite answer as to whether he ratifies the contract or not, within a period reasonably fixed by the other party. If the principal does not send a definite answer within such period, he is deemed to have refused to ratify.

Article 132 (Other Party of Ratification or Refusal)

The declaration of intention of a ratification or refusal cannot be set up against the other party, unless it is made to him: *Provided*, That this shall not apply in a case where the other party was aware of the fact.

Article 133 (Effect of Ratification)

In the absence of any declaration of intention to the contrary, ratification shall be effective retroactively as from the time the contract was entered: *Provided*, That the right of a third person shall not be prejudiced thereby.

Article 134 (Right of Withdrawal of Other Party)

A contract made by a person without power of representation may be withdrawn in respect to the principal or his agent by the other party, so long as it has not been ratified by the principal: *Provided*, That this shall not apply in a case where the other party was aware of the fact that such person had no such power when the contract was entered.

Article 135 (Responsibility of Unauthorized Agent to Other Party)

(1) If a person who has made a contract as an agent of another can neither prove his authority nor get the principal to ratify the contract, he shall be liable to the other party, at the latter's option, either for the performance of the contract or for damages.

(2) The provisions the preceding paragraph shall not apply if the other party was aware, or should have been aware, that such person had no power of representation, or if the person who made the contract as an agent had no capacity for entering into such contract.

Article 136 (Unilateral Act and Unauthorized Representation)

The provisions of the preceding six Articles shall apply to a unilateral act, only in a case where, at the time the act was done, the other party either consented to the act being done without proper authority by the

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person holding himself out to be an agent, or did not contest his authority. The same shall apply to a unilateral act which was done, with his consent, to a person without power of representation.

SECTION 4 Nullity and Voidance

Article 137 (Partial Nullity of Juristic Act)

In a case where a part of a juristic act is null, the entire part of the juristic act shall be made null: *Provided*, That in a case where it is deemed that the juristic act would have been done if the null part had not existed, then the rest of the act shall not become null.

Article 138 (Conversion of Null Act)

In a case where a null juristic act possesses requirements for another juristic act, and it is deemed that if the parties had known the nullity, they would have intended to do the other juristic act, such a null act shall have the effect as the other juristic act.

Article 139 (Ratification of Null Act)

A null juristic act shall not become effective by ratification: *Provided*, That if the party has ratified it with the knowledge of its nullity, he shall be deemed to have performed a new juristic act.

Article 140 (Person Voiding Juristic Act)

A voidable juristic act may be voided only by a person under disability, a person who has made a defective declaration of intention, or the agent or successor in title of such person.

Article 141 (Effect of Voidance)

A juristic act which has been voided shall be deemed to have been void from the beginning, but a person under disability shall be liable to make reparation only to the extent that he is still enriched by reason of such act.

Article 142 (Other Party in Voidance)

In a case where the other party to a voidable juristic act is an identified person, the voidance shall be effected by declaring intention to the other party.

Article 143 (Method and Effect of Ratification)

- (1) A voidable juristic act may be ratified by the persons mentioned in Article 140. After the ratification it shall not be voided.
- (2) The preceding Article shall apply *mutatis mutandis* to the preceding

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paragraph.

Article 144 (Requirements for Ratification)

- (1) Ratification shall not become effective unless it is made after causes for avoidance have ceased to exist.
- (2) The provisions of the preceding paragraph shall not apply in a case where a ratification is made by a representative by law.

Article 145 (Legal Ratification)

If any of the following events takes place with regard to a voidable act after it has become possible to ratify in accordance with the provisions of the preceding Article, the act shall be deemed to have been ratified; *Provided*, That this shall not apply where any objection is reserved.

1. Performance in full or part;
2. Demand for performance;
3. Novation;
4. Furnishing of security;
5. Assignment, in whole or in part, of the rights acquired by the voidable act; and
6. Compulsory execution.

Article 146 (Lapse of Right of Avoidance)

The right to declare an act voidable shall be exercised within three years from the time when it becomes possible to ratify, or within ten years from the time of performing the juristic act.

SECTION 5 Conditions and Time

Article 147 (Effect of Fulfilment of Conditions)

- (1) A juristic act subject to a condition precedent shall become effective upon the fulfilment of the condition.
- (2) A juristic act subject to a condition subsequent shall cease to be effective upon the fulfilment of the condition.
- (3) If the parties declare an intention that the effect of the fulfilment of conditions be affected retroactively before the actual fulfilment, this intention shall prevail.

Article 148 (Prohibition of Infringement of Conditional Right)

Neither party to a juristic act subject to a condition shall, during the pendency of the condition, do anything to impair the benefit which the other party might derive from such act upon the fulfilment of the condition.

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Article 149 (Disposition, etc. of Conditional Right)

The rights and duties of the parties during the pendency of a condition may be disposed of, inherited, preserved or secured in accordance with the general rules.

Article 150 (Act against Trust and Good Faith as to Condition)

(1) If a party who is to be disadvantaged upon the fulfilment of a condition has intentionally obstructed the fulfilment of such condition against the principles of trust and good faith, the other party may treat the condition as having been fulfilled.

(2) If a party who is to be advantaged upon the fulfilment of a condition has intentionally fulfilled such condition against the principles of good faith and trust, the other party may treat the condition as not having been fulfilled.

Article 151 (Unlawful Condition, Fulfilled Condition)

(1) If a condition is against good morals or other social order, the juristic act subject to the condition shall be null and void.

(2) If the condition has already been fulfilled at the time of the juristic act, such juristic act shall be unconditional in the case of a condition precedent, and null and void in the case of a condition subsequent.

(3) If the non-fulfilment of the condition was already certain at the time of the juristic act, such juristic act shall be unconditional in the case of a condition subsequent, and null and void in the case of a condition precedent.

Article 152 (Effect of Arrival of Time)

(1) If a juristic act is subject to a time of commencement, it shall be effective when such time arrives.

(2) If a juristic act is subject to a time of termination, it shall cease to be effective when such time arrives.

Article 153 (Benefit of Time and Waiver thereof)

(1) Time is presumed to be stipulated for the benefit of the obligor.

(2) The benefit of time may be waived, but the interests of the other party shall not be prejudiced thereby.

Article 154 (Right Subject to Time and Applicable Provisions)

The provisions of Articles 148 and 149 shall apply *mutatis mutandis* to a juristic act subject to time.

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CHAPTER VI PERIOD

Article 155 (Scope of Application of This Chapter)

The method of computing the period of time shall be governed by the provisions of this Chapter, unless it is otherwise provided by Acts or subordinate statutes by a judicial disposition or a juristic act.

Article 156 (Starting Point of Computing Period)

If a period has been fixed by the hour, minute or second, it shall be computed from the given moment.

Article 157 (Starting Point of Computing Period)

If a period has been fixed by the day, week, month or year, the first day of such period shall not be included in the computation: *Provided*, That this shall not apply if the period begins at midnight.

Article 158 (Starting Point of Counting Age)

In counting age, the day on which one was born shall be included.

Article 159 (Maturity Point of Period)

If a period has been fixed by the day, week, month or year, the period shall mature upon the expiration of the last day of such period.

Article 160 (Computation according to Calendar)

(1) If a period has been fixed by the week, month or year, it shall be computed according to the calendar.

(2) If a period does not commence at the beginning of a week, month or year, such period shall mature on the day in the last week, month or year preceding the day corresponding to that which it commenced.

(3) In cases where a period has been fixed by the month or year, if there is no corresponding day in the last month, the last day of the month shall be the day of maturity.

Article 161 (Holidays and Maturity Point of Period)

Where the last day of a period falls on a Saturday or a national holiday, such period shall mature on the following day. <Amended by Act No. 8720, Dec. 21, 2007>

CHAPTER VII EXTINGTIVE PRESCRIPTION

Article 162 (Extinctive Prescription of Claims or Property Right)

(1) The extinctive prescription of a claim shall become complete if not

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exercised for a period of ten years.

(2) The extinctive prescription of property rights, other than a claim and ownership, shall become complete if not exercised for a period of twenty years.

Article 163 (Short Extinctive Prescription for Three Years)

The extinctive prescription of claims defined in the following subparagraphs shall become complete if not exercised for a period of three years:

<Amended by Act No. 5454, Dec. 13, 1997>

1. Interest, support fees, salaries, rent, and other claims purporting for the delivery of money or other things within a time limit of one year;
2. Claims of medical practitioners, midwives, nurses, and pharmacists, for medical treatment, professional services, and dispensation of medicines;
3. Claims of contractors, engineers, and persons engaging in planning or supervising works, for the execution of their works;
4. Claims against attorneys-at-law, patent agents, notaries public, certified public accountants, and certified judicial scriveners, for the return of documents kept in connection with their services;
5. Claims of attorneys-at-law, patent agents, notaries public, certified public accountants, and certified judicial scriveners, for their services;
6. Items received in exchange for products and merchandise sold by producers and merchants; and
7. Claims of artisans and manufacturers for their works.

Article 164 (Short Extinctive Prescription for One Year)

The extinctive prescription of claims mentioned below shall become complete if not exercised for a period of one year:

1. The right to claim fees of hotels, restaurants, assembly rooms for hire, places of lodging and entertainment, refreshment, hire of rooms, admission fees, and the price of articles of consumption, as well as for substituted donation for another person;
2. Claims of rent for the hire of clothing, bedding, funeral necessities, and other movables;
3. Claims of wages of manual workers and public performers and the price of Articles supplied to them; and
4. Claims of school proprietors, keepers of boarding schools, and teachers, for the education, clothing, food, and lodging of pupils, and apprentices.

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Article 165 (Extinctive Prescription of Claims Established by Judgment, etc.)

(1) The period of extinctive prescription of claims established by a judgment shall be ten years, even in a case where the period for the original claim is shorter under the Act.

(2) The preceding paragraph shall also apply to claims established by bankruptcy proceedings, compromise in court, judicial conciliation or any other process having the same effect as a judgment.

(3) The provisions of the preceding two paragraphs shall not apply to claims which were not yet due at the time when the judgment became final.

Article 166 (Starting Point of Computing Extinctive Prescription)

(1) Extinctive prescription shall run from the time it becomes possible to exercise a certain right.

(2) The extinctive prescription of a claim, purporting to forbear, shall run from the time of its violation.

Article 167 (Retroactive Effect of Extinctive Prescription)

The effect of extinctive prescription shall be retroactive to the day on which it began to run.

Article 168 (Causes Interrupting Extinctive Prescription)

Extinctive prescription shall be interrupted in any of the following cases:

1. Demand;
2. Attachment, provisional attachment or provisional disposition; and
3. Acknowledgment.

Article 169 (Effect of Interruption of Prescription)

The interruption of prescription shall be effective only between the parties themselves and their successors in title.

Article 170 (Demand by Judicial Proceedings and Interruption of Prescription)

(1) A demand by way of judicial proceedings shall have no effect of interrupting prescription, if the judicial action is dismissed, rejected or withdrawn.

(2) In the case of the preceding paragraph, if a demand by way of judicial proceedings, intervention in bankruptcy proceedings, attachment or provisional attachment, or provisional disposition is made within six months, the prescription shall be deemed to have been interrupted by the demand

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by way of the first judicial proceedings.

Article 171 (Intervention in Bankruptcy Proceedings and Interruption of Prescription)

Intervention in bankruptcy proceedings shall have no effect of interrupting prescription if those proceedings are cancelled by a creditor or if his demand for intervention is dismissed.

Article 172 (Order for Payment and Interruption of Prescription)

An order for payment shall have no effect of interrupting prescription if it lapses for the claimant's failure to apply for provisional execution within the period of time prescribed by law.

Article 173 (Summons for Compromise, Voluntary Appearance, and Interruption of Prescription)

A summons for compromise shall have no effect of interrupting prescription, unless an action is brought within one month and the other party does not appear or a compromise is not arrived at. The same shall apply in the case of a voluntary appearance where a compromise is not arrived at.

Article 174 (Peremptory Notice and Interruption of Prescription)

A peremptory notice shall have no effect of interrupting prescription unless a demand by judicial proceedings, intervention in bankruptcy proceedings, a summons for compromise or a voluntary appearance for the same purpose, an attachment, a provisional attachment or a provisional disposition is taken within six months.

Article 175 (Attachment, Provisional Attachment, Provisional Disposition and Interruption of Prescription)

An attachment, a provisional attachment, or a provisional disposition, shall have no effect of interrupting prescription if annulled on the application of the claimant or by reason of non-compliance with any provisions of Acts.

Article 176 (Attachment, Provisional Attachment, Provisional Disposition and Interruption of Prescription)

An attachment, a provisional attachment, or a provisional disposition, if not effected against the person in whose favour prescription is running, shall not have the effect of interrupting prescription until such person has been notified thereof.

Article 177 (Acknowledgment and Interruption of Prescription)

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In order to make an acknowledgement, having the effect of interrupting prescription, no capacity or authority for disposition in respect of the rights of the other party is required.

Article 178 (Running of Prescription after Interruption)

(1) In a case where a prescription is interrupted, the period of prescription passed until the interruption shall not be computed, and the prescription which was interrupted begins to run anew from the time when the cause of such interruption has ceased to exist.

(2) Prescription which was interrupted by a demand by judicial proceedings begins to run anew from the time when the judgment thereon becomes finally binding in accordance with the provisions of the preceding paragraph.

Article 179 (Person under Disability and Suspension of Prescription)

If a person under disability has been without an agent by law within six months prior to the maturity of the period of extinctive prescription, the prescription shall not become complete against him for a period of six months from the time when he becomes a person of full capacity or when an agent by law assumes office.

Article 180 (Right of Person under Disability against Administrator of Property, Right between Husband and Wife, and Interruption of Prescription)

(1) In respect of the rights which a person under disability has against his father, mother, or his guardian who manages his property, extinctive prescription shall not become complete for a period of six months from the time when he becomes a person of full capacity or when a succeeding agent by law assumes office.

(2) In respect of the rights which one spouse has against the other, extinctive prescription shall not become complete for a period of six months from the time of the dissolution of the marital relationship.

Article 181 (Rights on Estate of Inheritance and Interruption of Prescription)

In respect of the rights on or against estate of inheritance, extinctive prescription shall not become complete for a period of six months from the time of identification of a successor, appointment of administrator or adjudication of bankruptcy.

Article 182 (Natural Calamity or Any Other Accidents and Interruption of Prescription)

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In a case where it is impossible to interrupt extinctive prescription because of a natural calamity or any other accidents, prescription shall not become complete for a period of one month from the time when such obstacle ceases to exist.

Article 183 (Effect of Extinctive Prescription to Accessory Rights)

When the extinctive prescription of a principal right has become complete, it shall affect its accessory right.

Article 184 (Waiving of Benefit of Prescription, etc.)

- (1) The benefit of extinctive prescription may not be waived in advance.
- (2) Although extinctive prescription shall, by a juristic act, not be excluded, extended or aggravated, it may be shortened or lessened.

PART II REAL RIGHTS

CHAPTER I GENERAL PROVISIONS

Article 185 (Kinds of Real Rights)

No real right can be created at will other than ones provided for by law or customary law.

Article 186 (Effect of Changes in Real Rights over Immovables)

The acquisition, loss of, or any alteration in, a real right by a juristic act over an immovable takes effect upon its registration.

Article 187 (Acquisition of Real Rights over Immovables not Requiring Registration)

The acquisition of real rights over immovables through inheritance, expropriation, judgment, auction and others stipulated in provisions of law shall not require registration: *Provided*, That the immovable shall not be disposed of unless it has been registered.

Article 188 (Effect of Changes in Real Rights over Movables, Summary Assignment)

- (1) The assignment of real rights over movables takes effect by delivery of the Article.
- (2) When an assignee possesses a movable, the assignment takes effect by a mere declaration of such intention by the parties.

Article 189 (Agreement on Possession)

If real rights in movables are to be assigned and the assigner is to continue

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possessing the Articles in accordance with a contract concluded by the parties, it shall be regarded that the Articles have been delivered to the assignee.

Article 190 (Assignment of Claim for Return of Object)

In a case where real rights to a movable possessed by a third party are assigned, if the assigner assigns to the assignee the claim for return of the movable possessed by the third party, it shall be regarded that the movable has been delivered.

Article 191 (Lapse of Real Rights due to Merger)

(1) When the ownership and other real rights over one and the same thing have become rested in one and the same person, such real rights shall lapse: *Provided*, That this shall not apply if the real rights form the object of a right of a third party.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to the case where a real right other than ownership and other rights having such right for its object, has become rested in one and the same person.

(3) The provisions of the preceding two paragraphs shall not apply to possessory rights.

CHAPTER II POSSESSORY RIGHT

Article 192 (Acquisition and Extinction of Possessory Right)

(1) Anyone who has *de facto* control over an Article shall have possessory right to that Article.

(2) Possessory right is lost if the possessor loses *de facto* control over the Article: *Provided*, That this shall not apply if possession is recovered in accordance with the provisions of Article 204.

Article 193 (Transfer of Possessory Right through Succession)

Possessory right shall be transferred to the successor in case of succession.

Article 194 (Indirect Possession)

Anyone who causes another person to possess an Article through superficies, *chonsegwon* (right of registered lease on deposit basis), pledge, loan for use, lease, bailment or other relations, shall indirectly have a possessory right over the subject Article.

Article 195 (Possession Assistant)

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If a person exercises *de facto* control over an Article based on instructions received from another person, through relationship of household affairs, business and other similar relations, only the latter person shall be the possessor.

Article 196 (Assignment of Possessory Right)

- (1) The assignment of possessory right shall become effective by the delivery of the Article in possession.
- (2) The provisions of Articles 188 (2), 189, and 190 shall apply *mutatis mutandis* to the assignment of possessory right under the preceding paragraph.

Article 197 (State of Possession)

- (1) A possessor is presumed to be in possession openly, peaceably, in good faith, and with the intention of holding as owner.
- (2) Even if a possessor is in good faith, when he fails in an action on title, he is deemed to have been a possessor in bad faith, from the time of the commencement of the action.

Article 198 (Presumption of Continuation of Possession)

If there is proof of possession at two different times, possession is presumed to have been continuous throughout the intermediate time.

Article 199 (Assertion of Succession of Possession and Effect thereof)

- (1) The successor in the chain of title of a possessor may at his option assert either only his own possession or it together with that of his predecessor.
- (2) In a case where the possession of a predecessor is asserted together with that of the successor in the chain of title, the latter shall also succeed to any defects in the title which the former had.

Article 200 (Presumption of Lawful Exercise of Right)

A possessor shall be presumed to lawfully hold the right which he exercises over the Article in possession.

Article 201 (Possessor and Fruits)

- (1) A possessor in good faith acquires the fruits of the Article in possession.
- (2) A possessor in bad faith is liable to return the fruits, and to make compensation for the value of fruits which have already been consumed by him, have been damaged, or have not been collected through his negligence.

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(3) The provisions of the preceding paragraph shall apply *mutatis mutandis* to possessors by force or in secret.

Article 202 (Possessor's Liability to Person Entitled to Restoration)

If an Article possessed has been lost or damaged by any cause for which the possessor is responsible, a possessor in bad faith shall be liable for the entire damage, and a possessor in good faith shall be liable to the extent of the enrichment he still enjoys. A possessor who has no intention of holding as owner must repair the entire damage even though he may be acting in good faith.

Article 203 (Claim of Possessor for Reimbursement)

(1) When a possessor restores the article in possession, he is entitled to be reimbursed by the person demanding restoration, for the cost of its preservation and other necessary expenses: *Provided*, That in the case where the possessor has acquired the fruits, ordinary necessary expenses shall be borne by himself.

(2) In regard to the cost of improvement and other necessary expenses paid on the article in possession, the possessor is, to the extent that the increase in value remains, entitled to reimbursement either of the amount expended or of the amount by which the value of the article has been increased, at the option of the person claiming its recovery.

(3) In the case of the preceding paragraph, the court may, upon the application of the person claiming recovery, allow a reasonable time for reimbursement.

Article 204 (Recovery of Possession)

(1) If a possessor has been deprived of the possession of his property, he may demand the return of that which he was deprived as well as compensation for damages.

(2) No demand under the preceding paragraph may be brought against a limited successor in title of a dispossessor, unless such successor in title was aware of dispossession.

(3) The right of demand under paragraph (1) shall be exercised within one year from the time of dispossession.

Article 205 (Maintenance of Possession)

(1) If a possessor is disturbed in his possession, he may demand cessation of the disturbance as well as compensation for damages.

(2) The right of demand under the preceding paragraph shall be exercised

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within one year from the time the disturbance cease to exist.

(3) If the Article possessed has been damaged due to construction works, the removal of the disturbance shall not be demanded after one year has elapsed since the beginning of such works, or after the works were completed.

Article 206 (Preservation of Possession)

(1) If the possessor feels that his possession may be disturbed, he may either demand the prevention of such disturbance or demand security for damages.

(2) If the possessor feels that his possession may be disturbed by any construction works, the provisions of paragraph (3) of the preceding Article shall apply *mutatis mutandis*.

Article 207 (Protection of Indirect Possession)

(1) The right of demand under the preceding three Articles may also be exercised by indirect possessors under the provisions of Article 194.

(2) If a possessor is deprived of his possession, the indirect possessor may demand the return of the article in question to the possessor, and in a case where the possessor cannot receive the return of the article in question or he does not want it, the indirect possessor may demand that the article be returned to him.

Article 208 (Relations between Possessory Actions and Actions on Title)

(1) Possessory actions and actions on title shall not exclude each other.

(2) Possessory actions may not be decided upon grounds related to actions on title.

Article 209 (Self-help)

(1) A possessor may defend, with his own force, his possession against those acts unjustly depriving him of his rightful possession or disturbing it.

(2) If the possessor of an immovable has been deprived of possession thereof, the possessor may recapture it by evicting the assailant immediately after the deprivation; and if it is a movable, the possessor may recapture from the assailant, on the spot or in pursuit, the article in question.

Article 210 (Quasi-Possession)

The provisions of this Chapter shall apply *mutatis mutandis* to cases where a person exercises a property right *de facto*.

CHAPTER III OWNERSHIP

SECTION 1 Limitation of Ownership

Article 211 (Contents of Ownership)

An owner has the right, within the scope of law, to use, take the profits of, and dispose of, the article owned.

Article 212 (Scope of Ownership of Land)

Within the scope, where a justifiable profit exists, the ownership of land extends both above and below its surface.

Article 213 (Claim for Return of Article Owned)

An owner may demand the return of an article from the person in possession of that article: *Provided*, That in a case where the possessor has the right to possess the article, he may refuse to return it.

Article 214 (Claim for Removal and Prevention of Disturbance against Article Owned)

An owner may demand the cessation of disturbance from a person who disturbs ownership, and may demand either prevention of the disturbance or security for damages from the person who might disturb ownership.

Article 215 (Partitioned Ownership of Building)

(1) If a building is divided between two or more persons and each owns a part thereof, those portions of the building and their appurtenances that are used in common are presumed to be under their co-ownership.

(2) The expenses for the preservation and other charges relating to the portions used in common shall be divided in proportion to the value of the part owned by each.

Article 216 (Claim of Use of Adjoining Land)

(1) The owner of land may, to the extent that it is necessary for the construction or repairs of walls or buildings in or near the boundary, demand use of the adjoining land: *Provided*, That he may not enter the dwelling house of the neighbor without his consent.

(2) In the case mentioned in the preceding paragraph, if the neighbor sustains any damages he may claim compensation for it.

Article 217 (Prohibition of Disturbance against Adjoining Land by Soot, etc.)

(1) The owner of land has a duty to take appropriate measures so that

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soot, heat gas, liquid, sound, vibration, and the like may not harm or disturb the neighbor's living or use of the adjoining land.

(2) If the situation under the preceding paragraph is appropriate for the ordinary use of the adjoining land, the neighbor has the duty of enduring such a situation.

Article 218 (Right of Installing Water Service Pipes, etc.)

(1) If the installation of necessary water pipes, drainpipes, gas pipes, electric wires, etc. would be impossible or the cost thereof is excessive, unless they passed over another person's land, the owner may pass over the such land and install them: *Provided*, That the place and method of such passage must be so chosen as to cause the least possible damage to the another person's land, and the other person shall, upon request, be compensated for the damage sustained thereby.

(2) Where circumstances develop which require further alteration in the installation under the preceding paragraph, the other person may request to make changes in the installation. The expenses of such changes in the installation shall be borne by the owner of the land.

Article 219 (Right of Passing over Surrounding Land)

(1) If a piece of land has no access to a public road, which is necessary for the use of the land, without passing over the surrounding land, and the owner of the land cannot reach the public road, or the cost to reach the public road would be excessive, he may pass over the surrounding land to the public road, and if necessary he may construct a path. But, the method and place must be so chosen as to cause the least possible damage to the surrounding land.

(2) The person having the right of passage under the preceding paragraph shall compensate the owner of the land for any damage done to the land passed over.

Article 220 (Partition, Partial Assignment and Right of Passing over Surrounding Land)

(1) If through the process of partition, a piece of land has lost access to a public road, the owner of such land may, in order to reach a public road, pass over the land partitioned. In such case no compensation is obliged.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to cases where the owner of land assigns part of his land.

Article 221 (Natural Flow of Water)

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(1) The owner of land may not interfere with the natural flow of water coming from adjoining land.

(2) The owner of higher land may not interfere with the natural flow of water necessary for and flowing down onto the adjoining lower land by diverting more water than is necessary for his reasonable use.

Article 222 (Right of Drainage Works)

When the water course has been obstructed on lower land, the owner of the higher land may at his own expense construct works necessary for its drainage.

Article 223 (Right to Claim Repair, etc. of Structures for Reservoiring Draining or Drawing Water)

When the owner of land constructs structures for the purpose of reservoiring, draining or drawing water, and if, by the disruption or obstruction of the works, damage has been done, or there is a possibility of damage to the other's land, the other person may request the owner of the land to effect repair, to drain off the water, or to take preventive measures.

Article 224 (Custom on Expense)

If in the cases mentioned in the preceding two Articles, any custom exists as to who shall bear the expense, such custom shall prevail.

Article 225 (Duty to Install Structures against Rain Water)

The owner of land shall construct proper structures so that rain water may not fall from the eaves directly on adjoining land.

Article 226 (Right of Discharging Surplus Water)

(1) For the purpose of draining land which is under water, or of discharging surplus water for household, agricultural or industrial uses, the owner of a higher land may divert the water to the lower land until it reaches a public road, public water way or drain.

(2) In the case of the preceding paragraph, the place and the method must be so chosen as to cause the least possible damage to the lower land, and compensation for any damage shall be paid.

Article 227 (Right to Use Structures for Flow of Water in Adjoining Land)

(1) The owner of land may, for the purpose of discharging water from his land, use any structures constructed by the owner of the adjoining land.

(2) The person using the structures under the preceding paragraph must

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bear the expenses of the construction and preservation of such structures in proportion to the benefit he derives therefrom.

Article 228 (Claim for Surplus Water)

If an owner of land finds it difficult to obtain the necessary water for his household or for utilization of his land without incurring excessive costs in material or labor, he may request the owner of the adjoining land to furnish surplus water, after paying compensation.

Article 229 (Alteration in Watercourse)

(1) The owner of a ditch or other watercourse may not alter its course or width, if the land on the opposite bank belongs to another person.

(2) If the land on both banks belongs to the owner of a water course, such owner may alter its course and width: *Provided*, That the water shall be restored to its natural course at the lower exit.

(3) If there exists any custom different from that provided for in the preceding two paragraphs, such custom shall prevail.

Article 230 (Right of Constructing and Using Dam)

(1) If there is any need for the construction of a dam, the owner of a water course may attach it to the opposite bank: *Provided*, That he must pay compensation for any damage caused thereby.

(2) If a part of a water course belongs to the owner of the opposite bank, he may use the dam; but he must bear the expenses of the construction and preservation of the dam in proportion to the benefit he derives therefrom.

Article 231 (Right of Using Public River)

(1) Those engaged in agriculture and industry on the banks of public rivers may draw necessary water from the river for use in their business as long as they do not disturb the use of water by other persons rightfully entitled to such use.

(2) Structures necessary for drawing water under the preceding paragraph may be constructed.

Article 232 (Protection of Right of Using Water at Lower Part)

In a case where the right to use water at a lower part has been disturbed by drawing water or structures under the preceding Article, the person having the right to use the water may demand removal of the disturbance as well as compensation for damages sustained thereby.

Article 233 (Succession of Right to Use Water)

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The limited successor of the owner of a watercourse, or other structures utilized for the operation of agriculture and industry, or the limited successor of the person profiting from the watercourse or the structures, shall succeed to the rights and duties of the former owner or the person profiting.

Article 234 (Other Customs on Right to Use Water)

If there exists any custom different from those provided for in the preceding three Articles, such custom shall prevail.

Article 235 (Right to Use Water for Common Use)

Adjoining neighbors have the right to use the wellspring or water supply for common use in proportion to their demands as long as they do not disturb the other's use of water.

Article 236 (Construction Work and Compensation for Damage due to Obstruction in Use of Water, Restoration)

(1) If a wellspring or water supply having necessary use or making necessary profits has been suspended, decreased in water amount, or is obstructed in the use due to building or other construction works by other persons, the person having the right to use the water may demand compensation for the damage sustained as a result thereof.

(2) If the construction work, as described in the preceding paragraph, causes any obstruction in the use of water for drinking or living the sufferer may demand restoration of its original state.

Article 237 (Right of Constructing Boundary Mark or Fence)

(1) The owners of adjoining land may construct a boundary mark or a fence at their joint expense.

(2) The expense under the preceding paragraph shall be borne by both persons in equal proportions: *Provided*, That the expenses of a survey shall be apportioned in proportion to the area of the land.

(3) If there exists any custom different from those provided for in the preceding two paragraphs, such custom shall prevail.

Article 238 (Right of Specially Constructed Fence)

Any of the adjoining neighbors may, at their own expense, construct a better fence using better materials, make it higher than ordinary fences, or may construct a fireproof wall, or other special facilities.

Article 239 (Presumption of Joint Ownership of Boundary Marks, etc.)

Boundary marks, fences, ditches, etc. set on the boundary line are pre-

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sumed to be co-owned by adjoining neighbors. But this shall not apply if the boundary marks, fences, ditches, etc. are constructed at the expense of only one of the adjoining neighbors, or the fence forms part of a building.

Article 240 (Right of Removing Branches and Roots of Trees)

(1) If the branches of trees on adjoining land extend over the boundary line, the owner of such trees may be required to remove the branches.

(2) If the owner does not comply with the request under the preceding paragraph, the claimant may remove them.

(3) If the roots of trees on adjoining land extend across the boundary line, they may be cut away at will.

Article 241 (Prohibition of Digging too Deep on Land)

The land owner shall not dig so deep on his own land so that the ground of the adjoining land might be imperiled unless sufficient protective construction work is done.

Article 242 (Construction near Boundary Line)

(1) If there is no special custom on constructing buildings, a distance of not less than 0.5 meters must be left between the building and the boundary line.

(2) The owner of the adjoining land may request that the person who has violated the provisions of the preceding paragraph remove or modify the building. But if one year has elapsed since the commencement of the construction work, or if the construction has been completed, only damages can be claimed.

Article 243 (Obligation of Establishing Screen)

If a person constructs, at a distance of not more than two meters from the boundary line, a window or verandah which overlooks the inside of another person's house, he shall erect a proper screen.

Article 244 (Limit to Underground Facilities, etc.)

(1) In digging a well or other underground facilities to store water, sewage or filth, etc., a distance of not less than two meters must be left from the boundary line. In digging a pond, ditch, or cellar, a distance of not less than one half of their depth must be left from the boundary line.

(2) In the construction work mentioned in the preceding paragraph, appropriate measures must be taken to prevent the collapse of earth and sand, or the infiltration of sewage or polluted liquids into adjoining land.

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SECTION 2 Acquisition of Ownership

Article 245 (Period for Acquiring Ownership of Immovables by Possession)

(1) A person who has for twenty years peaceably and openly held possession of an immovable with an intention to own it, shall acquire the ownership by making registration thereof.

(2) A person, who has made registration as the owner of an immovable and has for ten years peaceably and openly held possession of an immovable with the intent to own it, shall acquire the ownership of such immovable if his possession is in good faith and without negligence.

Article 246 (Period for Acquiring Ownership of Movables by Possession)

(1) A person who has for ten years peaceably and openly held possession of a movable with the intent to own it, shall acquire the ownership of such a movable.

(2) In a case where the possession under the preceding paragraph was commenced in good faith and without negligence, ownership shall be acquired after five years have elapsed.

Article 247 (Retroactive Effect of Acquisition of Ownership, Grounds of Interruption)

(1) The effect of acquisition of ownership under the preceding two Articles is retroactive to the commencement of possession.

(2) The provisions on the interruption of extinctive prescription shall apply *mutatis mutandis* to the period for acquiring ownership under the preceding two Articles.

Article 248 (Acquisitive Prescription of Property Rights other than Ownership)

The provisions of the preceding three Articles shall apply *mutatis mutandis* to the acquisition of property rights other than ownership.

Article 249 (*bona fide* Acquisition)

If a person who peaceably and openly was assigned a movable, had possession of it in good faith and without negligence, he shall acquire its ownership immediately even if the assigner is not a legal owner.

Article 250 (Special Provision on Stolen or Lost Articles)

If the movable mentioned in the preceding Article is a stolen or lost article, the injured party or loser may demand the return of the article within two years from the time when the article was stolen or lost: *Provided*, That this shall not apply in a case where the lost or stolen article is money.

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Article 251 (Special Provision on Stolen or Lost Articles)

If the assignee has bought the stolen or lost Article in good faith at a sale by auction, in a public market, or from a merchant selling articles of the same kind, the injured party or loser may demand the recovery of the article after he reimburses the assignee for the price paid for it.

Article 252 (Vesting of Articles without Owners)

- (1) A person who possesses, with the intention of owning, a movable without an owner, obtains its ownership.
- (2) Immovables without owners shall be vested in the National Treasury.
- (3) Wild animals shall be considered as without an owner. Wild animals which were kept in homes shall also be considered to be without an owner if they are returned to a natural state.

Article 253 (Acquisition of Ownership of Lost Articles)

The ownership of a lost article is acquired by the finder if its owner does not claim his right within one year after public notice has been given in accordance with the provisions of the Act.

Article 254 (Acquisition of Ownership of Treasure-Trove)

The ownership of a treasure-trove is acquired by the discoverer if its owner does not claim his right within one year after public notice has been given in accordance with provisions of the Act. But the ownership of a treasure-trove discovered on the property or among other things belonging to another person is acquired by the discoverer and the owner of the land or the thing in equal shares.

Article 255 (State Ownership of Cultural Heritage)

- (1) Things which are important for scientific, artistic, or antiquarian research shall belong to the state, not following the provisions of Article 252 (1) and the preceding two Articles.
- (2) In the case of the preceding paragraph, the finder, the discoverer, and the owner of the land or things where the treasure-trove was discovered, may submit a request for proper compensation from the state.

Article 256 (Attachment to Immovable)

The owner of an immovable acquires the ownership of anything affixed thereto: *Provided*, That this shall not affect the rights of another person who has affixed such item and retained the title thereto.

Article 257 (Attachment between Movables)

If two or more movables belonging to different owners are so united

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together that they can no longer be separated without severe damage, or cannot be separated without excessive expense, the ownership of the composite thing belongs to the owner of the principal movable. If no distinction of principal and accessory can be made, the owners of such movables shall own the composite thing jointly in proportion to the value of the movables at the time they were united together.

Article 258 (Mixture)

The provision of the preceding Article shall apply *mutatis mutandis* if the movables belonging to different owners, are so integrated as to be no longer distinguishable from each other.

Article 259 (Specification)

(1) When a person has performed work upon a movable belonging to another person, the ownership of the article created by the work shall belong to the owner of the raw material: *Provided*, That if the value arising out of such workmanship considerably exceeds that of the material, the person who has performed the work shall acquire the ownership of the entire article created.

(2) If a person who has performed work, has furnished a part of the material, the price of the part shall add to the value of work under the preceding paragraph.

Article 260 (Effect of Annexing)

(1) If the ownership of a movable is lost, in accordance with the provisions of the preceding four Articles, all other rights which exist over the movable shall also be lost.

(2) If the owner of the article, mentioned above, has become the sole owner of the composite item, the integration, or the item created by the work, then the other rights mentioned in the preceding paragraph shall still exist from thence over such item; and if he has become a co-owner thereof, the other rights shall exist over his share therein.

Article 261 (Right of Reimbursement due to Annexing)

A person who has sustained a loss by reason of the provisions of the preceding five Articles may request compensation based on the grounds of unjust enrichment.

SECTION 3 Joint Ownership

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Article 262 (Co-ownership of Article)

(1) If an article is owned jointly by two or more persons in proportion to their own shares, the article shall belong to co-ownership.

(2) The shares of the co-owners are presumed to be equal.

Article 263 (Disposition of Share, Use of and Profit from Article Jointly Owned)

The co-owners are entitled to dispose of their own shares and may make use of or take the profits from, in proportion to their own shares, the whole of the article owned jointly.

Article 264 (Disposition of, Alteration in Articles Jointly Owned)

No co-owner may dispose of or make any alteration in the article jointly owned without consent of the other co-owners.

Article 265 (Administration and Preservation of Article Jointly Owned)

All matters relating to the administration of the article jointly owned shall be determined by a majority in shares of the co-owners: *Provided*, That each co-owner is entitled to do any act of preservation.

Article 266 (Liability for Article Jointly Owned)

(1) Each co-owner shall pay the expenses of administration and bear all other charges relating to the articles jointly owned in proportion to his share.

(2) If a co-owner fails to meet the obligation mentioned in the preceding paragraph for a period of one year or more, the other co-owners may acquire his share upon payment of a reasonable compensation.

Article 267 (Reversion in case of Renunciation of Shares, etc.)

If a co-owner renounces his share or dies without a successor, his share reverts to the other co-owners in proportion to their shares.

Article 268 (Demand for Partition of Article Jointly Owned)

(1) Each co-owner may demand a partition of the article jointly owned, but the co-owners may agree not to partition the article for a period not exceeding five years.

(2) Such agreement as mentioned in the preceding paragraph may be renewed, but its duration cannot exceed five years from the time of renewal.

(3) The provisions of the preceding two paragraphs shall not apply to Articles jointly owned under Articles 215 through 239.

Article 269 (Methods of Partition)

(1) If, with regard to the methods of partition, no agreement can be reached

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among the co-owners, any co-owner may file an application for partition with a court.

(2) If partition of the property itself cannot be effected, or if there is an apprehension that the property may considerably depreciate in value as a result of partition, the court may order a sale thereof by official auction.

Article 270 (Liability for Warranty due to Partition)

Each co-owner shall, in proportion to his share, bear the same liability for warranty as that of a seller in regard to the parts which the other co-owners have acquired by partition.

Article 271 (Partnership-ownership of Property)

(1) In accordance with the provisions of Acts or contracts, if property is owned by several persons through a partnership relationship, the property shall belong to partnership-ownership. The rights of persons having partnership-ownership shall reach the whole of the property in partnership-ownership.

(2) With regard to partnership-ownership, the following three Articles shall apply in addition to the provisions of the preceding paragraph or contracts.

