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# NEGARIT GAZETA

*Gazette Extraordinary*

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CIVIL CODE OF THE EMPIRE OF ETHIOPIA

PROCLAMATION No. 165 OF 1960

*The first edition of this book was published during the 30th year of reign of His Imperial Majesty Haile Selassie I, Emperor of Ethiopia.*

**Berhanenna Selam Printing Press of H.I.M. Haile Selassie I — 17-9-52 — No. 2071-52 — 5000**

PROCLAMATION No. 165 of 1960

# THE CIVIL CODE PROCLAMATION OF 1960

**CONQUERING LION OF THE TRIBE OF JUDAH**
**HAILE SELASSIE I**
**ELECT OF GOD, EMPEROR OF ETHIOPIA**

WHEREAS it is essential to the orderly development of the legal system of Our Empire that a codified civil law be enacted; and

WHEREAS a Civil Code has been prepared under Our supervision and has received the approval of Our Senate and Chamber of Deputies;

NOW, THEREFORE, in accordance with Articles 34 and 88 of Our Revised Constitution, We approve the resolutions of Our Senate and Chamber of Deputies and We hereby proclaim as follows:

1. This Proclamation may be cited as the "Civil Code Proclamation, 1960".

2. The Civil Code of 1960, as published in a separate volume appearing as Extraordinary Issue No. 2 of 1960 of the Negarit Gazeta, shall come into force on the 11th day of September, 1960.

*Done at Addis Ababa this 5th day of May,* 1960.

TSAHAFE TAEZAZ AKLILU HABTE WOLD
*Deputy Prime Minister and Minister of Pen*

# PREFACE

## CONQUERING LION OF THE TRIBE OF JUDAH
## HAILE SELASSIE I
## ELECT OF GOD, EMPEROR OF ETHIOPIA

*The Civil Code has been promulgated by Us at a time when the progress achieved by Ethiopia requires the modernisation of the legal framework of Our Empire's social structure so as to keep pace with the changing circumstances of this world of today. In order to consolidate the progress already achieved and to facilitate yet further growth and development, precise and detailed rules must be laid down regarding those problems which do not only face the individual citizen but the nation as a whole. The rules contained in this Code are in harmony with the well-established legal traditions of Our Empire and the principles enshrined in the Revised Constitution granted by Us on the occasion of the Silver Jubilee of Our Coronation, and have called, as well, upon the best systems of law in the world.*

*No law which is designed to define the rights and duties of the people and to set out the principles governing their mutual relations can ever be effective if it fails to reach the heart of those to whom it is intended to apply and does not respond to their needs and customs and to natural justice. In preparing the Civil Code, the Codification Commission convened by Us and whose work We have directed has constantly borne in mind the special requirements of Our Empire and of Our beloved subjects and has been inspired in*

*its labours by the genius of Ethiopian legal traditions and institutions as revealed by the ancient and venerable Fetha Neguest.*

*It is essential that the law be clear and intelligible to each and every citizen of Our Empire, so that he may without difficulty ascertain what are his rights and duties in the ordinary course of life, and this has been accomplished in the Civil Code. It is equally important that a law which embraces a varied and diverse subject matter, as is the case with the Civil Code, form a consistent and unified whole, and this requirement, too, is fully satisfied by the law which We promulgate today.*

*The careful preparation of this Code by the Codification Commission and the pains taking review which it has received in Our Parliament assure that this law will achieve the purpose for which it is intended. With the guidance of the Almighty, Fountain of Justice and Source of all wisdom and benefits, this Code will contribute to the progress of Our Empire and the welfare of Our beloved subjects of today and of the future.*

*Given in the 30th year of Our Reign, this 5th day of May, 1960.*

***HAILE SELASSIE I***
***Emperor***

# BOOK I. PERSONS

# TITLE I. PHYSICAL PERSONS

## Chapter 1. Personality and the Rights inherent to personality

### Section 1. Attribution of Personality

Art. 1. — *Principle.*

The human person is the subject of rights from its birth to its death.

Art. 2. — *Child merely conceived.*

A child merely conceived shall be considered born whenever his interest so demands, provided he is born alive and viable.

Art. 3. — *Date of conception.*

(1) A child shall be deemed to have been conceived on the three hundredth day which precedes his birth.

(2) No proof shall be admitted against this presumption.

(3) Nothing in this Article shall affect the provisions of this Code relating to the date of conception where it need be established who is the father of the child.

Art. 4. — *Viable or not viable child.*

(1) A child shall be deemed to be viable where he lives for forty-eight hours after his birth, notwithstanding any proof to the contrary.

(2) A child shall be deemed to be not viable where he dies less than forty-eight hours after his birth.

(3) The presumption laid down in sub-art. (2) may be rebutted by proving that the death of the child is due to a cause other than a deficiency in his constitution.

Art. 5. — *Proof of life or death of person.* — 1. *Burden of proof.*

(1) Whosoever, for the purpose of exercising a right, alleges that a particular person is or was alive on a certain day, or is dead, shall prove the allegation.

(2) The proof that a person is or was alive shall be made by producing the person himself or by the evidence of three witnesses or any other reliable evidence.

(3) The proof of death shall be made in accordance with the provisions of Chapter 3 of this Title (art. 47).

Art. 6. — 2. *Persons dead simultaneously.*

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

Art. 7. — *Proof of identity.*

(1) The identity of a person shall be proved by the documents issued to such person by the administrative authorities.

(2) Failing such documents, it shall be proved by the production of two witnesses.

(3) The witnesses shall be liable to third parties for the damage which may be caused through the inaccuracy of their declarations or evidence.

## Section 2. Rights of Personality

Art. 8. — *Effect of personality.*

(1) Every physical person shall enjoy the rights of personality and the liberties guaranteed by the Ethiopian Constitution.

(2) In this respect, no regard shall be had to the race, colour, religion or sex of persons.

Art. 9. — *Limitations to these effects.*

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

(2) Any voluntary limitation imposed on the exercise of such rights and liberties shall be of no effect unless it is justified by a legitimate interest.