Article 272 (Disposition, Alteration and Preservation of Property in Partnership-ownership)

None of the persons having partnership-ownership of a piece of property may dispose of or make alterations to the property without the consent of the other persons having partnership-ownership: *Provided*, That each person is entitled to do any act of preservation.

Article 273 (Disposition of Share of and Prohibition of Partition of Property in Partnership-ownership)

(1) The persons having partnership-ownership of a piece of property shall not dispose of the shares of the property without the consent of all persons.

(2) The persons having partnership-ownership of a piece of property shall not demand partition of the property.

Article 274 (Termination of Partnership-ownership)

(1) Partnership-ownership of property shall terminate by dissolution of the partnership or assignment of the property.

(2) With regard to partition of property in partnership-ownership under the preceding paragraph, the provisions concerning the partition of property jointly owned shall apply *mutatis mutandis*.

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Article 275 (Collective Ownership of Property)

(1) If a piece of property is owned collectively by the members of an association which is not a juristic person, it shall belong to collective ownership.

(2) With regard to collective ownership, the following two Articles shall apply subject to Articles of an association or other covenants.

Article 276 (Administration, Disposition and Use of and Profit from Property in Collective Ownership)

(1) The administration and disposition of property in collective ownership shall be determined by resolutions from a general meeting of the members.

(2) Each member is entitled to make use of the property in collective ownership and to take the profits from it in accordance with the Articles of an association or other covenants.

Article 277 (Acquisition and Loss of Rights and Duties concerning Property in Collective Ownership)

The rights and duties of members concerning property in collective ownership shall be acquired or lost by acquiring or losing the membership therein.

Article 278 (Quasi-joint Ownership)

The provisions of this Section shall apply *mutatis mutandis* to property rights other than ownership, except as otherwise provided for by other Acts.

CHAPTER IV SUPERFICIES

Article 279 (Contents of Superficies)

A superfiary is entitled to use the land of another person for the purpose of owning buildings, other structures or trees thereon.

Article 280 (Superficies Having Agreed Duration)

(1) If the duration of a superficies is to be determined by a contract, the period shall not be less than:

1. 30 years if the superficies is for owning buildings made of stone, lime, brick, or strong buildings similar to the above, or for owning trees;
2. 15 years in a case where the superficies is for owning buildings other than those mentioned in the preceding subparagraph; and
3. 5 years in a case where the superficies is for owning structures other than buildings.

(2) If any period less than that mentioned in the preceding paragraph has been determined, it shall be extended to that period mentioned in

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the preceding paragraph.

Article 281 (Superficies Having No Agreed Duration)

(1) If the duration of superficies has not been determined by a contract, the period shall be the shortest period mentioned in the preceding Article.

(2) If, when the superficies was created, the kind and construction of the structure were not determined, the superficies shall be regarded as the type of building mentioned in subparagraph 2 of the preceding Article.

Article 282 (Assignment and Lease of Superficies)

A superficiary may assign his right to another person or may lease the land within the duration of the superficies.

Article 283 (Right to Demand Renewal and Purchase by Superficiary)

(1) If buildings, other structures, or trees remain, on termination of the superficies, the superficiary may demand renewal of the contract.

(2) If the settlor of the superficies does not want to renew the contract, the superficiary may ask the settlor of the superficies to purchase the structures or trees under the preceding paragraph at a reasonable price.

Article 284 (Renewal and Duration)

In the case where parties are to renew the contract, the duration of the superficies shall not be less than the shortest period mentioned in Article 280, commencing from the date of the renewal: *Provided*, That the parties can determine the duration of renewal longer than that of the Article 280.

Article 285 (Duties of Removal, Right to Demand Purchase)

(1) At the termination of a superficies, the superficiary shall restore the land to its original condition, removing the buildings, other structures, or trees.

(2) In the case of the preceding paragraph, if the settlor of the superficies makes a request to purchase the structures or trees, tendering a reasonable price therefor, the superficiary may not refuse such request without justifiable reason.

Article 286 (Claim for Increase or Decrease in Rent)

In a case where the rent is not reasonable, due to changes in the price of the land or an increase or decrease in taxes or burdens upon the land, the parties concerned may request an increase or decrease in the rent.

Article 287 (Claim for Termination of Superficies)

If a superficiary has not paid rent for a period of two years or more, the settlor of the superficies may claim termination of the superficies.

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Article 288 (Claim for Termination of Superficies and Notification to Mortgagee)

If a superficies is the subject matter of a mortgage, or the buildings or trees on the land are the subject matter of a mortgage, the claim under the preceding Article may be effected after a reasonable period has elapsed from the time when the mortgagees were so notified.

Article 289 (Compulsory Provisions)

Any contract which is against the provisions of Articles 280 through 287 and is disadvantageous to the superfiary has no effect.

Article 289-2 (Sectional Superficies)

(1) The space on or under the ground may be demarcated into upper or lower parts and may be the subject matter of the superficies for owning a building or other structures. In this case, the use of land may be restricted so as to exercise such superficies by means of an act of creation.

(2) Even when a third person has a right to use and take profits from the land, if he and all persons who have rights to it, consent to do so, a sectional superficies as prescribed in paragraph (1) may be established. In this case, the third person who has the right to use and take profits from the land, shall not interfere with the exercise of the superficies.

[This Article Newly Inserted by Act No. 3723, Apr. 10, 1984]

Article 290 (Provisions Applied *Mutatis Mutandis*)

(1) The provisions of Articles 213, 214, and 216 through 244 shall apply *mutatis mutandis* among superfiaries, or between a superfiary and the owner of the adjoining land.

(2) The provisions of Articles 280 through 289 and paragraph (1) of this Article shall apply *mutatis mutandis* to the sectional superficies under Article 289-2. <Newly Inserted by Act No. 3723, Apr. 10, 1984>

CHAPTER V SERVITUDE

Article 291 (Contents of Servitude)

A person having a servitude is entitled to use the land of another person for the convenience and benefit of his own land for a certain purpose.

Article 292 (Appendant Nature)

(1) A servitude is transferred along with the ownership of the dominant land as appendant thereto and is subject to any rights other than the ownership existing over the dominant land, unless it is otherwise provided

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for by the act of creation.

(2) A servitude may neither be assigned nor made the subject matter of any other rights apart from the dominant land.

Article 293 (Co-ownership Relations, Partial Assignment and Indivisibility)

(1) One co-owner of land cannot extinguish as to his own share a servitude existing for the benefit of the land or a servitude by which the land is dominated.

(2) If land is partitioned, or a part thereof is assigned, servitude shall continue to exist for the benefit of each part of the dominant land or over each part of servient land: *Provided*, That this shall not apply to the other parts of the land if the servitude relates only to a part thereof.

Article 294 (Period for Acquiring Servitude)

The provisions of Article 245 shall apply *mutatis mutandis* only if a servitude is continuous and apparent.

Article 295 (Acquisition and Indivisibility)

(1) If one co-owner acquires a servitude, the other co-owners also acquire a servitude.

(2) An interruption of acquisitive prescription of a servitude by possession as against co-owners shall not be effective unless it is made against each co-owner who exercises the servitude.

Article 296 (Interruption, Suspension of Extinctive Prescription and Indivisibility)

If there are two or more co-owners exercising the servitude an interruption or suspension of extinctive prescription of the servitude occurring in favor of one of them shall inure to the benefit of the other co-owners.

Article 297 (Servitude for Water)

(1) If the water on land subject to a right to water is not sufficient to meet the requirements of both the dominant and the servient lands, it shall, according to the demand of each piece of land, first be appropriated to household uses, and the remainder to other uses: *Provided*, That this shall not apply if it has been otherwise provided for by the act of creation.

(2) If two or more rights to water have been created over one and the same servient land, the person having the subsequent right to water may not interfere with the use of the water by the person having a prior right to water.

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Article 298 (Obligation of Owner of Servient Land and Succession Thereof)

If the owner of servient land has, by contract, assumed an obligation to construct structures, or to effect repairs thereon, at his own expense for the benefit of a servitude, such obligation shall devolve on limited successors in title of the owner of the servient land.

Article 299 (Relief of Obligation by Surrendering)

The owner of servient land may relieve himself of the obligation mentioned in the preceding Article by surrendering to the person entitled to the servitude the ownership of that portion of the land which is necessary for the servitude.

Article 300 (Common Use of Structures)

(1) The owner of servient land may use the structures on the servient land constructed by the person having the servitude for the benefit of the servitude, in so far as it does not interfere with the exercise of servitude.

(2) In the case mentioned in the preceding paragraph, the owner of the servient land must bear the expense of the construction and preservation of the structures in proportion to the benefit which he derives therefrom.

Article 301 (Provisions Applied *Mutatis Mutandis*)

The provisions of Article 214 shall apply *mutatis mutandis* to servitude.

Article 302 (Special Servitude)

In a case where the inhabitants of a certain area, as a collective body, are entitled to take grass or trees, catch wild animals, take earth or sand, rear live stock, or take other profits from the land of the area owned by another person, the provisions of this Chapter shall apply *mutatis mutandis* subject to the custom of each locality.

CHAPTER VI *CHONSEGWON* (RIGHT TO REGISTERED LEASE ON DEPOSIT BASIS)

Article 303 (Contents of *Chonsegwon*)

(1) Any person having *chonsegwon* is entitled to use it in conformity with its purposes and to take the profits from it, by paying the deposit money and possessing the real property owned by another person. Furthermore, he is also entitled to obtain the repayment of deposit money in preference to persons having the junior right or other creditors, with respect to the

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whole real property. <Amended by Act No. 3723, Apr. 10, 1984>

(2) Farming land shall not be made the subject matter of *chonsegwon*.

Article 304 (Effect of *Chonsegwon* on Superficies or Lease)

(1) Where a contract of *chonsegwon* is created over a building on the land owned by another person, the effect thereof shall apply to the superficies created for the purpose of owning the building or lease.

(2) In the case of the preceding paragraph, the settlor of *chonsegwon* may not perform any act which extinguishes the superficies or the lease without the consent of the person having *chonsegwon*.

Article 305 (*Chonsegwon* over Building and Legal Superficies)

(1) In a case where land with a building thereon belongs to one and the same person, and *chonsegwon* is created on the building, the limited successor in title of the land ownership, is deemed to have created legal superficies for the settlor of *chonsegwon*: *Provided*, That on application of the party to contract of *chonsegwon*, the rent thereon shall be determined by the court.

(2) In the case of the preceding paragraph, the owner of the land shall not lease the land to another person, nor have any other superficies or *chonsegwon* created on it.

Article 306 (Assignment and Lease of *Chonsegwon*, etc.)

The person having *chonsegwon* may assign it to another person or provide it as security; and during the term of *chonsegwon* he may conclude a contract for *chonchonse* (sublet to another person) or lease the subject matter to another person: *Provided*, That this shall not apply in cases where *chonchonse*, leasing, and assignment are prohibited by the terms of the contract.

Article 307 (Effect of Assignment of *Chonsegwon*)

The assignee of *chonsegwon* has the same rights and duties as those of the assignor of the *chonsegwon* towards the settlor of the *chonsegwon*.

Article 308 (Responsibility in a case where of *Chonchonse*, etc.)

In case the subject matter of *chonsegwon* becomes that of *chonchonse* having *chonsegwon* who has so leased or contracted for *chonchonse* shall be responsible for the damage arising from an act of God which would not have arisen if the contract for *chonchonse* or leases had not been entered.

Article 309 (Duties of Person Having *Chonsegwon* of Maintenance and

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Repair)

The person having *chonsegwon* shall maintain the status quo condition of the subject matter of *chonsegwon* and shall perform necessary repairs in the ordinary course of the management thereof.

Article 310 (Claim of Person Having *Chonsegwon* for Reimbursement)

(1) If the person having *chonsegwon* has defrayed expenses for the purpose of improving the subject matter of *chonsegwon*, or other useful expenses, he may, so long as the increase in value remains, require reimbursement from the owner either of the amount defrayed, or the amount by which its value has increased, at the option of said owner.

(2) In the case of the preceding paragraph, the court may, upon the application of the owner, allow him reasonable time for reimbursement.

Article 311 (Claim of Extinguishment of *Chonsegwon*)

(1) If a person having *chonsegwon* does not use or take profit from the subject matter of *chonsegwon* according to the terms applied to the use thereof, or according to the character of the subject matter, the settlor of *chonsegwon* may claim the extinguishment of *chonsegwon*.

(2) In the case of the preceding paragraph, the settlor of *chonsegwon* may request the person having *chonsegwon* to restore the subject matter to its original condition or may demand compensation for loss in lieu thereof.

Article 312 (Duration of *Chonsegwon*)

(1) The duration of *chonsegwon* shall be for not more than 10 years. If the period prescribed in the contract exceeds 10 years, it shall be shortened to 10 years.

(2) If the duration of *chonsegwon* for a building is fixed for a period less than one year, it shall be deemed as one year. <Newly Inserted by Act No. 3723, Apr. 10, 1984>

(3) The *chonsegwon* may be renewed. The renewal period shall be not more than ten years from the date thereof.

(4) When a person who has created *chonsegwon*, for a building has not notified the person, having *chonsegwon* of his refusal to renew the contract, or of the intention to the effect that he will not renew if the conditions thereof are not changed, within one to six months before the expiration of the duration of *chonsegwon*, it shall be considered that a new contract of *chonsegwon* is made under the same conditions as the previous one, at the expiration of the duration. In this case, the duration of *chonsegwon*

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shall be deemed not to have been determined. <Newly Inserted by Act No. 3723, Apr. 10, 1984>

Article 312-2 (Right to Request Increase or Reduction of Deposit Money)

If the amount of deposit money becomes inappropriate due to an increase or reduction of taxes, public imposts, or other charges related to the real property on which *chonsegwon* is created, or a fluctuation of the economic situation, a party may request an increase or reduction of the amount for the future: *Provided*, That in a case of an increase in amount, it shall not exceed the base rate as prescribed by Presidential Decree.

[This Article Newly Inserted by Act No. 3723, Apr. 10, 1984]

Article 313 (Notification of Extinguishment of Contract of *Chonsegwon*)

If duration of *chonsegwon* is not provided in the contract, either party may notify at any time the other party of his intention to extinguish *chonsegwon*, and *chonsegwon* shall be extinguished after 6 months have elapsed from the date of receipt by the other party of notification.

Article 314 (Loss by Act of God)

(1) If the whole or part of the subject matter of *chonsegwon* is destroyed by an act of God over which the party has no control, the *chonsegwon* over the portion destroyed shall be extinguished.

(2) If, in the case of partial destruction under the preceding paragraph, the person having *chonsegwon* cannot achieve the objective of *chonsegwon* with the remaining part, he may notify the settlor of *chonsegwon* of his intention to extinguish the entire *chonsegwon* and may demand the return of the deposit money.

Article 315 (Responsibility of Person Having *Chonsegwon* for Compensation for Loss)

(1) If the whole or part of the subject matter of *chonsegwon* is destroyed by some cause attributable to the person having *chonsegwon*, he is liable to compensate the settlor of *chonsegwon*.

(2) In the case of the preceding paragraph, the settlor of *chonsegwon* shall have the right to apply the deposit money as compensation for the loss, and if there is any surplus, he shall return it to the person having *chonsegwon*. If it is insufficient, the settlor may make a demand for the balance.

Article 316 (Duty to Restore to Original Condition, Right to Request Purchase)

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(1) When *chonsegwon* is extinguished according to terms for the duration of *chonsegwon*, the person having *chonsegwon* shall restore the subject matter thereof to its original condition and has the right to remove any things which he attached to the said subject matter. But, if the settlor of *chonsegwon* requests the purchase of the attached things, the person having *chonsegwon* may not refuse to sell without justifiable reasons.

(2) In the case of the preceding paragraph, if the thing has been attached to the subject matter with the consent of the settlor of *chonsegwon* the person having *chonsegwon* may request the settlor to purchase the attached thing. The same shall apply in a case where the attached thing has been purchased from the settlor of *chonsegwon*.

Article 317 (Extinction of *Chonsegwon* and Concurrent Performance)

When *chonsegwon* is extinguished, the settlor of *chonsegwon* shall receive from the person having *chonsegwon* delivery of the subject matter and any documents necessary for the cancellation of the registration of *chonsegwon*. The settlor shall return the deposit money to the person having *chonsegwon* concurrently.

Article 318 (Right of Person Having *Chonsegwon* to Request Auction)

If the settlor of *chonsegwon* delays the return of the deposit money, the person having *chonsegwon* may request an auction of the subject matter of *chonsegwon*, in accordance with the Civil Execution Act. <Amended by Act No. 5454, Dec. 13, 1997; Act No. 6544, Dec. 29, 2001>

Article 319 (Provisions Applied *Mutatis Mutandis*)

The provisions of Articles 213, 214, and 216 through 244 shall apply *mutatis mutandis* between persons having *chonsegwon*, or between a person having *chonsegwon* and the owner of adjoining land or superficiaries.

CHAPTER VII RIGHT OF RETENTION

Article 320 (Contents of Right of Retention)

(1) If the possessor of a thing or valuable instruments belonging to another person has any claim arising, in respect of such property or instruments and if payment of the claim is due, he may retain possession of the thing or instruments until the claim is satisfied.

(2) The provisions of the preceding paragraph shall not apply if the possession has originated in an unlawful act.

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Article 321 (Indivisibility of Right of Retention)

A person having a right of retention may exercise his right over the whole of the thing or valuable instruments retained until his claim has been fully satisfied.

Article 322 (Auction, Summary Application for Satisfaction of Claim)

(1) A person having a right of retention may sell the retained article at an auction in satisfaction of his claim.

(2) A person having a right of retention, if he has justifiable reasons, may request the court to apply the retained article to the satisfaction of his claim at the price estimated by an appraiser. In such a case, the person having a right of retention shall inform the debtor of it in advance.

Article 323 (Right of Collecting Fruits)

(1) A person having a right of retention may collect the fruits produced from the retained article and may apply them to the satisfaction of his claim in preference to other creditors: *Provided*, That if the fruits are not in the form of money they shall be sold at an auction.

(2) The fruits must first be applied to the payment of interest, the surplus if any, to the principal.

Article 324 (Duty of Keeping Property with Care of Good Manager)

(1) A person having a right of retention must keep the retained article with the care of a good manager.

(2) A person having a right of retention may not, without the consent of the debtor, use or lease the retained article nor pledge it as security: *Provided*, That this shall not apply to such use of the thing as necessary for its preservation.

(3) If a person having a right retention contravenes the provisions of the preceding two paragraphs, the debtor may demand the extinction of the right of retention.

Article 325 (Right of Demanding Reimbursement)

(1) If a person having a right of retention has defrayed necessary expenses in respect of the retained article, he may request reimbursement from the owner.

(2) If a person having a right of retention has defrayed useful expenses in respect of the retained article, he may, as long as an increase in value remains, request reimbursement either of the amount defrayed or the

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amount by which its value has been increased at the option of the owner: *Provided*, That the court may, upon the application by the owner, allow him reasonable time to make reimbursement.

Article 326 (Extinctive Prescription of Claim Secured)

The exercise of a right of retention shall not prevent extinctive prescription from running against the claim.

Article 327 (Furnishing Other Security and Extinction of Right of Retention)

The debtor may demand the extinction of a right of retention on furnishing reasonable security.

Article 328 (Loss of Possession and Extinction of Right of Retention)

A right of retention shall be extinguished by the loss of possession.

CHAPTER VIII PLEDGE

SECTION 1 Pledge of Movables

Article 329 (Contents of Pledge of Movables)

A pledgee of movables is entitled to hold possession of the movables which he has received from the debtor or a third person as security for his claim, and to obtain satisfaction of his claim out of the movables in preference to other creditors.

Article 330 (Delivery of Object of Pledge)

A pledge shall become effective upon the delivery to the creditor of the object of pledge.

Article 331 (Object of Pledge)

A thing which can not be assigned shall not be the object of pledge.

Article 332 (Ban on Holding Derivative Possession of Thing Pledged by Pledger)

A pledgee cannot let the pledger hold possession of the pledged article on his behalf.

Article 333 (Order of Priority of Several Pledges of Movables)

If several pledges have been created on a movable to secure several debts, the order of their priority shall depend upon the date of their creation.

Article 334 (Scope of Claim Secured)

Unless otherwise provided by an agreement, a pledge shall secure the principal, interest, penalty, expense for enforcement of the pledge, expense

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for preservation of the pledged article, and the damages arising from the non-fulfilment of the obligation or from latent defects in the pledged article.

Article 335 (Effect of Retaining)

A pledgee may retain the pledged article until he obtains satisfaction of his claim prescribed in the preceding Article: *Provided*, That this right cannot be set up against any creditor who has priority to him.

Article 336 (Sub-pledge)

A pledgee may, within his own right, sub-pledge the pledged article on his own responsibility. In such case, he shall be responsible even for damages due to act of God which would not have occurred if the Article had not been sub-pledged.

Article 337 (Requisites for Setting up Sub-pledge Against Debtors, etc.)

(1) In the case prescribed in the preceding Article, the sub-pledge cannot be set up against the debtor, surety, pledger, and their successors in title unless the debtor has been notified of such sub-pledge or has given his consent thereto.

(2) If the debtor has received notice or has given his consent thereto as prescribed in the preceding paragraph, no payment of debt made to the pledgee without the consent of the sub-pledgee can be set up against the sub-pledgee.

Article 338 (Auction Summary Application for Satisfaction of Claim)

(1) A pledgee may sell the pledged article by auction to obtain satisfaction of his claim.

(2) A pledgee may apply to the court to have the pledged article appropriated to the satisfaction of the debt to the extent of its value appraised by an expert, provided there is a justifiable reason for doing so. In such case, the pledgee must give the debtor and pledger notice of the application in advance.

Article 339 (Ban on Forfeited Pledge)

A pledger may not, by a contract effected before the debt becomes due, agree that the pledgee shall by way of satisfaction of his claim acquire the ownership of the pledged article or dispose of it otherwise than in the manner provided for by Acts.

Article 340 (Satisfaction of Claim out of Other Property than Pledged Article)

(1) A pledgee may obtain satisfaction of his claim out of other property

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of the debtor only in respect to that portion which has not been satisfied out of the pledged article.

(2) The provisions of the preceding paragraph shall not apply if other property is to be apportioned prior to the apportionment of the pledged article: *Provided*, That other creditors may ask the pledgee to deposit the apportioned amount.

Article 341 (Right to Indemnity of Person Who Pledged One's Property to Secure Another's Obligation)

If a person who has pledged his own property to secure a debt of another, discharges the debt or loses the ownership of the pledged article in consequence of the enforcement of the pledge, he is entitled to be indemnified by the debtor in accordance with the provisions relating to surety obligations.

Article 342 (Exercise of Pledge against Things Other than Pledged Articles)

A pledge may also be exercised against money or other things which the pledger is entitled to receive by reason of the loss, damage or expropriation of the pledged article. In such case, an attachment must be levied thereon prior to their payment or delivery.

Article 343 (Provisions Applied *Mutatis Mutandis*)

The provisions of Articles 249 through 251 and Articles 321 through 325 shall apply *mutatis mutandis* to pledges of movables.

Article 344 (Pledges under Other Acts)

The provisions of this Section shall apply *mutatis mutandis* to pledges created by the provisions of another Acts.

SECTION 2 Pledge of Rights

Article 345 (Object of Pledge of Rights)

A property right may be the object of a pledge: *Provided*, That the right to use and take the profit from the immovable may not be the object of a pledge.

Article 346 (Manner of Creating Pledge of Rights)

Unless Otherwise provided by Acts, a pledge of rights must be created by the method regarding the transfer of such rights.

Article 347 (Delivery of Documents Evidencing Obligation)

Where a claim is made the object of a pledge and there exists a document evidencing such claim, the creation of the pledge shall take effect by the

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delivery to the pledgee of the document.

Article 348 (Pledge against Mortgage Claim and Additional Registration of Pledge)

Where a claim secured by a mortgage has been made the object of a pledge, this cannot be effective against the mortgage unless an additional registration of the pledge is entered in the registration of the mortgage.

Article 349 (Requisite for Setting up Pledge for Nominative Claim)

(1) Where a nominative claim has been made the object of a pledge, the creation of the pledge cannot be set up against the original debtor or other third person, unless he has been notified of it by the pledger in accordance with the provisions of Article 450 or unless the original debtor has given his consent thereto.

(2) The provisions of Article 451 shall apply *mutatis mutandis* to the preceding paragraph.

Article 350 (Method of Creating Pledge against Debt Payable to Order)

Where a debt payable to order has been made the object of a pledge, the creation of the pledge shall take effect by the endorsement of the instrument and its delivery to the pledgee.

Article 351 (Method of Creating Pledge against Bearer Instrument)

Where a bearer instrument has been made the object of a pledge, the creation of the pledge shall take effect by the delivery to the pledgee of the instrument.

Article 352 (Restriction on Disposition of Right by Pledger)

Without the consent of a pledgee, a pledger cannot extinguish a right under the pledge, or cannot make any changes detrimental to the rights of the pledgee.

Article 353 (Method of Execution of Claim under Pledge)

(1) A pledgee may directly collect the claim under the pledge.

(2) If the subject matter of a claim is money, the pledgee may obtain direct payment of only such portion thereof as corresponds to the amount of his own claim.

(3) If the claim mentioned in the preceding paragraph has become due earlier than the pledgee's claim, the pledgee may request the original debtor to deposit the amount payable with the Court Depository. In such case the pledge shall exist over the money so deposited.

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(4) If the object of the claim is a thing other than money, the pledgee may exercise his pledge over the thing discharged.

Article 354 (Method of Execution of Claim under Pledge)

In addition to the provisions of the preceding Article, a pledgee may enforce his pledge by the method of execution as provided for in the Civil Execution Act. <Amended by Act No. 6544, Dec. 29, 2001>

Article 355 (Provisions Applied *Mutatis Mutandis*)

In addition to the provisions of this Section, the provisions of the pledge of movables shall apply *mutatis mutandis* to the pledge of rights.

CHAPTER IX MORTGAGE

Article 356 (Contents of Mortgage)

A mortgagee is entitled to obtain satisfaction of his claim in preference to other creditors out of the immovable which has been furnished by the debtor or by a third person as security without transferring its possession.

Article 357 (Floating Sum Mortgage)

(1) A mortgage can be created by settling only the maximum amount of the debt to be secured and reserving the determination of the debt in the future. In such case the extinction or transfer of the debt which occurred before the debt is determined cannot be effective against the mortgage.

(2) In the case of the preceding paragraph the interest of the debt shall be considered to be included in the maximum amount of the debt.

Article 358 (Scope of Effect of Mortgage)

The effect of a mortgage shall extend to all things which are attached to the immovable that is mortgaged including its accessories: *Provided*, That this shall not apply to cases if otherwise provided by Acts or agreed in the act of creation.

Article 359 (Effect upon Fruits)

A mortgage shall be effective against the fruits which the mortgager has obtained or can obtain out of the mortgaged immovable after an attachment has been levied on it: *Provided*, That this cannot be set up against the third person who has obtained the ownership of a superficies or *chonsegwon* on the mortgaged immovable unless the mortgagee has notified him of the attachment.

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Article 360 (Scope of Claim Secured)

A mortgage shall secure the principal, interest, penalty, damages arising from the nonperformance of the obligation, and the expense for the enforcement of the mortgage. Where the compensation for damages is delayed, a mortgage can be exercised only as regards the payments due in respect of one year after the lapse of time for the performance of the principal.

Article 361 (Limits on Disposition of Mortgage)

A mortgage cannot be assigned separately from its secured claim and also cannot be made the security of another claim.

Article 362 (Supplement of Property Mortgaged)

When the value of the property mortgaged has been conspicuously decreased by the acts attributable to a mortgager, a mortgagee may claim for recovery to the original state or the offer of reasonable security.

Article 363 (Claim of Mortgagee for Auction Bidders)

(1) A mortgagee may sell the mortgaged property by auction to obtain satisfaction of his claim.

(2) A third person who has obtained the ownership of the mortgaged property may also bid at the auction.

Article 364 (Payment of Debt by Third Party Purchaser)

A third person who has obtained the ownership of a superficies or *chon-segwon* on the mortgaged immovable may make a claim for the extinction of the mortgage by payment of the debt to the mortgagee.

Article 365 (Claim for Auction of Building on Mortgaged Land)

Where the mortgagor has constructed a building on the land after a mortgage was created over the land, the mortgagee may sell such building by auction together with the land: *Provided*, That he has no right to obtain payment out of the auction proceeds of the building in preference to all others.

Article 366 (Legal Superficies)

Where the land and the building on it belong to different persons by reason of the auction sale of the mortgaged property, the owner of the land is deemed to have created a superficies for the owner of the building: *Provided*, That in such case the rent shall be determined by the court on the application of the party concerned.

Article 367 (Claim of Third Party Purchaser for Reimbursement of Expenses)

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If the third party purchaser of the property mortgaged has defrayed necessary or useful expenses to preserve and improve the property, he may obtain reimbursement out of the proceeds of the auction sale of the property in preference to all others, according to the provisions of Article 203 (1) and (2).

Article 368 (Joint Mortgages and Dividend of Proceeds thereof, Subrogation of Mortgagee Next in Priority)

(1) Where two or more immovables are mortgaged to secure one claim and the proceeds of the auction are to be applied simultaneously to its satisfaction, the burdens in respect of the obligation shall be divided in proportion to the proceeds of the auction sale of each immovable.

(2) If the proceeds of the auction sale of part of the immovables mentioned in the preceding paragraph are to be applied, the mortgagee may obtain full satisfaction of his claim out of the same; in such case the mortgagee next in priority may exercise the right of the prior mortgages by subrogation to the extent of the amount which the latter would have received out of other immovables in accordance with the provisions of the preceding paragraph.

Article 369 (Appendant Nature)

When the claim secured by a mortgage becomes extinct by completion of prescription or by any other reason, the mortgage shall also lapse with it.

Article 370 (Provisions Applied *Mutatis Mutandis*)

The provisions of Articles 214, 321, 333, 340, 341 and 342 shall apply *mutatis mutandis* to mortgages.

Article 371 (Superficies and *Chonsegwon* Mortgaged)

(1) The provisions of this Chapter shall apply *mutatis mutandis* to the case where a superficies or *chonsegwon* has been mortgaged.

(2) A mortgagor who mortgaged a superficies or *chonsegwon* cannot take action to extinguish them without the consent of the mortgagee.

Article 372 (Mortgages under Other Acts)

The provisions of this Chapter shall apply *mutatis mutandis* to mortgages created by the provisions of other Acts.

PART III CLAIMS CHAPTER I GENERAL PROVISIONS

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SECTION 1 Subject of Claims

Article 373 (Subject of Claim)

Even something the value of which cannot be computed in money, may be the subject of a claim.

Article 374 (Duty of Obligor to Deliver Specific Thing with Good Manager's Care)

If the delivery of a specific thing is the subject of a claim, the obligor is bound to preserve such thing with the care of a good manager until it is delivered.

Article 375 (Claim in Species)

(1) Where the subject of a claim is designated in species only, and its quality cannot be determined by the nature of the juristic act or by the intention of the parties, the obligor is bound to perform with a thing of medium quality.

(2) If in the cases mentioned in the preceding paragraph the obligor has completed all acts that are necessary for the performance or has with the consent of the obligee designated a thing to be performed, such thing shall thenceforth constitute the subject matter of the claim.

Article 376 (Pecuniary Claim)

Where the subject of a claim is to be delivered in one kind of currency, and the currency has ceased to be legal tender at the time the claim becomes due, the obligor is bound to effect payment in another currency of legal tender.

Article 377 (Pecuniary Claim in Foreign Currency)

(1) Where the subject of a claim is to be delivered in foreign currency, the obligor may, at his option, effect payment in any kind of currency of the country.

(2) When the subject of a claim is to be delivered in one kind of foreign currency, and the currency has ceased to be legal tender at the time when the claim becomes due, payment shall be effected in some other currency of the country.

Article 378 (Pecuniary Claim in Foreign Currency)

If the amount of a claim is designated in foreign currency, the debtor may effect payment in Korean currency at the current rate of exchange at the place of performance when the delivery is made.

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Article 379 (Legal Rate of Interest)

The rate of interest of a claim bearing interest, unless otherwise provided by other Acts or agreed by the parties, shall be five percent per annum.

Article 380 (Alternative Claim)

Where the subject of a claim is to be determined according to option from among two or more acts, unless otherwise provided by other Acts or agreed by the parties, the right of option shall vest in the obligor.

Article 381 (Transfer of Right of Option)

(1) Where the period for the exercise of a right of option is specified, and the party having a right of option fails to exercise it within the period, the other party, having determined a reasonable period, may give peremptory notice to make an option; in a case where the party having a right of option fails to do so within the reasonably fixed period, the right of option shall be vested in the other party.

(2) Where the period for the exercise of a right of option is not specified, after the claim has become due, the other party, having determined a reasonable period, gives peremptory notice to make an option, and the party having a right of option fails to do so within such period, then it becomes identical with the preceding paragraph.

Article 382 (Exercise of Right of Option by Either Party)

(1) Where an option is made by the one party, it shall be made by the declaration of intention to the other party.

(2) The declaration of intention mentioned in the preceding paragraph cannot be revoked without the consent of the other party.

Article 383 (Exercise of Right of Option by Third Person)

(1) Where an option is made by a third person, it shall be made by the declaration of intention both to the obligor and to the obligee.

(2) The declaration of intention mentioned in the preceding paragraph cannot be revoked without the consent of both the obligee and the obligor.

Article 384 (Transfer of Right of Option Vested in Third Person)

(1) In a case where a third person cannot make an option, the right of option shall be vested in the obligor.

(2) Where a third person does not make an option, the obligee or the obligor may notify him to make an option within a reasonably fixed period, and if the third person fails to do so within the period, the right of option shall vest in the obligor.

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Article 385 (Specification of Alternative Claim Owing to Impossibility of Performance)

(1) If, among two or more acts of performance which are to be made under an option, some of which have either been impossible to perform in the beginning or subsequently become impossible to perform, the subject of the claim shall exist in respect of the remaining acts.

(2) The provisions of the preceding paragraph shall not apply, if any act of performance has become impossible by reason of the negligence of the party who does not have the right of option.

Article 386 (Retroactive Effect of Option)

The option shall be effective retroactively from the time the obligation arose: *Provided*, That the right of a third person may not be prejudiced thereby.

SECTION 2 Effect of Claim

Article 387 (Time for Performance and Delay of Performance)

(1) Where a definite time for the performance of a claim is fixed, the obligor shall be responsible for delay as from the commencement of such time. If an indefinite time for the performance of a claim is fixed, the obligor shall be responsible for any delay as from the time when the obligor has become aware of the arrival of the time for performance.

(2) If a time for the performance of a claim is not fixed, the obligor shall be responsible for the delay as from the time when demand for performance has been made upon him.

Article 388 (Forfeiture of Benefit of Time)

The obligor cannot claim the benefit of time under the following circumstances:

1. If the obligor has damaged, diminished or extinguished the security; and
2. If the obligor has failed to perform the obligation of furnishing the security.

Article 389 (Compulsory Performance of Obligation)

(1) If an obligor does not perform his obligation voluntarily, the obligee may apply to a court for compulsory performance thereof: *Provided*, That this shall not apply to cases where the nature of an obligation does not so permit.

(2) If the obligation mentioned in the preceding paragraph has a juristic

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act for its subject, application may be made to a court for a decision which shall act as a substitute for a declaration of intention by the obligor; if it has an act which is not entirely personal to the obligor for its subject, application may be made to a court to compel performance by a third person at the expenses of the obligor.

(3) Where the obligation has nonfeasance for its subject, and the obligor has violated it, application may be made to a court to have that which has been violated by the obligor removed at the obligor's expense, and that reasonable precautionary steps be taken against future repetition.

(4) The provisions of the preceding three paragraphs shall not affect a demand of compensation for damages.

Article 390 (Non-performance of Obligations and Compensation for Damages)

If an obligor fails to effect performance in accordance with the tenor and purport of the obligation, the obligee may claim damages: *Provided*, That this shall not apply to cases where performance has become impossible and where this is not due to the obligor's intention or negligence.

Article 391 (Intention or Negligence of Performance Assistant)

Where an Agent by law for the obligor effects performance in lieu of the latter or the obligor effects performance through the other person as an employee, the intention or negligence of the agent by law or the other person shall be deemed as that of the obligor.

Article 392 (Compensation for Damages Arising from Delayed Performance)

The obligor shall be responsible for damages during delay of the performance even where he is not at negligence: *Provided*, That this shall not apply to cases where the damage is inevitable even if he performed at the time when the time of performance became due.

Article 393 (Scope of Compensation for Damages)

(1) The compensation for damages arising from the non-performance of an obligation shall be limited to ordinary damages.

(2) The obligor is responsible for reparation for damages that have arisen through special circumstances, only if he had foreseen or could have foreseen such circumstances.

Article 394 (Method of Compensation for Damages)

Unless otherwise agreed by the parties, the damages shall be recovered in money.

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Article 395 (Performance Delay and Compensatory Damages)

Where the obligor has delayed the performance of an obligation, and the obligor fails to perform within a reasonably fixed time that the obligee has given notice, or performance after delay is no longer profitable for the obligee, the obligee may refuse to accept performance and claim damages in lieu of performance.

Article 396 (Contributory Negligence)

If there has been any negligence on the part of the obligee in regard to the non-performance of the obligation, the court shall take it into account in determining the liability for and assessing the amount of the damages.

Article 397 (Special Rules as to Non-performance of Monetary Debt)

(1) The amount of damages for non-performance of a monetary debt shall be determined by the legal rate of interest: *Provided*, That in a case where there exists an agreed rate of interest which does not exceed the limitation provided by Acts and subordinate statutes, that agreed rate of interest shall prevail.

(2) With regard to the damages mentioned in the preceding paragraph, the obligee is not bound to prove the actual damages nor can the obligor set up the absence of negligence as a defense.

Article 398 (Liquidated Damages)

(1) The parties may determine in advance the amount of damages payable in the event of the non-performance of an obligation.

(2) Where the amount of damages determined in advance is unduly excessive, the court may reduce the amount to a more reasonable and appropriate sum.

(3) The determination in advance of the amount of damages shall not affect the obligee's demand for performance or rescission of the contract.

(4) The agreement of a penalty is presumed to be determined in advance of the amount of damages.

(5) Even in a case where the parties have agreed beforehand that something other than money shall be applied as compensation for damages, the provisions of the preceding paragraphs shall apply *mutatis mutandis*.

Article 399 (Obligor's Subrogation to Oblige owing to Compensation for Damages)

If an obligee has received by way of damages the full value of the thing or right which forms the subject of the claim, the obligor shall *ipso jure* be

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subrogated to the position of the obligee in respect of such thing or right.

Article 400 (*Mora Creditoris*)

If an obligee is unable to accept performance of an obligation or refuses to accept it, such obligee shall be responsible for the delay commencing from the time when the performance has been tendered.

Article 401 (*Mora Creditoris* and Responsibility of Obligor)

If the obligor has no intention or gross negligence in respect of non-performance, such obligor shall, during the obligee's delay of acceptance, be free of all responsibility arising as a result of non-performance.

Article 402 (Obligee's Acceptance Delay and Responsibility of Obligor)

During a period of delay on the part of the obligee, the obligor is not bound to pay the interest even though the obligation is accompanied by the interest.

Article 403 (*Mora Creditoris* and Responsibility of Obligee)

If the expense for the custody of the subject-matter or for performance is increased owing to the delay on the part of the obligee, the amount of the increased expense shall be deducted from the account of the obligee.

Article 404 (Obligee's Right of Subrogation to Obligor)

(1) An obligee may, in order to preserve his claim, exercise the rights belonging to the obligor: *Provided*, That this shall not apply to such rights as are strictly personal to the obligor.

(2) Before a claim becomes due, the obligee cannot exercise the rights mentioned in the preceding paragraph without the court's permission: *Provided*, That this shall not apply to an act of preservation.

Article 405 (Notice as to Exercise of Obligee's Rights of Subrogation to Obligor)

(1) If the obligee, according to the provisions of the paragraph (1) of the preceding Article, has exercised the rights, except the act of preservation, he is bound to give notice to the obligor.

(2) After the obligor has received the notice under the preceding paragraph, even though he has disposed of his rights, this shall not be so set up against the obligee.

Article 406 (Obligee's Right of Revocation)

(1) If the obligor has performed any juristic act which has a property right for its subject, with the knowledge that it would prejudice the obligee, the obligee may apply to the court for its revocation and restitution of its original status: *Provided*, That this shall not apply in a case where

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a person who has derived a benefit from such act or a subsequent purchaser was, at the time of the act or of the purchase, unaware of the fact that it would prejudice the obligee.

(2) The action mentioned in the preceding paragraph shall be brought within one year from the time when the obligee became aware of the cause for revocation, or within five years from the time when the juristic act was done.

Article 407 (Effect of Revocation by Obligee)

The revocation and restitution of its original status according to the provisions of the preceding Article shall take effect for the benefit of all obligees.

SECTION 3 Several Obligees and Obligors

Sub-Section 1 General Provisions

Article 408 (Relationship of Divisible Claims)

Where there are several obligees or obligors, they shall, in the absence of any other agreement, have rights or assume duties in equal proportions.

Sub-Section 2 Indivisible Claims and Indivisible Obligations

Article 409 (Indivisible Claim)

Where the subject of a claim is indivisible by its nature or by a declaration of intention by the parties, and there are several obligees, each obligee may demand performance on behalf of all the obligees, and the obligor may effect performance to any obligee on behalf of all the obligees.

Article 410 (Effect of Facts Arisen to One of Obligees)

(1) Among the obligees having indivisible claims, an act done by, or any fact concerning any one of the obligees, except the fact which has an effect upon all the obligees according to the preceding Article, shall have no effect upon the other obligees.

(2) Where a novation or a release has been effected between one of the obligees having indivisible claims and the obligor, other obligees who have received performance of the entire obligation must reimburse the obligor that which would have been allocated to such obligee if he had not lost his right.

Article 411 (Indivisible Obligations and Provisions Applied *Mutatis Mutandis*)

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Where several persons assume an indivisible obligation, the provisions of Articles 413 through 415, 422, and 424 through 427 as well as those of the preceding Article shall apply *mutatis mutandis*.

Article 412 (Conversion into Divisible Claim and Divisible Obligation)

Where an indivisible claim or obligation is converted into a divisible one with respect to the obligees or the obligors, each obligee may demand performance only in respect of his own share, and each obligor shall be liable for the performance only in respect of the share incumbent upon himself to perform.

Sub-Section 3 Joint and Several Obligation

Article 413 (Content of Joint and Several Obligation)

If each of the several obligors has the responsibility to perform the entire obligation, and the performance by one of the obligors discharges the other's obligation, the obligation shall be a joint and several obligation.

Article 414 (Demand for Performance against Each of Obligors Jointly and Severally Liable)

The obligee may demand performance, in whole or in part of the obligation, against one of the obligors jointly and severally liable or all of them simultaneously or in succession.

Article 415 (Nullity or Voidance in Respect of Obligors)

The ground for nullifying or avoiding a juristic act in regard to one of the obligors jointly and severally liable, shall not affect the others' obligation.

Article 416 (Absolute Effect of Demand for Performance)

A demand for performance made upon one of the obligors jointly and severally liable shall be effective as against the others.

Article 417 (Absolute Effect of Novation)

If a novation has been effected between one of the obligors jointly and severally liable and the obligee, the claim shall be extinguished in favor of all the obligors.

Article 418 (Absolute Effect of Set-off)

(1) Where one of the obligors jointly and severally liable has a counter claim against the obligee, and the obligor makes a set-off, the claim shall be extinguished in favour of all the obligors.

(2) If the obligor who has a counter claim does not make a set-off, the

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other obligors can make a set-off only to the extent of his share of the obligation.

Article 419 (Absolute Effect of Release)

A release of an obligation given to one of the obligors jointly and severally liable, shall be effective in favour of the other obligors jointly and severally liable only to the extent of his share of the obligation.

Article 420 (Absolute Effect of Merger)

If a merger has taken place as between one of obligors jointly and severally liable and the obligee, the other obligors jointly and severally liable shall also be relieved of their obligation only to the extent of the share incumbent upon such obligor.

Article 421 (Absolute Effect of Extinctive Prescription)

If extinctive prescription has been completed for one of the obligors jointly and severally liable, the other obligors jointly and severally liable shall also be relieved of their obligation only to the extent of the share incumbent upon such obligor.

Article 422 (Absolute Effect of *Mora Creditoris*)

The obligee's acceptance delay against one of the obligors jointly and severally liable, shall be effective upon the other obligors jointly and severally liable.

Article 423 (Principles as to Relativity of Effect)

Except for matters mentioned in the preceding seven Articles, all other matters relating to one of the obligors jointly and severally liable shall not be effective on the other obligors.

Article 424 (Equality of Contribution)

The extent of the share incumbent upon the obligors jointly and severally liable to contribute, shall be presumed as equal.

Article 425 (Right of Reimbursement of Obligor Who has Performed at His Own Expense)

(1) If one of the obligors jointly and severally liable has, by performance of the obligation or otherwise at his own expense, procured a discharge for common profit, he is entitled to reimbursement from the other obligors jointly and severally liable in proportion to their respective shares.

(2) The right of reimbursement mentioned in the preceding paragraph shall include legal interest as from the day of discharge, and the expenses or other losses which were unavoidable, or other compensation for damages.

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Article 426 (Notice as Requisite for Reimbursement)

(1) Where one of the obligors jointly and severally liable has, without notifying the other obligors jointly and severally liable, procured a common discharge by performance or otherwise at his own expense, and one of the other obligors had a defense available against the obligee, he may set it up against such obligor as has done an act for discharge only to the extent of the share incumbent upon himself, and if the ground for defense so set up is a set-off, the claim which is to be extinguished by a set-off, shall be transferred to such obligor as has done an act for discharge.

(2) Where one of the obligors jointly and severally liable fails to notify the other obligors jointly and severally liable that he has procured a common discharge by performance or otherwise at his own expense, and one of the other obligors jointly and severally liable has in good faith effected performance or otherwise procured a discharge for value, he shall insist upon the effectiveness of his own act for discharge.

Article 427 (Share Incumbent upon Obligor who is Insolvent)

(1) If one of the obligors jointly and severally liable has no sufficient means to make reimbursement, the part which he is unable to pay shall be borne by the person demanding reimbursement and the other solvent obligors in proportion to their respective shares: *Provided*, That if the party demanding reimbursement is at negligence, he cannot demand the other obligors jointly and severally liable to bear their proportionate shares.

(2) In the case of the preceding paragraph, if one of the other obligors who are to bear the part for reimbursement of the obligor, who is insolvent, has obtained a release by the obligee from his joint and several liability, the obligee shall bear the part incumbent upon the obligor.

Sub-Section 4 Surety Obligation

Article 428 (Contents of Surety Obligation)

(1) A surety is liable to perform the obligation upon which the principal obligor has defaulted.

(2) A suretyship may be made for a future obligation.

Article 429 (Extent of Surety Obligation)

(1) The surety obligation shall include interest on the principal obligation, penalty, damages, and all other charge incidental to the principal obligation.

(2) A surety may stipulate in advance the amount of penalty or other

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liquidated damages in regard to his own surety obligation.

Article 430 (Appendant Nature of Surety Obligation)

If the burden of a surety is greater than that of the principal obligor either as to its subject or its terms, it shall be reduced to the extent of the principal obligation.

Article 431 (Requisite as to Surety)

- (1) Where an obligor is bound to furnish surety, such surety must be a person who has full capacity and sufficient means to effect performance.
- (2) If the surety ceases to have sufficient means to effect performance, the obligee may demand substitution of another for such surety.
- (3) Where the obligee has designated the surety, the provisions of the preceding two paragraphs shall not be applicable.

Article 432 (Furnishing Other Security)

The obligor may be released from liability to furnish a surety by furnishing other reasonable security in lieu thereof.

Article 433 (Surety and Defense of Principal Obligor)

- (1) A surety may avail himself of any defense against the obligee which the principal obligor has against the obligee.
- (2) A waiver of a defense by the principal obligor shall not be effective as against a surety.

Article 434 (Surety and Right to Set-off of Principal Obligor)

A surety may avail himself of any claim which the principal obligor has against the obligee as a set-off against the latter.

Article 435 (Surety and Right to Revocation, etc. of Principal Obligor)

So far as the principal obligor has the right of revocation, rescission or termination against the obligee, the surety may refuse to perform the obligation against the obligee.

Article 436 (Surety as to Voidable Obligation)

Where a surety has guaranteed an obligation which is voidable and of which he was aware at the time of entering into the suretyship, and there exists non-performance or revocation of the principal obligation, he is presumed to have assumed an independent obligation of the same tenor as the principal obligation.

Article 437 (Defense by Surety of Peremptory Notice and Inquiry)

If an obligee has demanded performance of the obligation from the surety, upon proving that the principal obligor has sufficient means to effect

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performance and that the execution would be easy, the surety may enter a plea as a defense that the obligee must demand from the principal obligor and that he must first levy execution on the property of the principal obligor: *Provided*, That if the surety has assumed an obligation jointly and severally liable with the principal obligor, this shall not be apply.

Article 438 (Effect of Laches as to Peremptory Notice or Inquiry)

Notwithstanding that a defense has been made by a surety in accordance with the provisions of the preceding Article, and the obligee has, owing to his laches, been unable to obtain partial or full performance from the obligor, the surety shall be relieved of his liability to the extent that the obligee would have received performance, if he had not been negligent.

Article 439 (Benefit of Division by Co-sureties)

Even where several sureties have assumed their liabilities for one obligation by separate acts, the provisions of Article 408 shall apply.

Article 440 (Effect of Interruption of Prescription against Surety)

An interruption of prescription against the principal obligor shall also be effective as against the surety.

Article 441 (Right of Reimbursement of Fiduciary Surety)

(1) If a surety who has become such at the request of the principal obligor has, without negligence on his part, caused the principal obligation to be extinguished by performance or at his own expense, such surety shall have a right to be indemnified by the principal obligor.

(2) The provisions of Article 425 (2) shall apply *mutatis mutandis* to the cases mentioned in the preceding paragraph.

Article 442 (Right of Preliminary Reimbursement of Fiduciary Surety)

(1) A surety who has become such at the request of the principal obligor may exercise in advance his right of reimbursement against the principal obligor in one of the following subparagraphs:

1. When a surety has, without his negligence, had judgment entered against him ordering performance to the obligee;
2. If the principal obligor has been declared bankrupt, and the obligee does not participate in the bankrupt estate;
3. If five years have elapsed after the conclusion of the contract of suretyship, in a case where the time for the performance of the obligation is uncertain and even its maximum duration is unascertainable; and

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4. If the time for the performance of the obligation has arrived.

(2) In the case of subparagraph 4 of the preceding paragraph, no time granted by the obligee to the principal obligor after the conclusion of the contract of suretyship can be set up against the surety.

Article 443 (Demand for Discharge by Principal Obligor)

Where a principal obligor indemnifies the surety in accordance with the provisions of the preceding Article, he may demand of the surety to discharge the obligation for him or request of the surety to furnish security, or he may relieve himself of his liability of indemnification by making a deposit of the amount of indemnification, furnishing security or procuring a discharge of the surety.

Article 444 (Right of Reimbursement of Nonfiduciary Surety)

(1) In a case where a person who has become surety without the request of the principal obligor, has performed the obligation or has otherwise, at his own expense, procured the discharge of the principal obligor, the latter is liable to indemnify the surety to the extent that he was enriched as of the time of discharge.

(2) In a case where a person has become surety against the will of the principal obligor, has performed the obligation or has otherwise at his own expense procured the discharge of the principal obligor, the latter is liable to indemnify the surety only to the extent that the latter is still being enriched.

(3) If, in the preceding paragraph, the principal obligor claims that he had, prior to the demand for indemnification, a good cause for set-off against the obligee, the claim, which would have been extinguished by such set-off, shall be transferred to the surety.

Article 445 (Notice as Requisite for Reimbursement)

(1) Where a surety has, without notifying the principal obligor, performed or otherwise procured a discharge of the principal obligation at his own expense, and the principal obligor had a defense available against the obligee, he may set it up against the surety, and in a case where the defense so set up is a set-off, the claim which would be extinguished by the set-off shall be transferred to the surety.

(2) Where a surety has not notified the principal obligor that he had performed the obligation or otherwise procured at his own expense a discharge, and the principal obligor has in good faith effected performance to

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the obligee or otherwise procured a discharge for value, the principal obligor may treat his act of discharge as effective.

Article 446 (Duty of Notice of Discharge to Surety of Principal Obligor)

Where the principal obligor has not notified the person who has become a surety at the request of the principal obligor that he has obtained a discharge by his own act, and the surety has in good faith effected performance to the obligee or otherwise has procured a discharge for value, the surety may treat his act of discharge as effective.

Article 447 (Right of Reimbursement of Person Who has Become Surety for One of Obligors Jointly and Severally Liable or of Indivisible Obligation)

A person who has become surety for one of the obligors jointly and severally liable or of an indivisible obligation is entitled to be indemnified from the other obligors only in proportion to their respective shares.

Article 448 (Right of Reimbursement among Co-sureties)

(1) Where there are several sureties, one of whom has effected performance in excess of the share incumbent on him, the provisions of Article 444 shall apply *mutatis mutandis*.

(2) Where the principal obligation is indivisible or each surety has assumed the obligation for which they are jointly and severally liable to each other or with the principal obligor, and one of the sureties has effected performance in excess of the share incumbent on him, the provisions of Articles 425 through 427 shall apply *mutatis mutandis*.

SECTION 4 Assignment of Claim

Article 449 (Assignability Nature of Claim)

(1) A claim may be assigned, except in cases where its nature does not so permit.

(2) Where the parties have declared a contrary intention, a claim shall not be assigned: *Provided*, That such declaration of intention, cannot be set up against a third person acting in good faith.

Article 450 (Requisite for Setting up Assignment of Nominative Claim against Obligor)

(1) The assignment of a nominative claim cannot be set up against the obligor or any other third person, unless the assigner has given notice thereof to obligor or the obligor has consented thereto.

(2) The notice or consent mentioned in the preceding paragraph cannot

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be set up against a third person other than the obligor, unless it is put in writing with a certified fixed date.

Article 451 (Effect of Consent or Notice)

(1) If the obligor has given his consent as mentioned in the preceding Article without reservation, he cannot set up against the assignee any defense that he could have set up against the assignor: *Provided*, That if the obligor has paid anything to the assignor for the discharge of his obligation, he may recover it, and if he had incurred a new obligation to him, he may treat it as if it had not been incurred.

(2) Where the assignor has merely given notice of the assignment, the obligor may set up against the assignee any defense which has arisen against the assignor prior to the receipt of the notice.

Article 452 (Notice of Assignment and Estoppel)

(1) If an assignor has given notice of assignment of a claim to the obligor, even in a case where assignment has not been made or the assignment is null and void, an obligor acting in good faith may be set up a defense which can set up against the assignee, against the assignor.

(2) The notice mentioned in the preceding paragraph cannot be withdrawn without the consent of the assignee.

SECTION 5 Assumption of Obligation

Article 453 (Assumption of Obligation by Contract with Obligee)

(1) A third person may assume an obligation by contract entered into with the obligee and thereby discharge the obligation for the obligor, except in a case where its nature does not so permit.

(2) A third person who has no interest in the obligation cannot assume an obligation against the will of the obligor.

Article 454 (Assumption of Obligation by Contract with Obligor)

(1) Where a third person has taken over a debt by contract entered with the obligor, it shall be effective as from the time when the obligee has given consent thereto.

(2) The other party to whom the obligee's consent or refusal shall have effect upon, shall be the obligor or a third person.

Article 455 (Peremptory Notice to Confirm of Whether to Consent or not)

(1) In the case of the preceding Article, the third person or the obligor

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may request the obligee to answer whether he will consent or not within a reasonably fixed period.

(2) If the obligee has not sent a definite answer within such reasonable period specifying whether to consent or not, it shall be deemed as a refusal.

Article 456 (Withdrawal or Change of Assumption of Obligation)

The parties may withdraw or change the assumption of an obligation according to a contract between a third person and the obligor by the time of the obligee's consent.

Article 457 (Retroactive Effect of Assumption of Obligation)

The consent of the assumption of the obligation by the obligee shall, if there exists no different declaration of intention, be effective retroactively as from the time of such assumption: *Provided*, That the retroactive effect may not harm the rights of a third person.

Article 458 (Ground for Defense of Former Obligor)

A person assuming an obligation may set up a defense against the obligee which the former obligor could have set up.

Article 459 (Assumption of Obligation and Extinguishment of Suretyship or Security)

A suretyship for the obligation of the former obligor or the security furnished by a third person shall be extinguished by virtue of assumption of the obligation, unless the surety or the third person has given consent thereto.

SECTION 6 Extinction of Claim

Sub-Section 1 Performance

Article 460 (Method of Tender of Performance)

Performance must be effected by way of actual tender in strict accordance with the tenor of the obligation: *Provided*, That in a case where the obligee previously refused its acceptance or where an act of the obligee is required for the performance of the obligation, it shall be sufficient to inform the obligee that all preparations have been made for performance, and give a peremptory notice to him of its acceptance.

Article 461 (Effect of Tender of Performance)

A tender of performance shall relieve the obligor from responsibility for non-performance as from the time of such tender.

Article 462 (Delivery of Specific Thing in its Existing Condition)

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If the delivery of a specific thing is the subject of the obligation, the obligor must deliver the thing in the condition in which it exists at the time when the delivery thereof is due.

Article 463 (Delivery of Thing Belonging to Another as Performance of Obligation)

An obligor who has delivered a thing belonging to another by way of performance of an obligation cannot demand the recovery of such thing, unless he effects a valid performance anew.

Article 464 (Delivery of Thing by its Owner Who has No Capacity to Dispose of It)

Where the owner of a thing who has no capacity to dispose of it has delivered it by way of performance, and then such performance has been avoided, he cannot demand the recovery of such thing unless he effects a valid performance anew.

Article 465 (Consumption or Assignment in Good Faith by Obligee and Right of Reimbursement)

(1) If, in the cases mentioned in the preceding two Articles, the obligee has consumed or disposed of in good faith the thing which he had received by way of performance, the performance shall be effective.

(2) If, in the cases of the preceding paragraph, the obligee has been demanded by a third person to pay damages, he may exercise the right of reimbursement against the obligor.

Article 466 (Accord and Satisfaction)

Where an obligor has, with the consent of the obligee, done an act of performance different from, and in substitution for the one originally intended, such act shall be deemed a valid performance.

Article 467 (Place of Performance)

(1) If the place of performance has not been decided by the nature of the obligation or the declaration of intention of the parties, the delivery of a specific thing must be made at the place where the thing existed when the obligation arose.

(2) In the cases of the preceding paragraph, performance of the obligation other than the delivery of a specific thing must be effected at the present domicile of the obligee: *Provided*, That the performance of the obligation in regard to the business shall be effected at the present business place of the obligee.

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Article 468 (Performance Prior to Time for Performance)

In the absence of the declaration of special intention by the parties, the obligor may effect performance even prior to the time when performance becomes due: *Provided*, That he must compensate for the damage of the other party.

Article 469 (Performance by Third Person)

(1) The performance of an obligation may also be effected by a third person: *Provided*, That if its nature does not so permit, or the parties have declared a contrary intention, this shall not apply.

(2) A third person who has no interest in the obligation cannot effect performance against the will of the obligor.

Article 470 (Performance to Quasi-Possessor of Claim)

A performance made to a quasi-possessor of the claim is effective only if it was done in good faith and without negligence.

Article 471 (Performance to Bearer of Receipt)

A performance made to the bearer of a receipt shall be effective even where he is not authorized to accept performance: *Provided*, That this shall not apply to cases where the person effecting performance was aware or should have been aware of the fact that the bearer did not have such authority.

Article 472 (Performance to Unauthorized Person)

Except in the cases mentioned in the preceding two Articles, a performance made to a person who is not authorized to accept it is effective only to the extent that the obligee has been enriched thereby.

Article 473 (Bearing Expenses of Performance)

In the absence of a special agreement, the expenses of performance shall be borne by the obligor: *Provided*, That in a case where the expenses of performance is increased by changing the obligee's domicile or by his any other act, the amount of such increase shall be borne by the obligee.

Article 474 (Claim of Receipt)

A person effecting performance may demand a receipt from the person accepting the performance.

Article 475 (Claim of Return of Document Evidencing Obligation)

If there exists a document evidencing the obligation, the person effecting performance in full may demand the return of such document. This shall also apply in a case where the obligation has been extinguished in full by any cause other than performance.

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Article 476 (Designated Appropriation of Performance)

(1) If an obligor owes to the same obligee several obligations whose subject is of the same kind, and the tender of performance is insufficient to discharge them all, the person effecting performance may, at the time of performance, designate the obligation to be discharged by appropriating performance for it.

(2) If the person effecting performance makes no such designation as mentioned in the preceding paragraph, the person accepting the performance may at the time of acceptance designate an obligation to be discharged by appropriation of performance: *Provided*, That this shall not apply if the person effecting performance immediately objects to such designation and appropriation.

(3) The appropriation of performance mentioned in the preceding two paragraphs shall be effected by a declaration of intention made to the other party.

Article 477 (Constructive Appropriation of Performance by law)

If the parties have not designated the obligation to be discharged by appropriation, it shall be done in accordance with the provisions of the following subparagraphs:

1. If some of the obligations are due and others are not due, it shall be appropriated for the performance of the obligation which is due;
2. If all the obligations are due or all are not due, it shall be appropriated for the performance of the obligation the discharge of which is most advantageous to the obligor;
3. If the advantage to the obligor is equal, it shall be appropriated for the performance of the obligation which first became due or will become due; and
4. If the facts mentioned in the preceding two subparagraphs are equal, it shall be appropriated for the performance of each obligation in proportion to the amount of each obligation.

Article 478 (Appropriation of Insufficient Performance)

The provisions of the preceding two Articles shall apply *mutatis mutandis* to cases where two or more acts of performance are necessary for the discharge of one obligation, and those acts for performance which have been effected are insufficient to satisfy the entire obligation.

Article 479 (Order of Appropriation of Performance to Expenses, Interest

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and Principal Obligation)

(1) If the obligor is to pay expenses and interest of one or more obligations, and the person effecting performance has effected insufficient performance to satisfy the entire obligation, such performance shall be appropriated in the order of the expenses, the interest and the principal.

(2) The provisions of Article 477 shall apply *mutatis mutandis* to the case mentioned in the preceding paragraph.

Article 480 (Voluntary Subrogation by Person Who has Performed Obligation)

(1) A person who has performed an obligation on behalf of the obligor may be subrogated to the rights of the obligee with the consent of the latter, which should be obtained simultaneously with the performance.

(2) The Articles 450 through 452 shall apply *mutatis mutandis* to the case mentioned in the preceding paragraph.

Article 481 (Constructive Subrogation by Act of Person Who has Performed Obligation)

A person who has a legitimate interest to effect performance shall be by operation of law subrogated to the rights of the obligee by effecting the performance.

Article 482 (Effect of Subrogation by Person Who has Performed Obligation, Relations among Subrogators)

(1) A person who has been subrogated to the rights of the obligee in accordance with the provisions of the preceding two Articles may exercise the claim and the right in respect to its security to the extent to which he may be reimbursed by virtue of his own right.

(2) The exercise of the right mentioned in the preceding paragraph shall be subject to the provisions of the following subparagraphs:

1. A surety cannot be subrogated to the rights of the obligee as against the third person who acquired of the right on an article which is the object of *chonsegwon* or mortgage unless the subrogation has been entered in advance into the registration of *chonsegwon* or the mortgage;
2. A third party purchaser cannot be subrogated to the rights of the obligee as against a surety;
3. One of the third party purchasers shall be subrogated to the rights of the obligee as against the other purchasers in proportion to the value of each immovable property;

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4. The provisions of the preceding subparagraph shall apply *mutatis mutandis* to the case where there are several persons who have furnished their own property as security for the obligation of another; and
5. As between a person who has furnished his own property as security for the obligation of another and surety, they shall be subrogated to the rights of the obligee in proportion to their numbers: *Provided*, That there are several persons who have furnished their own property as security for the obligation of another, they shall be subrogated to the rights of the obligee in respect of the balance excluding the part incumbent upon the surety, and in proportion to the value of each property. If, in the case mentioned above the property is an immovable, the provisions of subparagraph 1 shall apply *mutatis mutandis*.

Article 483 (Partial Subrogation)

- (1) Where a person has performed a part of the obligation on behalf of the obligor by subrogation, he may exercise his right concurrently with the obligee in proportion to the value of the performance effected by him.
- (2) In the case mentioned in the preceding paragraph the rescission or termination of contract by reason of non-performance must be done by the obligee only, and he must reimburse the person subrogated for the value of the performance effected together with the interest thereon.

Article 484 (Performance by Subrogation, Documents Relating to Obligation, and Security)

- (1) An obligee who has obtained full satisfaction of the obligation by performance by subrogation must deliver to the subrogee all the documents relating to the obligation and the Article held in possession as security.
- (2) Where performance by subrogation has taken place in respect to a part of the obligation, the obligee must enter the fact of subrogation in the documents relating to the obligation, and must allow the subrogee to supervise the preservation of the Article held in his possession as security.

Article 485 (Loss or Diminution of Security by Obligee and Discharge of Person Entitled to Constructive Subrogation)

Where there is a person entitled to the rights of subrogation in accordance with the provisions of Article 481, and the security is lost or diminished by the obligee's intention or negligence, such person shall be relieved of his liability in so far as it has become impossible for him to be reimbursed by reason of loss or diminution.

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Article 486 (Extinguishment of Obligation Otherwise than by Means of Performance and Subrogation)

The provisions of the preceding six Articles shall apply *mutatis mutandis* to the case where a third person has made the obligor's obligation extinguished by the deposit or at his own expenses.

Sub-Section 2 Deposit

Article 487 (Requisite and Effect of Deposit for Performance)

If the obligee refuses to accept performance or is unable to accept it, the person effecting performance may relieve himself of his obligation by depositing the subject matter of performance for the obligee. The same shall apply where the obligee cannot be ascertained without any negligence on the part of the person effecting performance.

Article 488 (Method of Deposit)

- (1) The deposit must be made with the Deposit Office in the place for the performance of the obligation.
- (2) If there are no special provisions of Acts in respect of the Deposit Office, the court must, on the application of the person effecting performance, designate a Deposit Office and appoint a custodian of the deposited article.
- (3) The depositor must, without delay, give notice of the deposit to the obligee.

Article 489 (Recovery of Deposited Article)

- (1) Until the obligee has given his consent to the deposit or has notified the Deposit Office of the receipt of the deposited article or a judgment declaring the deposit effective has become final and conclusive, the depositor may recover the deposited article and, in such case, the deposit is deemed not to have been made.
- (2) The provisions of the preceding paragraph shall not apply where a pledge or a mortgage has been extinguished by making a deposit.

Article 490 (Deposit of Proceeds)

If the subject matter of performance is unfit for deposit, or there is any danger of its perishing or being damaged, or excessive expense is required for deposit, the person effecting performance may, with the permission of the court, sell the subject matter by official auction or for value at the market price and deposit the proceeds.

Article 491 (Acceptance of Deposited Article and Performance of Reciprocal

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Obligations)

Where the obligor is to effect performance concurrently with the counter performance of the obligee, the obligee cannot take delivery of the deposited article unless he effects his performance.

Sub-Section 3 Set-off

Article 492 (Requisite for Set-off)

(1) If two persons are bound to each other by obligations whose subject is of the same kind and both of which have become due, each obligor may make a set-off to the extent of the amount corresponding to that of his obligation: *Provided*, That this shall not apply where the nature of the obligations does not so permit.

(2) The provisions of the preceding paragraph shall not apply to cases where the parties have declared an intention to the contrary: *Provided*, That such declaration of intention cannot be so set up against a third person acting in good faith.

Article 493 (Method and Effect of Set-off)

(1) A set-off be effected by means of a declaration of intention to the other party. No condition may be attached, nor a time be fixed, to such declaration of intention.

(2) The declaration of intention for a set-off shall be deemed to extinguish the obligation to the extent of the same amount when each obligation is eligible for a set-off.

Article 494 (Set-off of Obligations Which Are to be Performed at Different Places)

A set-off may be effected even where each obligation is to be performed at different places: *Provided*, That the party who effects the set-off must compensate the other party for any damages which have arisen therefrom.

Article 495 (Set-off by Claim with Completed Extinctive Prescription)

A claim with completed extinctive prescription may be used for a set-off if it had been able to be used therefor prior to the completion of prescription.

Article 496 (Prohibition of Set-off against Obligation Arisen from Intentional Unlawful Act)

Where the obligation has arisen from an intentional unlawful act, the obligor cannot avail himself of a set-off against the obligee.

Article 497 (Prohibition of Set-off against Obligation of Which Attach-

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ment is Prohibited)

If the claim is one of which an attachment cannot be effected, the obligor may not set up against the obligee any defense of set-off.

Article 498 (Prohibition of Set-off against Obligation under Garnishment Order)

A third obligor under garnishment order may not set up against his obligee who requested such order any defense of set-off subsequently acquired by him.

Article 499 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 476 through 479 shall apply *mutatis mutandis* to a set-off.

Sub-Section 4 Novation

Article 500 (Requisite for and Effect of Novation)

If the parties have entered into a contract by which the essential elements of the obligation are modified, such obligation shall be extinguished by novation.

Article 501 (Novation by Change of Obligor)

A novation by change of an obligor may be effected by a contract between the obligee and the new obligor: *Provided*, That it shall not be effected against the intention of the original obligor.

Article 502 (Novation by Change of Obligee)

A novation by change of an obligee cannot be set up against a third person, unless it is done by a document with a certified fixed date.

Article 503 (Novation Changing Obligee and Effect of Consent of Obligor)

The provisions of Article 451 (1) shall apply *mutatis mutandis* to a novation by change of an obligee.

Article 504 (Case of Non-extinguishment of Original Obligation)

If the new obligation arisen from a novation does not come into existence or has been avoided by reason of illegality of its cause or of any circumstance of which the parties were not aware, the original obligation shall not be extinguished.

Article 505 (Transfer to New Obligation of Security)

The parties to a novation may transfer the security for the original obligation to that of the new obligation, within the limit of its objective:

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Provided, That if the security has been furnished by a third person, his consent must be obtained.

Sub-Section 5 Release

Article 506 (Requisite for and Effect of Release)

If the obligee declares to the obligor an intention to release the obligor from the obligation, such obligation shall be extinguished: *Provided*, That a release cannot be set up against a third person who has a reasonable interest.

Sub-Section 6 Merger

Article 507 (Requisite for and Effect of Merger)

If a claim and the corresponding obligation become vested in one and the same person, the claim shall be extinguished: *Provided*, That this shall not apply if such claim itself is a subject of a third person's right.

SECTION 7 Debts Payable to Order

Article 508 (Form of Assignment of Debt Payable to Order)

A debt payable to order may be assigned by means of endorsement on and delivery of the instrument.

Article 509 (Endorsement to Party Liable on Instrument)

- (1) A debt payable to order may be assigned even to its obligor by means of endorsement.
- (2) An obligor who has been assigned the debt payable to order by means of endorsement may assign it by means of re-endorsement.

Article 510 (Form of Endorsement)

- (1) An endorsement must be written on the instrument or on a slip affixed thereto and the endorser must sign or write his name and affix his seal on it.
- (2) The endorsement may be made by means of leaving the endorsed unspecified, and it may be made by means of simply a signature of the endorser or the name and seal of an endorser.

Article 511 (Form of Disposition of Informal Endorsement)

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If an endorsement has been made in an informal way according to paragraph (2) of the preceding Article, the holder may dispose of it in the form of each of following subparagraphs.

1. His own name or the name of some other person may be written as an endorsee;
2. An endorsement may again be made on the instrument in an informal way or by means of indicating some other person as an endorsee; and
3. The instrument may be assigned by means of delivering it to a third person without indicating the endorsee, and without endorsing it.

Article 512 (Effect of Endorsement Payable "To Bearer")

An endorsement payable to bearer is equivalent to an informal endorsement.

Article 513 (Effect of Establishing Title by Endorsement)

- (1) The possessor of an instrument is deemed to be the lawful holder if he establishes his title to the instrument through an uninterrupted series of endorsements. The same shall apply even if the last endorsement is in an informal way.
- (2) If an informal endorsement is followed by another endorsement, the endorser of this last endorsement is deemed to have acquired the instrument by the informal endorsement.
- (3) Cancelled endorsements are deemed not to be written in connection with the uninterrupted series of endorsements.

Article 514 (Effect of Establishing Title—a *bona fide* Purchase)

No person can require the lawful holder of an instrument to give it up: *Provided*, That this shall not apply if, the holder acquired it, he was aware that the assignor did not have title, or was not aware of it owing to gross negligence.

Article 515 (Endorsement Transferring Rights and Personal Defenses)

The debtor of a debt payable to order cannot set up against the holder defenses arising from his personal relations with the previous holders: *Provided*, That this shall not apply if the holder has knowingly acquired the debt payable to order to the detriment of the debtor.

Article 516 (Place of Performance)

If the place of performance is not determined by the instrument, the present place of business of the obligor shall be the place of performance. If he has not the place of business, his present domicile shall be the

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place of performance.

Article 517 (Presentation of Instrument and Performance Delay)

Even in a case where the time for performance is determined by the instrument, the obligor shall be in default only when the holder has presented the instrument and demanded performance after the time for performance has commenced.

Article 518 (Right and Duty of Debtor to Verify)

The debtor is bound to verify the regularity of the series of endorsements, and he has the right, but is not under any duty, to verify the genuineness of the signature or name and seal of the endorser, or the identity of the holder: *Provided*, That if, when the debtor effected payment, he was aware that the holder is not the person having the right or fails to know it owing to gross negligence, the payment shall be null and void.

Article 519 (Performance and Delivery of Instrument)

The debtor is bound to effect performance only in exchange for the instrument.

Article 520 (The Claim to Subscribe Receipt of Instrument)

(1) The debtor, when he effects performance, may require the instrument to be receipted by the holder.

(2) In the case of partial payment, if the debtor requires, the obligee is bound to make mention of this payment on the instrument.

Article 521 (Lapse of Instrument by Procedure of Public Summons)

The instrument which has been destroyed, or has become separated from the possession of the holder may be voidable by the procedure of public summons.

Article 522 (Deposit or Performance by Procedure of Public Summons)

When there exists a cause for application for a public summons, it may cause the obligor to deposit the subject matter of the obligation, and it may cause the obligor to effect performance, if the holder furnishes adequate security.

SECTION 8 Debts Payable to Bearer

Article 523 (Form of Assignment of Bearer Security)

A debt payable to bearer may be assigned by means of delivery of the instrument.

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Article 524 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 514 through 522 shall be applied *mutatis mutandis* to a debt payable to bearer.

Article 525 (Debt Payable to Named Obligee or to Bearer)

The instrument in which the obligee is named with an additional statement that the payment is to be made to the holder, is equivalent to a debt payable to bearer.

Article 526 (Instrument for Discharge)

The provisions of Articles 516, 517 and 520 shall be applied *mutatis mutandis* to the instrument issued by the obligor in order to escape from the responsibility by means of effecting performance to the holder of the instrument.

CHAPTER II CONTRACT

SECTION 1 General Provisions

Sub-Section 1 Formation of Contract

Article 527 (Binding Force of Offer of Contract)

An offer of a contract may not be withdrawn.

Article 528 (Offer of Contract Specifying Period for Acceptance)

(1) An offer of a contract specifying a period for acceptance shall lose its effect if the offerer does not receive a notice of acceptance within the period specified.

(2) In a case where a notice of acceptance had arrived after the expiration of the period mentioned in the preceding paragraph, if it was dispatched at such a time that under normal circumstances it would have arrived within such period, the offerer shall dispatch, without delay, to the other party a notice of the delayed arrival: *Provided*, That this shall not apply in a case where a notice of the delay has already been dispatched by the offerer before its arrival.

(3) If the offerer has neglected to give the notice mentioned in the preceding paragraph, the notice of acceptance shall be deemed not to have been delayed.

Article 529 (Offer of Contract not Specifying Period for Acceptance)

An offer of a contract which does not specify a period for acceptance loses its effect if the offerer does not receive a notice of acceptance within a

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reasonable period.

Article 530 (Effect of Delayed Acceptance)

The offerer may regard a delayed acceptance as a new offer in the cases of the preceding two Articles.

Article 531 (Time when Contract *inter absentes* Comes into Existence)

A contract *inter absentes* shall come into existence at the time when a notice of acceptance is dispatched.

Article 532 (Formation of Contract by Realization of Intention)

In a case where no notice of acceptance is necessary either by reason of declaration of intention to that effect by the offerer, or by reason of custom, the contract shall come into existence upon the occurrence of an event which may be taken as a declaration of intention to accept.

Article 533 (Crossed Offer)

Where offers of the same content, are sent to each other the contract shall come into existence at the time when each of the two offers has reached each other party.

Article 534 (Acceptance with Modification)

If the offeree has accepted an offer but subject to a condition or with any other modification, he shall be deemed to have rejected the original offer and thereby simultaneously made a new offer.

Article 535 (*Culpa in Contrahendo*)

(1) In a case where a contract, whose objective is unattainable, is concluded, a party to the contract who was aware of, or should have been aware of such unattainability, shall be liable for damages suffered by the other party who relied upon the contract as valid: *Provided*, That the amount of damages to be recovered may not exceed the profit which would have occurred if the contract was valid.

(2) The provisions of the preceding paragraph shall not apply in a case where the other party was aware of, or should have been aware of such unattainability.

Sub-Section 2 Effect of Contract

Article 536 (*Exceptio non adimpleti contractus*)

(1) One of the parties to a bilateral contract may refuse performance of his own obligation until the other party tenders performance of his ob-

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ligation: *Provided*, That this shall not apply where the obligation of the other party is not due.

(2) If one of the parties to a contract is bound to tender performance of his own obligation first to the other party, and if there is any significant cause existing by which the other party's performance becomes difficult, the body of the preceding paragraph shall apply.

Article 537 (Obligor's Burden to Bear Risk)

If the performance of an obligation of one of the parties to a bilateral contract becomes impossible by any cause for which neither of the parties is responsible, the obligor may not be entitled to counter-performance.