Art. 10. — *Cessation of unlawful molestations.*

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

Art. 11. — *Restriction on freedom and searches.*

No person may have his freedom restricted, or be subjected to a search, except in the cases provided by law.

Art. 12. — *Freedom of residence.*

(1) Every person is free to establish his residence wherever it is suitable for him and to change the place of such residence.

(2) The undertaking of a person to reside in a particular place shall be of no effect under civil law.

(3) The undertaking of a person not to reside in or not to go to a particular place shall be of no effect unless it is justified by a legitimate interest.

Art. 13. — *Inviolability of domicile.*

(1) The domicile of a physical person is inviolable.

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

Art. 14. — *Freedom of thought.*

(1) Every person is free to think and to express his ideas.

(2) The only restrictions which this liberty admits of are those which are imposed by the respect for the rights of others, morality and the law.

Art. 15. — *Religion.*

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

Art. 16. — *Freedom of action.*

(1) Every person is free to exercise any activity which he deems proper in that which concerns his calling and his leisure.

(2) The only restrictions which such freedom admits of are those which are imposed by the respect for the rights of others, morality and the law.

(3) The act by which a person binds himself to exercise a given activity or binds himself not to exercise such activity shall be of no effect unless it is justified by a legitimate interest.

Art. 17. — *Marriage and divorce.*

(1) The undertaking of a person not to marry or not to remarry shall be of no effect under civil law.

(2) This shall apply to the undertaking of a person to divorce or not to divorce.

Art. 18. — *Integrity of human body.*

(1) The act by which a person disposes of the whole or of a part of his body shall be of no effect under civil law where such act is to be carried out before the death of the person thus disposing, if such act has the effect of causing a serious injury to the integrity of the human body.

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

Art. 19. — *Revocability of acts relative thereto.*

(1) A person may at any time revoke the act by which he has disposed of the whole or a part of his body whether such act is to be carried out during the lifetime of the person by whom it was performed or after his death.

(2) The person to whose advantage such act has been made has the right to be indemnified for the expenses which he has incurred on the faith of such promise.

Art. 20. — *Medical examinations and treatment.* — 1. *Principle.*

(1) A person may at any time refuse to submit himself to a medical or surgical examination or treatment.

(2) Nothing in this Article shall affect the provisions of laws or regulations providing for a physical examination of persons or their compulsory vaccination or other similar measures in the public interest.

(3) Nothing in this Article shall affect the power of a guardian of a minor or interdicted person to submit the incapacitated person of whom he is in charge to an examination or treatment beneficial to that person's health.

Art. 21. — 2. *Restriction.*

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

Art. 22. — *Medical examination.*

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

Art. 23. — *Right to keep silent.*

Any admission or manifestation of the will obtained by methods causing molestation to the personality shall be of no effect.

Art. 24. — *Professional secrecy.*

(1) A person may not be compelled to reveal facts which have come to his knowledge by reason of his profession, if by revealing such facts

he will betray or risk to betraying the confidence which a third person has placed in him for the very reason of his profession.

(2) The person who has confided or disclosed such facts may ensure that they be not revealed by him in whom he has placed his confidence.

(3) Nothing in this Article shall affect the provisions of Arts. 267 and 344 of the Penal Code.

Art. 25. — *Funeral.* — 1. *Will of deceased.*

(1) Every person having the capacity to make a will may prescribe the conditions of his funeral.

(2) He may appoint one or more persons to ensure that such provisions are carried out.

(3) The persons so appointed and, failing such, any other person who shows that he has a material or moral interest may apply to the court of the place of the death to enforce those provisions.

Art. 26. — 2. *Will not expressed.*

(1) Where the deceased has not expressed his will in the form mentioned in Art. 25, the conditions of his funeral shall be fixed by his surviving spouse or by his nearest relatives.

(2) In default of the spouse and of relatives present or known at the time of the death, such conditions shall be fixed by the persons who take the initiative therefor.

(3) In case of contestation, the matter may be laid before the court of the place of death by the most diligent party.

Art. 27. — *Image of the person.* — 1. *Principle.*

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

Art. 28. — 2. *Exception.*

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

Art. 29. — 3. *Sanction.*

(1) Where the image of a person is exhibited or offered for sale without the consent of such person, except in the cases referred to in Art. 28,

such person may demand that the exhibition or offer for sale of his image be stopped.

(2) The court may, if equity so demands, also award damages to such person within the limits of the enrichment derived by the person who made use of the image from its exhibition or offer for sale.

(3) Damages for moral prejudice may be awarded if the exhibition or offer for sale does not cease immediately, when the cessation thereof is demanded.

Art. 30. — 4. *Rights of the family.*

(1) Where the person whose image is exhibited or offered for sale is dead or not in a position to manifest his will, the right referred to in Art. 29 shall vest in his relatives if the exhibition or offer for sale is of such a nature as to be prejudicial to the honour or reputation of the deceased person.

(2) The only persons competent to represent the family for the application of this Article are the spouse, or, in his default, the nearest descendant or, in default of a descendant, the nearest ascendant of the person concerned.

(3) In case of equal degrees, the eldest descendant or the oldest ascendant is the only person competent to represent the family.

Art. 31. — *Inviolability of correspondence.*

(1) The addressee of a confidential letter may not divulge its contents without the consent of its author.

(2) He may, however, produce it in judicial proceedings if he shows that he has a legitimate interest.

## Chapter 2. Names

Art. 32. — *Principle.*

(1) Every individual has a family name, one or more first names and a patronymic.

(2) He shall be designated in administrative documents by his family name followed by his first names and by his patronymic.

Art. 33. — *Assumption of names.*

(1) A child shall have the name of his father.

(2) Where the father of the child is not known, or the child has been disowned, the child shall have the family name of his mother.

(3) The provisions of sub-art. (2) shall apply where the paternity of the child has been judicially declared.

Art. 34. — *Choice of first names.* — 1. *Principle.*

(1) The first name of the child shall be chosen by his father, or, in his default, by the family of his father.

(2) An additional first name may be chosen for the child by his mother, or, in her default, by the family of his mother.

(3) The mother, or, in her default, the family of the mother, may give two first names to the child where his father is unknown or the child has no family on the paternal side.