Article 538 (Impossibility of Performance due to Cause for Which Obligee is Responsible)

(1) If the performance of an obligation of one of the parties to a bilateral contract becomes impossible by any cause for which the obligee is responsible, the obligor may demand counter-performance. The same applies to cases where performance becomes impossible by any cause for which neither of the parties is responsible in the case of *mora creditoris*.

(2) In the cases of the preceding paragraph if the obligor has received any benefit by being relieved of his own obligation, he shall return such benefit to the obligee.

Article 539 (Contract in Favour of Third Person)

(1) Where a party to a contract has agreed therein to effect an act of performance in favour of a third person, the person may demand such act of performance directly from the obligor.

(2) In the case of the preceding paragraph the right of the third person shall come into existence from the time when he declares to the obligor his intention to accept the benefit of the contract.

Article 540 (Obligor's Right to Demand Third Person's Answer)

In the case of the preceding Article the obligor may, with a reasonable period fixed, demand the third person to answer whether or not he will receive and enjoy the benefit stipulated in the contract. If the obligor has not received a definite answer from the third person within such period, it shall be deemed that the third person has refused to receive the benefit stipulated in the contract.

Article 541 (Establishment of Third Person's Right)

The right of the third person which has come into existence in accordance

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with the provisions of Article 539, shall not be altered or extinguished by the parties.

Article 542 (Obligor's Right to Defend)

Defences incidental to the contract mentioned in Article 539 may be set up by the obligor against the third person who is to receive the benefit of the contract.

Sub-Section 3 Rescission for the Future and Rescission of Contract

Article 543 (Right of Rescission for Future or of Rescission)

(1) If, pursuant to the contract or the provisions of Acts, one of the parties or both parties have a right of rescission for the future, or a right of rescission, either right of rescission shall be effected by a declaration of intention made to the other party.

(2) The declaration of intention mentioned in the preceding paragraph may not be withdrawn.

Article 544 (Delay of Performance and Rescission)

If one of the parties does not perform his obligation, the other party may fix a reasonable period and give peremptory notice demanding its performance, and may rescind the contract, if no performance is effected within such period: *Provided*, That if the obligor declares in advance his intention that he will not effect such performance, no peremptory notice shall be required.

Article 545 (Periodic Acts and Rescission)

If, according to the nature of the contract or by a declaration of intention of the parties, the objective for which the contract has been entered is unattainable unless it is performed at a designated time and date or within a designated period, and one of parties has not effected performance on his part, the other party may, without giving the notice mentioned in the preceding Article, rescind the contract.

Article 546 (Impossibility of Performance and Rescission)

If performance has become impossible for any cause for which the obligor is responsible, the obligee may rescind the contract.

Article 547 (Indivisibility of Right of Rescission for Future or of Rescission)

(1) Where there are several persons as parties to each side of a contract, a right of rescission for the future or a right of rescission of the contract

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shall only be effected by or against all of them.

(2) If, in the case mentioned in the preceding paragraph the right of rescission for future or the right of rescission has lapsed against one of the parties, it shall also lapse as against the others.

Article 548 (Effect of Rescission and *Restitutio in Integrum*)

(1) If one of the parties has rescinded the contract, each party shall be liable to restore his other party to his original position: *Provided*, That the rights of third persons shall not be prejudiced thereby.

(2) Interest shall be paid upon any money to be repaid in the case mentioned in the preceding paragraph as from the day on which such money has been received.

Article 549 (*Restitutio in Integrum* and *Exceptio non Adimpleti Contractus*)

The provisions of Article 536 shall apply *mutatis mutandis* to the case mentioned in the preceding Article.

Article 550 (Effect of Rescission for Future)

If one of the parties rescinds a contract for the future, the contract shall lose its effect for the future.

Article 551 (Rescission for Future or Rescission and Claims for Damages)

Rescission for the future or rescission of a contract shall not affect any claim for damages.

Article 552 (Right of Preemptory Notice as to Whether Other Party Exercises Right of Rescission or not)

(1) If no period is fixed for the exercise of a right of rescission, the other party may demand of the person entitled to rescission to make a definite answer by fixing a reasonable period as to whether he rescinds the contract or not.

(2) If no notice of rescission has been received within the period mentioned in the preceding paragraph, the right of rescission shall lapse.

Article 553 (Extinction of Right of Rescission due to Injury, etc.)

If a person entitled to a right of rescission has by his intentional act or negligence, materially damaged the subject matter of the contract, or has become unable to return it, or has caused it to be converted into a different kind of object by processing or altering it, the right of rescission shall be extinguished.

SECTION 2 Gift

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Article 554 (Meaning of Contract of Gift)

A contract of gift shall become effective when one of the parties declares his intention to transfer property of his own gratuitously to the other party and the other party agrees to accept it.

Article 555 (Contract of Gift not in Writing and its Rescission)

A contract of gift which is not in writing may be rescinded by either party.

Article 556 (Acts of Donee and Rescission of Contract of Gift)

(1) The donor may rescind a contract of gift in favor of the donee for the reasons as prescribed in the following subparagraphs:

1. If the donee has committed an act of crime against the donor, his or her spouse or lineal relatives by blood; and
2. Where the donee is under duty to support the donor, but does not perform this duty.

(2) The right of rescission mentioned in the preceding paragraph shall be extinguished after the lapse of six months from the day on which the donor was aware of the occurrence of any cause of rescission or at the time when he has declared an intention of acquiescence.

Article 557 (Change of Donor's Property Status and Rescission of Contract of Gift)

The donor may rescind a contract of gift, if after the conclusion of a contract of gift the donor's property status has been adversely changed and the donor's living has become gravely affected by the performance of contract of gift.

Article 558 (Rescission and Portion as to Which Performance of Contract has been Completed)

Rescission of a contract of gift in accordance with the provisions of the preceding three Articles shall not have any effect in respect of any portion as to which performance has been completed.

Article 559 (Donor's Liability for Warranty)

(1) A donor shall not be liable for any defect or deficiency in the thing or right which forms the subject of his gift: *Provided*, That this shall not apply to cases where he was aware of such defect or deficiency and has nevertheless failed to inform the donee thereof.

(2) In respect of a gift subject to a charge, the donor shall assume the same liability in respect of warranty as that of a seller to the extent of such charge.

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Article 560 (Gift for Periodical Performance and Lapse due to Death)

A contract of gift for periodic performance shall lose its effect upon the death either of the donor or of the donee.

Article 561 (Gift subject to Charge)

The provisions relating to bilateral contract shall apply to a gift subject to a charge, in addition to the provisions of this Section.

Article 562 (Gift Effective upon Death)

The provisions relating to testamentary gifts shall apply *mutatis mutandis* to a contract of gift which is to become effective upon the death of the donor.

SECTION 3 Sale

Sub-Section 1 General Provisions

Article 563 (Definition of Sale)

A sale shall become effective when one of the parties agrees to transfer a property right to the other party and the other party agrees to pay the purchase-price to the former.

Article 564 (Unilateral Promise to Sell or Purchase)

(1) A unilateral promise to sell or purchase shall become effective as a sale from the time when the other party declares his intention to complete the sale.

(2) Where no period is fixed for the declaration of intention mentioned in the preceding paragraph, the person who has made a unilateral promise may give a peremptory notice to the other party to give a definite answer within a reasonably fixed period as to whether he will or will not complete the sale.

(3) If the other party fails to give an answer within that period, the unilateral promise shall become void.

Article 565 (Earnest Money)

(1) If one of the parties to a contract of sale has delivered, at the time of entering into the contract, money or other things under the name of down payment, assurance deposit, etc. to the other party, unless otherwise agreed upon between the parties, the deliverer by giving up such money, and the receiver by repaying double such money, may rescind such contract before one of the parties has initiated performance of the contract.

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(2) The provisions of Article 551 shall not apply to the case mentioned in the preceding paragraph.

Article 566 (Burden of Expenses Relating to Contract of Sale)

The expenses relating to a contract of sale shall be borne by both parties in equal shares.

Article 567 (*Mutatis Mutandis* Application to Contract for Value)

The provisions of this section shall apply *mutatis mutandis* to contracts for value other than sales: *Provided*, That this shall not apply in the case where the nature of such contracts does not so permit.

Sub-Section 2 Effect of Sale

Article 568 (Effect of Sale)

(1) The seller shall transfer a right which has been made the object of a sale to the buyer, and the buyer shall pay the purchase-price to the seller.

(2) The duties of both parties mentioned in the preceding paragraph shall, unless there exists any specific agreement or custom, be performed concurrently by both parties.

Article 569 (Sale of Right Belonging to Another Person)

In the case where a right, which has been made the object of a sale, belongs to another person, the seller shall acquire such right and transfer it to the buyer.

Article 570 (Sale of Right Belonging to Another Person-Seller's Liability for Warranty)

If, in the case mentioned in the preceding Article the seller is unable, by acquiring the right he has sold, to transfer it to the buyer, the buyer may rescind the contract: *Provided*, That if he was aware, at the time the contract was made, that the right did not belong to the seller, he may not claim damages.

Article 571 (Sale of Right Belonging to Another Person-*bona fide* Seller's Liability for Warranty)

(1) If the seller was unaware, at the time the contract was made, that the right which has been made the object of a sale did not belong to him, and the seller is unable, by acquiring the right he has sold, to transfer the right to the buyer, the seller may, paying damages suffered by the buyer, rescind the contract.

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(2) If, in the case of the preceding paragraph, the buyer was aware at the time the contract was entered that the right did not belong to the seller, the seller may, by giving notice that he is unable to transfer the right to the buyer, rescind the contract.

Article 572 (Case Where Part of Right Belongs to Another Person and Seller's Liability for Warranty)

(1) If the seller is unable to acquire and transfer the right to the buyer by reason of the fact that a part of the right which forms the object of a sale belongs to another, the buyer may demand a reduction of the purchase-price in proportion to the part.

(2) If in the case of the preceding paragraph the buyer would not have bought the remaining part, had such alone been the object of the sale, the buyer acting in good faith may rescind the whole of the contract.

(3) The *bona fide* buyer may claim damages besides claiming for a reduction of the purchase-price or the rescission of a contract.

Article 573 (Period during Which Right Mentioned in Preceding Article is to be Exercised)

The right mentioned in the preceding Article shall be exercised within one year from the time when the buyer became aware of the fact, if the buyer was acting in good faith, and from the time when the contract was entered if the buyer was acting in bad faith.

Article 574 (Partial Shortage and Loss of Items Sold and Seller's Liability for Warranty)

The provisions of the preceding two Articles shall apply *mutatis mutandis* to the case where the articles sold by quantity show a shortage or part of the subject matter of sale had already been lost at the time when the contract was entered and the buyer was unaware of such shortage or loss.

Article 575 (Case Where Restricted Real Rights Exist in Contract and Seller's Liability for Warranty)

(1) Where the subject matter of a sale is subject to a superficies, servitude, *chonsegwon*, right of retention, or pledge and the buyer was unaware thereof, the buyer may rescind the contract only if the objective of the contract is not unattainable thereby. In other cases the buyer may only claim damages.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to the cases where a servitude which has been represented as existing

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in favour of the immovable which is the subject of the sale does not exist or where a registered lease exists on such an immovable.

(3) The rights mentioned in the preceding two paragraphs shall be exercised within one year from the time the buyer became aware of the fact.

Article 576 (Exercise of Right of Mortgage or *Chonsegwon* and Seller's Liability for Warranty)

(1) If the buyer has been unable to acquire or has lost the ownership of the immovable which forms the subject of a sale by reason of the exercise of a right of mortgage or *chonsegwon* existing over such an immovable, the buyer may rescind the contract.

(2) In the cases of the preceding paragraph, if the buyer has preserved the ownership at his own expense, he may demand reimbursement of such expenses from the seller.

(3) In a case where mentioned in the preceding two paragraphs the buyer may recover damages he has sustained from the seller.

Article 577 (Sale of Superficies and *Chonsegwon* Which Forms Subject of Mortgage and Seller's Liability for Warranty)

The provisions of the preceding Article shall apply *mutatis mutandis* to the sale of superficies or *chonsegwon* which have been the subject of the mortgage.

Article 578 (Sale by Auction and Seller's Liability for Warranty)

(1) In the case of a sale by auction, the successful bidder may in accordance with the provisions of the preceding eight Articles, either rescind the contract or demand a reduction of the purchase-price against the obligor.

(2) In the case of the preceding paragraph, if the obligor is under financial disability, the successful bidder may demand all or some of the proceeds of the sale which the obligee has received as his portion of the proceeds of the sale.

(3) If, in the cases of the preceding two paragraphs, the obligor was aware of any deficiency in the object or right sold and nevertheless failed to disclose it, or the obligee was aware of such deficiency and demanded a sale by auction, the successful bidder may claim damages either from the obligor or obligee who was aware of such deficiency.

Article 579 (Sale of Claim and Seller's Liability for Warranty)

(1) If the seller of a claim warrants the solvency of the obligor, he is

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presumed to have warranted his solvency at the time the contract was entered.

(2) If the seller of a claim which is not yet due warrants the solvency of the obligor, he is presumed to have warranted his solvency at the time when the claim becomes due.

Article 580 (Seller's Liability for Warranty Against Defect)

(1) If any defects exist in the subject-matter of a sale, the provisions of Article 575 (1) shall apply *mutatis mutandis*: *Provided*, That if the buyer was aware of or was not aware of such defects due to his negligence, this shall not apply.

(2) The provisions of the preceding paragraph shall not apply to the cases of a sale by auction.

Article 581 (Sale in Kind and Seller's Liability for Warranty)

(1) Even where the subject matter of a sale has been specified in kind, if any defects exist in the specified subject matter, the provisions of the preceding Article shall apply *mutatis mutandis*.

(2) In the cases of the preceding paragraph, the buyer may demand the non-defective item without rescinding a contract or claiming for damages.

Article 582 (Period during Which Rights Mentioned in Preceding Two Articles are to be Exercised)

The rights mentioned in the preceding two Articles shall be exercised by the buyer within six months from the time when he was first aware of such fact.

Article 583 (Liability for Warranty and Concurrent Fulfilment)

The provisions of Article 536 shall apply *mutatis mutandis* to the cases of Articles 572 through 575, 580 and 581.

Article 584 (Special Stipulation for Relief of Liability for Warranty)

Even where the seller has made a special stipulation that he is not liable in respect of the warranties mentioned in the preceding fifteen Articles, he may not be relieved of liability in respect of any fact of which he was aware and nevertheless failed to disclose, or in respect of any right which he himself created in favour of, or assigned to, a third person.

Article 585 (Presumption of Same Time-Limit)

If a time has been stipulated for the performance of duties of one party to a contract of sale, the same time-limit shall also be presumed to have been stipulated for the other party's performance of duties.

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Article 586 (Place of Payment of Purchase-Price)

If the purchase-price is to be paid in exchange for the delivery of the subject matter of the sale, the payment shall be made at the place of delivery.

Article 587 (Reversion of Fruits and Interest on Purchase-Price)

If the subject matter of a sale which has not yet been delivered produces fruits after a contract of sale has been entered, such fruits shall vest in the seller. The buyer shall pay interest on the purchase-price from the day of the delivery: *Provided*, That if a time-limit has been stipulated for payment of the purchase-price, this shall not apply.

Article 588 (Buyer's Right to Refuse Payment of Purchase-Price Where Third Person Claims Right)

If a third person claims a right over the subject matter of the sale, and consequently there is a danger of the buyer's losing what he has bought in whole or in part, he may refuse payment of the purchase-price to the extent of such danger: *Provided*, That this shall not apply when the seller furnishes reasonable security.

Article 589 (Seller's Right to Demand Buyer to Deposit Purchase-Money)

In the case of the preceding Article, the seller may demand the buyer to deposit the purchase-price.

Sub-Section 3 Redemption

Article 590 (Definition of Redemption)

(1) If the seller reserves the right of redemption at the time of the contract of sale, the seller may redeem the object of a sale by returning the purchase-money received and the expenses relating to such a sale borne by the buyer.

(2) If any specific agreement concerning the redemption money has been made between the parties referred to in paragraph (1), such agreement shall govern the matters concerning redemption money.

(3) Unless a specific agreement has been made between the parties in the cases of paragraphs (1) and (2), the fruits of the object of the sale and the interest on the purchase-price shall be deemed to have been set-off against each other.

Article 591 (Period for Redemption)

(1) The period for redemption shall not exceed five years in the case of

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immovables and three years in the case of movables. If any period specifically agreed upon between the parties exceeds the period mentioned above, it shall be reduced to five years in the case of immovables and three years in the case of movables.

(2) If a period for redemption has been fixed, it may not subsequently be extended.

(3) If no period for redemption has been designated, the period shall be deemed to be five years in the case of immovables and three years in the case of movables.

Article 592 (Registration of Right of Redemption)

If, where the object of a sale is an immovable, the reservation of the right of redemption has been registered simultaneously with the registration of a sale, such registration shall be effective against the third persons.

Article 593 (Subrogative Exercise of Right of Redemption and Right of Buyer)

Where a creditor of the seller desires to redeem the property in place of the seller, the buyer may extinguish the right of redemption by discharging the debt of the seller, out of the balance remaining after the amount to be repaid by the seller has been deducted from the value of the object, as assessed by an expert appointed by the court, and by paying the surplus, if any, to the seller.

Article 594 (Execution of Redemption)

(1) The seller shall lose the right of redemption unless he tenders the purchase-price he received and the expenses relating to the sale to the buyer within the specified period for redemption.

(2) If the buyer or any subsequent purchaser has disbursed expenses in respect of the object of a sale, the seller shall reimburse the same amount in accordance with the provisions of Article 203: *Provided*, That with respect to useful expenses the court may upon the application of the seller, allow him a reasonable period for reimbursement.

Article 595 (Redemption of Common Share)

If, after one of the co-owners of the object of a sale, in which the right of redemption has been reserved, has sold his share, and the partition of, or sale by auction of such an object has taken place, the seller may exercise the right of redemption in respect of that part or the purchase-money which the buyer has received or is to receive: *Provided*, That the

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buyer who has not given any notice upon the partition or a sale by auction to the seller, may not set up against the seller therewith.

SECTION 4 Contract of Exchange

Article 596 (Definition of Contract of Exchange)

A contract of exchange becomes effective when two parties agree to exchange any property right other than money.

Article 597 (Supplementary Disbursement of Money)

If one of the parties has agreed to transfer the property rights mentioned in Article 596 together with the additional payment of money, the provisions relating to the purchase-price of a sale shall apply *mutatis mutandis* with respect to the money.

SECTION 5 Loan for Consumption

Article 598 (Definition of Loan for Consumption)

A loan for consumption becomes effective when one of the parties agrees to transfer the ownership of money, or any other substitute, to the other party, and the other party agrees to return the same amount of money or the same kind, quality, and quantity of any substitute therefor.

Article 599 (Bankruptcy and Invalidation of Loan for Consumption)

A loan for consumption shall cease to be effective, if one of the parties has been declared bankrupt before the lender delivers the object of the loan for consumption to the borrower.

Article 600 (Commencement of Computing Interest)

Computation of interest on a loan for consumption shall begin from the time when the borrower has received the object of a loan for consumption. When the borrower has delayed receiving the delivery of the object for a reason for which the borrower is responsible, the computation of interest shall be commenced from the time when the lender has tendered the delivery of such an object.

Article 601 (Loan for Consumption Bearing No Interest and Right of Rescission)

Either party to a loan for consumption bearing no interest may rescind the contract at any time before the object of a loan for consumption has been delivered to the borrower: *Provided*, That if damages have been

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caused to the other party due to the rescission of the contract, the rescinding party shall be liable to compensate for such damages.

Article 602 (Lender's Liability for Warranty)

(1) If any defect is found in the object of a loan for consumption bearing interest, the provisions of Articles 580 through 582 shall apply *mutatis mutandis*.

(2) In the case of a loan for consumption bearing no interest the borrower may return the value of the defective object: *Provided*, That if the lender was aware of the defect and, nevertheless, failed to inform the borrower thereof, the provisions of paragraph (1) shall apply.

Article 603 (Time to Return)

(1) The borrower shall return to the lender an object of the same kind, quality, and quantity as the object borrowed at the time agreed upon by the parties.

(2) If no time for the return of an object has been stipulated by the parties, the lender shall fix a reasonable period and then demand the return of the object loaned: *Provided*, That the borrower has the right to return the object borrowed at any time.

Article 604 (Refund of Market Price due to Impossibility of Return)

If it becomes impossible for the borrower to return an object of the same kind, quality, and quantity as the borrowed one, he shall refund the value of the object at the current market price: *Provided*, That this shall not apply to the cases mentioned in Articles 376 and 377 (2).

Article 605 (Quasi-Loan for Consumption)

In case where both parties are liable to furnish money, or any other substitutes, not by a loan for consumption, if both parties agree to make the subject matter the object of a loan for consumption, it becomes effective as a loan for consumption.

Article 606 (Loan by Substitutes)

If, in the case of pecuniary loans, the borrower accepts delivery of valuable instruments, or any other thing in place of money, the amount of the loan shall be the current price of the object at the time of such delivery to the borrower.

Article 607 (Promise to Return by Substitutes)

If the borrower has promised to substitute any other property right in lieu of the borrowed object, the value of the substituted property shall

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not exceed the aggregate value of the original amount borrowed plus the interest thereon.

Article 608 (Prohibition of Agreement Prejudicial to Borrower)

Any agreement entered by the parties which is in violation of the provisions of the preceding two Articles and is prejudicial to the borrower is not valid even if claimed as a "redemption" or as any other legal remedy.

SECTION 6 Loan for Use

Article 609 (Definition of Loan for Use)

A loan for use becomes effective when one of the parties agrees to deliver an object to the other party for his gratuitous use, and the taking of profits therefrom, and when the other party agrees to return such object after having used and taken profits therefrom.

Article 610 (Borrower's Right to Use and Take Profits)

- (1) The borrower shall use and take profits from the object in such a manner as is determined by the contract or by the nature of its subject matter.
- (2) The borrower may not allow a third person to use or take profits from the object borrowed without the consent of the lender.
- (3) If the borrower has violated the provisions of paragraphs (1) and (2), the lender may rescind the contract for the future.

Article 611 (Burden to Bear Expenses)

- (1) The borrower shall bear the ordinary and necessary expenses relating to the object borrowed.
- (2) The provisions of Article 594 (2) shall apply *mutatis mutandis* to any other expenses.

Article 612 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 559 and 601 shall apply *mutatis mutandis* to loans for use.

Article 613 (Time to Return Object Borrowed)

- (1) The borrower shall return the object borrowed at the time agreed upon by the parties.
- (2) If no time for the return of the object borrowed has been stipulated by the parties, the borrower shall return the object when he has completed the use thereof and the taking of profits therefrom in conformity with the purpose specified in the contract or the nature of the subject matter: *Provided*, That the lender may rescind the contract for the future at any

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time after a reasonable period has elapsed to allow for the specified use of the object and the taking of profits therefrom.

Article 614 (Borrower's Death or Bankruptcy and Rescission of Contract for Future)

The lender may rescind the contract for the future when the borrower has died or has been declared bankrupt.

Article 615 (Borrower's Duty for *restitutio in integrum* and Right to Remove)

The borrower shall restore the object borrowed to its original condition before he returns it to the lender and the borrower may remove any attachments which he has attached thereto.

Article 616 (Co-borrower's Joint Obligation)

When several persons jointly borrow an object or objects, they shall be jointly obligated.

Article 617 (Period for Claiming Damages and Reimbursement of Expenses)

Compensation for damages which have arisen from the use of the object, or the taking of profits therefrom contrary to the tenor of the contract or the nature of the subject matter, and the reimbursement of expenses incurred by the borrower, shall be claimed within six months from the date of the return of the object borrowed to the lender.

SECTION 7 Lease

Article 618 (Definition of Lease)

A lease becomes effective when one of the parties has agreed to allow the other party to use an object and take profits therefrom, and the latter has agreed to pay rent for it.

Article 619 (Short Term Lease Given by Person without Capacity or Authority to Dispose of Property)

Where a lease is given by a person who has no capacity or authority to dispose of property, its duration shall not exceed the periods mentioned below:

1. Ten years for the lease of land for the purpose of planting, collecting salt, or construction built with stone, lime-stone, brick, or any other similar construction;
2. Five years for the lease of any other land;
3. Three years for the lease of a building or any other structure; and

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4. Six months for the lease of a movable.

Article 620 (Renewal of Short Term Lease)

The periods mentioned in the preceding Article may be renewed: *Provided*, That such renewal shall be effected within one year in the case of land, within three months in the case of a building or any other structure, and within one month in the case of a movable, prior to the expiration of the period.

Article 621 (Registration of Lease)

(1) The lessee of an immovable may, unless there exists any contrary agreement between the parties, request the lessor to cooperate in effecting necessary formalities for the registration of the lease.

(2) The lease of an immovable, if registered, shall be effective against the third persons from the time registration has been effected.

Article 622 (Defenses Set up against Third Person of Lease of Land for Which Ownership of Building has been Registered)

(1) When the object of a lease of land is to own a building, if a building on such land has been registered by the lessee, the lease of land shall be effective against a third person even if such a lease of land has not been registered.

(2) If a building has been destroyed or has become dilapidated from use prior to the termination of the lease period, it shall lose the effect mentioned in paragraph (1).

Article 623 (Lessor's Duty)

A lessor is bound to deliver the object to the lessee, to maintain conditions necessary for the use and taking profits of the leased object while the lease is in force.

Article 624 (Lessor's Act of Preservation and Duty of Tolerance)

The lessee may not object to a lessor who performs any act deemed necessary for the preservation of the object leased.

Article 625 (Act of Preservation against Intention of Lessee and Lessee's Right of Rescission for Future)

If the lessor performs an act of preservation against the will of the lessee and the lessee is thereby incapable of attaining the objective for which the lease has been obtained, the lessee may rescind the contract for the future.

Article 626 (Lessee's Right to Demand Reimbursement)

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(1) If a lessee has made necessary expenditures relating to the preservation of the object leased he may demand reimbursement thereof from the lessor.

(2) If the lessee has made any useful expenditures, the lessor shall reimburse the lessee, to the extent that the increase in value remains subsisting at the time when the lease terminates, in the amount disbursed by the lessee or the amount by which the value of the object has been increased. In such a case, the court may, upon the application of the lessor, allow him reasonable time for settlement with the lessee.

Article 627 (Partial Loss of Object Leased, and Right to Demand Reduction of Rent and Right of Rescission for Future)

(1) If part of the leased object has become unusable, or has become impossible to take profit from, due to loss or any other cause other than the fault of the lessee, the lessee may demand a reduction of the rent in proportion to the part which has been lost.

(2) If, as mentioned in paragraph (1), the remaining part of the object is not sufficient to enable the lessee to attain the objective for which the lease has been made, the lessee may rescind the contract for the future.

Article 628 (Right to Demand an Increase or Reduction of Rent)

If the rent previously agreed upon by the parties has become unreasonable due to the increase or decrease of the public impost imposed upon the object leased or any other change in the economic situation, either party may demand of the other party to raise or reduce the rent for the future.

Article 629 (Restriction on Assignment of Right of Lease and Sub-lease)

(1) A lessee may not assign his rights or sub-lease the leased object without the consent of the lessor.

(2) If the lessee violates the provisions of paragraph (1), the lessor may rescind the contract for the future.

Article 630 (Effect of Sub-lease)

(1) If a lessee has sub-leased the object with the consent of the lessor, the sub-lessee assumes the obligations directly to the lessor. In this case the sub-lessee may not set a defense against the lessor by a payment of the rent to the sub-lessor.

(2) The provisions of paragraph (1) shall not prejudice the exercise of the lessor's right against the lessee.

Article 631 (Confirmation of Sub-lessee's Rights)

If the lessee has sub-leased the object with the consent of the lessor, the

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rights of the sub-lessee shall not be extinguished even when the contract of lease is terminated by an agreement between the lessor and the lessee.

Article 632 (In Case Where Lessee Allows Third Person to Use Small Part of Building Leased)

The provisions of Articles 629, 630 and 631 shall not apply in cases where the lessee of a building allows a third person to use a small part of the building leased.

Article 633 (Time to Pay Rent)

Rent shall be paid at the end of each month in the case of a movable, a building, or a building site, and at the end of each year in the case of any other land: *Provided*, That in the case of a leased object which has a harvest season, rent shall be paid, without delay, upon the close of such a season.

Article 634 (Lessee's Duty to Give Notice)

If repairs are necessary to the leased object or a third person claims a right over it, the lessee shall notify the lessor thereof without delay: *Provided*, That this shall not apply if the lessor has prior knowledge of this information.

Article 635 (Notice of Rescission for Future of Lease without Fixed Period)

(1) If no period for a lease has been fixed, either party may give notice to the other party at any time to rescind the lease for the future.

(2) Rescission of the lease for the future shall be effective upon the expiration of the periods mentioned in each of the following subparagraphs, from the day on which the other party has received the notice mentioned in paragraph (1):

1. Six months, if the lessor has given notice of rescission of the lease to the lessee, and one month, if the lessee has given notice of rescission of the lease to the lessor, in the case of land, building and any other structure; and

2. Five days in the case of a movable.

Article 636 (Notice of Rescission for Future of Lease with Fixed Period)

Even in cases where a lease period has been fixed by the parties, the provisions of Article 635 shall apply *mutatis mutandis* if one or both of the parties has reserved a right to rescind the lease for the future with respect to the remaining unexpired term.

Article 637 (Lessee's Bankruptcy and Notice of Rescission of Contract for

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Future)

(1) If the lessee has been declared bankrupt, either the lessor or the bankruptcy trustee may, in accordance with the provisions of Article 635, give notice to rescind the lease for the future with respect to the remaining unexpired term, notwithstanding the fact that the lease contained a fixed period of rental.

(2) In the cases of paragraph (1), neither party may claim damages arising from the rescission of the lease for the future with respect to the remaining unexpired term.

Article 638 (Notice of Rescission to Sub-lessee)

(1) If a lease has been terminated by the notice of rescission with respect to its unexpired rental period, and the leased object has lawfully been sub-leased, the lessor may not set up a claim against the sub-lessee based on the rescission of the lease unless notice is given to the sub-lessee.

(2) The provisions of Article 635 (2) shall apply *mutatis mutandis* in cases where the sub-lessee receives the notice mentioned in paragraph (1).

Article 639 (Implicit Renewal)

(1) If the lessee continues to use the object leased, or takes profits therefrom after the expiration of the period of the lease, and the lessor fails to raise any objection thereto within a reasonable period, it shall be deemed to have created a new lease on the same terms and conditions as those of the previous one: *Provided*, That either party may give notice to the other party to rescind the lease for the future in accordance with the provisions of Article 635.

(2) In the case of paragraph (1), the security for the previous lease furnished by a third person shall be extinguished by expiration of the period.

Article 640 (Rent in Arrears and Rescission of Lease for Future)

In the case of the lease of a building or any other structure, if the amount of rent in arrears reaches the rent for two periods, the lessor may rescind the contract for the future.

Article 641 (Rent in Arrears and Rescission Future)

The provision of Article 640 shall apply *mutatis mutandis* to the case of a lease of land where the object is to own a building or any other structure, or is for planting, collecting salt, and stock farming.

Article 642 (Rescission of Lease of Land for Future and Notice to Mortgage Right Holders)

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The provisions of Article 288 shall apply *mutatis mutandis* in the cases of Article 641 if a building or any other structure on such land becomes an object of real right granted by way of security.

Article 643 (Lessee's Right to Demand Renewal of Contract and Right to Demand Purchase of Building, etc.)

The provisions of Article 283 shall apply *mutatis mutandis* to buildings, trees, or any other facilities on land remaining after the expiration of the period of the lease of land where the object is to own a building or any other structure, or is for planting, collecting salt, and stock farming.

Article 644 (Sub-lessee's Right to Demand Lease Contract and Right to Demand Purchase of Building)

(1) In the case of a land lease where the lessee's objective is to own a building or any other structure, or for planting, collecting salt, and stock farming, where the land has been lawfully sub-leased, if any building, tree or any other facilities on the land remains subsisting at the time when the periods for lease and sub-lease have concurrently terminated, the sub-lessee may demand that the lessor give him a lease on the same terms as those of the former sub-lease.

(2) The provisions of Article 283 (2) shall apply *mutatis mutandis*, if, in the case of paragraph (1), the lessor does not desire to lease his land.

Article 645 (Right to Demand Lease and Right to Demand Purchase Exercisable by Lessee of Land which became Object of Superficies)

The provisions of Article 644 shall apply *mutatis mutandis* in a case where a superficiary leases land which became the object of superficies.

Article 646 (Lessee's Right to Demand Purchase of Accessories)

(1) If the lessee of a building or any other structure has attached an Article to such a building, etc. with the consent of the lessor for the benefit of the lessee's use, the lessee may demand that the lessor purchase such accessories at the time when the contract of lease terminates.

(2) The provisions of the preceding paragraph shall apply to the accessories purchased from the lessor.

Article 647 (Sub-Lessee's Right to Demand Purchase of Accessories)

(1) If, in a case where the lessee of a building or any other structure has lawfully sub-leased such a building, etc., and the sub-lessee has attached an Article to such a building, etc. with the consent of the lessor for the benefit of the sub-lessee's use, the sub-lessee may demand that

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the lessor purchase such accessories at the time when the contract of sub-lease terminates.

(2) The provisions of the preceding paragraph shall also apply to the accessories purchased from the lessor or purchased from the lessee with the consent of the lessor.

Article 648 (Pledge for Accessories, Fruits, etc. on Leased Land, Recognized by Law)

If the lessor of land levies an attachment pursuant to the claims relating to the lease, on a movable owned by the lessee which is affixed to the leased land, or offered for the benefit of the lessee's use, and fruits accruing from such land, it shall be effective as a pledge.

Article 649 (Mortgage on Building on Leased Land, Recognized by Law)

If the lessor of land levies an attachment on a building on his land owned by the lessee, pursuant to the claims for rent of the last two years, for which period rent has not been paid, such right shall be effective as a mortgage.

Article 650 (Pledge for Accessories attached to Leased Building, etc., Recognized by Law)

If the lessor of a building or any other structure attaches, pursuant to the claims created under the lease, a movable owned by the lessee and also attached to the building or any other structure, it shall be effective as a pledge.

Article 651 (Duration of Lease Contract)

(1) The duration of the lease except in cases of land lease the object of which is to own a building or any other structure made of stone, limestone, brick or any other solid building or structure, or is for planting or collecting salt, shall not exceed twenty years. If the period agreed upon by the parties exceeds twenty years, the period shall be shortened to twenty years.

(2) The period mentioned in paragraph (1) may be renewed. The period shall not exceed ten years from the day on which it has been renewed.

Article 652 (Mandatory Provisions)

Any agreement entered by the parties in contravention of the provisions of Articles 627, 628, 631, 635, 638, 640, 641, and 643 through 647 which is unfavorable to either the lessee or sub-lessee shall be void.

Article 653 (Special Rule Applicable to Lease for Temporary Use)

The provisions of Articles 628, 638, 640, 646 through 648, 650 and

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Article 652 shall not apply to the cases where it is evident that a lease or sub-lease is given for temporary use.

Article 654 (Provisions to be applied *Mutatis Mutandis*)

The provisions of Articles 610 (1), 615 through 617 shall apply *mutatis mutandis* to the cases of lease.

SECTION 8 Contract of Employment

Article 655 (Definition of Contract of Employment)

A contract of employment becomes effective when one of the parties agrees to render services to the other party and the latter agrees to pay the former remuneration therefor.

Article 656 (Amount of Remuneration and Time to Pay)

(1) Where no agreement has been entered upon between the parties as to the amount of remuneration, custom shall prevail accordingly.

(2) Remuneration shall be made at the time mutually agreed upon, but where no time has been specified, custom shall prevail. In the absence of any established custom of time, it shall be paid after the completion of the work agreed upon without delay.

Article 657 (Exclusivity of Rights and Duties)

(1) The employer may not assign his rights to a third person without the consent of the employee.

(2) An employee may not substitute a third person to perform his services without the consent of the employer.

(3) If one of the parties violates the provisions of paragraphs (1) and (2), the other party may rescind the contract for the future.

Article 658 (Content of Service and Right of Rescission for Future)

(1) If the employer demands of the employee some unrelated service which has not been agreed upon between the parties, the employee may rescind the contract and refuse to perform his services in the future.

(2) If, in a case where the specified services which have been agreed upon between the employer and employee require special training, experience, and knowledge on the part of the employee, the employer may rescind the contract for services for the future if the employee fails to possess the above qualifications agreed upon.

Article 659 (Lapse of Three Years or More and Right to Give Notice of Rescission of Contract for Future)

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(1) If the period of employment agreed upon between the parties exceeds three years, or if it is to continue for the lifetime of one of the parties or of a third person, either party may give notice of his intention to rescind the contract of employment for the future at any time after the expiration of three years.

(2) In the case of paragraph (1), the notice of intention to rescind the contract of employment for the future by either of the parties becomes effective after three months have elapsed from the date of receipt by the other party of such notice.

Article 660 (Notice of Rescission for Future of Contract of Employment in which No Period has been Fixed)

(1) If no period for the employment has been fixed by the parties, either party may give notice to the other party of his intention to rescind the contract for the future at any time.

(2) In the case of paragraph (1), the notice of intention to rescind for the future becomes effective after one month has elapsed from the date of receipt by the other party of such notice.

(3) If remuneration has been fixed on a set and regular periodical basis, the rescission of the contract for the future shall be deemed to be effective after one full period has elapsed from the date of completion of the current period during which the other party received the notice of intention to rescind the contract for the future.

Article 661 (Unavoidable Cause and Right to Rescind Contract for Future)

Even where a fixed period for the employment has been set by the parties, either party may, if any unavoidable cause arises, rescind the contract for the future: *Provided*, That if such cause arises out of the negligence of one of the parties, such party is liable for damages to the other party.

Article 662 (Implicit Renewal)

(1) If the employee continues to render services after the expiration of the agreed period, and the employer has not raised any objection thereto within a reasonable period, they are deemed to have entered into a new contract of employment on the same terms as before: *Provided*, That either party may give notice to the other party to rescind the contract for the future in accordance with the provisions of Article 660.

(2) In the case of paragraph (1), the security furnished by a third person in respect to the former contract of employment shall be extinguished at

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the expiration of the first period agreed upon.

Article 663 (Employer's Bankruptcy and Notice of Rescission of Contract for Future)

(1) If the employer has been declared bankrupt, either the employee or the bankruptcy trustee may rescind the contract of employment, even when a term of employment contract has been fixed.

(2) In the case of paragraph (1), neither party may claim from the other any damages arising from the rescission of the contract for the future.

SECTION 9 Contract for Work

Article 664 (Definition of Contract for Work)

A contract for work becomes effective when one of the parties has agreed to perform a certain job and the other has agreed to pay remuneration for the result of such work.

Article 665 (Time to Make Remuneration)

(1) The remuneration shall be made simultaneously with the delivery of the finished object of the work: *Provided*, That if the delivery of the object of the work is not required, remuneration shall be paid without delay after the work has been performed.

(2) The provisions of Article 656 (2) shall apply *mutatis mutandis* to the remuneration mentioned in paragraph (1).

Article 666 (Contractor's Right to Demand Creation of Mortgage on Immovable which is Object of Contract)

The contractor for work on an immovable may demand of the person who ordered the work to create mortgage on the immovable in order to secure the contractor's claim in relation to his remuneration mentioned in Article 665.