Art. 35. — 2. *Representative of the family.*

(1) The nearest ascendant and, in his default, the nearest relative in the collateral line is competent to represent the family for the purpose of Art. 34.

(2) In the case of equal degrees, the eldest ascendant or relative in the collateral line shall choose the name of the child.

Art. 36. — *Patronymic.*

(1) The child shall have the usual first name of his father as his patronymic.

(2) A person shall have no patronymic where his father is unknown.

(3) The patronymic shall be omitted in official acts if it is confused with the name.

Art. 37. — *Declaration to the civil status.*

The officer of civil status of the commune where the child is born shall be informed of the first names of the child and of his patronymic within ninety days following his birth, by the person who is bound to declare the birth of the child.

Art. 38. — *Forbidden first names.*

(1) A child may not receive purely and simply the first name of his father or of his mother or that of one of his brothers or sisters who are alive.

(2) He shall, in such case, have another first name which distinguishes him from them.

Art. 39. — *Unknown filiation.*

(1) A child whose father and mother are not known shall have the name and two first names which are given to him by the officer of civil status in his record of birth.

(2) The name and first names shall be chosen from among names and first names common in the region.

(3) Any person who shows that he has a material or moral interest may apply to the court, before the child has reached the age of five years, to modify such name and first names.

Art. 40. — *Name of married woman.*

(1) A married woman shall retain her personal family name.

(2) She may, while her marriage lasts, be designated or designate herself by the name of her husband.

(3) Such faculty shall continue, in her favour as well as to her prejudice, after the marriage, unless this has been dissolved by divorce or the woman has remarried.

Art. 41. — *Name and first names of adopted child.*

(1) The adopted child shall take the name of the adopter.

(2) He may, by virtue of the contract of adoption, receive a new first name and receive as patronymic the usual first name of the adopter.

Art. 42. — *Change of family name.*

(1) The change of the family name of a person may be authorised, for good cause, by the court on the application of such person.

(2) In deciding on the application, the court shall ensure that the interest of third persons is not prejudiced by the change of name.

Art. 43. — *Change of first names.*

The cancellation of one or more first names or the addition of a first name for a person may be authorised by the court on the application of such person.

Art. 44. — *Agreements relating to name.*

(1) Any agreement relating to the name shall be of no effect under civil law.

(2) Nothing in this Article shall affect the rules relating to trade names.

Art. 45. — *Abuse of name.*

(1) The use of his own name by a person in the exercise of an activity connected with his calling may not have the object or the effect of causing prejudice, by means of a harmful confusion, to the credit or to the reputation of a third person.

(2) The provisions relating to unfair competition and to defamation shall apply in appropriate cases.

Art. 46. — *Usurpation of name.*

(1) Whosoever bears a name may resist the usurpation of such name by a third person whenever such usurpation causes or is likely to cause a material or moral damage.

(2) After the death of a person or if a person is not in a position to manifest his will, the same right appertains to each of his descendants and to his spouse, even where they themselves do not bear such name.

(3) Damages for moral prejudice may be awarded to the person demanding them if the usurpation of the name does not cease immediately, when such cessation has been demanded.

## Chapter 3. Proof of Civil Status

Art. 47. — *Modes of proof.*

(1) Births, deaths and marriages shall be proved, in case of doubt or of contention, by means of the records of civil status.

(2) They may also be proved, in the cases provided by law, by means of acts of notoriety or of possession of status.

### Section 1. Officers of Civil Status

#### Paragraph 1. — Appointment of officers of civil status

Art. 48. — *Appointment by governor.*

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

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

Art. 49. — *Quarters or sections of communes.*

(1) Where an urban commune is divided into several quarters, a different officer of civil status may be appointed for each quarter by the governor.

(2) Where a section of a rural commune is isolated or is far from the centre of the commune, a different officer of civil status may be appointed for such section of a commune by the governor.

(3) In such cases one or more assistants to each officer of civil status shall be appointed.

Art. 50. — *Assistants to officer of civil status.*

(1) The assistant to the officer of civil status shall replace him in case of any impediment on his part.

(2) If the order in which the assistants are called upon to carry out their duties has not been fixed by the governor of the province or by the officer of civil status, it shall be fixed having regard to their age, the eldest being called in the first place.

(3) The records drawn up by any one of the assistants shall have the same effect as if they had been drawn up by the officer of civil status himself.

Art. 51. — *Commencement of duties.*

(1) The duties of officer of civil status shall start when he has accepted such duties and when his signature has been registered in the departmental office or in the registers of civil status.

(2) The duties of officer of civil status shall also start when the person appointed by the governor has in fact carried out such duties by drawing up a record or by taking part, in the capacity of officer of civil status, in the drawing up of such record.

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

Art. 52. — *Termination of duties.*

(1) The duties of an officer of civil status shall terminate on his death or when he is relieved of his duties or dismissed or when his resignation has been accepted by the governor.

(2) The same shall apply to the duties of the assistants.

Art. 53. — *Death or lasting impediment.*

(1) The officer of civil status shall without delay inform the governor of the province of the death of his assistants, or of any circumstance which prevents in a lasting manner any one of them from carrying out his duties.

(2) The assistants of the officer of civil status shall without delay inform the governor of the province of the death of the officer of civil status or of any circumstance which prevents him in a lasting manner from carrying out his duties.

Art. 54. — *Head of commune.*

(1) The head of the commune shall be officer of civil status in the territory of his commune, where the person appointed by the governor and his assistants are not in a position to carry out their duties.

(2) He may, in such case, require to be helped or substituted in his duties of officer of civil status, under his own responsibility, by one or more helpers.

(3) He shall without delay inform the governor of the situation.

Art. 55. — *Departmental office.*

(1) The governor of the province shall appoint in each chief town of the departments of his province the personnel of the departmental office of civil status.

(2) Such personnel shall include, besides a director responsible for the organisation and supervision, officials in sufficient number to ensure the performance of the work incumbent on the office.

Art. 56. — *Records relating to the Imperial Family.*

(1) The Minister of the Pen shall carry out the duties of officer of civil status as regards the records relating to His Majesty the Emperor of Ethiopia and the members of the Imperial Family.

(2) For the purpose of this Article, the persons mentioned in Art. 16 of the Constitution shall be deemed to be members of the Imperial Family.

Art. 57. — *Consuls of Ethiopia.*

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

Art. 58. — *Commanding officers of ships.*

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

Paragraph 2. — Duties of officers of civil status

Art. 59. — *Principle.*

The officer of civil status shall ensure that the births, deaths and marriages, taking place within his jurisdiction, be entered in the register of civil status.

A. *Urban communes*

Art. 60. — *Keeping and conservation of registers.*

(1) The officer of civil status shall himself keep the registers of civil status in those communes where such duty has been expressly imposed on him by the governor.

(2) He shall ensure their custody and conservation and deliver to interested persons extracts from or copies of the records of such registers.

Art. 61. — *Drawing up of records.*

(1) The records of civil status shall be drawn up by the officer of civil status on his own initiative whenever he has the particulars required for drawing up such records.

(2) The officer of civil status may, where he thinks fit, summon any interested party, with the object of completing the information which he requires.

Art. 62. — *Periods.*

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

(a) three months for records of birth;

(b) one month for records of death;

(c) one month for records of marriage.

Art. 63. — *Sanctions of prescribed periods.*

(1) The records of civil status drawn up after the periods laid down in Art. 62 have expired shall only have the probatory value of simple information.

(2) The provisions of sub-art. (1) shall not apply where such records are entered in the registers by virtue of a judgment.

(3) In this case, the record shall bear on its back a reference to such judgment.

B. *Rural communes*

Art. 64. — *Declaration.*

(1) In those communes in which such duty has not been expressly imposed on him by the governor, the officer of civil status shall not be bound to keep the registers himself.

(2) He shall communicate to the departmental office of civil status such informations as are required for drawing up the records of civil status relating to births, deaths and marriages which have taken place in the commune.

(3) The records of civil status shall be drawn up immediately, on the basis of such informations, by the officials of the departmental office of civil status.

Art. 65. — *Regulations of application.*

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

(2) They shall prescribe in particular in which place and at what times such informations are to be furnished.

Art. 66. — *Place where informations are to be furnished.*

(1) Regulations may impose on the officer of civil status the duty to go to the chief town of the department or to another centre less distant from the commune in order to furnish there the informations relating to civil status.

(2) They may on the other hand provide that such informations shall be gathered by the officials of the departmental office of civil status in the same commune for which the registers are to be drawn up.

(3) In the case mentioned in sub-art. (2), regulations shall prescribe whether the registers are to be kept in the commune or in the departmental office of civil status.

Art. 67. — *Time within which informations are to be furnished.*

(1) The informations concerning civil status shall be gathered at least once a year in each commune.

(2) In the case provided for in sub-art. (1) of Art. 66, the duty to go to the chief town of the department or to another centre may not be imposed on the officer of civil status at intervals of less than three months.

Art. 68. — *Possibility of declarations at intervening times.*

(1) The officer of civil status may, at any time, even on dates other than those prescribed by the governor, communicate to the departmental office of civil status informations concerning the civil status of persons in his commune.

(2) Such informations shall be immediately recorded in the registers by the departmental office of civil status when the registers relating to the commune are kept in such office.

Art. 69. — *Drawing up of records by officer of civil status.*

(1) The instructions may authorise the officer of civil status to draw up the records of civil status himself.

(2) Each record thus drawn up shall, in such case, be approved by the departmental office of civil status.

(3) Mention of such approval shall be made on the back of the record.

Art. 70. — *Late declarations.*

(1) The records drawn up or approved more than two years after the event which has given occasion for them shall only have the probatory value of mere information.

(2) The provisions of sub-art. (1) shall not apply where the record has been entered in the registers by virtue of a judgment.

(3) In such case the record shall bear on its back a reference to such judgment.

C. *Special Cases*

Art. 71. — *Minister of the Pen.*

(1) The Minister of the Pen shall himself keep the registers of civil status relating to His Majesty the Emperor and to the Imperial Family.

(2) He shall ensure their custody and conservation and deliver copies of the records in such registers.

Art. 72. — *Consuls.*

(1) Consuls of Ethiopia in foreign countries shall draw up records only at the request of interested persons.

(2) They shall themselves keep the registers of civil status.

(3) They shall ensure their custody and conservation and deliver to interested persons extracts from, or copies of, the records in such registers.

Art. 73. — *Commanding officers of ships.*

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

## Section 2. Registers of civil status

Art. 74. — *Enumeration of registers.*

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

Art. 75. — *Supply of registers.*

(1) The registers shall be supplied free of charge to the officers of civil status by the governor of the province who receives them from the Ministry of Interior.

(2) They shall be supplied free of charge to the consulates by the Ministry of Foreign Affairs.

(3) The persons having the duty to keep the registers shall, six months before the probable date on which a register will be terminated, apply for a new register to be supplied to them.

Art. 76. — *Prohibition to remove registers.*

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

Art. 77. — *Compulsory indications.* — 1. *Registers of communes.*

(1) Each register shall indicate the commune and where appropriate the quarter or section of the commune to which it refers, as well as the province in which such commune is situated.

(2) It shall bear a reference number.

(3) Such indications shall appear on the cover and on the edge of the register and be reproduced on each leaf of the register.

Art. 78. — 2. *Other registers.*

(1) The registers of the Imperial Family shall bear, instead of the indications mentioned in sub-art. (1) of Art. 77, the indication: *'Registers of the Imperial Family.*

(2) The registers kept in the consulates shall bear the indication of the consulate in which they are draw up.

Art. 79. — *Form of registers.*

(1) The registers shall commence with several pages on which shall be mentioned the persons authorised to keep the registers with the signature of such persons against such mention.

(2) The registers shall contain next a series of numbered leaves each one of which shall serve for drawing up a record of civil status.

(3) They shall end with several pages intended to contain the alphabetical index of the persons to whom the records of the registers refer.