Article 667 (Contractor's Liability for Warranty)

(1) If any defect exists in the completed subject-matter of a work or in a certain part of the subject-matter of a work which has been finished before the completion of all the work, the person who ordered the work may fix a reasonable period for the contractor to repair and rectify such defect: *Provided*, That this shall not apply if the defect is not material and if its rectification would involve excessive expense.

(2) The person who has ordered the work may claim damages in lieu of, or together with, rectification of the defect.

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(3) The provisions of Article 536 shall apply *mutatis mutandis* in the cases of paragraph (2).

Article 668 (Contractor's Liability for Warranty-Right of Rescission of Person Who Ordered Work)

If, by reason of some defect in the finished subject-matter of the work, the purpose of the contract can not be achieved, the person who ordered the work may rescind the contract: *Provided*, That this shall not apply to a building or any other structure on land.

Article 669 (Contractor's Liability for Warranty-Release from Responsibility in Case Defect has Arisen through Nature of Materials Supplied or Instructions Given by Person Who Ordered Work)

The provisions of Articles 667 and 668 shall not apply if the defect in the finished subject-matter of the work has arisen through the nature of the materials supplied by the person who ordered the work, or by reason of instructions given by him: *Provided*, That this shall not apply if the contractor, knowing the impropriety of the materials or instructions, has failed to notify the person who ordered the work.

Article 670 (Duration of Warranty Liabilities)

(1) The demand for rectifying the defects, the claim for damages, or the rescission of the contract mentioned in Articles 667, 668 and 669 shall be made within one year from the day of the delivery of the subject-matter of the work.

(2) Where the delivery of the subject-matter of the work is not required, the period mentioned in paragraph (1) shall commence to run from the day on which the work was finished.

Article 671 (Contractor's Liability for Warranty Special Rules Applicable to Land, Building, etc.)

(1) A contractor for work with respect to land, a building or any other structure shall be liable for any defects in the subject-matter of the work or in its foundations for a period of five years after delivery: *Provided*, That this period shall be ten years where the subject-matter of the work is made of stone, limestone, brick, metal or any other similar material.

(2) If the subject-matter is destroyed or damaged by reason of such defects mentioned in paragraph (1), the person who ordered the work shall exercise the rights mentioned in Article 667 within one year from the day that such destruction or damage took place.

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Article 672 (Special Agreement Releasing Warranty Liabilities)

Even where there was a special agreement between the parties that the contractor shall not be bound by warranty liabilities mentioned in Articles 667 and 668, he may not be relieved of liabilities with respect to the defects in workmanship or materials of which he was aware and nevertheless failed to give notice.

Article 673 (Right of Rescission of Person who Ordered Work Before Its Completion)

Before the completion of the contracted work, the person who ordered the work may rescind the contract at any time, but shall be liable for damages.

Article 674 (Bankruptcy of Person who Ordered Work and Right of Rescission)

(1) If the person who ordered the contracted work has been declared bankrupt, the contractor or the bankruptcy trustee may rescind the contract. In such a case, the contractor may claim in the distribution of the bankrupt estate remuneration for the part of work already completed, and for any other expenses which are not included in such remuneration.

(2) In a case where of paragraph (1), neither party may demand from the other party compensation for any damages which have arisen from the rescission of the contract.

SECTION 10 Advertisement for Prize Contest

Article 675 (Definition of Advertisement for Prize Contest)

An advertisement for prize contest shall become effective when an advertiser has expressed his intention to give a certain reward to any person who performs a certain act and a contestant has accomplished such an act as has been specified in the advertisement.

Article 676 (Person Entitled to Reward)

(1) If there are several persons who have accomplished the act specified in the advertisement, the person who accomplished it first shall be entitled to the reward.

(2) If two or more persons have accomplished the act simultaneously, each of them shall be entitled to the reward in equal proportions: *Provided*, That If the reward is by its nature indivisible, or if it has been stipulated in the advertisement that only one person is to receive the reward, the

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ultimate recipient of such a reward shall be determined by drawing lots.

Article 677 (Act Done by Person Who was not Aware of Advertisement)

The provisions of Article 676 shall apply *mutatis mutandis* where a person has accomplished the act specified in the advertisement without knowledge of such an advertisement.

Article 678 (Advertisement which Specifies Prize only for Performance of Highest Credit)

(1) An advertisement offering the reward only for one of several contestants who has performed the act in the manner deserving the highest credit shall be effective only if a certain period of definite duration is stipulated for the contest.

(2) In a case where of paragraph (1), the decision as to whose performance deserves the highest credit shall be made by the person designated in the advertisement. If no such designation has been made in the advertisement, the decision shall be made by the advertiser himself.

(3) A decision that no performance deserves the highest credit among the contestants shall be impermissible: *Provided*, That this shall not be the case where declaration of a different intention from the above exists in the advertisement or the standards of the decision has been stipulated by the nature of the advertisement.

(4) No contestant may raise objection to the decision mentioned in paragraphs (2) and (3).

(5) If two or more persons are judged to have performed the act with the same highest credit, the provisions of Article 676 (2) shall apply *mutatis mutandis*.

Article 679 (Withdrawal of Advertisement for Prize Contest)

(1) Where a period within which the act specified by the advertiser is to be accomplished has been fixed in the advertisement, the advertisement may not be withdrawn before the expiration of such period.

(2) In a case where of an unfixed period within which the act specified by the advertiser is to be performed, the advertiser may, until such time as a person has completely performed the specified act, withdraw the advertisement in the same manner in which it was originally effected.

(3) If the advertisement cannot be withdrawn in the same manner as the advertisement was originally effected, the withdrawal may be made in any other similar manner: *Provided*, That such withdrawal shall be effective

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only as against persons who have become aware thereof.

SECTION 11 Mandate

Article 680 (Definition of Mandate)

A mandate shall become effective when one of the parties has entrusted the other party with the management of affairs and the other party has consented thereto.

Article 681 (Mandatory's Duty of Care and Due Diligence)

A mandatory shall manage the affairs entrusted to him with the care of a good manager in accordance with the tenor of the mandate.

Article 682 (Restriction on Right of Reappointment)

(1) A mandatory may not allow any third person to manage the entrusted affairs without the consent of the mandator or any inevitable reasons.

(2) If a mandatory has allowed a third person to manage the entrusted affairs in accordance with the provisions of paragraph (1), the provisions of Articles 121 and 123 shall apply *mutatis mutandis*.

Article 683 (Mandatory's Duty to Report)

A mandatory shall upon demand by the mandator report on the status of the management of the entrusted affairs, and upon the termination of the mandate he shall make a full report on the entire developments with respect to the management of the entrusted affairs without delay.

Article 684 (Mandatory's Duty to Deliver and Transfer Things Acquired, etc.)

(1) A mandatory shall deliver to the mandator all the money and any other things which he has received and the fruits which he has collected therefrom in the course of management of the entrusted affairs.

(2) All rights which the mandatory has acquired in his own name on behalf of the mandator shall be transferred to the mandator.

Article 685 (Mandatory's Liability for Pecuniary Consumption of Money)

If a mandatory has spent for his own benefit any money which he ought to deliver to the mandator or which is to be used for the mandator's benefit, he shall pay interest thereon as from the day on which he spent such money, and if there are any further damages, he shall also be liable therefor.

Article 686 (Mandatory's Right to Demand Remuneration)

(1) In the absence of a special agreement, a mandatory may not demand remuneration from the mandator.

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(2) Where it was agreed that a mandatary is to receive remuneration, he may not demand it until the entrusted affairs have been completely performed: *Provided*, That if the remuneration has been fixed by periods, he may demand it after the expiration of the period.

(3) If a mandate terminates in the course of performance of the entrusted affairs by the mandatary due to any cause not attributable to the mandatary, he is entitled to remuneration in proportion to the affairs already managed by him.

Article 687 (Mandatary's Right to Demand in Advance Payment of Expenses)

If any expense is required for the management of the entrusted affairs, the mandator shall, upon demand by the mandatary, pay them in advance.

Article 688 (Mandatary's Right to Demand Reimbursement of Expenses, etc.)

(1) If a mandatary has defrayed any expenses necessary for the management of the entrusted affairs, he may demand from the mandator the reimbursement of such expenses with interest thereon from the day on which they were defrayed.

(2) If a mandatary has assumed an obligation necessary for the management of the entrusted affairs, he may request the mandator to perform it in his place and, if the obligation is not due, to furnish adequate security.

(3) If a mandatary, without any negligence on his part, sustains damages through the management of the entrusted affairs, he may demand compensation therefor from the mandator.

Article 689 (Right to Terminate Mandate by either Party at Will)

(1) Either party may at any time rescind a contract of a mandate for the future.

(2) If one of the parties rescinds a mandate for the future without any inevitable reasons when it would be unfavourable to the other party, he shall compensate the other party for any damages occasioned by such rescission.

Article 690 (Death, Bankruptcy, etc. and Termination of Mandate)

A mandate shall terminate upon the death or bankruptcy of either party.

The same shall apply where the mandatary is adjudged incompetent.

Article 691 (Measures for Urgency at Time of Termination of Mandate)

If, on the termination of a mandate, the circumstances are of an urgent nature requiring the continuous management, the mandatary, his successor or his agent by law shall continue to manage the entrusted affairs

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until the mandator, his successor, or his agent by law becomes in a position to take over the management of the affairs. In this case, the continuous management after the termination of a mandate shall be deemed to have the same effect as the original mandate.

Article 692 (Requirement of Setting up of Termination of Mandate)

No termination of a mandate can, whether the ground therefor exists on the part of the mandator or of the mandatory, be set up against the other party, unless the other party is given notice thereof or he is otherwise aware thereof.

SECTION 12 Bailment

Article 693 (Definition of Bailment)

Bailment shall become effective when one of the parties has committed to the other party the custody of money, securities or any other things, and the other party has consented thereto.

Article 694 (Prohibition on Use of Bailed Articles by Bailee)

A bailee may not use the bailed Articles without the consent of the bailor.

Article 695 (Gratuitous Bailee's Duty of Care)

A gratuitous bailee shall give the same degree of care in the custody of the bailed Articles as he gives with respect to his own property.

Article 696 (Bailee's Duty to Give Notice)

If a third person alleging a claim right over the bailed Articles has commenced an action against the bailee or levied an attachment thereon, the bailee shall notify the bailor thereof without delay.

Article 697 (Bailor's Liability to Redress Damages Arisen from Nature of or any Defect in Bailed Articles)

A bailor shall indemnify the bailee for damages suffered by the bailee, as a result of the nature of, or any defect in, the bailed Articles: *Provided*, That this shall not be the case if the bailee was aware of such defects.

Article 698 (Rescission of Contract of Bailment for Future on which Period has been Fixed)

If a period was fixed for a bailment, a bailee may not, in the absence of any inevitable reason, rescind a contract of a bailment for the future before the expiration of the stipulated period of time: *Provided*, That the bailor may rescind the contract at any time.

Article 699 (Rescission of Contract of Bailment for future on which No

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Period has been Fixed)

If no period was fixed for a bailment, either party may rescind a contract of a bailment at any time.

Article 700 (Place of Returning Bailed Articles)

The bailed Articles shall be returned at the place where they have been kept: *Provided*, That if the bailee has for any justifiable cause removed it to another place, he may return it at the place where the Articles actually exist.

Article 701 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 682, 684 through 687 and 688 (1) and (2) shall apply *mutatis mutandis* to a bailment.

Article 702 (Bailment subject to Consumption)

Where the bailee is allowed by the contract to consume the bailed Articles, the provisions relating to loans for consumption shall apply *mutatis mutandis*: *Provided*, That if no time for its return has been fixed by the contract, the bailor may at any time demand its return.

SECTION 13 Partnership

Article 703 (Definition of Partnership)

(1) A partnership shall become effective when two or more persons have agreed to carry on a joint undertaking by making mutual contribution thereto.

(2) The contribution mentioned in paragraph (1) may be made in cash or in kind such as other property or labor service.

Article 704 (Partnership-ownership of Partnership Property)

The contribution made by each partner and the other property of the partnership shall belong to all the partners jointly.

Article 705 (Liability for any Pecuniary Contribution in Arrears)

If, where the contribution is to be made in cash, a partner delayed in making his contribution, he shall, besides paying any interest in arrears, compensate for all damages resulting therefrom.

Article 706 (Method of Managing Partnership Affairs)

(1) If a manager of the partnerships affairs has not been designated by the partnership contract, such a manager shall be elected with an affirmative vote of not less than two-thirds of all the partners.

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(2) The management of the partnership affairs shall be decided by a majority of the partners. If several managers are appointed to take charge of the affairs of the partnership, the management of the affairs shall be decided by a majority of such managers.

(3) The ordinary affairs of the partnership may, notwithstanding the provisions of paragraph (2), be managed solely by any partner or any manager, as the case may be, acting alone: *Provided*, That if other partners or other managers, as the case may be, raises an objection to such acts before the completion thereof, he shall immediately suspend these acts.

Article 707 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 681 through 688 shall apply *mutatis mutandis* to partners who manage the affairs of the partnership.

Article 708 (Resignation and Removal of Manager of Partnership Affairs)

A partner who manages the partnership affairs may not be allowed to resign without justifiable reasons and shall not be removed from the office except with the unanimous consent of the other partners.

Article 709 (Presumption of Representative Power of Managers)

The partners who manage the partnership affairs shall be presumed to have a representative power of the management of the partnership affairs.

Article 710 (Partner's Right to Inspect Affairs and Status of Property of Partnership)

Each partner may at any time inspect the affairs and status of the property of the partnership.

Article 711 (Ratio of Sharing of Profit and Loss)

(1) In the absence of an agreement between the partners as to the ratio of the sharing of profits and losses, it shall be decided in proportion to the value of the contribution of each partner.

(2) If the ratio has been fixed as to the sharing of either profits or losses, such ratio shall be presumed to apply both to profits and losses.

Article 712 (Creditor's Exercise of Right against Partners)

A creditor of the partnership who was not aware of the ratio of the sharing of losses among the partners at the time when his claim came into existence, may exercise his right against each partner in equal shares.

Article 713 (Debt of Insolvent Partner and Other Partner's Liabilities)

If any partner does not have sufficient means to discharge his obligations,

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his portion shall be equally divided among other partners.

Article 714 (Effect of Attachment of Shares)

Attachment of a partner's share shall be effective against the partner's right to future dividends and return of share.

Article 715 (Prohibition of Set-off by Debtor of Partnership)

A debtor of the partnership cannot set-off his obligation against a claim which he has against a partner.

Article 716 (Voluntary Retirement)

(1) If a partnership contract provides for no fixed period of the duration of the partnership, or if it has been specified therein that the partnership shall continue its existence during the life time of the partners, each partner may retire at any time: *Provided*, That he may not, in the absence of any inevitable reason, retire at a time which would be unfavorable to the partnership.

(2) Even when a period has been fixed for the duration of the partnership, each partner may retire, if any inevitable reason exists therefor.

Article 717 (Non-Voluntary Retirement)

In addition to the cases mentioned in Article 716, a partner shall cease to be such for any of the following causes:

1. Death;
2. Bankruptcy;
3. Adjudication of incompetency; or
4. Expulsion.

Article 718 (Expulsion)

(1) Expulsion of a partner may be made only with just cause and by the unanimous consent of all other partners.

(2) The decision of expulsion mentioned in paragraph (1) can not be set up against the expelled partner until he is notified of such a decision.

Article 719 (Settlement of Account of an Ex-Partner's Share)

(1) The accounts between an ex-partner and remaining partners shall be settled based on the status of the property of the partnership at the time when the former ceased to be a partner.

(2) The share of an ex-partner may be paid out in cash irrespective of the nature of his original contribution.

(3) In a case where of a matter having not been completed at the time when a partner ceases to be such, the account may be settled after such

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matters have been completed.

Article 720 (Demand to Dissolve Partnership due to Inevitable Reasons)

Any partner may demand dissolution of the partnership if any inevitable reasons therefor exists.

Article 721 (Liquidator)

(1) If a partnership is dissolved, the liquidation shall be conducted jointly by all the partners or by a person appointed by them.

(2) The appointment of a liquidator mentioned in paragraph (1) shall be decided by a majority of all the partners.

Article 722 (Liquidator's Way of Conducting Partnership Affairs)

The provisions of the latter part of Article 706 (2) shall apply *mutatis mutandis* where there are two or more liquidators.

Article 723 (Resignation and Removal of Liquidator who is Partner)

The provisions of Article 708 shall apply *mutatis mutandis* where the liquidator is appointed from among the partners.

Article 724 (Liquidator's Duties, Powers, and Distribution of Surplus Assets)

(1) The provisions of Article 87 shall apply *mutatis mutandis* to the duties and powers of the liquidator.

(2) The surplus assets shall be distributed among the partners in proportion to the value of their contributions.

SECTION 14 Life Annuity

Article 725 (Definition of Contract of Life Annuity)

A contract of life annuity shall become effective when one of the parties has agreed to deliver money, or other things, periodically to the other party or to a third person, until the end of his life or that of the other party or the third person.

Article 726 (Computation of Life Annuity)

A life annuity shall be computed by the day.

Article 727 (Rescission of Contract of Life Annuity)

(1) If an obligor on a life annuity neglects to pay the periodical payments or fails to perform any of his other duties after he has received the principal of the annuity, the obligee on a life annuity may demand the return of such principal: *Provided*, That in such case, the obligee shall return to the obligor the balance, after interest on the principal sum has been

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deducted from the periodical payments already received by him.

(2) The provisions of paragraph (1) shall not preclude any claim for damages.

Article 728 (Rescission and Concurrent Performance)

The provisions of Article 536 shall apply *mutatis mutandis* to the cases mentioned in Article 727.

Article 729 (Death Occurred by any Reason Attributable to Obligor and Declaration of Continuance of an Obligation)

(1) If death occurs by any reason for which the obligor on a life annuity is responsible, the court may, upon the application of the obligee or his successor, declare that the obligation shall continue to exist for a reasonable period.

(2) The right mentioned in Article 727 may also be exercised even in the cases of paragraph (1).

Article 730 (Life Annuity due to Testamentary Gift)

The provisions of this Section shall apply *mutatis mutandis* to a life annuity effected by a testamentary gift.

SECTION 15 Compromise

Article 731 (Definition of Compromise)

A compromise shall become effective when the parties have agreed to terminate a dispute between them by mutual concessions.

Article 732 (Creative Effect of Compromise)

A contract of a compromise shall have the effect that the rights conceded by one of the parties is thereby extinguished and the other party will, in turn, acquire the pertinent rights by virtue of the compromise.

Article 733 (Effect of Compromise and Mistake)

A contract of a compromise may not be canceled on the ground of a mistake: *Provided*, That this shall not be the case where such a mistake is concerned with the matters relating to the qualification of either party of a compromise or any matters other than those which are pertinent to the dispute subject to the compromise.

CHAPTER III MANAGEMENT OF AFFAIRS

Article 734 (Definition of Management of Affairs)

(1) A person who manages affairs on behalf of another without being

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bound to do so shall conduct that management in the manner most advantageous to the principal according to the nature of such affairs.

(2) If a manager knows or should have known the intention of the principal, he shall conduct the management in conformity with the intention of the principal.

(3) If a manager has managed the affairs in violation of paragraphs (1) and (2), he shall be liable for the damages caused thereby even if he was not guilty of negligence: *Provided*, That if his act of management conforms to the public interest, he shall not be liable for damages unless he was grossly negligent.

Article 735 (Management of Affairs in Urgency)

If a manager has managed the affairs in order to protect the principal against an imminent danger to the latter's life, person, reputation or property, he shall not be liable for any damages caused thereby, unless he acted wilfully or with gross negligence.

Article 736 (Manager's Duty to Give Notice)

A manager shall give notice to the principal without delay when he has commenced to manage his affairs: *Provided*, That this shall not be the case where the principal is already aware thereof.

Article 737 (Manager's Duty to Continue Management)

A manager shall continue the management until the principal, his successor or his agent by law is in a position to manage the affairs: *Provided*, That this shall not be the case, if it is evident that such a continuance would be against the intention of the principal or would be prejudicial to the principal's interests.

Article 738 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 683 through 685 shall apply *mutatis mutandis* to management of affairs.

Article 739 (Manager's Right to Demand Reimbursement of Expenses)

(1) If a manager has defrayed any necessary or useful expenses on behalf of the principal, he may demand reimbursement thereof from the principal.

(2) When a manager has assumed on behalf of the principal an obligation which is necessary or beneficial to the latter, the provisions of Article 688 (2) shall apply *mutatis mutandis*.

(3) If a manager manages the affairs against the principal's intention,

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the provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* only to the extent of the principal's present enrichment.

Article 740 (Manager's Right to Claim for Indemnification Suffered without Negligence)

When a manager has suffered loss caused not by his own negligence in the course of the management of affairs, he shall be entitled to claim for indemnification to the extent that the principal is being enriched thereby.

CHAPTER IV UNJUST ENRICHMENT

Article 741 (Definition of Unjust Enrichment)

A person who without any legal ground derives a benefit from the property or services of another and thereby causes loss to the latter shall be bound to return such benefit.

Article 742 (Discharge without Obligation)

If a person has discharged an obligation with the knowledge that no such obligation has ever existed, he may not demand the return of the subject matter.

Article 743 (Discharge prior to Due Date)

If an obligor has discharged an obligation which is not due, he may not demand the return of the subject matter: *Provided*, That if the obligor discharges such obligation by mistake, the obligee shall return the benefit which he received therefrom.

Article 744 (Discharge without Obligation which Conforms to Moral Sense)

In the event that a person, not liable to an obligation, has discharged such an obligation by mistake and such discharge conforms to a sense of morality, he may not demand the return of the subject matter.

Article 745 (Discharge of Another Person's Obligation)

(1) If, in the event that a person other than the obligor has discharged an obligation by mistake, the obligee has in good faith destroyed evidentiary documents, relinquished any security, or lost his claim rights by prescription, the person who has effected the performance may not demand the return of his payments.

(2) In the case of paragraph (1), the person who has effected the performance may avail himself of the right to obtain reimbursement from the obligor.

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Article 746 (Performance for Illegal Cause)

If a person granted property or rendered service for an illegal cause, he may not demand the return of benefits resulting therefrom: *Provided*, That this shall not be the case if such illegal cause exists only on the part of the person enriched.

Article 747 (Cases where Original Object is not Returnable, Liability for Return of Value, and Liability of Subsequent Purchaser)

(1) If the person enriched is unable to return the object itself which he has received, he shall return the value of the object.

(2) When the person enriched is unable to return the benefit, a third party acting in bad faith, who has obtained the object or the benefits gratuitously from the person enriched, shall be liable to return such objects in accordance with the provisions of paragraph (1).

Article 748 (Amount of Benefits to be Returned by Person Enriched)

(1) The person enriched in good faith shall be liable to act as set forth in Article 747 to the amount that he still possesses of such benefits.

(2) A person enriched in bad faith shall return the benefits received by him together with interest, and if there has been any damage, he shall be bound also to make compensation.

Article 749 (Recognition of Bad Faith of Person Enriched)

(1) If the person enriched becomes aware of the fact that no legal ground had ever existed after he had received such benefit, he shall be liable to return the benefit as a person enriched in bad faith, from the time of his awareness of the above fact.

(2) The person enriched in good faith shall, if defeated in a lawsuit, be deemed to be a person enriched in bad faith from the time such action was filed.

CHAPTER V TORTS

Article 750 (Definition of Torts)

Any person who causes losses to or inflicts injuries on another person by an unlawful act, wilfully or negligently, shall be bound to make compensation for damages arising therefrom.

Article 751 (Compensation for Non-Economic Damages)

(1) A person who has injured the person, liberty or fame of another or

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has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom.

(2) The court may order the guilty party to discharge the compensation mentioned in paragraph (1) by periodical payments, and may order such guilty parties to offer reasonable security in order to insure his performance of such obligations.

Article 752 (Consolation Money in a case where of Violation of Life)

A person who has caused the death of another person shall be liable for damages to the lineal ascendants, lineal descendants and the spouse, even where no economic damages exist as a result thereof.

Article 753 (Minor's Competency)

In the event that a minor has caused damage to another, if he was not in possession of sufficient intelligence to understand his responsibility for the act, he shall not be liable for damages resulting therefrom.

Article 754 (Competency of Person of Mental Unsoundness)

A person who, while in a state of mental unsoundness, has caused damage to another, shall not be liable for damages resulting therefrom: *Provided*, That this shall not be the case, if he has brought upon himself his state of mental unsoundness either wilfully or negligently.

Article 755 (Liability of Supervisor over Incompetent Person)

(1) In the event that an incompetent person exempts from liabilities in accordance with the provisions of Articles 753 and 754, the person who is under a legal duty to supervise such incompetent persons shall be bound to make compensation for damages which the incompetent person has caused to a third person: *Provided*, That this shall not be the case, if the person so supervising has exercised reasonable care.

(2) A person who supervises an incompetent person as a substitute for a person whose duty is to supervise shall also assume the same liability as set forth in paragraph (1).

Article 756 (Employer's Liability for Damages)

(1) A person who employs another to carry out an undertaking shall be bound to make compensation for damages done to a third person by the employee in the course of the execution of the undertaking: *Provided*, That this shall not be the case, if the employer has exercised due care in the appointment of the employee, and the supervision of the undertaking,

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or if the damage would have resulted even if due care had been exercised.

(2) A person who supervises the undertaking in place of the employer shall also assume the same liability as set forth in paragraph (1).

(3) In cases of paragraphs (1) and (2), the employer or the supervisor may exercise the right to obtain reimbursement from the employee.

Article 757 (Liability of Person who Ordered Work to be Done)

The person who placed an order for a work to be done shall not be bound to make compensation for any damages caused to a third person by the contractor with respect to such work: *Provided*, That this shall not be the case, if the former was guilty of gross negligence in placing the order, or in providing instructions therefor.

Article 758 (Liability of Possessor, Owner of Structure, etc.)

(1) If any damages has been caused to another person by reason of any defect in the construction or maintenance of a structure, the person in possession of the structure shall be liable for such damages: *Provided*, That if the person in possession has exercised due care in order to prevent the occurrence of such damages, compensation for the damage shall be made by the owner.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* where there exists any defect in the planting or maintenance of trees.

(3) In cases of paragraphs (1) and (2), the possessor or the owner may exercise the right to obtain reimbursement from the person to whom the damages are attributable.

Article 759 (Liability of Possessor of Animals)

(1) The possessor of an animal shall be liable for any damages caused to another person by the animal: *Provided*, That this shall not be the case, if the possessor has not neglected nor failed to give proper care according to the species and nature of the animal.

(2) A person who has a custody of an animal in place of the possessor shall assume the responsibility mentioned in paragraph (1).

Article 760 (Liability of Joint Tort-feasors)

(1) If two or more persons have by their joint unlawful acts caused damages to another, they shall be jointly and severally liable to make compensation for such damages.

(2) The provisions of paragraph (1) shall also apply if it is impossible

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to ascertain which of the participants, albeit not joint, has caused the damages.

(3) Instigators and accessories shall be deemed to act jointly.

Article 761 (Self-Defense and Act of Necessity)

(1) A person who, in order to protect his own interest or that of a third person against an unlawful act of another, unavoidably causes damages to another person shall not be liable for such damages: *Provided*, That the injured party may claim for damages in respect of the unlawful act.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* where a person unavoidably caused damages to another person in order to avert an imminent danger.

Article 762 (Status of Unborn Child in respect of Claims for Damage)

An embryo or fetus shall, in respect of the claim for damages, be deemed to have been already born.

Article 763 (Applicable Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 393, 394, 396 and 399 shall apply *mutatis mutandis* to torts claims.

Article 764 (Special Rules which Govern in case of Defamation)

The court may, on the application of the injured party, order the person who has impaired another's fame to take suitable measures to restore the injured party's fame, either in lieu of, or together with damages.

«Inclusion of the publication of apology in newspapers, etc. in the "suitable measures to restore the injured party's fame" in this Article is in violation of the Constitution according to the decision of limited unconstitutionality by the Constitutional Court which was made on Apr. 1, 1991»

Article 765 (Application for Reduction in Compensation Amount)

(1) The person liable to make compensation in accordance with the provisions of this Chapter may petition the court for a reduction in the amount of compensation, if the damages were caused neither intentionally nor by gross negligence, and such payments of compensation shall be a severe hardship to his livelihood.

(2) The court may, if the petition mentioned in paragraph (1) has been filed, reduce the amount of compensation after a study of the claimant's and obligor's respective financial situations and the cause giving rise to the damages.

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Article 766 (Prescription in respect of Right to Claim for Damages)

(1) The right to claim for damages resulting from an unlawful act shall lapse by prescription if not exercised within three years commencing from the date on which the injured party or his agent by law becomes aware of such damage and of the identity of the person who caused it.

(2) The provisions of paragraph (1) shall also apply if ten years have elapsed from the time when the unlawful act was committed.

PART IV RELATIVES

CHAPTER I GENERAL PROVISION

Article 767 (Definition of Relatives)

A spouse, blood relatives and relatives by affinity shall be considered as relatives.

Article 768 (Definition of Blood Relatives)

One's lineal ascendants and lineal descendants shall be one's lineal blood relatives. One's brothers and sisters, brother's and sister's lineal descendants, brothers and sisters of one's lineal ascendants and such brother's and sister's lineal descendants shall be considered collateral blood relatives. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 769 (Lineal of Relatives by Affinity)

Spouses of blood relatives, blood relatives of the spouse, and spouses of the blood relatives of the spouse shall be relatives by affinity. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 770 (Computation of Degree of Relationship of Blood Relatives)

(1) The number of generations of a lineal blood relative shall be determined by computing the number of generations ascending from the person concerned to his or her ascendant or descending from him or her to his or her descendant.

(2) The degree of relationship of a collateral blood relative shall be determined by computing the number of generations ascending from the person concerned to a lineal ascendant of common origin and then descending from such lineal ascendants of common origin to his or her lineal descendant.

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Article 771 (Calculation of Degrees of Affinity)

The affinity shall be determined by the degrees to blood relatives from the spouse for blood relatives of the spouse, and those to the blood relative for the spouse of a blood relative.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 772 (Parental Lineage and Degree of Relationship of Adopted Child)

(1) Parental lineage and the degree of relationship between an adopted child on the one hand and the parent by adoption and their blood relatives and relatives by affinity on the other, shall be deemed from the time when an adoption has been made, the same as those of a child born while the father and mother are in matrimonial relations.

(2) The degree of relationship of the spouse, lineal descendant and the spouse of such lineal descendant, of the adopted child shall be determined upon the basis of the parental lineage of an adopted child as prescribed in paragraph (1).

Articles 773 and 774 Deleted. *<by Act No. 4199, Jan. 13, 1990>*

Article 775 (Extinction of Affinity Relation, etc.)

(1) Affinity shall be terminated by annulment of marriage, or divorce.
<Amended by Act No. 4199, Jan. 13, 1990>

(2) In cases where one of husband and wife has died, if the surviving spouse has remarried, the provisions of paragraph (1) shall also be applicable. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 776 (Extinction of Relationship by Adoption)

Relationships arising due to adoption shall be terminated by annulment or dissolution of the adoptive relationship.

Article 777 (Scope of Relatives)

Legal effect taken by relationship of relatives shall extend to those who fall under any of the following subparagraphs unless this Act or other Acts provide otherwise:

1. Blood relatives within the eighth degree of relationship;
2. Affinity relatives within the fourth degree of relationship; and

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3. Spouse.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

CHAPTER II SCOPE OF FAMILY MEMBERS AND SURNAME AND ORIGIN OF SURNAME OF CHILD

Article 778 Deleted. *<by Act No. 7427, Mar. 31, 2005>*

«This Article was deleted by Act No. 7427, March 31, 2005, pursuant to the decision of incompatibility with the Constitution which was made by the Constitutional Court on March 27, 1997»

Article 779 (Scope of Family Members)

(1) Family members shall consist of the following persons:

1. The spouse, lineal blood relatives, and brothers and sisters; and
2. Spouses of the lineal blood relatives, lineal blood relatives of the spouse, and brothers and sisters of the spouse.

(2) In the case of paragraph (1) 2, it shall be limited to the case where they share living accommodations.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 780 Deleted. *<by Act No. 7427, Mar. 31, 2005>*

Article 781 (Surname and Origin of Surname of Child)

(1) A child shall succeed his or her father's surname and origin of surname: *Provided*, That when the parents agree to have the child assume his or her mother's surname and origin of surname at the time of filing a report on their marriage, he or she shall succeed the mother's surname and origin of surname.

«This portion "child shall succeed his or her father's surname and origin of surname" in this paragraph was amended by Act No. 7427, March 31, 2005 (enforced on January 1, 2008) pursuant to the decision of incompatibility with the Constitution which was made by the Constitutional Court on December 22, 2005»

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(2) Where the father is a foreigner, the child may succeed the mother's surname and origin of surname.

(3) A child whose father is not known shall assume the mother's surname and origin of surname.

(4) A child whose father and mother are not known shall, with the approval of the court, establish a new surname and origin of surname: *Provided*, That if the father or mother is known after the child has established a new surname and origin of surname, the child may assume the father or mother's surname and origin of surname.

(5) Where a child born out of wedlock is affiliated, the child may continue to use the previous surname and origin of surname subject to the agreement of the parents: *Provided*, That if the parents can not make such an agreement or fail to reach such an agreement, the child may continue to use the previous surname and origin of surname with the approval of the court.

(6) Where there exists a need to alter the surname and origin of surname of a child for the welfare of the child, they may be altered with the approval thereof which the court grants upon a request of the father or mother or the child itself: *Provided*, That if the child is a minor and its agent by law may not make such a request, the request may be made by the relative provided for in Article 777 or a public prosecutor.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Articles 782 through 789 Deleted. <by Act No. 7427, Mar. 31, 2005>

Article 790 Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 791 Deleted. <by Act No. 7427, Mar. 31, 2005>

Article 792 Deleted. <by Act No. 4199, Jan. 13, 1990>

Articles 793 through 796 Deleted. <by Act No. 7427, Mar. 31, 2005>

Articles 797 through 799 Deleted. <by Act No. 4199, Jan. 13, 1990>

CHAPTER III MARRIAGE

SECTION 1 Matrimonial Engagement

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Article 800 (Freedom of Matrimonial Engagement)

Any adult person may freely enter into a matrimonial engagement.

Article 801 (Eligible Age for Matrimonial Engagement)

Any person who is eighteen years old or older may enter into a matrimonial engagement upon the consent of his or her parents or guardian. The provisions of Article 808 shall apply *mutatis mutandis* to this case.

<Amended by Act No. 8720, Dec. 21, 2007>

Article 802 (Matrimonial Engagement for Incompetent)

An incompetent may enter into a matrimonial engagement upon the consent of his or her parents or guardian. The provisions of Article 808 shall apply *mutatis mutandis* to this case.

Article 803 (Prohibition of Compulsory Performance of Matrimonial Engagement)

No person may claim to the court for compulsory performance of a matrimonial engagement.

Article 804 (Reasons for Dissolution of Matrimonial Engagement)

In cases where any one of the reasons as provided in the following subparagraphs is attributable to any one party to a matrimonial engagement, the other party may dissolve such engagement: <Amended by Act No. 4199, Jan. 13, 1990>

1. If one of the parties has been sentenced to punishment of not less than suspension of qualification;
2. If one of the parties has been adjudicated as incompetent or quasi-incompetent after the conclusion of matrimonial engagement;
3. If one of the parties has been suffering from venereal disease, incurable psychosis or any other incurable malignant disease;
4. If one of the parties is engaged to or has married a person other than the party to the engagement after the conclusion of matrimonial engagement;
5. If one of the parties has committed adultery with another person after the conclusion of matrimonial engagement;
6. If the death and life of one of the parties has been unknown for one

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year or more after the conclusion of matrimonial engagement;

7. If one of the parties has refused or delayed marriage without due reason; and

8. If there exists any other serious reason.

Article 805 (Method of Dissolution of Matrimonial Engagement)

Dissolution of a matrimonial engagement shall be effected by the declaration of intention of one party to the other party: *Provided*, That in cases where a party is unable to make any declaration of intention to the other party, such engagement shall be deemed to have been dissolved when the cause of such dissolution becomes known to the dissolving party.

Article 806 (Dissolution of Matrimonial Engagement and Claims for Damages)

(1) When a matrimonial engagement has been dissolved between parties, one party may claim against the other party in negligence the damages therefrom.

(2) In paragraph (1), the negligent party shall be liable for damages from mental anguish in addition to property damages.

(3) Claims for damages from mental anguish may not be assigned or succeeded: *Provided*, That this shall not apply to the case where a contract concerning indemnity has already been entered into between the parties or a legal action on a claim for damages has been instituted.

SECTION 2 Formation of Marriage

Article 807 (Marriageable Age)

Any person who is eighteen years old or older may enter into matrimony.

[This Article Wholly Amended by Act No. 8720, Dec. 21, 2007]

Article 808 (Marriage Requiring Consent)

(1) A minor shall obtain the consent of both parents in order to marry. If one parent is unable to exercise the right of consent, the minor shall obtain the consent of the other parent, and if neither parent is able to

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exercise the right of consent, the minor shall obtain the consent of its guardian.

(2) An incompetent may marry by obtaining the consent of its parents or guardian.

(3) In cases of paragraphs (1) and (2), if a minor or an incompetent does not have a parent or guardian, or its parent or guardian is unable to give consent, he may marry with the consent of its family council.

[This Article Wholly Amended by Act No. 3051, Dec. 31, 1977]

Article 809 (Prohibition of Consanguineous Marriage, etc.)

(1) A marriage may not be allowed between blood relatives (including the blood relatives of an adoptee before full adoption) within the eighth degree of relationship.

«This paragraph was amended by Act No. 7427, March 31, 2005 pursuant to the decision of incompatibility with the Constitution which was made by the Constitutional Court on March 27, 1997»

(2) A marriage may not be allowed between the parties who are or were such relatives by affinity as the spouses of blood relatives within the sixth degree of relationship, the blood relatives of the spouse within the sixth degree of relationship, and the spouses of blood relatives of the spouse within the fourth degree of relationship.

(3) A marriage may not be allowed between the parties who were the blood relatives of adoptive parent line within the sixth degree of relationship and the affinity relatives of adoptive parent line within the fourth degree of relationship.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 810 (Prohibition of Bigamy)

No one who has a spouse shall enter into another marriage.

Article 811 Deleted. *<by Act No. 7427, Mar. 31, 2005>*

Article 812 (Formation of Marriage)

(1) A marriage shall take effect by reporting in accordance with the provisions of the Act on the Registration, etc. of Family Relationship.

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<Amended by Act No. 8435, May 17, 2007>

(2) The report mentioned in paragraph (1) shall be submitted in writing with co-signatures of both parties and two adult witnesses.

Article 813 (Examination of Marriage Report)

Marriage report shall be accepted unless a marriage is in violation of the provisions of Articles 807 through 810 and 812 (2), and of any other Acts and subordinate statutes. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 814 (Marriage Report in Foreign State)

(1) A marriage between Korean nationals in a foreign state may be reported to the Korean Ambassador, Minister, or Consul stationed in that state.