Art. 80. — *Leaves of registers.*

(1) The leaves of the register of civil status shall be made up of detachable slips, bearing identical particulars attached to a counterfoil.

(2) The registers of birth and of marriage shall comprise three detachable slips and the registers of death only two detachable slips.

(3) The back of the leaves shall be reserved for writing thereon the handwritten particulars prescribed by the law.

Art. 81. — *Detachable slip No.* 3.

(1) The detachable slip farthest from the counterfoil, called detachable slip No. 3, shall be detached from the counterfoil as soon as the record is drawn up

(2) It shall be sent by the officer of civil status to the guardian of the child in the case of a record of birth and to the husband in the case of a record of marriage.

(3) The slip No. 3 shall be kept by the interested party.

Art. 82. — *Detachable slip No.* 2.

(1) When the register finishes, the detachable slips No. 2 shall be detached from the counterfoil and put together in a file which shall be deposited in the registry of the court of the chief town of the province or in such other place as may be prescribed, distinct from that where the detachable slips No. 1 are conserved.

(2) The detachable slips No. 2 of the register kept by the Minister of the Pen and by the consuls shall be sent to the Ministry of Foreign Affairs of the Empire of Ethiopia to be conserved therein.

(3) Upon receiving the detachable slips No. 2 the person who is constituted depositary thereof shall bind them.

Art. 83. — *Detachable slip No. 1.*

The detachable slips attached to the counterfoil (slips No. 1) shall be conserved attached to the counterfoil of the register, in the place where the registers have been kept or in another place fixed by regulations.

Art. 84. — *No unutilised leaves.*

(1) The officer of civil status before drawing up a record shall verify the number of the leaf on which the last record appearing in the register has been entered.

(2) He shall draw up the record on the leaf whose number immediately follows that of such last record.

(3) He may in no case leave an unutilised leaf in the register.

Art. 85. — *Leaf unutilised by mistake.*

(1) If, as a result of a mistake, a leaf has been left unutilised, the officer of civil status, as soon as he notices such mistake, shall annul the leaf in question.

(2) He shall draw across each detachable slip of the record two diagonal lines forming a cross and write on the back of each such slip of the record the indication "Leaf unutilised by mistake".

(3) The unutilised leaf may in no case serve for writing thereon a record of civil status.

Art. 86. — *Index.*

(1) When a register finishes, the officer of civil status shall draw up, in the pages which are at the end of the register, the alphabetical list, according to their family name, of all the persons to whom the records in the register refer.

(2) He shall form a file of the detachable slips No. 2, and send such file, together with a copy of the index drawn up by him, to the place prescribed by regulations.

Art. 87. — *Destruction of registers.*

(1) If a register kept in a commune is lost or destroyed it shall immediately be recompiled with the help of the detachable slips No. 2 of such register, on the initiative of the officer of civil status of the commune.

(2) If the detachable slips No. 2 of a register are lost or destroyed, they shall immediately be reconstituted, with the help of the detachable slips kept in the commune, on the initiative of the depositary of the detachable slips lost or destroyed.

(3) The provisions of this Article shall apply mutatis mutandis in the case of registers kept in a place other than a commune.

Art. 88. — *Destitution of registers still in use.*

(1) If a register still being used is lost or destroyed before the detachable slips No. 2 have been detached, the officer of civil status shall immediately give notice of such fact to the departmental office of civil status.

(2) This office shall take the necessary measures for the recompilation of the register.

(3) The same shall apply where the detachable slips Nos. 1 and 2 of a register are both destroyed or lost for any reason whatsoever.

Art. 89. — *Control of the keeping of registers.*

(1) The departmental office of civil status shall supervise civil status officers and control the proper keeping of registers of civil status in the commune.

(2) It shall organise their inspection and take action for the repression of the criminal infringements which it ascertains.

(3) The Ministry of Foreign Affairs shall carry out the same duties as regards registers kept in consulates.

## Section 3. Records of Civil Status

### Paragraph 1. — General provisions

Art. 90. — *Particulars to be mentioned.*

(1) The records of civil status shall be drawn up by filling in the blank spaces in the registers.

(2) The records shall mention in all cases the day, the month and the year when they are received and bear the signature of the officer of civil status who receives them.

Art. 91. — *Particulars which may not be mentioned.*

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

Art. 92. — *Unknown or uncertain information.*

(1) If one of the blank spaces left in a record of civil status cannot be filled in on account of lack of sufficiently accurate information given to the person who keeps the registers, such person shall fill in the

blank space by inserting the word "unknown".

(2) If the officer of civil status knows approximately the particular to be entered, he shall enter such particular in the appropriate place adding the word "probably".

Art. 93. — *No abbreviations.*

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

Art. 94. — *No erasures or words written over others.*

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

Art. 95. — *Signature.*

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

Art. 96. — *Leaves not utilised.*

(1) When, on account of erasures, or for any other cause, a record has to be redone, the officer of civil status shall draw across each detachable slip of the record two diagonal lines forming a cross.

(2) On the back of each detachable slip of the record he shall write the indication "Leaf not utilised".

(3) The detachable slip number 3 of the leaf shall be destroyed immediately.

Art. 97. — *Probatory force of records.*

(1) The records of civil status regularly entered in the registers shall, saving evidence to the contrary, be proof of the statements which they contain.

(2) Evidence to the contrary may not be adduced except where it is authorised by the court.

(3) It may, in such case, be adduced in any manner.

Art. 98. — *Records not entered in registers.*

(1) Records which are not entered in the registers shall not have the probatory value inherent to records which are registered.

(2) They have only the value of mere information.

Paragraph 2. — Records of birth

Art. 99. — *Particulars of record.*

The record of birth shall show:

BACK



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

Art. 100. — *When record required.*

A declaration of birth and the drawing up of a record of birth are required when the child has lived for forty-eight hours, notwithstanding that he dies before the expiration of the time fixed for drawing up the record of birth.

Art. 101. — *Declaration of birth.*

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

Art. 102. — *First names of child.*

(1) Before drawing up the record of birth the officer of civil status shall require the parents or, in their absence, the guardian of the child, to state the first name or names which the child is to be given.
(2) If he does not receive any reply or if the first names proposed are not acceptable in terms of the law, the officer of civil status shall himself choose the first name or names of the child.

Art. 103. — *Foundlings.*

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

**Paragraph 3. — Records of death**

Art. 104. — *Particulars of records of death.*

The record of death shall show:
(a) the day, month and year of the death;

(b) the name, first names, date and place of birth of the deceased;
(c) the names, first names, dates and places of birth of the father and mother of the deceased;
(d) the name, first names, date and place of birth of the spouse of the deceased if such spouse is still alive, and the date of the marriage;
(e) where appropriate, the name, first names, date and place of birth of the person who makes the declaration of the death.

Art. 105. — *When record required.*

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

Art. 106. — *Persons bound to declare death.*

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

Art. 107. — *Death in another person's house.*

If the deceased dies outside his home, the person in whose house the death has occurred shall be bound to declare the death.

Art. 108. — *Hospitals, schools, hotels and prisons.*

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

Art. 109. — *Soldiers on active service.*

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

Art. 110. — *Finding of corpse.*

(1) If the corpse of a person is found outside a dwelling place, the person who found the corpse shall be bound to declare the death.
(2) If the identity of the deceased person is unknown, a detailed procès-verbal shall be drawn up indicating the day on which and the place

where the corpse has been found, the apparent age and the sex of the dead person, and the probable date of the death.

(3) The record of death shall contain on its back a reference to such proces-verbal.

Art. 111. — *Corpse not found.* — 1. *Judgment declaring death.*

(1) Where a person has disappeared in such circumstances that his death is certain, although his corpse has not been found, any interested person may apply to the court to give a judgment declaring the death of such person.

(2) The judgment declaring the death shall take the place of a record of death.

Art. 112. — 2. *Court having jurisdiction.*

(1) The court having jurisdiction shall be that of the place where the person whose death the person making the application wants to establish had his principal residence at the time of his death.

(2) The court may waive its jurisdiction in favour of the court of the place where the event which brought about the death has occurred or in favour of the court of another place.

(3) The delegation of jurisdiction thus made is binding on the court in whose favour it is made.

Art. 113. — *Disasters.* — 1. *Collective judgment.*

(1) If death is due to an event, such as a shipwreck, an air disaster, an earthquake, a land-slide, as a consequence of which there is reason to believe that several persons have perished, the death of such persons may be declared by a collective judgment.

(2) The court having jurisdiction in such case shall be that of the place where the event occurred.

(3) However in the case of disappearance of a ship or of an aircraft the court having jurisdiction shall be that of the home port of the ship or aircraft.

Art. 114. — 2. *Individual extracts.*

(1) Individual extracts from a collective judgment may be obtained by interested persons.

(2) They shall take the place of a record of death.

Art. 115. — *Date of death.*

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

(2) The date thus fixed may not be rectified except in the case where it is proved that it has been fixed as a result of fraud.

(3) Any application having as its object the rectification of the date shall be dismissed when three years have elapsed from the date of the judgment.

Art. 116. — *Annulment of judgment declaring death.*

If the person whose death has been judicially declared reappears after the judgment declaring death, the judgment shall be annulled, at his request or at the request of the public prosecutor, by the court which gave it.

Paragraph 4. — Records of marriage

Art. 117. — *Particulars of records of marriage.*

The record of marriage shall show:

(a) the names, first names, dates and places of birth of the husband and of the wife;

(b) the names, first names, dates and places of birth of the witnesses of the husband and of the wife;

(c) the date on which the marriage has been celebrated.

Art. 118. — *When record required.*

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

Art. 119. — *Duty to declare marriage.*

(1) The obligation to declare the marriage shall lie with the authority who has celebrated the marriage.

(2) It shall also lie with the spouses and with their witnesses.

Art. 120. — *Drawing up "ex officio" of record.*

(1) The officer of civil status shall draw up the act of marriage of his own motion whenever he is aware of the marriage.

(2) In such case, he shall summon the interested persons to make them sign the record of marriage.

## Section 4. Correction of the records of civil status

Art. 121. — *Principle.*

The records of civil status may not be corrected except by virtue of an order or judgment given by the court.

Art. 122. — *Application for correction.*

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

Art. 123. — *Adding first name.*

Where the application has as its object the addition of a first name to a person, at the time when such person contracts marriage or during the six months which follow such marriage, the president of the court shall decide on the application by order.

Art. 124. — *Clerical mistakes.*

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

Art. 125. — *Other cases.*

(1) In all other cases decision on the application shall be given by a judgment delivered by the court.

(2) The court, before deciding, shall give the person or persons to whom the record refers and all interested persons the opportunity of making their submissions.

Art. 126. — *Manner in which the record is corrected.*

(1) The particulars the correction of which is ordered shall be cancelled in the record, provided that they shall remain legible.

(2) The particulars which replace them or which are added in the record shall be entered on the back of the record, with a reference to the order or judgment which has ordered the correction of the record.

(3) Such alterations shall, as far as it is possible, be made on all the detachable slips of the record which is corrected.

Art. 127. — *Drawing up of new record.*

(1) The court may, where it thinks fit, order the annulment of the record which is to be corrected and the drawing up of a new record in its place.

(2) Every detachable slip of the old record shall in this case be crossed out across the registers by two diagonal lines forming a cross, and reference shall be made, on the back of each detachable slip, to the new record which replaces it.

(3) On the back of the new record reference shall be made to the judgment which has ordered its drawing up.

Art. 128. — *Authority of judicial decision.*

The judicial decision which orders the correction of a record of civil status may be set up against everybody, in the same conditions as the record corrected by it.

## Section 5. Copies and extracts of records of civil status

Art. 129. — *Record of birth.*

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

(2) Copies of the record of birth may only be issued to the heirs of the child or to public administrative bodies or with the authorisation of the court.

Art. 130. — *Record of death.*

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

Art. 131. — *Record of marriage.*

They shall issue a copy of the record of marriage to any person making an application to this effect.

Art. 132. — *Records relating to the Imperial Family.*

The Minister of the Pen shall not issue copies of the records contained in the registers relating to the Imperial Family unless an application to this effect is made to him by the court.