(2) The Ambassador, Minister, or Consul who has received such a report, as mentioned in paragraph (1), shall promptly forward such a report and any other documents attached thereto to the family registration offices in the home State which have jurisdiction over the place of registration of the nationals concerned. *<Amended by Act No. 7427, Mar. 31, 2005; Act No. 8435, May 17, 2007>*

SECTION 3 Nullity and Annulment of Marriage

Article 815 (Nullity of Marriage)

A marriage is null and void if it falls under any one of the following subparagraphs: *<Amended by Act No. 7427, Mar. 31, 2005>*

1. Where there is no agreement to marry between the parties;
2. Where the marriage is in violation of Article 809 (1);
3. Where there exists or existed between the parties the relationship of lineal relatives by affinity; and
4. Where there existed between the parties the relationship of lineal blood relatives of adoptive parent line.

Article 816 (Causes for Annulment of Marriage)

A claim to the court for annulment of a marriage may be made under any one of the following subparagraphs: *<Amended by Act No. 4199, Jan. 13,*

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1990; Act No. 7427, Mar. 31, 2005>

1. Where a marriage is in violation of the provisions of Articles 807 through 809 (excluding the cases falling under the nullity of marriage under Article 815; hereafter in Articles 817 and 820 the same shall apply) or 810;
2. When at the time of marriage one of the parties was unaware that the other party had been suffering from a malignant disease or had any other serious reason which would make marital life unable to continue; and
3. When the declaration of intention to marry has been made by fraud or duress.

Article 817 (Claimant for Annulment of Marriage in Violation of Marriageable Age, etc.)

In the case of a marriage in violation of the provisions of Articles 807 and 808, a claim for annulment of the marriage to the court may be made by either party or agent by law thereof. In case of a marriage in violation of the provisions of Article 809, a claim for annulment of the marriage to the court may be made by either party, their lineal ascendants or collateral blood relatives within the fourth degree of relationship. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 818 (Claimant for Annulment of Bigamy)

In the case of marriage in violation of the provisions of Article 810, a claim for annulment of the marriage to the court may be made by either party, the spouse, the lineal ascendants, the collateral blood relatives within the fourth degree of relationship, or a public prosecutor.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 819 (Extinguishment of Right of Claim for Annulment of Marriage without Consent)

In the case of a marriage in violation of the provisions of Article 808, no claim for annulment of the marriage may be made, if three months have elapsed from the day on which the minor party had attained the age of 20 or the adjudication of incompetency of the party concerned had been canceled, or if the female party has become pregnant during

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the marriage. <Amended by Act No. 4199, Jan. 13, 1990; Act No. 7427, Mar. 31, 2005>
Article 820 (Extinguishment of Right of Claim for Annulment of Con-sanguineous Marriage, etc.)

In the case of a marriage in violation of the provisions of Article 809, no claim for annulment of the marriage may be made, if the female party has become pregnant during the marriage. <Amended by Act No. 7427, Mar. 31, 2005>

Article 821 Deleted. <by Act No. 7427, Mar. 31, 2005>

Article 822 (Extinguishment of Right of Claim for Annulment of Marriage due to Malignant Disease, etc.)

No claim for annulment of a marriage may be made on the ground of causes falling under the provisions of subparagraph 2 of Article 816, if six months have elapsed from the day when one party became aware that the other party had such cause.

Article 823 (Extinguishment of Right of Claim for Annulment of Marriage by Fraud or Duress)

No claim for annulment of a marriage by fraud or duress may be made, if three months have elapsed from the day when the party discovered the fraud, or became free from the duress.

Article 824 (Effect of Annulment of Marriage)

The annulment of a marriage shall not be retrospectively effective.

Article 824-2 (Annulment of Marriage, Fosterage of Children, etc.)

The provisions of Articles 837 and 837-2 shall apply *mutatis mutandis* with respect to the responsibility of fostering children and the visitation right in the case of the annulment of a marriage.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 825 (Annulment of Marriage and Right to Claim Damages)

The provisions of Article 806 shall apply *mutatis mutandis* in a case of the nullity and annulment of a marriage.

SECTION 4 Effect of Marriage

Sub-Section 1 General Effect

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Article 826 (Duties of Husband and Wife)

(1) Husband and wife shall live together, and shall support, and aid each other: *Provided*, That both parties must tolerate, if they do not live together temporarily for a due reason.

(2) The place where husband and wife reside, shall be determined by an agreement between them: *Provided*, That if they fail to reach an agreement, the place shall be determined by the Family Court upon a request of either party. <Amended by Act No. 4199, Jan. 13, 1990>

(3) and (4) Deleted. <by Act No. 7427, Mar. 31, 2005>

«Paragraph (3) was deleted by Act No. 7427, March 31, 2005 pursuant to the decision of incompatibility with the Constitution which was made by the Constitutional Court on March 27, 1997»

Article 826-2 (Attaining Majority by Marriage)

If a minor enters into marriage, he shall be deemed to have attained majority.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 827 (Right of Representation between Husband and Wife for Home Affairs)

(1) Husband and wife shall exercise the right of representation for each other on normal home affairs.

(2) Restriction upon the right of representation as mentioned in paragraph (1) shall not be set up against a third party acting in good faith.

Article 828 (Revocation of Contract Entered between Husband and Wife)

A contract entered into between husband and wife may be revoked by either party at any time during the marriage: *Provided*, That the right of a third party may not be prejudiced thereby.

Sub-Section 2 Effect on Property

Article 829 (Agreement and its Alteration on Matrimonial Property)

(1) If husband and wife have not, prior to the formation of marriage, entered into a contract which provides otherwise with respect to their property, their property relation shall be governed by the provision of each Article of this Sub-Section.

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(2) If husband and wife have, prior to the formation of marriage, entered into a contract with respect to their property, such contract may not be altered during the marriage: *Provided*, That if there is a due reason to alter such contract, it may be altered upon approval of the court.

(3) If, in a case where one spouse manages the property of the other in accordance with the contract referred to in paragraph (2), and such property is imperiled by mismanagement, the other spouse may claim to the court for permission of its own management. In this case, if such property is common property between husband and wife, the other spouse may claim to the court for the division of such property.

(4) If husband and wife have entered into a contract regarding their property, such contract may not be enforced against a successor in title of the husband or wife or a third party unless it is registered prior to the formation of their marriage.

(5) If the manager has been changed or a division of property in co-ownership has been effected in accordance with paragraphs (2) and (3) or by a contract, such change or division may not be enforced against a successor in title of the husband or wife or against a third party unless it has been registered.

Article 830 (Peculiar Property and Property of which Title is Uncertain)

(1) Inherent property belonging to either husband or wife from the time before the marriage and property acquired during the marriage in his or her own name shall constitute his or her peculiar property.

(2) Any property, of which title is uncertain between the husband and wife, shall be presumed to be in their co-ownership. <Amended by Act No. 3051, Dec. 31, 1977>

Article 831 (Management, etc. of Peculiar Property)

Husband or wife shall separately manage, use and take profit from his or her peculiar property.

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Article 832 (Joint Liability for Obligations with respect to Home Affairs)

If, with respect to normal home affairs, one spouse has effected a juristic act with a third person, the other spouse shall be jointly and severally liable for the obligation therefrom: *Provided*, That this shall not apply where a previous notice, to the effect that the other spouse will not assume such liability, has been clearly given to the third person.

Article 833 (Living Expenses)

The expenses necessary for communal life of husband and wife shall be jointly and severally borne by them, unless a special stipulation has been made between them.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

SECTION 5 Divorce

Sub-Section 1 Divorce by Agreement

Article 834 (Divorce by Agreement)

Husband and wife may get a divorce by agreement.

Article 835 (Divorce by Agreement for Incompetent Person)

The provisions of Article 808 (2) and (3) shall apply *mutatis mutandis* to a divorce by agreement for an incompetent person.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 836 (Taking Effect of Divorce and Method of Reporting)

(1) Divorce by agreement shall take effect upon reporting in accordance with the Act on the Registration, etc. of Family Relationship after obtaining the confirmation of the Family Court. *<Amended by Act No. 3051, Dec. 31, 1977; Act No. 8435, May 17, 2007>*

(2) The report as mentioned in paragraph (1) shall be filed in writing with joint signatures of both parties and two adult witnesses.

Article 836-2 (Procedure of Divorce)

(1) Any person who intends to get a divorce by agreement shall have a guidance on divorce provided by the Family Court and, if necessary, the Family Court may recommend to take counsel with a professional counselor who has expertise and experiences in counseling.

(2) The party who filed an application for the confirmation of intention to divorce with the Family Court may have the confirmation of intention

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to divorce after the periods, prescribed by the following subparagraphs, have passed since the day of having such a guidance referred to in paragraph (1):

1. Three months, if the party has any child to take care of (including an unborn child; hereafter the same shall apply in this Article); or
 2. One month, if not falling under subparagraph 1.
- (3) The Family Court may exempt the party from or reduce the period under paragraph (2), when there are such urgent circumstances to proceed a divorce as the party's unbearable suffering may be expected due to domestic violence.
- (4) The party who has any child to take care of shall submit the documents of agreement on fostering under Article 837 and decision of custody under Article 909 (4) or the original copy of adjudication of the Family Court under Articles 837 and 909 (4).

[This Article Newly Inserted by Act No. 8720, Dec. 21, 2007]

Article 837 (Divorce and Responsibility of Fostering Children)

- (1) The parties shall determine by agreement matters concerning fostering their children. *<Amended by Act No. 4199, Jan. 13, 1990>*
- (2) If the agreement as set forth in paragraph (1) shall include matters as follows: *<Amended by Act No. 8720, Dec. 21, 2007>*
 1. Decision on the custodian;
 2. Child support; and
 3. Visitation right and methods thereof.
- (3) Where the agreement as set forth in paragraph (1) harms children's welfare, the Family Court shall order correction or decide *ex officio* matters related to fostering, taking consideration of children's intention and age, each parent's financial status and other circumstances. *<Amended by Act No. 8720, Dec. 21, 2007>*
- (4) Where the agreement on fostering cannot or would not be made, the Family Court shall decide it upon a request of the party or *ex officio*. In this case, the Family Court shall take matters as set forth in paragraph (3) into account. *<Newly Inserted by Act No. 8720, Dec. 21, 2007>*
- (5) Where deemed necessary for children's welfare, the Family Court may change matters concerning fostering or take other appropriate measures, upon a request of each parent, children or prosecutor or *ex officio*. *<Newly Inserted by Act No. 8720, Dec. 21, 2007>*

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(6) Except for matters related to fostering, the provisions of paragraphs (3) through (5) shall not change the rights and duties of parents. <Newly Inserted by Act No. 8720, Dec. 21, 2007>

Article 837-2 (Visitation Rights)

(1) A parent who does not take care of children and his/her children shall have the visitation right. <Amended by Act No. 8720, Dec. 21, 2007>

(2) If it is required for the welfare of children, the Family Court may, upon a request of the party or *ex officio*, restrict or exclude such a visitation right. <Amended by Act No. 7427, Mar. 31, 2005>

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 838 (Claims for Revocation of Divorce by Fraud and Duress)

Any person who has declared intention of divorce by fraud or duress may claim to the Family Court for revocation of divorce. <Amended by Act No. 4199, Jan. 13, 1990>

Article 839 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Article 823 shall apply *mutatis mutandis* to the cases of divorce by agreement.

Article 839-2 (Claim for Division of Property)

(1) One of the parties who have been divorced by agreement, may claim a division of property against the other party.

(2) If no agreement is made for a division of property as referred to in paragraph (1), or if it is impossible to reach an agreement, the Family Court shall, upon a request of the parties, determine the amount and method of division, considering the amount of property acquired by cooperation of both parties and other circumstances.

(3) The claim for division of property as referred to in paragraph (1) shall be extinguished after two years have passed from the date of divorce.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 839-3 (Right to Revoke Fraudulent Act for Preservation of Claim for Division of Property)

(1) When a party files a legal act for a property right, knowing that such act may obstruct the other party's exercise of a claim for division of property, the other party may file a lawsuit demanding a revocation of such act and recovery therefrom with the Family Court with Article 406 (1) applied *mutatis mutandis*.

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(2) Such lawsuits as set forth in paragraph (1) shall be filed within the period as set forth in Article 406 (2).

[This Article Newly Inserted by Act No. 8720, Dec. 21, 2007]

Sub-Section 2 Judicial Divorce

Article 840 (Causes for Judicial Divorce)

Either husband or wife may apply to the Family Court for a divorce in each case of the following subparagraphs: <Amended by Act No. 4199, Jan. 13, 1990>

1. If the other spouse has committed an act of unchastity;
2. If one spouse has been maliciously deserted by the other spouse;
3. If one spouse has been extremely maltreated by the other spouse or his or her lineal ascendants;
4. If one spouse's lineal ascendant has been extremely maltreated by the other spouse;
5. If the death or life of the other spouse has been unknown for three years; and
6. If there exists any other serious cause for making it difficult to continue the marriage.

Article 841 (Extinguishment of Right to Apply for Divorce due to Unchastity)

With respect to the cause mentioned in subparagraph 1 of Article 840, if the spouse has given a previous consent or an *ex post facto* tolerance to the other party, or if six months have passed since the spouse was aware of such act of unchastity of the other, or if two years have passed since the happening of such event, the spouse may not apply to the court for a divorce.

Article 842 (Extinguishment of Right to Apply for Divorce due to Any Other Reason)

With respect to the cause as provided in subparagraph 6 of Article 840, one spouse may not apply to the court for divorce after the lapse of six months since the day when the spouse became aware of such cause, or after the lapse of two years since such cause has occurred.

Article 843 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 806, 837, 837-2 and 839-2 shall apply *mutatis mutandis* to the case of judicial divorce. <Amended by Act No. 4199, Jan.

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CHAPTER IV PARENTS AND CHILDREN

SECTION 1 Children of Natural Parent

Article 844 (Presumption as Husband's Child)

(1) A child conceived by a wife during the marriage shall be presumed to be the child of the wife's husband.

(2) A child born after two hundred days from the day when the marriage was formed or born within three hundred days from the day when the matrimonial relation was terminated, shall be presumed to have been conceived during the marriage.

Article 845 (Determination of Paternity by Court)

If a woman who has remarried gives birth to a child, and it is impossible to determine the father of the child in accordance with the provisions of Article 844, the court shall, upon the application of the party concerned, determine the paternity of the child. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 846 (Denial of Paternity of Child)

Either of husband and wife may, in any case mentioned in Article 844, bring an action to deny that he is the natural father of the child. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 847 (Action of Denial of Paternity)

(1) The action of denial of paternity shall be brought by the husband or wife against the other spouse or the child within two years from the day when he or she becomes aware of the cause of the action.

«This paragraph is amended by Act No. 7427, March 31, 2005 pursuant to the decision of incompatibility with the Constitution which was made by the Constitutional Court on March 27, 1997»

(2) In the case of paragraph (1), if both of the other spouse and the child against whom the action is to be brought has died, the action of denial of paternity may be brought against a public prosecutor within two years from the day on which he or she becomes aware of the death.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 848 (Incompetent's Action of Denial of Paternity)

(1) If the husband or wife is a person adjudged incompetent, his or her

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guardian may, upon the consent of the family council, bring an action of denial of paternity of a child. *<Amended by Act No. 7427, Mar. 31, 2005>*

(2) If, in the case of paragraph (1), the guardian has not brought an action of denial of paternity, the person adjudged incompetent may bring the action of denial of paternity within two years after the revocation of the adjudication of incompetency. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 849 (Denial of Paternity after Death of Child)

If any lineal descendant of a child survives after the death of the child, the husband may bring an action of denial against the child's mother, or if the mother does not survive, against the public prosecutor.

Article 850 (Denial of Paternity by Will)

If the husband or wife has expressed an intention of denial of paternity by will, the executor of the will shall bring an action of denial of paternity. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 851 (Death of Husband before Birth of Child, etc. and Denial of Paternity)

If the husband dies before the birth of a child or the husband or wife dies within the period mentioned in Article 847 (1), only the lineal ascendant or lineal descendant of the husband or wife may bring an action of denial of paternity within two years from the day on which he or she becomes aware of the death.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 852 (Extinction of Right of Denial of Paternity)

Any person who recognizes the paternity of a child after the child is born may not bring an action of denial of the paternity again.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

Article 853 Deleted. *<by Act No. 7427, Mar. 31, 2005>*

Article 854 (Revocation of Recognition caused by Fraud or Duress)

Recognition mentioned in Article 852 caused by fraud or duress shall be revocable. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 855 (Affiliation)

(1) A child born out of wedlock may be affiliated by its natural father or mother. When the marriage of the parent becomes null and void, the child born between them shall be deemed to be a child born out of wedlock.

(2) A child born out of wedlock, when its father and mother marry, shall be deemed to be a child born during the marriage from the time of the

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marriage.

Article 856 (Affiliation by Incompetent)

If a father is a person adjudged incompetent, he may affiliate himself as being the father of his child with the consent of the guardian.

Article 857 (Affiliation of Deceased Child)

Even after a child has died, if its lineal descendant survives, it may be affiliated as the lawful child.

Article 858 (Affiliation of Unborn Child)

A father may affiliate an unborn child.

Article 859 (Effectiveness of Affiliation)

(1) Affiliation shall become effective when it is reported in accordance with the provisions of the Act on the Registration, etc. of Family Relationship. <Amended by Act No. 8435, May 17, 2007>

(2) Affiliation may be effected by a will. In this case, the executor of a will shall make such report.

Article 860 (Retrospective Effect of Affiliation)

Affiliation shall be retrospectively effective from the time of birth of the child: *Provided*, That the right acquired by a third person shall not be prejudiced thereby.

Article 861 (Revocation of Affiliation)

If affiliation has been made by fraud, duress or grave mistake, its revocation may be claimed to the Family Court within six months from the day when such fraud or mistake becomes known, or such duress disappears. <Amended by Act No. 7427, Mar. 31, 2005>

Article 862 (Action of Demurrer against Affiliation)

A child or any other person interested may bring an action of demurrer against an affiliation within one year from the day when it becomes aware of a report of such affiliation.

Article 863 (Action Demanding Affiliation)

A child, any of its lineal descendants or the agent by law of any of them, may bring an action against its father or mother demanding affiliation by its father or mother.

Article 864 (Death of Father or Mother and Action Demanding Affiliation)

In the cases mentioned in Articles 862 and 863, if the father or mother of a child has died, an action of demurrer or action demanding affiliation may be brought against the public prosecutor within two years

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from the day when the death of the father or mother becomes known.

<Amended by Act No. 7427, Mar. 31, 2005>

Article 864-2 (Affiliation and Responsibility of Fostering Child, etc.)

The provisions of Articles 837 and 837-2 shall apply *mutatis mutandis* with respect to the responsibility of fostering a child and the visitation right in the case of the affiliation of the child.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 865 (Action Demanding Confirmation of Denial or Existence of Paternity due to Any Other Reasons)

(1) A person who may bring an action in accordance with the provisions of Articles 845, 846, 848, 850, 851, 862 and 863, may bring an action demanding confirmation of denial or the existence of paternity for any reason other than those mentioned in the aforesaid Articles.

(2) In the cases mentioned in paragraph (1), if the party concerned has died, the other party may bring an action against the public prosecutor within two years from the day when it becomes aware of such death.

<Amended by Act No. 7427, Mar. 31, 2005>

SECTION 2 Adoption

Sub-Section 1 Requisites for Adoption

Article 866 (Capacity for Adoption)

Any person who has attained majority may adopt another as his child.

Articles 867 and 868 Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 869 (Assent to Adoption of Person under Fifteen Years of Age)

If the person to be adopted is under fifteen years of age, his agent by law shall assent to the adoption on his behalf: *Provided*, That the guardian may give his assent to the adoption after obtaining permission from the family court therefor. <Amended by Act No. 7427, Mar. 31, 2005>

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 870 (Consent to Adoption)

(1) The person to be adopted shall obtain the consent of his parents, and if such consent cannot be obtained from the parents due to death or any other cause, consent of any other lineal ascendant, if any, shall be obtained.

(2) In the case of paragraph (1), if there are several lineal ascendants, the priority shall be put on the closest ascendant, and if there are sev-

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eral persons in the same order, the priority shall be put on the oldest person. <Amended by Act No. 4199, Jan. 13, 1990>

Article 871 (Consent to Adoption of Minor)

If the person to be adopted has not attained majority and he has neither parents nor any lineal ascendants, he shall obtain the consent of his guardian: *Provided*, That the permission by the Family Court shall be obtained upon the consent of guardian. <Amended by Act No. 4199, Jan. 13, 1990>

Article 872 (Adoption between Guardian and Ward)

A guardian shall obtain the permission of the Family Court, if he adopts his ward. <Amended by Act No. 4199, Jan. 13, 1990>

Article 873 (Adoption of Incompetent Person)

An incompetent person may, upon the consent of his guardian, adopt a child or may be adopted by another.

Article 874 (Joint Adoption of Husband and Wife)

(1) When a person who has a spouse, adopts a child, he or she shall do it jointly with his or her spouse.

(2) When a person who has a spouse, is adopted, he or she shall obtain the consent of the other party.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Articles 875 and 876 Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 877 (Prohibition of Adoption)

(1) No ascendant or person of elder age may be adopted.

(2) Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 878 (Effectiveness of Adoption)

(1) An adoption shall become effective when it is reported under the Act on the Registration, etc. of Family Relationship. <Amended by Act No. 8435, May 17, 2007>

(2) The report mentioned in paragraph (1) shall be made in writing with joint signatures of both parties and two adult witnesses.

Articles 879 and 880 Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 881 (Examination of Adoption Report)

Adoption report shall be accepted unless the adoption is in violation of the provisions of Articles 866 through 877, and 878 (2) and any other Acts and subordinate statutes. <Amended by Act No. 4199, Jan. 13, 1990>

Article 882 (Adoption Report in Foreign State)

The provisions of Article 814 shall apply *mutatis mutandis* to the cases of adoption.

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Sub-Section 2 Nullity and Annulment of Adoption

Article 883 (Causes of Nullity of Adoption)

An adoption shall be null and void if it falls under any of the following subparagraphs:

1. Where there is no agreement to an adoption between the parties; and
2. Where an adoption is in violation of the provisions of Articles 869 and 877 (1).

Article 884 (Causes of Annulment of Adoption)

If an adoption falls under any of the following subparagraphs, a claim for annulment may be made to the Family Court: *<Amended by Act No. 4199, Jan. 13, 1990>*

1. Where an adoption is in violation of the provisions of Articles 866 and 870 through 874;
2. Where there is no knowledge of the fact, at the time of adoption, that the child to be adopted or the adopting person has been suffering from a malignant disease or has had any other serious cause; and
3. Where an intention of adoption was expressed by fraud or duress.

Article 885 (Claimants for Annulment of Adoption)

If an adoption has been made in violation of the provisions of Article 866, a claim for annulment of said adoption may be made to the court by the adoptive parent, adopted child or his agent by law and lineal blood relative.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 886 (Claimants for Annulment of Adoption)

If an adoption has been made in violation of the provisions of Article 870, the person entitled to give consent to the adoption may claim annulment of said adoption to the court, and if an adoption has been made in violation of the provisions of Article 871, the adopted child or the person entitled to give consent to the adoption may claim annulment to the court. *<Amended by Act No. 4199, Jan. 13, 1990; Act No. 7427, Mar. 31, 2005>*

Article 887 (Claimants for Annulment of Adoption)

If an adoption has been made in violation of the provisions of Article 872, a claim for annulment of said adoption may be made to the court by the ward or a member of family council, and if an adoption has been

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made in violation of the provisions of Article 873, a claim for annulment may be made by the incompetent or the guardian.

Article 888 (Claimants for Annulment of Adoption)

If an adoption has been made in violation of the provisions of Article 874, a claim for annulment may be made by the spouse.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 889 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption is in violation of the provisions of Article 866, no claim for annulment may be made to the court after the adoptive parents have reached their majority.

Article 890 Deleted. *<by Act No. 4199, Jan. 13, 1990>*

Article 891 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption is in violation of the provisions of Article 871, no claim for annulment may be made to the court, if three months have elapsed after the adopted child attained its majority or if the adopted child has died.

Article 892 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption is in violation of the provisions of Article 872, no claim for annulment may be made to the court, if six months have elapsed after closing of the management account by the termination of guardianship.

Article 893 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption is in violation of the provisions of Article 873, no claim for annulment may be made after the lapse of three months from the time when the adjudication of incompetency has been revoked.

Article 894 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption is in violation of the provisions of Article 870 or 874, no claim for annulment may be made to the court after the lapse of six months from the day when the adoptive parent became aware of any cause thereof, or after the lapse of one year from the day when any cause thereof occurred.

Article 895 Deleted. *<by Act No. 4199, Jan. 13, 1990>*

Article 896 (Extinction of Right to Claim for Annulment of Adoption)

If an adoption of which there is any cause falling under the provisions of subparagraph 2 of Article 884, no claim for annulment may be made to the court after the lapse of six months from the day when either

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the adoptive parent or adopted child was aware of any cause thereof.

<Amended by Act No. 4199, Jan. 13, 1990>

Article 897 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Article 823 and 824 shall apply *mutatis mutandis* to the cases of annulment of adoption, and the provisions of Article 806 shall apply *mutatis mutandis* to the case of nullity or annulment of adoption.

Sub-Section 3 Dissolution of Adoptive Relation

(I) Dissolution of Adoptive Relation by Agreement

Article 898 (Dissolution of Adoptive Relation by Agreement)

(1) The Adoptive parent and the adopted child may, by agreement, dissolve the adoptive relation.

(2) Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 899 (Dissolution of Adoptive Relation by Agreement for Persons under Fifteen Years of Age)

(1) If an adopted child is under fifteen years of age, the person who assented to the adoption in accordance with the provisions of Article 869 shall consult, on behalf of the adopted child, with the adoptive parent regarding dissolution of the adoption: *Provided*, That if the person who assented to the adoption is unable to consult, due to death or any other reason, such consultation shall be made by another lineal ascendant of the adopted child's native family. <Amended by Act No. 7427, Mar. 31, 2005>

(2) Where the consultation referred to in paragraph (1) is made by the guardian of the adopted child or any other lineal ascendant of the adopted child's native family, permission therefor shall be obtained from the family court. <Newly Inserted by Act No. 7427, Mar. 31, 2005>

Article 900 (Dissolution of Adoptive Relation by Agreement for Minor)

If an adopted child is a minor, it may enter into consultation for dissolution of adoptive relation upon the consent of the person entitled to give consent to an adoption pursuant to the provisions of Article 871.

Article 901 (Provisions to be Applied *Mutatis Mutandis*)

In cases as prescribed in Articles 899 and 900, if there are several lineal ascendants, the provisions of Article 870 (2) shall apply *mutatis mutandis*.

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[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 902 (Dissolution of Adoptive Relation by Agreement for Incompetent)

If the adoptive parent or adopted child is an incompetent person, it may enter into a consultation for dissolution of adoptive relation upon the consent of its guardian.

Article 903 (Examination of Report of Dissolution of Adoptive Relation)

The report of dissolution of the adoptive relation shall be accepted unless the dissolution is in violation of the provisions of Articles 878 (2) and 898 through 902 or any other Acts and subordinate statutes.

Article 904 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 823 and 878 shall apply *mutatis mutandis* to the cases of the dissolution of adoptive relation by agreement.

(II) Judicial Dissolution of Adoptive Relation

Article 905 (Cause for Judicial Dissolution of Adoptive Relation)

Either the adoptive parent or the adopted child may, if either of them has cause mentioned in any of the following subparagraphs, claim to the Family Court for dissolution of adoptive relation: <Amended by Act No. 4199, Jan. 13, 1990>

1. If one party has committed grave negligence, such as impairing family honor or dissipating property;
2. If one party has been extremely maltreated by the other or its lineal ascendant;
3. If one party's lineal ascendant has been extremely maltreated by the other party;
4. If the death or life of the adopted child has been unknown for three years or more; and
5. If there exists any other serious cause with which it is difficult for either party to continue the adoptive relationship.

Article 906 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Article 899 through 902 shall apply *mutatis mutandis* to the cases of application for judicial dissolution of adoptive relationship. <Amended by Act No. 4199, Jan. 13, 1990>

Article 907 (Extinction of Right to Claim for Dissolution of Adoptive Relation)

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No claim of the dissolution of adoptive relation may be made with the cause falling under the provisions of subparagraphs 1 through 3 and 5 of Article 905, after the lapse of six months from the day when the party becomes aware of such cause, or after the lapse of three years from the day when such cause occurs.

Article 908 (Dissolution of Adoptive Relation and Right to Claim Damages)

The provisions of Article 806 shall apply *mutatis mutandis* to the cases of judicial dissolution of adoptive relation.

Sub-Section 4 Full Adoption

Article 908-2 (Requisites, etc. for Full Adoption)

(1) Any person who intends to make the full adoption of a child shall make a request to the Family Court for such full adoption after meeting the following requirements:

1. The adoption shall be made jointly by the husband and wife who are married for three years or more: *Provided*, That where either of the husband and wife who are married for one year or more makes the full adoption of the other spouse's child as his or her one, the same shall not apply;
2. The child to be adopted shall be under the age of fifteen;
3. Consent to such adoption shall be obtained from the natural parents of the child to be adopted: *Provided*, That if such consent cannot be obtained due to the loss of the parental authority or the death of the parents or any other cause, the same shall not apply; and
4. Assent to such adoption shall be obtained from the child's agent by law pursuant to Article 869.

(2) The Family Court may reject the request of paragraph (1) if it deems that such full adoption is not appropriate for the welfare of the child to be adopted, taking into consideration the situation of the child's upbringing, the motives of such full adoption, the competence of the prospective adoptive parents for bringing up the child, and other circumstances.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-3 (Effect of Full Adoption)

(1) The child adopted through full adoption shall be deemed to be born

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during the marriage of the adoptive parents.

(2) Relationships of the adopted child before such full adoption shall be terminated at the time when such full adoption is decided upon such a request as provided for in Article 908-2 (1): *Provided*, That where one of husband and wife has made the full adoption of the other spouse's child as his or her one independently, the same shall not apply with respect to the relationship of the child with the other spouse and the other spouse's relatives.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-4 (Annulment, etc. of Full Adoption)

(1) If a natural father or mother of the child who is adopted through full adoption failed to be concerned in such consent as referred to in the proviso of Article 908-2 (1) 3 due to any cause not attributable to himself or herself, he or she may make a request to the Family Court for annulment of such full adoption within six months from the day when he or she becomes aware of such adoption.

(2) The provisions of Articles 883 and 884 shall not apply with respect to full adoption.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-5 (Dissolution of Full Adoption)

(1) The adoptive parent, adopted child, natural father or mother, or public prosecutor may apply to the Family Court for the dissolution of the full adoption in each case of the following subparagraphs:

1. Where the adoptive parent has abused or deserted the adopted child or otherwise has severely impaired the welfare of the adopted child; and
2. Where it is impossible to maintain the relation of the full adoption due to any act of immoral conduct which the adopted child has committed against the adoptive parent.

(2) The provisions of Articles 898 and 905 shall not apply with respect to the dissolution of full adoption.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-6 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Article 908-2 (2) shall apply *mutatis mutandis* with

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respect to the annulment of full adoption or the request for dissolution of full adoption under Article 908-5 (1) 2.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-7 (Effect of Annulment and Dissolution of Full Adoption)

(1) If a full adoption is annulled or dissolved, the adoptive relation shall be terminated and the relationship of relatives before such full adoption shall be reestablished.

(2) In the case of paragraph (1), the annulment of full adoption shall not be effective retroactively.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Article 908-8 (Provisions to be Applied *Mutatis Mutandis*)

Except as otherwise provided in this Sub-Section, the provisions of adoption shall apply *mutatis mutandis* with respect to full adoption unless they are contrary to the nature of such full adoption.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

SECTION 3 Parental Authority

Sub-Section 1 General Provisions

Article 909 (Custodian)

(1) Parents shall have the parental authority of their minor child. In cases of an adopted child, the adoptive parents shall have the parental authority. *<Amended by Act No. 7427, Mar. 31, 2005>*

(2) The parental authority shall be jointly exercised by both parents during their marriage. If the parents fail to reach an agreement, the Family Court shall determine it upon the request of the parties.

(3) When one parent is unable to exercise the parental authority, the other shall exercise it.

(4) If a child born out of wedlock is legally recognized and his parents are to be divorced, the custodian shall be determined by an agreement between the parents, and, if such agreement cannot or would not be made, the Family Court shall designate the custodian upon the request of the parties or *ex officio*: *Provided*, That if the agreement between the parents harms children's welfare, the Family Court shall order to correct it or *ex*

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officio decide the custodian. <Amended by Act No. 7427, Mar. 31, 2005; Act No. 8720, Dec. 21, 2007>

(5) In cases of the annulment of marriage, judicial divorce, or action demanding affiliation, the Family Court shall *ex officio* determine the custodian. <Amended by Act No. 7427, Mar. 31, 2005>

(6) The Family Court may, if deemed necessary for the welfare of a child, alter the person of the parental authority to the other party upon request of a relative of the child within the fourth degree of relationship.

<Newly Inserted by Act No. 7427, Mar. 31, 2005>

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 910 (Exercise of Child's Parental Authority)

A person of parental authority shall exercise, in place of the child subject to his or her parental authority, parental authority over children of such child. <Amended by Act No. 7427, Mar. 31, 2005>

Article 911 (Agent by Law of Minor Child)

The parent who exercises parental authority shall become the agent by law of his or her minor child.

Article 912 (Standards for Exercise of Parental Authority)

In exercising parental authority, priority shall be given to the welfare of a child.

[This Article Newly Inserted by Act No. 7427, Mar. 31, 2005]

Sub-Section 2 Effect of Parental Authority

Article 913 (Rights and Duties to Protect and Educate Child)

A person of parental authority shall have rights and duties to protect and educate his or her child.

Article 914 (Right to Designate Place of Residence)

A child shall reside at a place designated by a person of parental authority.

Article 915 (Right to Take Disciplinary Action)

The person of parental authority may, in order to protect or educate his or her child, take necessary disciplinary action against the child, and may entrust such child to a reformatory or correctional institution upon the approval of the court.

Article 916 (Child's Peculiar Property and Management thereof)

Any property acquired under the name of a child shall be peculiar prop-

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erty of the child, and such property shall be managed by the person of parental authority who is the agent by law of the child.

Article 917 Deleted. <by Act No. 4199, Jan. 13, 1990>

Article 918 (Management of Property Gifted to Child by Third Party)

(1) If a third party, in gifting a property to a child, has declared an intention to oppose the management of the property by the person of parental authority, the person of parental authority shall not manage the property.

(2) If, in case of paragraph (1), the third party has not designated a manager for the property, the court will appoint a manager upon the application of the child to whom the property has been gifted, or of any of its relatives pursuant to the provisions of Article 777.

(3) The same shall apply as prescribed in the preceding paragraph if, in a case where the authority of the manager designated by the third party has been terminated, or if it becomes necessary to change manager, but the third party fails to appoint a new manager.

(4) The provisions of Article 24 (1), (2) and (4), former part of Article 25 and Article 26 (1) and (2) shall apply *mutatis mutandis* to the cases of paragraphs (2) and (3).

Article 919 (*Mutatis Mutandis* Application of Provisions concerning Mandate)

The provisions of Articles 691 and 692 shall apply *mutatis mutandis* to the cases of property management as provided in Articles 916, 917, and 918.

Article 920 (Right of Representation by Person of Parental Authority with respect to Child's Property)

The person of parental authority who is the agent by law of the child shall represent the child on juristic acts concerning the property of the child: *Provided*, That if an obligation is to be assumed requires any act of the child the consent of the child itself shall be obtained.

Article 920-2 (Effect of Act done under Joint Names by One of Persons of Joint Parental Authority)

If both parents have parental authority, and one parent, under the names of both parents, represents its child or consents to a juristic act of the child, such representation or consent shall be valid even though it is contrary to the intention of the other parent except for the case

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where the other party is in bad faith.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 921 (Acts of Conflicting Interest between Person of Parental Authority and Child, or among Children)

(1) If a person of parental authority, who is the agent by law of a child, is to perform acts of conflicting interest between himself or herself and his or her child, he or she shall apply to the court for appointment of a special representative on behalf of the child.

(2) In a case where a person of parental authority, who is the agent by law of children, is to perform acts in which the interests of one child conflict with those of the other child or children, the person of parental authority shall, on behalf of one party, apply to the court for appointment of a special representative. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 922 (Duty of Person of Parental Authority to Pay Due Care and Diligence)

If a person of parental authority exercises the right of representation on juristic acts or the right of property management for the children under his or her parental authority, he or she shall exercise such authority with the same care and diligence as he or she would do so on any acts regarding his or her own property.

Article 923 (Account of Property Management)

(1) When the parental authority of a person who is the agent by law of a child has been extinguished, the person who has been exercising parental authority shall render an account of the property management of the child.

(2) In case of paragraph (1), the benefits accrued from the child's property shall be deemed to have been set-off against the expenses from bringing up the child and from managing the property: *Provided*, That this shall not apply to a property with which a third party, in gifting it to the child, has declared an intention contrary to such set-off.

Sub-Section 3 Loss of Parental Authority

Article 924 (Adjudication of Loss of Parental Authority)

If a parent abuses parental authority or is guilty of gross misconduct, or there exists any other serious reason for not allowing the parent to exercise parental authority, the court may, upon the application of any

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of the child's relatives pursuant to the provisions of Article 777 or of a public prosecutor, adjudge the loss of parental authority.

Article 925 (Adjudication of Loss of Right of Representation and Management)

If a person of parental authority who is the agent by law of his or her child endangers by mismanagement the property of the child, the court may, upon the application of any of the child's relatives pursuant to the provisions of Article 777, adjudge the loss of the right of representation on juristic acts of the child and the right of the management of the child.

Article 926 (Adjudication of Recovery of Lost Authority)

When the causes mentioned in Articles 924 and 925 have ceased to exist, the court may upon the application of the party concerned or any of its relatives pursuant to the provisions of Article 777, adjudge the recovery of the lost right.

Article 927 (Surrender and Recovery of Right of Representation and of Property Management)

(1) The person of parental authority who is the agent by law of the child may, if due reasons exist, surrender the right of representation on the juristic act of the child and the right of the management of property of the child upon the approval of the court.

(2) If the circumstances mentioned in paragraph (1) cease to exist, the person of parental authority may, upon the approval of the court, recover the right which he or she has surrendered.

CHAPTER V GUARDIANSHIP

SECTION 1 Guardian

Article 928 (Commencement of Guardianship over Minor)

If there is no person of parental authority over a minor or if a person of parental authority is unable to exercise the right of representation with respect to the juristic acts or the right of management of property of a minor, a guardian shall be appointed for said minor.

Article 929 (Commencement of Guardianship over Incompetent, etc.)

If an adjudication of incompetency or quasi-competency has been made,

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a guardian shall be appointed over such person who has been adjudicated as such.

Article 930 (Number of Guardian)

There shall be no more than one guardian.

Article 931 (Designation of Guardian by Will)

A parent who exercises parental authority over a minor may designate by will a guardian over a minor: *Provided*, That a person of parental authority who has no right of representation on juristic acts or of management of property may not designate a guardian.

Article 932 (Order in Guardianship of Minor)

If no guardian is designated under Article 931, a guardian shall be appointed in the order of the lineal blood relatives and collateral blood relatives within the third degree of relationship of the minor.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 933 (Order in Guardianship of Incompetent Person, etc.)