Art. 133. — *Depositaries of detachable slips No. 2.*

The depositaries of detachable slips No. 2 of the registers shall have the same obligations where:

(a) the corresponding register of the commune has been destroyed or lost;

(b) in such register, kept in the commune, a record is missing which is recorded in the file of detachable slips No. 2;

(c) the record entered in the register kept in the commune does not correspond with that recorded in the file of detachable slips No. 2;

(d) it is a case of records drawn up by a consulate of Ethiopia in a foreign country;

(e) such obligation is, in a particular case, imposed on them by the court.

Art. 134. — *Corrected records.*

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

(2) It shall not show that the purport of the extract or of the copy is due to a correction of the record.

(3) Corresponding copies, reproducing the record as it is, and showing the corrections which may have been made to it, shall be delivered only to the court at its request.

Art. 135. — *Form and cost.*

(1) The copies or extracts of the records of civil status shall be drawn up on printed forms which the governor of the province shall supply to the officers of civil status.

(2) Such copies or extracts shall be signed by the officer of civil status who delivers them and bear the seal of the administrative department to which he belongs.

(3) The prescribed fee shall be charged on their delivery, as well as, where appropriate, the postal expenses for the sending of the copy or of the extract.

Art. 136. — *Probatory force.*

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

Art. 137. — *Verification.*

(1) The court may, where it thinks fit, order that the extracts or copies be collated with the original.

(2) It may order that a photocopy of the record be supplied to it.

## Section 6. Sanction of the rules relating to civil status

Art. 138. — *Civil liability of officials.*

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

Art. 139. — *Refusal to draw up record.*

(1) Where the officer of civil status or the official charged with keeping the registers refuses to draw up a record corresponding with the de-

clarations which are made to him, any interested person may apply to the court against such refusal.

(2) The provisions of sub-art. (1) shall apply where the officer of civil status fails to supply to the office of civil status the informations relating to an event in respect of which a record of civil status is to be drawn.

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

Art. 140. — *Liability of witnesses and declarants.*

(1) The declarants and the witnesses shall be liable for the accuracy of the facts which they attest or corroborate in the records of civil stauts.

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

Art. 141. — *Criminal liability.* — 1. *Failure to draw record.*

The punishments prescribed by the Penal Code shall apply to:

(a) the officer of civil status who, being bound to draw up a record of civil status, fails to draw it up within the period prescribed by the law;

(b) the officer of civil status who, being bound to declare an event to the departmental office of civil status, fails to declare it within the period prescribed by the law;

(c) the official of the departmental office of civil status who has not immediately drawn up a record when the informations intended for drawing up such record have been communicated to him.

Art. 142. — 2. *Failure to make declaration.*

The punishments prescribed by the Penal Code shall apply to:

(a) any person who, being bound to declare an event to the officer of civil status, fails to declare it within the periods prescribed by law, when, as a result of such failure, a record of civil status has not been drawn up;

(b) any person who, having been required by the officer of civil status to give information for the purpose of the drawing up of a record of civil status concerning them, fails to give such informations.

Art. 143. — 3. *Inaccurate declarations.*

(1) The punishments prescribed by the Penal Code shall apply to any person who, for the purpose of drawing up a record of civil status, makes a declaration which he knows to be inaccurate to the office of civil status or to the officials of the departmental office of civil status.

(2) The punishments prescribed by the Penal Code shall apply to the witnesses who support such declarations knowing them to be false.

(3) The punishments prescribed by the Penal Code shall apply to the officer of civil status or the official of the departmental office of civil status who draws up a record of civil status on declarations which he knows to be inaccurate, or who issues an extract or a copy of a record not corresponding with the original.

Art. 144. — 4. *Destruction or alteration of registers.*

The punishments prescribed by the Penal Code shall apply to any person who destroys or alters a register of civil status.

Art. 145. — 5. *Use of altered record.*

The punishments prescribed by the Penal Code shall apply to any person who knowingly makes use of a record or of a copy of a record or of an extract of a record of civil status fraudulently altered.

## Section 7. Acts of Notoriety

Art. 146. — *Principle.*

(1) Acts of notoriety are drawn up by officers of civil status or by notaries.

(2) They shall be authorised and approved by the court.

Art. 147. — *Authorisation.*

Proof by means of acts of notoriety may only be authorised by the court where:

(a) it is proved that the registers of civil status have not been kept regularly or that they contain gaps;

(b) it is proved that such registers have been lost or torn;

(c) it is impossible or very difficult to obtain a copy of a record in such registers;

(d) the person who refers to a record does not know in which place such record has been made, and such ignorance is excusable;

(e) the law so provides.

Art. 148. — *Who draws up the act.*

(1) When the court authorises the proof by means of an act of notoriety, it shall specify in which place the act of notoriety shall be drawn up.

(2) It shall give the officer of civil status or the notary required to draw up the act all the appropriate instructions, for the purpose of provoking opposition and of ensuring the genuineness of the act.

Art. 149. — *Particulars of the act.*

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

Art. 150. — *Report annexed thereto.*

(1) The officer of civil status or the notary who has drawn up an act of notoriety shall annex thereto a report to the court on the circumstances in which he has performed his task.

(2) He shall mention in particular whether the act of notoriety is in conflict with a record of civil status or with another act of notoriety previously drawn up.

Art. 151. — *Probatory value.* — 1. *Before approval.*

(1) The court shall determine freely the value attached to acts of notoriety taking into consideration the date and the circumstances in which they have been drawn up.

(2) It may take such steps as are necessary to verify the particulars therein.

Art. 152. — 2. *After approval.*

An act of notoriety approved by the court, shall have the same effect as a record of civil status.

Art. 153. — *Liability of witnesses.*

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

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

## Chapter 4. Absence

### Section 1. Declaration of absence

Art. 154. — *Application.*

(1) Where a person has disappeared and has given no news of himself for two years, any interested party may apply to the court to declare his absence.

(2) The court having jurisdiction shall be the court of the place in which the absentee had his principal residence.