If incompetence or quasi-incompetence is adjudged, a guardian shall be appointed in the order of the lineal blood relatives and collateral blood relatives within the third degree of relationship of the person who is declared incompetent or quasi-incompetent.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 934 (Order in Guardianship of Married Person)

If a married person is declared incompetent or quasi-incompetent, the spouse shall be a guardian: *Provided*, That if the spouse is declared incompetent or quasi-incompetent as well, a guardian shall be appointed in the order as provided in Article 933.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 935 (Order Whereby Guardian is to be Appointed)

(1) If there are several lineal or collateral blood relatives as provided in Articles 932 through 934, the precedence shall be given to the closest relative, and if there are several persons in the same order, the precedence shall be given to the oldest person. *<Amended by Act No. 4199, Jan. 13, 1990>*

(2) Notwithstanding paragraph (1), where both natural parents of an adopted child and the adoptive parents are alive, the priority of guardianship shall be placed on the adoptive parents, and in a case where the degree of relationship between a blood relative of natural family and the blood relative of adoptive family is the same, the priority shall be

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placed on the blood relative of the adoptive family.

Article 936 (Appointment of Guardian by Court)

(1) If there is no person to become guardian in accordance with provisions of Articles 932 through 935, the court shall appoint a guardian upon the application of the ward's relatives pursuant to the provisions of Article 777 or of any other interested parties.

(2) The same shall apply as provided in the preceding paragraph in a case where there is no person to become a guardian in accordance with the provisions of Articles 932 through 935, if any vacancy in the position of guardian occurs due to the death, ineligibility or any other reason of the guardian.

Article 937 (Ineligibility for Guardianship)

Any person who falls under any of the following subparagraphs shall not become a guardian: <Amended by Act No. 7428, Mar. 31, 2005>

1. A minor;
2. A person adjudged as incompetent or quasi-incompetent;
3. A person declared bankrupt;
4. A person who has been sentenced to the punishment of not less than suspension of qualification and is in serving the term of punishment;
5. An agent by law or a member of family council who has been removed by the court;
6. A person whose whereabouts is unknown; and
7. A person who has brought or is bringing an action against the ward, or his or her spouse or any of the lineal blood relatives of such person.

Article 938 (Right of Representation of Guardian)

A guardian shall become the agent by law of the ward.

Article 939 (Surrender of Guardianship)

A guardian may, where any reasonable ground exists, surrender his authority upon the approval of the court.

Article 940 (Replacement of Guardian)

(1) If it is deemed that there is a need to replace a guardian for the welfare of the ward, the family court may replace the guardian upon the application of the ward's relative or a public prosecutor or *ex officio*.

(2) In the case of paragraph (1), the family court may appoint a relative within the fourth degree of relationship or any other competent person as a guardian of the ward, regardless of the order in guardianship

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referred to in Articles 932 through 935.

[This Article Wholly Amended by Act No. 7427, Mar. 31, 2005]

SECTION 2 Duties of Guardian

Article 941 (Investigation of Property and Preparation of Inventory)

(1) A guardian shall, without delay, investigate the ward's property, and prepare an inventory of such property within two months: *Provided*, That where reasonable grounds exist, this period may be extended with the permission of the court.

(2) The investigation of property and the preparation of the inventory mentioned in paragraph (1) shall not be valid unless conducted with the participation of a designated member of the family council.

Article 942 (Presentation of Claim and Obligation by Guardian)

(1) In a case where a guardian has a claim against, (or is under an obligation towards), the ward, he shall present the contents thereof to the family council or a designated member of such council before he completes the preparation of the inventory.

(2) If a guardian, notwithstanding his awareness of his claim against the ward, fails to present such claim as provided in paragraph (1), he shall be deemed to have waived the claim.

Article 943 (Authority of Guardian prior to Completion of Inventory)

Until a guardian has investigated the property and has completed the inventory, he shall not be entitled to exercise his authority with respect to such property, except for urgent necessity: *Provided*, That this may not be set up against a third person acting in good faith.

Article 944 (Investigation of Property Acquired by Ward, etc. under Blanket Title)

The provisions of Articles 941 through 943 shall apply *mutatis mutandis* to the case where the ward has acquired property under a blanket title after the guardian has assumed office.

Article 945 (Rights and Duties of Guardian on Status of Minor)

The guardian of a minor shall have, with respect to the matters as provided in Articles 913 to 915, the same rights and duties as a person of parental authority: *Provided*, That in order to change the mode of education, or the place of residence as determined by the person of

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parental authority, or to entrust the ward to a reformatory or correctional institution, or to revoke or restrict business permitted by the person of parental authority, the guardian shall obtain the consent of the family council.

Article 946 (Guardianship Limited to Management of Property)

When a person of parental authority is only unable to exercise parental power with respect to the right of representation on juristic acts and the right of management of property, the functions of a guardian shall be limited to the acts concerning the property of a minor.

Article 947 (Medical Treatment and Care, and Custody for Incompetent)

(1) The guardian of an incompetent shall not neglect his duty of care in the medical treatment, care and custody of his ward.

(2) In order to place an incompetent under restraint in a private residence or to confine such person in a mental institution or any other place to undergo medical treatment, a guardian shall obtain permission from the court: *Provided*, That in an urgent situation, he may apply to the court for an *ex post facto* permission.

Article 948 (Exercise of Parental Authority of Minor)

(1) A guardian shall exercise parental authority in place of the ward over a child of the ward.

(2) With respect to the exercise of parental authority as mentioned in paragraph (1), the provisions concerning the functions of guardian shall apply *mutatis mutandis*.

Article 949 (Right of Property Management and of Representation)

(1) A guardian shall manage the ward's property and represent the ward in juristic acts concerning the latter's property.

(2) The provisions of the proviso of Article 920 shall apply *mutatis mutandis* to the juristic acts as mentioned in paragraph (1).

Article 950 (Restriction to Right of Legal Representation by Law and Right of Consent)

(1) A guardian shall obtain the consent of family council in order to do one of the acts mentioned in the following subparagraphs in place of the ward, or to give consent to the performance of one of the acts mentioned in the following subparagraphs by a minor or a quasi-incompetent:

1. An act to conduct business;
2. An act to contract a debt or to stand surety;

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3. An act which aims at acquisition, forfeit and alteration of right and title on immovables or important property; and

4. An act to bring an action to the court.

(2) Any act done in violation of the provisions of paragraph (1) may be revoked by the ward or family council.

Article 951 (Acquisition of Right Against Ward by Assignment)

(1) When a guardian acquires by assignment a third person's right against the ward, he shall obtain the consent of family council.

(2) An act done in violation of the provisions of paragraph (1) may be revoked by the ward or family council.

Article 952 (Peremptory Notice by Other Party on whether to Ratify)

The provisions of Article 15 shall apply *mutatis mutandis* to the peremptory notice of the other party to family council whether it ratifies or not in the cases of Articles 950 and 951.

Article 953 (Supervision over Guardianship Affairs by Family Council)

The family council may at any time demand a guardian to submit a report on the performance of its duties and to present an inventory of property, and may investigate the status of the ward's property.

Article 954 (Disposition concerning Guardianship Affairs by Court)

The court may, upon the application of the ward, of any of the ward's relatives pursuant to the provisions of Article 777 or of any other interested persons, investigate the status of the ward's property, and may order such dispositions as may be necessary for the management of the ward's property or any other performance of guardian's duties.

Article 955 (Remuneration to Guardian)

The court may, upon the application of a guardian, allow to the guardian a reasonable remuneration from the ward's property, taking into account the financial capacity of the ward and any other circumstances.

Article 956 (*Mutatis Mutandis* Application of Provisions of Mandate and Parental Authority)

The provisions of Articles 681 and 918 shall apply *mutatis mutandis* to a guardian.

SECTION 3 Termination of Guardianship

Article 957 (Termination of Functions of Guardianship and Account of Management)

(1) When the duties of a guardian have terminated, the guardian or

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his successor shall render an account of his management within one month: *Provided*, That if there is any justifiable reason, such period may be extended upon the approval of the court.

(2) The account as mentioned in paragraph (1) shall not be effective unless conducted with the participation of a designated member of family council.

Article 958 (Addition of Interest and Liability for Pecuniary Expenditure)

(1) Money to be paid by a guardian to the ward or *vice versa* shall bear interest from the day when the account has been closed.

(2) If a guardian has expended the ward's money for its own benefit, such money shall bear interest from the day when the expenditure was made, and if there are any damages incurred to the ward, the guardian shall be liable for such damages.

Article 959 (*Mutatis Mutandis* Application of Provisions concerning Mandate)

The provisions of Articles 691 and 692 shall apply *mutatis mutandis* in case of the termination of guardianship.

CHAPTER VI FAMILY COUNCIL

Article 960 (Organization of Family Council)

A family council shall be organized when any circumstances which require a resolution of family council in accordance with the provisions of this Act and any other Acts exist.

Article 961 (Number of Family Council Members)

(1) Members of a family council shall be not less than three and not more than ten in number.

(2) A family council shall have one representative, who is elected by mutual votes among members of the family council.

(3) The representative mentioned in paragraph (2) shall legally represent the family council concerning activities in a litigation or other acts directed to outsiders.

Article 962 (Designation of Family Council Members by Person of Parental Authority)

A person of parental authority who may designate a guardian, may designate members of a family council for minor.

Article 963 (Election and Appointment of Family Council Member)

(1) Members of a family council shall be appointed by the court from

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among the relatives pursuant to the provisions of Article 777 or the persons who are in any special relation to the person concerned, upon the application of the person concerned, his or her agent by law or any of the relatives pursuant to the provisions of Article 777 or the party interested: *Provided*, That this shall not apply to the case where members of a family council have been designated in accordance with the provisions of Article 962. <Amended by Act No. 7427, Mar. 31, 2005>

(2) A person who is entitled to file an application to the court pursuant to the provisions of paragraph (1), may submit a statement of his opinion concerning the number of members of the family council and their appointment.

Article 964 (Ineligibility for Membership of Family Council)

(1) A guardian may not become a member of family council for the ward until the account of guardian's management has been completed.

(2) The provisions of Article 937 shall apply *mutatis mutandis* to the members of family council.

Article 965 (Standing Family Council for Person Lacking Legal Capacity)

(1) A family council for a minor, an incompetent or a quasi-incompetent shall continue to exist until the time when the cause of incapacity has ceased.

(2) When a vacancy in the position of family council member as referred to in the preceding paragraph has occurred, the court shall fill up such vacancy *ex officio* or upon the application.

Article 966 (Convocation of Family Council)

Family council shall be convoked by the Family Court upon the application of the person concerned, his or her agent by law, spouse, any lineal blood relatives, member of family council, the party interested or prosecutor. <Amended by Act No. 4199, Jan. 13, 1990; Act No. 7427, Mar. 31, 2005>

Article 967 (Method of Decision by Family Council)

(1) Decisions of family council on the matter concerned shall be made by an affirmative vote of the majority of the members.

(2) A member interested in the matter mentioned in paragraph (1) shall be excluded from voting.

(3) In cases where a decision has been made in writing by an affirmative vote of the majority of family council in place of a decision of family council, the person who is entitled to demand the convocation of family council in accordance with the provisions of Article 966 may apply to the court for its revocation within two months.

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Article 968 (Expression of Opinion at Family Council)

The person concerned, his or her agent by law, spouse, lineal blood relative, or collateral blood relative within the fourth degree of relationship may present and express his or her opinion at a family council.

<Amended by Act No. 7427, Mar. 31, 2005>

Article 969 (Court Decision to be Substituted for Decision of Family Council)

If it is impossible for family council to make a decision or family council fails to make a decision, the person who is entitled to demand the convocation of family council may apply to the court for a decision which will substitute for a decision of family council.

Article 970 (Surrender of Membership from Family Council)

A member of family council may, if valid reasons exist, surrender the membership of family council upon permission of the court.

Article 971 (Dismissal of Family Council Member)

(1) If any unjustifiable act has been committed against the duty of the member of family council and there is any other improper reason, the court may, *ex officio* or upon the application of the person concerned, his or her agent by law, or any of the relatives of the person concerned pursuant to the provisions of Article 777, or the person interested, replace or dismiss the responsible member of family council.

(2) In cases where the court deems it appropriate, the court may *ex officio* or upon the application of the person concerned, his or her agent by law, or any of the relatives of the person concerned pursuant to the provisions of Article 777 or the party interested, increase the number of the members of family council and appoint them.

Article 972 (Decision of Family Council and Actions of Demurrer thereto)

A person who is entitled to demand the convocation of a family council, may within two months after a decision of family council file an action in the court, to contest such decision.

Article 973 (Duties of Members of Family Council to Manage with Care of Good Manager)

The provisions of Article 681 shall apply *mutatis mutandis* to a member of family council.

CHAPTER VII SUPPORT

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Article 974 (Duty to Furnish Support)

Relatives falling under each of the following subparagraphs shall be under a duty to furnish support to each other:

1. Among lineal blood relatives and their spouses;
2. Deleted; <by Act No. 4199, Jan. 13, 1990>
3. Among any other relatives (limited to cases where they share living accommodations).

Article 975 (Duty to Furnish Support and Ability of Living)

A person under duty to furnish support shall perform his or her duty only in cases where the person entitled to receive support is unable to support himself or herself by his or her own financial resources or labor.

Article 976 (Order to Furnish Support)

(1) In cases where there exist several persons under duty to support, and no agreement has been reached between the parties concerned with respect to the order in which they are to furnish support, such order shall be determined by the court upon the application of the parties concerned. In cases where there exist several persons entitled to get support, and the financial capacity of the person under duty to furnish support is insufficient to support all of them, the same shall apply.

(2) In cases of paragraph (1), the court may select and designate several persons under duty to furnish support, or entitled to get support.

Article 977 (Extent and Method of Support)

If no agreement has been reached between the parties concerned with respect to the extent and method of support, the court may, upon the application of the parties concerned, determine such matters, taking into account the living standard of the person entitled to get support, the financial capacity of the person under duty to furnish support and any other related circumstances.

Article 978 (Alteration or Revocation of Support Relation)

If, after an agreement has been reached between the parties concerned, or a court decision has been rendered with respect to the order of persons under obligation to support or persons entitled to get support, or to the extent and method of support, any change has taken place in the circumstances, the court may revoke or alter the agreement or the decision upon the application of the parties concerned.

Article 979 (Prohibition of Disposition of Claim for Support)

The right to be supported may not be the subject of disposition.

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CHAPTER VIII Deleted.

Articles 980 through 996 Deleted. <by Act No. 7427, Mar. 31, 2005>

PART V INHERITANCE

CHAPTER I INHERITANCE

SECTION 1 General Provisions

Article 997 (Causes for Commencement of Inheritance)

An inheritance shall be commenced by death. <Amended by Act No. 4199, Jan. 13, 1990>

Article 998 (Place of Commencement of Inheritance)

An inheritance shall be commenced at the place of domicile of the inheritee.

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

Article 998-2 (Expenses for Inheritance)

Expenses for inheritance shall be paid out of the inherited property.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 999 (Claim for Recovery of Inheritance)

(1) If the right of inheritance is infringed by a person who pretends to have the right of inheritance, the person who has the right of inheritance or his agent by law may bring an action for recovery of inheritance.

(2) The claim for recovery of inheritance under paragraph (1) shall lapse at the expiration of three years from the date he comes to know the infringement, or ten years from the date the right of inheritance is infringed. <Amended by Act No. 6591, Jan. 14, 2002>

[This Article Wholly Amended by Act No. 4199, Jan. 13, 1990]

SECTION 2 Inheritor

Article 1000 (Priority of Inheritance)

(1) In inheritance, persons become inheritors in the following order:
<Amended by Act No. 4199, Jan. 13, 1990>

1. Lineal descendants of the inheritee;

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2. Lineal ascendants of the inheritee;
3. Brothers and sisters of the inheritee; and
4. Collateral blood relatives within the fourth degree of the inheritee.

(2) In the case mentioned in paragraph (1), if there are two or more inheritors standing in the same order, the closest in degree of relationship shall have the priority of inheritance. If there are two or more inheritors standing in the same degree of relationship, they become co-inheritors.

(3) With respect to the order of inheritance, an unborn child shall be considered as born. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 1001 (Inheritance by Representation)

Where a lineal descendant or a brother or sister who would become an inheritor in accordance with the provisions of Article 1000 (1) 1 and 3, has died, or has become disqualified before the commencement of succession, his or her lineal descendants, if any exist, shall become inheritors in the order in which the deceased or disqualified person would have become the inheritor.

Article 1002 Deleted. *<by Act No. 4199, Jan. 13, 1990>*

Article 1003 (Order of Inheritance of Spouse)

(1) If there exist such inheritors as provided in Article 1000 (1) 1 and 2, the spouse of the inheritee becomes a co-inheritor, in the same order as the said inheritor. If there exists no inheritor, the spouse becomes the sole inheritor. *<Amended by Act No. 4199, Jan. 13, 1990>*

(2) In the case mentioned in Article 1001, the spouse of the deceased or the disqualified person, before the commencement of inheritance, becomes a co-inheritor in the same order as the inheritors provided in the same Article. If there exists no inheritor, the spouse becomes the sole inheritor. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 1004 (Cause Whereby Inheritor becomes Disqualified)

No person who falls under any one of the following subparagraphs may become the inheritor: *<Amended by Act No. 4199, Jan. 13, 1990; Act No. 7427, Mar. 31, 2005>*

1. A person who has intentionally killed or attempted to kill a lineal ascendant, the inheritee, his or her spouse, or any person who has priority or is in the same order of inheritance;
2. A person who has intentionally assaulted a lineal ascendant, the inheritee or his or her spouse, and caused their death;

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3. A person who interferes by fraud or duress with a will or withdrawal of a will on inheritance of the inheritee;
4. A person who, by fraud or duress, has the inheritee make a will on his or her inheritance; and
5. A person who forges, alters, destroys or conceals a will on inheritance of the inheritee.

SECTION 3 Effects of Inheritance

Sub-Section 1 General Effect

Article 1005 (Inheritance and Succession of Blanket Rights and Duties)

An inheritor succeeds, from the time of the commencement of the inheritance, to the blanket rights and duties pertaining to the property of the inheritee: *Provided*, That this shall not apply to the property which is entirely personal to the inheritee. <Amended by Act No. 4199, Jan. 13, 1990>

Article 1006 (Joint Inheritance and Co-ownership of Inherited Property)

If there exist two or more inheritors, they become co-owners of the inherited property. <Amended by Act No. 4199, Jan. 13, 1990>

Article 1007 (Co-Inheritor's Succession to Rights and Duties of Inheritee)

Each of the co-inheritors succeeds to the rights and duties of the inheritee in proportion to his share of the inheritance.

Article 1008 (Shares of Inheritance for Special Beneficiary)

If any one of the co-inheritors has previously received a gift or testamentary gift of property from the inheritee, and such property received is of less value than his share of the inheritance, he shall be entitled to a share of the inheritance within the limit of the difference between the said gifts and his legal share of the inheritance. <Amended by Act No. 3051, Dec. 31, 1977>

Article 1008-2 (Contributory Portion)

(1) If there is a person among co-inheritors who has specially supported the inheritee through sharing living accommodations or providing nursing, etc. for a considerable period or has specially contributed to the maintenance or increase of the property of the inheritee, the value, calculated by deducting his contributory portion as determined by an agree-

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ment of co-inheritors from the value of property of the inheritee at the time the inheritance is commenced, shall be considered as an inherited property. The amount calculated by adding such contributory portion to the inherited portion calculated under Articles 1009 and 1010 shall be the inherited portion of that person. *<Amended by Act No. 7427, Mar. 31, 2005>*

(2) If co-inheritors fail to reach an agreement under paragraph (1), or if it is impossible to reach an agreement, the Family Court shall, upon the request of the contributor under paragraph (1), determine the contributory portion, taking into consideration the time, method and degree of the contribution, the value of the inherited property and other circumstances.

(3) The contributory portion shall not exceed the amount calculated by deducting the value of testamentary gifts from that of property of the inheritee when the inheritance is commenced.

(4) The request under paragraph (2) may be made when a request is made under Article 1013 (2), or as provided in Article 1014.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 1008-3 (Inheritance of Graveyards, etc.)

The right of ownership in forest land not more than 2.451 acres for graves and farmland for management of graves less than 1983.48 square meters, a genealogy, and ritual implements shall be succeeded to by the person who superintends the ancestral rites.

[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Sub-Section 2 Shares of Inheritance

Article 1009 (Legal Portions in Inheritance)

(1) If there exist two or more inheritors in the same rank, their shares of the inheritance shall be equally divided. *<Amended by Act No. 3051, Dec. 31, 1977; Act No. 4199, Jan. 13, 1990>*

(2) The portions inherited to an inheritee's spouse shall be increased by fifty percent over the inherited portion of his or her lineal descendant where he or she inherits jointly with his or her descendants, or fifty percent over the inherited portion of his or her lineal ascendant where he or she inherits jointly with his or her lineal ascendants. *<Amended by Act No. 4199, Jan. 13, 1990>*

(3) Deleted. *<by Act No. 4199, Jan. 13, 1990>*

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Article 1010 (Shares of Inheritance by Representation)

(1) The portion inherited by the person who becomes an inheritor in place of the deceased or disqualified person in accordance with the provisions of Article 1001 shall be that of the deceased or the disqualified person.

(2) In the case mentioned in paragraph (1), if there exist two or more lineal descendants of the deceased or disqualified person, their shares of the inheritance shall be determined in accordance with the provisions of Article 1009, within the limit of the share of the inheritance of the deceased or disqualified person. The same shall also apply to the cases mentioned in Article 1003 (2).

Article 1011 (Assignment of Common Shares in Joint Inheritance)

(1) If one of the co-inheritors assigns his or her share of the inheritance to a third person, any other co-inheritor may obtain such share by transfer upon effecting a reimbursement of its value and expenses relating to the transfer.

(2) The right mentioned in paragraph (1) shall be exercised within three months from the day on which such cause has been known or within one year from the day on which such cause has occurred.

Sub-Section 3 Division of Inherited Property

Article 1012 (Determination of Method Division or Forbidding Division by Will)

An inheritee may by will determine the method of division of the inherited property, entrust a third person with such determination, or forbid division for a period not exceeding five years from the time of the commencement of the inheritance.

Article 1013 (Division by Agreement)

(1) Except as mentioned in Article 1012, co-inheritors may, at any time, effect the division of the inherited property by their agreement.

(2) The provisions of Article 269 shall apply *mutatis mutandis* to the division of the inherited property mentioned in paragraph (1).

Article 1014 (Right to Apply for Division by Person, etc. Affiliated after Division of Inherited Property)

Where a person who has become a co-inheritor by affiliation or by a final judgement after the commencement of the inheritance applies for the division of inherited property, he or she may, if other co-inheritors have

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already effected the partition or other disposition, claim payment of the amount equivalent to his or her portion.

Article 1015 (Retroactive Effect of Division)

Division of an inherited property shall be effective retroactively from the time of the commencement of the inheritance: *Provided*, That the rights of third persons shall not be prejudiced thereby.

Article 1016 (Liability for Warranty to be Borne by Co-Inheritor)

Each co-inheritor shall, in proportion to his or her share of the inheritance, bear the same liability for warranty as that of a seller towards other co-inheritors with regard to the property acquired by them through division.

Article 1017 (Liability for Warranty for Solvency of Obligor to Inheritance)

(1) Each co-inheritor shall, in proportion to his or her share of the inheritance, warrant the solvency of the obligor as of the time of division with regard to claims acquired by other co-inheritors through division.

(2) With regard to an obligation which is not yet due or an obligation subject to a condition precedent, each co-inheritor warrants the solvency of the obligor at the time of performance.

Article 1018 (Apportionment of Warranty Liability of Insolvent Co-Inheritor)

If there is an insolvent person among co-inheritors liable for warranty, the portion of liability which such person is to bear is apportioned to those having the right to claim for reimbursement and other solvent co-inheritors in proportion to their inherited portions: *Provided*, That if the person who has the right to claim reimbursement fails to receive any reimbursement due to his own negligence, he may not make a demand upon the other co-inheritors to bear their portions.

SECTION 4 Acceptance and Renunciation of Inheritance

Sub-Section 1 General Provisions

Article 1019 (Period for Acceptance and Renunciation)

(1) An inheritor to property may, within three months after he is informed of the commencement of an inheritance, effect an acceptance,

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absolute or qualified, or a renunciation: *Provided*, That such period may be extended by the Family Court upon the application of any party interested or of a public prosecutor. <Amended by Act No. 4199, Jan. 13, 1990>

(2) An inheritor may examine the inherited property before effecting such acceptance or renunciation as mentioned in paragraph (1). <Amended by Act No. 6591, Jan. 14, 2002>

(3) Notwithstanding the provisions of paragraph (1), where an inheritor has made an absolute acceptance (including the case deemed to have made an absolute acceptance under subparagraphs 1 and 2 of Article 1026) without knowing the fact that his inherited liability exceeds his inherited property within the period under paragraph (1) without any gross negligence, a qualified acceptance may be made within 3 months from the date on which he knew such fact. <Newly Inserted by Act No. 6591, Jan. 14, 2002>

Article 1020 (Period for Acceptance and Renunciation by Person without Legal Capacity)

If an inheritor is a person without legal capacity, the period mentioned in Article 1019 (1) shall be calculated from the time when his agent by law becomes aware that the inheritance has been commenced.

Article 1021 (Special Rule Governing Calculation of Period for Acceptance or Renunciation)

Where an inheritor dies without effecting either acceptance or renunciation within the period mentioned in Article 1019 (1), the period mentioned in Article 1019 (1) shall be calculated from the time when his inheritor becomes aware that the inheritance has been commenced in his favor.

Article 1022 (Management of Inherited Property)

An inheritor shall manage the inherited property with the same care as he uses with respect to his own property: *Provided*, That this shall not apply when the inheritor has effected either absolute acceptance or renunciation.

Article 1023 (Disposition Necessary for Preservation of Inherited Property)

(1) The court may, upon the application of any party interested or of a public prosecutor, at any time, order a disposition as may be necessary for the preservation of the inherited property.

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(2) Where the court appoints an administrator for property, the provisions of Articles 24 through 26 shall apply *mutatis mutandis*.

Article 1024 (Prohibition of Revocation of Acceptance or Renunciation)

(1) Acceptance or renunciation of inheritance may not be revoked even within the period mentioned in Article 1019 (1). <Amended by Act No. 4199, Jan. 13, 1990>

(2) The provisions of paragraph (1) shall not affect the voidance in accordance with the provisions of Part I, General Provisions: *Provided*, That such right of voidance shall be extinguished by prescription, if it is not exercised within three months from the day on which it became possible to effect ratification, or within one year from the day on which acceptance or renunciation was effected.

Sub-Section 2 Absolute Acceptance

Article 1025 (Effect of Absolute Acceptance)

If an inheritor effects an absolute acceptance, he shall succeed without limitation to the rights and duties of the inheritee. <Amended by Act No. 4199, Jan. 13, 1990>

Article 1026 (Absolute Acceptance by Law)

Where the cause mentioned in any of the following subparagraphs exists, an inheritor shall be deemed to have effected an absolute acceptance: <Amended by Act No. 6591, Jan. 14, 2002>

1. If an inheritor has taken an act of disposition with regard to the inherited property;
2. If an inheritor has failed to effect either a qualified acceptance or a renunciation within the period mentioned in Article 1019 (1); and
«This subparagraph was amended by Act No. 6591, Jan. 4, 2002 according to the decision of the Constitutional Court as unconstitutional on August 27, 1998»
3. If an inheritor, after having effected a qualified acceptance or a renunciation, has concealed or fraudulently consumed, or failed intentionally to enter in the inventory, the inherited property.

Article 1027 (Exception to Absolute Acceptance by Law)

If an inheritor of second priority has accepted an inheritance owing to renunciation of inheritance effected by the inheritor, the cause mentioned in subparagraph 3 of Article 1026 shall not be deemed as an acceptance

of inheritance.

Sub-Section 3 Qualified Acceptance

Article 1028 (Effect of Qualified Acceptance)

An inheritor may effect an acceptance of inheritance on the condition that he shall perform the obligations and testamentary gift of the inheritee only to the extent of the property to be acquired through the inheritance. <Amended by Act No. 4199, Jan. 13, 1990>

Article 1029 (Qualified Acceptance by Co-Inheritors)

If there exist two or more inheritors, each inheritor may effect an acceptance of inheritance on the condition that he shall perform in proportion to his share of the obligations and testamentary gift of the inheritee only to the extent of the property to be acquired in proportion to his share of the inheritance.

Article 1030 (Method of Qualified Acceptance)

(1) If an inheritor desires to effect a qualified acceptance, he shall file a report of qualified acceptance, attaching an inventory of the inherited property, with the court within the period mentioned in Article 1019 (1) or (3). <Amended by Act No. 7427, Mar. 31, 2005>

(2) In effecting a qualified acceptance pursuant to Article 1019 (3), if there is any property, among the inherited properties, which is already disposed of, its inventory and value shall be submitted together. <Newly Inserted by Act No. 7427, Mar. 31, 2005>

Article 1031 (Qualified Acceptance and Non-extinction of Rights and Duties over Property)

Where an inheritor effects a qualified acceptance, any rights and duties over property which he had towards the inheritee shall be deemed not to have been extinguished.

Article 1032 (Public Notice and Peremptory Notice towards Obligees)

(1) A qualified acceptor shall, within five days after he has effected the qualified acceptance, notify the general obligees in succession and the testamentary donees by public notice that he has effected a qualified acceptance and that they are called upon to notify him of their claims or testamentary gifts within a specified period of not less than two months.

(2) The provisions of Articles 88 (2) and (3), and 89 shall apply *mutatis mutandis* to the cases mentioned in paragraph (1).

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Article 1033 (Refusal of Performance within Period of Peremptory Notice)

A qualified acceptor may refuse performance of obligations relating to inheritance, until the expiration of the period mentioned in Article 1032 (1).

Article 1034 (Performance by Distribution)

(1) A qualified acceptor shall, upon the expiration of the period mentioned in Article 1032 (1), effect performance to obligees who have notified him of their claims within such period, and to all other obligees known to him, in proportion to the amounts of their respective claims of the inherited property: *Provided*, That the rights of the obligees who have priority may not be prejudiced thereby.

(2) Where a qualified acceptance is made pursuant to Article 1019 (3), the inheritor shall effect the performance of paragraph (1) by adding up the amounts of the remaining inherited property and the inherited property already disposed of: *Provided*, That the amount of performance which is already effected to obligees in inheritance or testamentary donees before such a qualified acceptance is made shall be excluded from the amount of the property which is already disposed of. <*Newly Inserted by Act No. 7427, Mar. 31, 2005*>

Article 1035 (Performance of Obligations, etc., which are not yet Due)

(1) A qualified acceptor shall perform in accordance with the provisions of Article 1034 even those obligations which are not yet due.

(2) Conditional obligations or obligations with uncertain duration shall be performed according to the valuation of an expert appointed by the court.

Article 1036 (Performance to Testamentary Donees)

A qualified acceptor may not effect performance to testamentary donees until he has completed performance to all obligees inherited in accordance with the provisions of Articles 1034 and 1035.

Article 1037 (Sale of Inherited Property by Auction)

When it is necessary to sell out some or all of the inherited properties in order to perform the obligations in accordance with the provisions of Articles 1034 through 1036, an auction shall be held pursuant to the Civil Execution Act. <*Amended by Act No. 5454, Dec. 13, 1997; Act No. 6544, Dec. 29, 2001*>

Article 1038 (Liability Arising from Unfair Performance, etc.)

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(1) If a qualified acceptor has neglected to give a public or peremptory notice pursuant to the provisions of Article 1032, or has effected performance to some obligees in inheritance or testamentary donees in violation of the provisions of Articles 1033 through 1036, and in consequence has become unable to effect performance to the other obligees in inheritance or testamentary donees, he shall redress any damages arising therefrom. This shall also apply to the cases where the inheritor who has neglected to know the fact that his inherited liability exceeds his inherited property but has made a qualified acceptance pursuant to Article 1019 (3) had effected performance to some obligees in inheritance or testamentary donees before such a qualified acceptance. <Amended by Act No. 7427, Mar. 31, 2005>

(2) In the case of the former part of paragraph (1), any obligee in inheritance or testamentary donee to whom no performance has been effected, may exercise the right to demand reimbursement from such obligees in the inheritance or testamentary donees, as having improperly received performance with knowledge of the circumstances. This shall also apply to the cases where there are obligees in inheritance or testamentary donees who have received performance from the inheritor, who has made a qualified acceptance pursuant to Article 1019 (3), before such a qualified acceptance with knowledge that the inherited liability exceeds the inherited property. <Amended by Act No. 7427, Mar. 31, 2005>

(3) The provisions of Article 766 shall apply *mutatis mutandis* to the cases mentioned in paragraphs (1) and (2). <Amended by Act No. 7427, Mar. 31, 2005>

Article 1039 (Obligees, etc. who Fail to Give Notice of Their Claims)

Obligees in inheritance and testamentary donees who have failed to give notice of their claims within the period mentioned in Article 1032 (1), and who were unknown to the qualified acceptor, may receive performance only where there is any surplus of the inherited property: *Provided*, That this shall not apply where obligees to the inherited property and testamentary donees have special security interest with respect to the inherited property.

Article 1040 (Property Jointly Inherited and Appointment of Administrator Thereof)

(1) Where there exist two or more inheritors, the court shall, upon the request of each inheritor or interested person, appoint an administrator

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of the inherited property among the co-inheritors.

(2) The administrator appointed by the court shall have the right and duty to perform all acts relating to management of the inherited property and perform obligations on behalf of the co-inheritors.

(3) The provisions of Articles 1022 and 1032 through 1039 shall apply *mutatis mutandis* to the administrator mentioned in paragraph (2): *Provided*, That the period of five days of public notice to be given in accordance with the provisions of Article 1032 shall be calculated from the day on which an administrator became aware of his appointment.

Sub-Section 4 Renunciation

Article 1041 (Method of Renunciation)

If an inheritor to property effects a renunciation of an inheritance, he shall make a declaration of renunciation to the Family Court within the period mentioned in Article 1019 (1). <Amended by Act No. 4199, Jan. 13, 1990>

Article 1042 (Retroactive Effect of Renunciation)

A renunciation of inheritance shall be effective retroactively from the time of the commencement of the inheritance.

Article 1043 (Reversion of Renounced Inherited Property)

Where there exist two or more inheritors, and one of them has effected a renunciation of inheritance, his share of the inheritance shall revert to the other inheritors in proportion to their respective shares thereof.

Article 1044 (Duty to Continue Management of Renounced Inherited Property)

(1) A person who has effected a renunciation of inheritance shall continue to manage the inherited property until the person who becomes inheritor by reason of renunciation is able to undertake the management of the property.

(2) The provisions of Articles 1022 and 1023 shall apply *mutatis mutandis* to the management of the property mentioned in paragraph (1).

SECTION 5 Separation of Property

Article 1045 (Right to Apply to Court for Separation of Inherited Property)

(1) An obligee in inheritance, or a testamentary donee, or an obligee of an inheritor, may, within three months from the time of the com-

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mencement of the inheritance, apply to the court for the separation of the inherited property from the inherent property of the inheritor.

(2) An application may be filed with the court for the separation of property even after the period mentioned in paragraph (1) elapses, until such time as an inheritor has not accepted or renounced the pertinent inheritance. <Amended by Act No. 4199, Jan. 13, 1990>

Article 1046 (Order to Separate Property, and Pubic and Peremptory Notice to Obligees, etc.)

(1) If the court has ordered a separation of property on an application as mentioned in Article 1045, the applicant shall, within five days, give public notice to the general obligees in inheritance and to testamentary donees, that an order for a separation of property has been issued and that they are called upon to give a notice of their claims or testamentary gifts within a specified period of not less than two months.

(2) The provisions of Articles 88 (2) and (3), and 89 shall apply *mutatis mutandis* to the cases mentioned in paragraph (1).

Article 1047 (Management of Inherited Property after Separation of Property)

(1) Where the court has ordered a separation of property, it may order the adoption of such measures as may be necessary for the management of the inherited property.

(2) Where the court has appointed an administrator of property, the provisions of Articles 24 through 26 shall apply *mutatis mutandis*.

Article 1048 (Inheritor's Duty to Manage Property Inherited after Separation of Property)

(1) Even after an inheritor has effected an absolute acceptance, and if a separation of property has been ordered, the inheritor shall henceforth manage the inherited property with the same care as he uses with respect to his own property.

(2) The provisions of Articles 683 through 685, and 688 (1) and (2) shall apply *mutatis mutandis* to the management of property mentioned in paragraph (1).

Article 1049 (Condition to Set up against Third Person in case of Separation of Property)

As to immovable inherited property, a separation of property cannot be set up against a third person, unless it has been registered.

Article 1050 (Separation of Property and Non-extinguishment of Right

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and Duty)

Where a separation of property has been ordered, the rights and duties of the inheritor to the inheritee with respect to the property shall not become extinguished.

Article 1051 (Refusal of Performance and Performance by Distribution)

(1) An inheritor may refuse performance to obligees in inheritance, and to testamentary donees, until the expiration of the periods mentioned in Articles 1045 and 1046.

(2) The inheritor shall, upon the expiration of the period mentioned in paragraph (1), effect performance, out of the inherited property, to obligees in inheritance and testamentary donees who applied for the separation of property or who have notified within such period, and to obligees in inheritance and testamentary donees known to the inheritor, in proportion to their amount of obligations or testamentary gifts: *Provided*, That the rights of obligees who have priority may not be prejudiced thereby.

(3) The provisions of Articles 1035 through 1038 shall apply *mutatis mutandis* to the cases mentioned in paragraph (2).

Article 1052 (Performance of Obligation out of Inherent Property)

(1) The obligees in inheritance and testamentary donees pursuant to the provisions of Article 1051 may be entitled to receive performance out of the inherent property of the inheritor only where they are unable to receive full performance from the inherited property.

(2) In the case mentioned in paragraph (1), the obligees of the inheritor shall have the right to receive performance in preference to other persons out of the inherent property of the inheritor.

SECTION 6 Absence of Inheritor

Article 1053 (Administrator of Property of which Inheritor does not Exist)

(1) If it is unknown whether an inheritor exists, the court shall, upon the application of any relative of the inheritee pursuant to the provisions of Article 777 or any other interested person or the public prosecutor, appoint an administrator of the inherited property, and shall publicly announce the matter without delay. <Amended by Act No. 4199, Jan. 13, 1990>

(2) The provisions of Articles 24 through 26 shall apply *mutatis mu-*

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tandis to the administrator of property mentioned in paragraph (1).

Article 1054 (Presentation of Inventory of Property and Report on Status of Property)

If a demand is made by any of the obligees in inheritance or testamentary donees, the administrator shall at any time present the inventory of the inherited property and report the status thereof.

Article 1055 (Cases in which Existence of Inheritor Becomes Clear)

(1) The duty of an administrator shall be terminated at the time when an inheritor effects an acceptance of inheritance.

(2) In the case mentioned in paragraph (1), the administrator shall render an account of the management of the inherited property without delay.

Article 1056 (Liquidation of Property of which Inheritor does not Exist)

(1) If it is unknown within three months after the public notice mentioned in Article 1053(1) has been given whether an inheritor exists, the administrator shall, without delay, give public notice to the general obligees in inheritance and testamentary donees, calling upon them to give him notice of their claims or testamentary gifts within a specified period of not less than two months.

(2) The provisions of Articles 88 (2) and (3), 89, and 1033 through 1039 shall apply *mutatis mutandis* to the cases mentioned in paragraph (1).

Article 1057 (Public Notice in Order to Search Inheritor)

If, after the expiration of the period mentioned in Article 1056 (1), it is still unknown whether an inheritor exists, the court shall, upon the application of the administrator, give public notice calling upon the inheritors, if any, to assert their rights within a specified period of not less than one year. <Amended by Act No. 7427, Mar. 31, 2005>

Article 1057-2 (Apportionment for Person having Special Connection)

(1) If no person asserts his right to inheritance within the period as prescribed in Article 1057, the Family Court may apportion all or part of the inherited property upon the request of those who have lived together with the inheritee, have provided the inheritee with medical and nursing care, or have had a special relationship with him. <Amended by Act No. 7427, Mar. 31, 2005>

(2) The request as referred to in paragraph (1) shall be made within two months after the period prescribed in Article 1057 expires. <Amended by Act No. 7427, Mar. 31, 2005>

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[This Article Newly Inserted by Act No. 4199, Jan. 13, 1990]

Article 1058 (Escheatment of Inherited Property)

(1) If there is any inherited property which is not apportioned pursuant to Article 1057-2, the inherited property shall be escheated to the State. <Amended by Act No. 7427, Mar. 31, 2005>

(2) The provisions of Article 1055 (2) shall apply *mutatis mutandis* to the cases of paragraph (1). <Amended by Act No. 7427, Mar. 31, 2005>

Article 1059 (Prohibition on Demanding Performance with respect to Property Escheated)

In the case mentioned in Article 1058 (1), even if there exist any obligees in inheritance or testamentary donees who have not received any performance out of the inherited property, no demand of such performance may be filed against the State.

CHAPTER II WILLS

SECTION 1 General Provisions

Article 1060 (Formality of Wills)

No will shall take effect unless he is in conformity with the formality stipulated by this Act.

Article 1061 (Eligible Age to Make Will)

Any person who has not attained full seventeen years of age may not make a will.

Article 1062 (Persons without Legal Capacity and Wills)

The provisions of Articles 5, 10 and 13 shall not apply to wills.

Article 1063 (Incompetent's Capacity to Make Will)

(1) An incompetent may make a will only when he has sufficiently recovered to the point of understanding his intentions.

(2) In case of paragraph (1), a medical practitioner shall add in writing the status of recovery of mental soundness on the testament, and shall affix his signature and seal thereto.

Article 1064 (Will and Unborn Child and Ineligible Person for Succession)

The provisions of Articles 1000 (3) and 1004 shall apply *mutatis mutandis* to a testamentary donee. <Amended by Act No. 4199, Jan. 13, 1990>

SECTION 2 Forms of Wills

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Article 1065 (Ordinary Form of Wills)

There shall be five forms of wills as follows: holograph document, sound recording, notarial and secret documents and instrument of dictation.

Article 1066 (Will by Holograph Document)

(1) In order to make a will by holograph document, the testator must write with his own handwriting the whole text, the date, the domicile and his full name, and must affix his seal thereto.

(2) In order to make any insertion, deletion or other alteration of letters in a holograph mentioned in paragraph (1), such correction must be made in the testator's own handwriting and affix his seal thereto.

Article 1067 (Will by Sound Recording)

In order to make a will by a sound recording, the testator must orally state the tenor of his will, his full name and the date, and the witness must orally state that the will made by the testator is due and correct and also state his full name.

Article 1068 (Will by Notarial Document)

In order to make a will by a notarial document, the testator must orally state the tenor of his will before a notary, in the presence of two witnesses and the notary must write down and read it, and then the testator and each of the witness must affix their signature or names, and seals to the writing after acknowledging it to be due and correct.

Article 1069 (Will by Secret Document)

(1) In order to make a will by a secret document, the testator must close up the document on which the writer's full name was written and affix his seal thereto, and after the testator has produced the sealed document before at least two witnesses and declares that it is his testamentary document, the date of the production of the document must be written on the sealed cover, and then the testator and the witnesses must affix their signatures or names and seals thereto.

(2) A closed document of a will prepared in compliance with the forms mentioned in paragraph (1) must be submitted to a notary or the court clerk within five days from the day on which the date of production of the document has been written down on the cover of the document, and the date of confirmation thereof must be affixed on the part sealed.

Article 1070 (Will by Instrument of Dictation)

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(1) In order to make a will by an instrument of dictation in a case where a will is not able to be made in compliance with the forms mentioned in the preceding four Articles due to disease or any other cause imminent, the testator must orally declare the tenor of his will to one of the witnesses in the presence of at least two witnesses, and the person to whom the oral declaration is made must write it down and read it, and the testator and each witness, after their having acknowledged the writing to be due and correct, must affix their signature and seal thereto.

(2) A will made in compliance with the form mentioned in paragraph (1) must be submitted to the court for its inspection and approval thereof by the witness or the persons interested within seven days from the day on which such imminent cause terminates.

(3) The provisions of Article 1063 (2) shall not apply to a will to be made by an instrument of dictation.

Article 1071 (Conversion of Will made by Secret Document)

If a will which has been made by a secret document is defective as to formalities, he shall be deemed as a holograph will if he fulfills the formalities of a holograph document.

Article 1072 (Ineligibility for Witness)

(1) Any person falling under one of the following subparagraphs may not become a witness to the preparation of a will:

1. A minor;
2. An incompetent and quasi-incompetent person; and
3. A person to be benefited by a will, his spouse, or lineal blood relatives.

(2) A person who is ineligible pursuant to the provisions of the Notary Public Act may not become a witness to the preparation of a notarial will.

SECTION 3 Effect of Wills

Article 1073 (Time for Effectiveness of Wills)

(1) A will becomes effective upon the death of the testator.

(2) Where a will is subject to a precedent condition, and the condition is fulfilled after the death of the testator, the will becomes effective upon the fulfillment of the condition.

Article 1074 (Acceptance or Renunciation of Testamentary Gift)

(1) A testamentary donee may effect an acceptance or a renunciation of

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the testamentary gift at any time subsequent to the death of the testator.

(2) The acceptance or renunciation mentioned in paragraph (1) shall be effective retroactively from the time of the death of the testator.

Article 1075 (Prohibition of Revocation of Acceptance or Renunciation of Testamentary Gift)

(1) An acceptance or a renunciation of a testamentary gift cannot be revoked.

(2) The provisions of Article 1024 (2) shall apply *mutatis mutandis* to the acceptance and renunciation of testamentary gifts.

Article 1076 (Acceptance or Renunciation of Inheritor to Testamentary Donee)

Where a testamentary donee dies without effecting either an acceptance or a renunciation of the testamentary gift, his inheritor can effect an acceptance or a renunciation within the limits of his share of the inheritance: *Provided*, That if the testator has declared a different intention in his will, such intention shall prevail.

Article 1077 (Right to Give Peremptory Notice by Person Charged with Testamentary Gift)

(1) A person charged with a testamentary gift or any interested person may, by fixing a reasonable period, give a peremptory notice to the testamentary donee or his inheritor to furnish within such period a definite answer as to whether he would effect an acceptance or a renunciation of the testamentary gift.

(2) If the testamentary donee or his inheritor fails to furnish a definite answer to the person charged with the testamentary gift within the period mentioned in paragraph (1), he shall be deemed to have accepted the testamentary gift.

Article 1078 (Rights and Duties of Testamentary Donee by Universal Title)

A testamentary donee by a universal title has the same rights and duties as an inheritor. *<Amended by Act No. 4199, Jan. 13, 1990>*

Article 1079 (Testamentary Donee's Right to Acquire Fruits)

A testamentary donee acquires the fruits bearing on the subject of the testamentary gift from the time when he can demand fulfillment of the testamentary gift: *Provided*, That if the testator has declared a different intention in his will, such intention shall prevail.

Article 1080 (Right to Demand Reimbursement of Expenses Incurred for

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Purpose of Collecting Fruits)

If the person charged with a testamentary gift defrays necessary expenses for the purpose of collecting the fruits of the subject of the testamentary gift after the death of the testator, he may make a demand upon the testamentary donee who has acquired the fruits for reimbursement thereof to the extent of the value of the fruits derived therefrom.

Article 1081 (Right to Demand Reimbursement of Expenses by Person Charged with Testamentary Gift)

If the person charged with a testamentary gift defrays any expenses with respect to the subject of the testamentary gift after the death of the testator, the provisions of Article 325 shall apply *mutatis mutandis*.

Article 1082 (Liability for Warranty to be Assumed by Person Charged with Unspecified Testamentary Gift)

(1) Where an unspecified item has become the subject of a testamentary gift, the person charged with the testamentary gift shall assume the same liability with respect to the warranty as that of a seller.

(2) In the case mentioned in paragraph (1), if any defect exists in the object, the person charged with the testamentary gift shall substitute an item free from any defect for the object.

Article 1083 (Subrogation for Testamentary Gift)

Where a testator has a right to demand compensation from a third person by reason of the loss, or damage of the subject of a testamentary gift or infringement upon the possession thereof, such right shall be deemed to have become the subject of the testamentary gift.

Article 1084 (Subrogation for Testamentary Gift of which Subject is Claim)

(1) Where a claim has become the subject of a testamentary gift, and the things which the testator has received by obtaining performance still remain among the inherited property, such things shall be deemed to have become the subject of the testamentary gift.

(2) As to a claim mentioned in paragraph (1) for which money is the subject, the amount of such money shall be deemed to have become the subject of the testamentary gift even though there is no sum of money corresponding to the amount of the claim included in the inherited property.

Article 1085 (Item or Right Which Constitutes Subject of Testamentary Gift)

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If the item or right which constitutes the subject of a testamentary gift at the time of the death of the testator is the subject of a right belonging to a third person, the testamentary donee may not demand from the person charged with the testamentary gift that such right be extinguished.

Article 1086 (Cases in which Testator has Declared Different Intention in His Will)

In the cases mentioned in Articles 1083 through 1085, if the testator has declared a different intention in his will, such intention shall prevail.

Article 1087 (Testamentary Gift of Right Which does not Comprise Inherited Property)

(1) A will shall not take effect if the right which forms the subject thereof does not comprise the inherited property at the time of the death of the testator: *Provided*, That if the testator had intended that his will should take effect even if the subject of his will does not comprise the inherited property at the time of his death, the person charged with the testamentary gift is under a duty to acquire that right and transfer it to the testamentary donee.

(2) In the case of the proviso of paragraph (1), if the person cannot acquire the right or if excessive expense would be required in order to acquire it, he may pay over the value thereof.

Article 1088 (Testamentary Gift subject to Charge and Responsibility of Testamentary Donee)

(1) A person who has received a testamentary gift subject to a charge is bound to perform the duty which he has assumed only to the extent of the value of the testamentary gift.

(2) Where the value of a testamentary gift is reduced by reason of a qualified acceptance of the inheritance or a separation of property, the testamentary donee shall, in proportion to such reduction, be relieved of the duty which he has assumed.

Article 1089 (Death of Testamentary Donee before Effectiveness of Testamentary Gift)

(1) A testamentary gift shall not be effective if the testamentary donee dies before the death of the testator.

(2) A testamentary gift subject to a precedent condition shall not take effect if the testamentary donee dies before the fulfillment of the condition.

Article 1090 (Null and Void Testamentary Gift and Reversion of Property

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subject to Testamentary Gift)

Where a testamentary gift does not take effect, or a testamentary donee renounces a testamentary gift, the property of a testamentary gift reverts to the inheritor: *Provided*, That if the testator has declared a different intention in his will, such intention shall prevail.

SECTION 4 Execution of Wills

Article 1091 (Probate of Testamentary Document or Sound Recording)

(1) The custodian of a testamentary document or a sound recording, or the person who discovered these, shall after the death of the testator, present them to the court and apply for probate thereof without delay.

(2) The provisions of paragraph (1) shall not apply to a will in the form of a notarial document or an instrument of dictation.

Article 1092 (Opening of Testamentary Document)

Where the court is to open a testamentary document closed with a seal, the inheritors or representatives of the testator or any other interested persons must be present at the opening of such document.

Article 1093 (Designation of Executor)

A testator may designate an executor by will or commission a third person to designate an executor.

Article 1094 (Designation of Executor by Commission)

(1) A third person who has accepted the commission mentioned in Article 1093, must designate an executor without delay after he has knowledge of the commission, and he must give notice thereof to the inheritors. If he desires to decline such commission, he must give notice of such declination to the inheritors.

(2) An inheritor and any other interested person may, by fixing a reasonable period, give a peremptory notice to the person who has been commissioned to designate an executor within such period. If no notice of the designation by the person commissioned has been given within such period, he shall be deemed to have declined such commission to designate an executor.

Article 1095 (Cases in which No Designated Executor Exists)

If there exists no designated executor pursuant to the provisions of Articles 1093 and 1094, an inheritor becomes an executor.

Article 1096 (Appointment of Executor by Court)

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(1) If there exists no executor, or if no executor remains due to death, ineligibility, or any other cause, the court shall appoint an executor upon the application of an interested person.

(2) If the court appoints an executor, the court may order said executor to effect the necessary dispositions with respect to his performance.

Article 1097 (Acceptance or Renunciation by Executor)

(1) An executor by designation must notify the inheritor whether he will accept or decline the designation of executor without delay after the death of the testator.

(2) An executor by appointment must, upon receiving the notice of appointment, notify the court without delay whether he will accept or decline the appointment.

(3) The inheritor or any other interested person may, by fixing a reasonable period, give peremptory notice to the executor by designation or appointment to give a definite answer within such period as to whether he will accept or decline becoming an executor. If no definite answer to the peremptory notice has been received within such period, it shall be deemed that the executor has accepted designation or appointment as executor.

Article 1098 (Ineligibility for Executor)

An incompetent person or a person declared bankrupt may not become an executor. <Amended by Act No. 7428, Mar. 31, 2005>

Article 1099 (Executor's Undertaking of Duties)

If an executor accepts his office, he must perform his duties without delay.

Article 1100 (Preparation of Inventory of Property)

(1) If a will has been made about property, the executor by designation or appointment must, without delay, prepare an inventory of the inherited property and hand it over to the inheritors.

(2) If an application is made by the inheritors, an executor must allow the inheritors to participate in the making of the inventory of property mentioned in paragraph (1).

Article 1101 (Rights and Duties of Executor)

An executor has the right and duty to manage the property which is the subject of a testamentary gift, and to perform acts necessary for carrying out the will.

Article 1102 (Joint Execution)

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Where there exist two or more executors, the conduct of their duties shall be decided by the majority: *Provided*, That each executor is entitled to effect acts of preservation.

Article 1103 (Status of Executor)

(1) An executor by designation or appointment shall be deemed to be a representative of the inheritor.

(2) The provisions of Articles 681 through 685, 687, 691 and 692 shall be applied *mutatis mutandis* to executors.

Article 1104 (Remuneration for Executor)

(1) When a testator has not provided remuneration for an executor in his will, the court may determine remuneration for the executor who assumed office by designation or appointment by taking into consideration the status of the inherited property, or any other circumstances.

(2) Where the executor receives remuneration for his service, the provisions of Article 686 (2) and (3) shall apply *mutatis mutandis*.

Article 1105 (Resignation of Executor)

Any executor who assumed office by designation or appointment may, if there exists any justifiable reason, resign his office with the permission of the court.

Article 1106 (Removal of Executor from Office)

If an executor who assumed office by designation or appointment neglects his duties, or if there exists any unfavorable reason, the court may, upon the application filed by the inheritor or any other interested persons, remove the executor from his office.

Article 1107 (Expenses relating to Execution of Wills)

Expenses relating to carrying out a will shall be defrayed from the inherited property.

SECTION 5 Withdrawal of Wills

Article 1108 (Withdrawal of Wills)

(1) A testator may at any time withdraw the whole or part of his will by creating another will or by an act *inter vivos*.

(2) A testator may not waive the right to withdraw his will.

Article 1109 (Conflict of Wills)

If a prior will is inconsistent with a subsequent will or if an act *inter vivos*, after a will has been made, is inconsistent with such will, the prior

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will shall be deemed to have been withdrawn with respect to the parts in which they are inconsistent.

Article 1110 (Withdrawal of Will in case Testamentary Document, etc. is Destroyed)

If a testator intentionally destroys the testamentary document or the subject of a testamentary gift, he shall be deemed to have withdrawn the will with respect to such parts as have been destroyed.

Article 1111 (Revocation of Will subject to Charge)

If a person who has received a testamentary gift subject to a charge does not perform the duty which he has assumed, the inheritors or executors may fix a reasonable period and give peremptory notice demanding his performance, and if no performance is effected within such period, they may apply to the court for the revocation of the will : *Provided*, That such action shall not prejudice the interests of third persons.

CHAPTER III LEGAL RESERVE OF INHERITANCE

Article 1112 (Persons with Right to Legal Reserve of Inheritance and Legal Reserve of Inheritance)

Legal reserve of inheritance for an inheritor shall be calculated according to the following subparagraphs:

1. For lineal descendants of an inheritee, one half of the inheritance stipulated by law;
2. For the spouse of an inheritee, one half of the inheritance stipulated by law;
3. For lineal ascendants of an inheritee, one third of the inheritance stipulated by law; and
4. For brothers and sisters of an inheritee, one third of the inheritance stipulated by law.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1113 (Calculation of Legal Reserve of Inheritance)

- (1) A legal reserve of inheritance shall be calculated as the sum of the values of the inherited properties and the given properties at the commencement of inheritance minus the total amount of debts of the inheritee.
- (2) The value of a conditional right or of an uncertain right in validity

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of duration time shall be determined by the assessment of an appraiser appointed by the Family Court.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1114 (Gifts to be Added to)

Gifts that have been given only within the period of one year preceeding the commencement date of the inheritance shall be included for the assessment pursuant to the provisions of Article 1113. Exception applies to the property given before the period of the one year preceeding, if the both parties concerned recognize that the act would cause loss to a person with the right of legal reserve of inheritance.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1115 (Recovery of Legal Reserve of Inheritance)

(1) When there are shortages in the legal reserve of inheritance due to gifts or testamentary gifts made by the inheritee pursuant to the provisions of Article 1114, persons with the right to legal reserve of inheritance may recover the shortage.

(2) With respect to paragraph (1), when two or more persons receive the gifts or testamentary gifts, they shall return the same proportions as their shares of the testamentary gifts.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1116 (Sequence of Return)

Gifts cannot be demanded to be returned until testamentary gifts have been returned.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1117 (Extinctive Prescription)

The right to demand the return in this Chapter shall be extinguished by prescription, if it is not exercised within one year from the time when the person entitled to a legal reserve of inheritance becomes aware of the fact that the inheritance has commenced and that gifts or testamentary gifts, which are to be returned, were made. The above right shall also be extinguished by prescription if ten years have elapsed from the time of the commencement of the inheritance.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

Article 1118 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 1001, 1008, and 1010 shall apply *mutatis mu-*

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tandis to legal reserve of inheritance.

[This Article Newly Inserted by Act No. 3051, Dec. 31, 1977]

ADDENDA

Article 1 (Definition of Previous Act)

The term "previous Act" mentioned in the Addenda shall refer to Acts and subordinate statutes or provisions in Acts and subordinate statutes to be replaced by this Act.

Article 2 (Retroactive Effect of This Act)

Unless otherwise Provided, this Act shall also apply to matters before the date of enforcement of this Act: *Provided*, That no effect taken already under the previous Act shall be affected by this Act.

Article 3 (Authentic Documents and Preparation thereof)

(1) Private documents which contain fixed date stamps by notaries public or clerks of the court shall have authentic power concerning the date of preparation thereof.

(2) A notary public or clerk of the court who has received a request to fix a date shall make an entry of the requester's domicile, name and title of the document in the book for fixed date, and shall put a serial number and date stamp on the document, and shall seal over the joint of the book and the document.

(3) Persons applying for fixation of dates to a notary public and those doing the same to clerks shall pay fees pursuant to the Ordinance of the Ministry of Justice or of the Supreme Court Regulations, as the case may be. *<Amended by Act No. 2200, Jun. 18, 1970>*

(4) Dates recorded in notarial documents or dates recorded in government offices after certifying certain matters in private documents shall be the fixed dates.

Article 4 (Limited Incompetent by Old Act)

(1) Those persons adjudged as quasi-incompetents since they are feeble-minded or spend-thrift in accordance with the previous Act shall be regarded as quasi-incompetents under the provisions of this Act on the date of enforcement of this Act.

(2) Those persons who have been declared incapacitated because they

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have been adjudged as limited-incompetents in accordance with the previous Act since they are deaf, dumb or blind persons, shall have their capacity restored on the date of enforcement of this Act.

Article 5 (Transitional Provisions on Husband's Right to Avoid)

Even if a wife performed some acts which require her husband's permission in accordance with the previous Act, the acts shall not be voided after the date of enforcement of this Act even in the absence of the permission.

Article 6 (Period for Registration of Juristic Persons)

With regard to registration period on registration matters for juristic persons, the provisions of this Act shall apply to even those matters which occurred before the date of enforcement of this Act.

Article 7 (Non-retroactivity on Penal Provisions)

(1) Those persons who committed acts subject to minor fine in accordance with the previous Act, and have not been tried at the time of enforcement of this Act, shall be tried only in a case where they are to be subject to a fine for negligence in accordance with this Act.

(2) The fine for negligence under paragraph (1) shall not exceed the amount of minor fine under the previous Act.

Article 8 (Transitional Provisions on Prescription)

(1) Those rights whose prescription period under the previous Act has lapsed at the time of enforcement of this Act shall be regarded to have been acquired or lapsed by this Act.

(2) Provisions on prescription of this Act shall apply to those rights whose extinctive prescription period under the previous Act has not lapsed at the time of enforcement of this Act.

(3) Provisions on acquisition of ownership under this Act shall apply to those rights whose acquisitive prescription period under the previous Act has not lapsed at the time of enforcement of this Act.

(4) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to legal periods other than the prescription period.

Article 9 (Real Rights Which are to Lose Effects)

Those real rights provided in the previous Act shall lose their effect on the date of enforcement of this Act if they are not provided in this Act, unless otherwise provided in this Act or other Acts.

Article 10 (Transitional Provisions on Transfer of Ownership)

(1) The acquisition or loss of or any alteration in a property right over

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a real property through juristic acts before the date of enforcement of this Act shall lose his effect if he is not registered within 6 years after the date of enforcement of this Act. *<Amended by Act No. 1668, Dec. 31, 1964>*

(2) The assignment of a property right over movables before the date of enforcement of this Act shall lose his effect if his delivery is not made within one year after the date of enforcement of this Act.

(3) The provisions of paragraph (1) shall apply to cases where a property right has been acquired through completion of prescription before the date of enforcement of this Act.

Article 11 (Registration of Lease on Deposit Basis Acquired by Custom in Old Act)

A lease on a deposit basis acquired by custom before the date of enforcement of this Act shall have his effect as a property right if he is registered within one year after the date of enforcement of this Act.

Article 12 (Transfer of Ownership by Court Judgment)

In a case where registration or delivery under Article 10 of the Addenda is requested by means of a lawsuit, if the registration is not made within 6 months after the date of the final court judgment thereof, or the delivery is not received within 3 months after the date, or the procedures for compulsory execution are not taken, the effect of transfer of the real rights shall be lost.

Article 13 (Transitional Provision for Duration of Superficies)

If the duration of a superficies provided by the act of creation of the superficies before the date of enforcement of this Act does not expire at the time of enforcement of this Act, the provisions of this Act shall apply to the duration. The same shall apply in a case where the duration of the superficies is not provided by the act of creation of the superficies.

Article 14 (Real Rights)

With regard to a right of permanent farming or pledge of real property created before the date of enforcement of this Act, the provisions of the previous Act shall apply: *Provided*, That it shall not be renewed after the date of enforcement of this Act.

Article 15 (Transitional Provision for Period of Lease)

In a case where a period is provided in a lease before the date of enforcement of this Act, if the period does not expire at the time of enforcement of this Act, the provisions of this Act shall apply to the duration of the

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period provided for in the lease.

Article 16 (Invalidation of Preferential Rights)

Preferential rights acquired before the date of enforcement of this Act in accordance with the previous Act shall lose their effect from the date of enforcement of this Act.

Article 17 (Husband's Right over His Wife's Property)

Even if a husband administers, uses or takes the profit of his wife's property through marriage before the date of enforcement of this Act, the husband shall lose the right from the date of enforcement of this Act.

Article 18 (Transitional Provisions on Nullity and Annulment of Marriage and Adoption)

(1) If there is any cause of nullity or annulment under this Act in marriage or adoption made before the date of enforcement of this Act, it may be nullified or annulled in accordance with the provisions of this Act. In the above case, if there is a period for annulment, the period shall be calculated on the date of enforcement of this Act.

(2) Even if there is any cause of annulment under the previous Act in the marriage or adoption made before the date of enforcement of this Act, but if such is not a cause of annulment in accordance with provisions of this Act, he shall not be annulled after the date of enforcement of this Act.

Article 19 (Transitional Provisions on Divorce and Dissolution of Adoption)

(1) If there is any cause for divorce or dissolution of adoption under this Act in marriage or adoption made before the date of enforcement of this Act, judicial divorce or dissolution of adoption may be requested in accordance with provisions of this Act. In the above case, if there is a period for the request, the period shall be calculated on the date of enforcement of this Act.

(2) Even if there is any cause of divorce or dissolution of adoption under the previous Act in marriage or adoption made before the date of enforcement of this Act, and if it is not a cause for divorce or dissolution of adoption under this Act, judicial divorce or dissolution of adoption shall not be requested after the date of enforcement of this Act.

Article 20 (Parental Authority)

Persons who reach majority, shall not submit to parental authority on the date of enforcement of this Act.

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Article 21 (Abolition of Limits on Exercise by Mother of Parental Authority)

Even if a mother of parental authority represented a minor or approved a minor's act, without the consent of a family council, which would be required under the previous Act, the act performed by the mother shall not be voided after the date of enforcement of this Act.

Article 22 (Transitional Provisions on Guardians)

(1) Even if guardianship over a minor or an incompetent is commenced in accordance with the previous Act, the provisions of this Act shall apply with regard to matters on order, appointment, duties and disqualification of guardians after the date of enforcement of this Act.

(2) The same shall apply to matters on guardianship over the persons adjudged limited-incompetents in accordance with the previous Act.

Article 23 (Transitional Provisions on Assistants, etc.)

Assistants, supervisors over guardians and members of family councils under the previous Act shall lose their positions on the date of enforcement of this Act: *Provided*, That the consent made by assistants, supervisors over guardians and family councils in accordance with provisions of the previous Act before the date of enforcement of this Act shall not lose their effect.

Article 24 (Application of this Act on Duty of Support)

If duty of support is commenced in accordance with the previous Act, the provisions of this Act, with regard to the order, appointment and methods, shall apply on the date of enforcement of this Act.

Article 25 (Transitional Provisions on Inheritance)

(1) With regard to inheritance commenced before the date of enforcement of this Act, the provisions of the previous Act shall apply even after the date of enforcement of this Act.

(2) Where inheritance of a head of family or of property is commenced because of judicial declaration of disappearance, if the period of disappearance expires during the enforcement of the previous Act, and the declaration is made after the date of enforcement of this Act, the provisions of this Act shall apply with regard to order of inheritance, share of inheritance, and other matters.

Article 26 (Transitional Provisions on Will)

Even where a will by custom made before the date of enforcement of this

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Act does not comply with the methods provided in this Act, if the testator cannot express his intention from the date of enforcement of this Act to the effectuation date of the will, the will shall not lose its effect.

Article 27 (Acts and Subordinate Statutes Repealed)

The following Acts and subordinate statutes shall be repealed:

1. The Civil Act, Act for Enforcement of the Civil Act, and Act on Computation of Age applied in accordance with Article 1 of the *Chosun* Civil Ordinance;
2. Provisions of Acts and subordinate statutes applied in accordance with the *Chosun* Civil Ordinance and Article 1 of the Ordinance which conflict with the provisions of this Act; and
3. Provisions of Military Government Acts and subordinate statutes which conflict with the provisions of this Act.

Article 28 (Enforcement Date)

This Act shall enter into force on January 1, 1960.

ADDENDUM <Act No. 1237, Dec. 29, 1962>

This Act shall enter into force on January 1, 1963.

ADDENDUM <Act No. 1250, Dec. 31, 1962>

This Act shall enter into force on January 1, 1963.

ADDENDUM <Act No. 1668, Dec. 31, 1964>

This Act shall enter into force on January 1, 1965.

ADDENDUM <Act No. 2200, Jun. 18, 1970>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 3051, Dec. 31, 1977>

- (1) This Act shall enter into force one year following the date of its promulgation.
- (2) Nothing in this Act shall prejudice any of the effects which have been effected under the previous Act.
- (3) Even if a person who was married before the enforcement of this Act

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has attained the age of 20, and the marriage was in violation of Article 808 (1) of the previous Act, the marriage cannot be requested to be annulled.

(4) A minor who was married before the enforcement date of this Act shall be deemed to have attained majority from the effective date of this Act.

(5) With regard to the commencement of inheritance before the date of enforcement of this Act, the provisions of the previous Act shall apply even after the date of enforcement of this Act.

(6) When inheritance of property is commenced because of judicial declaration of disappearance, and the period of disappearance expires after the enforcement of this Act, the provisions of this Act shall apply with regard to the inheritance.

ADDENDA <Act No. 3723, Apr. 10, 1984>

(1) (Enforcement Date) This Act shall enter into force on September 1, 1984.

(2) (Rules of Transitional Measures) Except as provided otherwise in the text, this Act shall apply to the matters which have taken place before the enforcement of this Act, without prejudice of any effect under the previous provisions.

(3) (Transitional Measures as to Judicial Declaration of Disappearance) The amended provisions of Article 27 (2) shall apply to a case where a peril that may be a cause of death has occurred before this Act becomes effective.

(4) (Transitional Measures as to Lease on a Deposit Basis) The amended provisions of Articles 303 (1), 312 (2) and (4), and 312-2 shall apply not only to a lease on deposit basis which has been effected before the enforcement of this Act, and the duration of which remains for not less than three months, but also to that of an unfixed duration: Provided that, if a request for increase in amount of the deposit money before the enforcement of this Act has been made, the amendment provisions of the proviso of Article 312-2 shall not be applicable.

ADDENDA <Act No. 4199, Jan. 13, 1990>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 1991.

Article 2 (Non-retroactivity of Effect of This Act)

Except as provided otherwise in this Act, no effect generated already

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under the previous Act (referred to the previous provisions of the Civil Act as revised or repealed under this Act; hereinafter the same shall apply) shall be affected.

Article 3 (Transitional Measures concerning Relatives)

If a person who was a relative under the previous Act, becomes a non-relative under this Act, he shall lose the status as a relative as of the enforcement date of this Act.

Article 4 (Transitional Measures concerning Mother and Child who was Born from Other)

The relationship between a child of the former wife and the step mother and her blood and affinity relatives and that between a child born out of wedlock and the spouse of his father and her blood and affinity relatives, which were created before this Act enters into force, shall be extinguished on the enforcement date of this Act.

Article 5 (Transitional Measures concerning Termination of Matrimonial Engagement)

(1) If there exists any cause of termination under this Act in an matrimonial engagement made before the enforcement date of this Act, it may be terminated under this Act.

(2) Even in a case where there exists any cause of termination under the previous Act in an matrimonial engagement made before the enforcement date of this Act, if it is not any cause of termination under this Act, the engagement shall not be terminated after the enforcement date of this Act.

Article 6 (Application of This Act to Property Relations between Husband and Wife)

Property relations between husband and wife recognized by a marriage before this Act enters into force, shall be subject to the provisions of this Act on the enforcement date of this Act.

Article 7 (Transitional Measures concerning Cancellation of Adoption)

In a case where any cause of cancellation under the previous Act exists in an adoption made before this Act enters into force, if it does not constitute any cause of cancellation under this Act, no request for cancellation shall be made after the enforcement date of this Act.

Article 8 (Transitional Measures concerning Dissolution of Adoption)

(1) If there exists any cause to dissolve an adoption under this Act in

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an adoption made before this Act enters into force, a judicial dissolution of adoption may be requested under this Act.

(2) In a case where any cause to dissolve an adoption under the previous Act exists in an adoption made before this Act enters into force, if it does not constitute any cause to dissolve the adoption under Act, no request for judicial dissolution of adoption shall be made after the enforcement date of this Act.

Article 9 (Application of This Act to Parental Authority)

The provisions of this Act shall also apply to the parental authority commenced under the previous Act from the enforcement date of this Act.

Article 10 (Application of This Act to Guardian)

Even after a guardianship for a minor, quasi-incompetent or incompetent person is commenced under the previous Act, matters concerning the order and appointment of such guardian shall be subject to the provisions of this Act on the enforcement date of this Act.

Article 11 (Application of This Act to Duty of Support)

Even after the duty of support is commenced under the previous Act, the provisions of this Act shall apply to such duty of support from the enforcement date of this Act.

Article 12 (Transitional Measures concerning Inheritance)

(1) Any inheritance commenced before this Act enters into force shall be subject to the provisions of the previous Act even after the enforcement date of this Act.

(2) Where an inheritance is commenced due to a judicial declaration of disappearance, even when the period of disappearance expires while the previous Act is in force, if the disappearance is judicially declared after the enforcement date of this Act, the inheritance shall be subject to this Act.

Article 13 (Relation with Other Acts and Subordinate Statutes)

At the time of implementation of this Act where the inheritance of family headship or inheritor of family headship is cited in other Acts and subordinate statutes, the succession of family headship or successor of family headship is regarded as cited, and where the inheritance of property or the inheritor of property is cited, the inheritance or the inheritor is regarded as cited.

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ADDENDA <Act No. 5431, Dec. 13, 1997>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Articles 2 through 8 Omitted.

ADDENDUM <Act No. 5454, Dec. 13, 1997>

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDUM <Act No. 6544, Dec. 29, 2001>

This Act shall enter into force on July 1, 2002.

ADDENDA <Act No. 6591, Jan. 14, 2002>

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Non-retroactivity of This Act's Validity) This Act shall not affect any validity caused by the previous provisions.

(3) (Transitional Measures for Qualified Acceptance) From among those who have known the commencement of inheritance from May 27, 1998 to before the enforcement of this Act, a person who has failed to make a report on a qualified acceptance, as he has not known the fact that the inherited liability exceeds the inherited property within the period under Article 1019 (1) without any gross negligence but comes to know such fact before the enforcement of this Act, may make a qualified acceptance under the amended provisions of Article 1019 (3) within 3 months from the date of enforcement of this Act: *Provided*, That where he fails to make a qualified acceptance within such period, he shall be deemed to make an absolute acceptance.

(4) (Special Cases concerning Qualified Acceptance) A person who was aware of the commencement of inheritance but was unaware of the fact that the inherited liability exceeds the inherited property (hereinafter referred to as the "fact of inherited liability in excess") within the period referred to in Article 1019 (1) without gross negligence before May 27, 1998, and who comes to know of the fact of inherited liability in excess on or after May 27, 1998, may make a qualified acceptance under Article 1019 (3) as categorized in the following subparagraphs: *Provided*, That where no qualified acceptance has been made within the period of any of the subpara-

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graphs, it shall be deemed an absolute acceptance has been made: <Newly Inserted by Act No. 7765, Dec. 29, 2005>

1. Within three months from the enforcement date of Act No. 7765 which is an Act partly amending the Civil Act (hereinafter referred to as the "amended Act") for a person who has not made a qualified acceptance despite he was aware of the fact of inherited liability in excess before the enforcement of the amended Act; and
2. Within three months from the date of knowing of the fact of inherited liability in excess for a person who has come to know of the said fact after the enforcement of the amended Act.

«This paragraph is newly inserted by Act No. 7765, Dec. 29, 2005 pursuant to the decision of unconstitutionality, which was made by the Constitutional Court on Jan. 29, 2004, with respect to the portion to which paragraph (3) of the Addenda applies»

ADDENDA <Act No. 7427, Mar. 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation: *Provided*, That the amended provisions of Chapter II (Articles 778 through 789, 791, and 793 through 796) of Part IV, Articles 826 (3) and (4), 908-2 through 908-8, 963, 966, and 968, and Chapter VIII (Articles 980 through 982, 984 through 987, 989, and 991 through 995) of Part IV and the provisions of Article 7 (excluding paragraphs (2) and (29) thereof) of the Addenda shall take effect on January 1, 2008.

Article 2 (Non-retroactivity of Effect of This Act)

This Act shall not affect any effect generated already under the previous provisions.

Article 3 (Transitional Measures concerning Action of Denial of Paternity)

(1) Where the period provided for in the amended provisions of Article 847 (1) expires within thirty days from the date this Act enters into force, the action of denial of paternity may be brought within thirty days from the date this Act enters into force.

(2) In calculating the period provided for in the amended provisions of Article 847 (1), the period of March 27, 1997 to the day preceeding the enforcement date of this Act shall not be counted therein.

Article 4 (Transitional Measures concerning Nullity and Annulment of Marriage)

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In a case where any cause of the nullity or annulment of a marriage under the previous provisions exists in a marriage contracted before this Act enters into force, if it does not constitute any cause of the nullity or annulment of marriage under this Act, no claim for the nullity or annulment of the marriage shall be made after the enforcement date of this Act.

Article 5 (Transitional Measures concerning Full Adoption)

Any person who intends to make the full adoption of a child who is adopted under the previous provisions may make a request to the family court for such full adoption after meeting the requirements as referred to in Article 908-2 (1) 1 through 4.

Article 6 (Transitional Measures concerning Period)

In a case where a period is changed under this Act, if the period under the previous provisions has yet to pass at the time of the entry into force of this Act, the period set in the amended provisions of this Act or the previous provisions, whichever is the longer, shall apply.

Article 7 Omitted.

ADDENDA <Act No. 7428, Mar. 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation.

Articles 2 through 6 Omitted.

ADDENDA <Act No. 7765, Dec. 29, 2005>

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Transitional Measures regarding Qualified Acceptance) Where a person who falls under a special case with regard to qualified acceptance under this Act made a report on qualified acceptance before the enforcement of this Act and the report has been pending at or accepted by a court, the report or the court's decision of acceptance shall take effect.

ADDENDA <Act No. 8435, May 17, 2007>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2008. (Proviso Omitted.)

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Articles 2 through 9 Omitted.

ADDENDA <Act No. 8720, Dec. 21, 2007>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation: *Provided*, That the amended provisions of Articles 97 and 161 shall enter into force three months after the date of its promulgation, and the amended provisions of Articles 836-2, 837 (2) through (6) and 909 (4) shall enter into force six months after the date of its promulgation.

Article 2 (Non-retroactivity of Validity of This Act)

This Act shall not affect any validity generated already under the previous provisions.

Article 3 (Transitional Measures)

- (1) This Act (excluding the amended provisions of Article 837) shall not apply to cases pending at courts at the time this Act enters into force.
- (2) The application of a fine for negligence to the acts committed before this Act enters into force shall be governed by the previous provisions.
- (3) A female who reached 16 years old at the time this Act enters into force may engage or marry, notwithstanding the amended provisions of Articles 801 and 807.