Art. 155. — *Publication of application.*

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

Art. 156. — *Inquiry.*

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

Art. 157. — *Principle of decision.*

(1) The court shall declare the absence where the death of the absentee appears to it to be probable.

(2) In making its decision, it shall have regard to all the circumstances of the case.

(3) It shall in particular take into consideration the fact whether the person whose absence is invoked has or has not appointed an attorney to administer his property and the causes which may have impeded the receipt of his news.

Art. 158. — *Postponement of judgment.*

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

Art. 159. — *Duty to declare absence.*

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

Art. 160. — *Day of last news.*

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

Art. 161. — *Judgment declaring death.*

If the evidence collected by the court establish in a manner which may be considered certain that the absentee is dead, the court to which the application for the declaration of absence was made, may deliver a judgment declaring the death of the absentee.

Art. 162. — *Costs of proceedings.*

(1) The costs of the proceedings by which the absence is declared shall be chargeable to the absentee.

(2) They shall be borne by the person making the application, where the application is dismissed.

## Section 2. Effects of absence

Art. 163. — ***Marriage.***

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

(2) The marriage contracted by the spouse after the day on which the last news of the absentee was received may be impugned only by the absentee.

(3) Notwithstanding the provisions of sub-art. (2), it may also be impugned by the public prosecutor if he proves in an indisputable manner that the absentee is alive on the day on which the action is instituted.

Art. 164. — *Succession devolving on absentee.*

(1) Where, after the date of the last news, a succession opens to which the absentee would have been called if he were alive, such succession shall devolve without taking into account the portion which may eventually be assigned to the absentee.

(2) The heirs or legatees may be obliged by the court to furnish a guarantee or other security for safeguarding the rights of the absentee.

Art. 165. — *Rights depending on death of absentee.*

(1) The persons who have rights dependent on the death of the absentee may enforce them after the judgment declaring the absence has become final as though the absentee were dead.

(2) Such persons may be obliged by the court to give, before commencing to enjoy the rights which appertain to them, a guarantee or other security for the things subject to restitution.

Art. 166. — *Obligations depending on life of absentee.*

(1) The persons who have obligations depending on the condition that the absentee is alive shall no longer be bound to fulfil such obligations.

(2) Such persons may be obliged by the court to furnish a guarantee or other security, in case the absentee should still be alive.

Art. 167. — *Property of absentee.* — 1. *Placing in possession.*

(1) The will of the absentee, if any, shall be opened at the request of any interested party.

(2) The persons who would have been called to succeed to the property of the absentee in case he had died on the day of the last news may be placed in possession and the property be partitioned.

Art. 168. — 2. *Obligations.*

(1) The heir or legatee shall enjoy the property as a good "paterfamilias".

(2) He may be obliged by the court to give, before commencing his enjoyment, a guarantee or other security for the things subject to restitution.

Art. 169. — 3. *Restriction to powers.*

(1) He shall invest the sums received by him within three months from the day on which he received them.

(2) He may not transfer the property by a gratuitous title, save for establishing the children of the absentee.

## Section 3. Termination of absence

Art. 170. — *Causes.* — 1. *Principle.*

The declaration of absence shall cease to have effect where:

(a) the absentee reappears; or

(b) it is proved that he was alive on a date subsequent to that of the judgment declaring the absence; or

(c) it is proved that he died on a date different from that established in such judgment as being the date of the last news.

Art. 171. — 2. *Return of absentee.*

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

(2) The income deriving from the property of the absentee shall remain the property of the heirs or legatees who have received such income.

(3) The absentee shall retain the right to claim damages from the heirs or legatees and their guarantors, where they failed to comply with their legal obligations or committed a fraud.

Art. 172. — *Presumption of death.* — 1. *Condition.*

When ten years have elapsed since the date of the last news, established by the judgment of declaration of absence, the proof that the absentee did not die on the day of the last news may no longer be made except by the absentee himself or by his special attorney appointed after the date of the judgment declaring the absence.

Art. 173. — 2. *Effects.*

(1) The persons who have been placed in possession of the property of the absentee may henceforth act as having the right which has justified their being placed in possession.

(2) The guarantees or securities furnished in case the absentee should return shall be extinguished.

## Chapter 5. Residence and Domicile

### Section 1. Residence

Art. 174. — *Definition.*

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

Art. 175. — *Mere sojourn in a place.*

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

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

Art. 176. — *Persons without proved residence.*

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

Art. 177. — *Several residences.*

(1) A person may have several residences.

(2) One of such residences may have the character of principal residence, and the other residences that of secondary residences.

Art. 178. — *Married women and minors.*

(1) Married women may have a residence of their own.

(2) The same shall apply to minors and interdicted persons.

Art. 179. — *Public officials.*

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

Art. 180. — *Traders.*

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

Art. 181. — *Residence-stipulated.* — 1. *Principle.*

A person may validly stipulate that, in his relations with another person, or as regards a specific business or activity, a given place shall be deemed to be his residence.

Art. 182. — 2. *Effects.*

(1) Unless otherwise expressly agreed, the person in whose favour such stipulation is made shall not be bound by it,

(2) He may, at his option, consider as being the residence of the other contracting party either the actual residence of the latter or the residence which has been stipulated.

## Section 2. Domicile

Art. 183. — *Definition.*

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

Art. 184. — *Presumed intention.*

(1) Where a person has his normal residence in a place, he shall be deemed to have the intention of residing permanently in such place.

(2) An intention to the contrary expressed by such person shall not be taken into consideration unless it is sufficiently precise, and it is to take effect on the happening of an event which will normally happen according to the ordinary course of things.

Art. 185. — *Professional and family life.*

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

Art. 186. — *Unity of domicile.*

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

Art. 187. — *Change of domicile.*

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

Art. 188. — *Unknown domicile.*

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

(2) In default of a normal residence, regard shall be had to the secondary residence first established.

(3) In default of residence, regard shall be had to the place where the interested person is.

Art. 189. — *Married people.*

(1) A married woman has the domicile of her husband so long as the marriage lasts.

(2) She may acquire a domicile of her own when the husband is affected by a judicial or legal interdiction.

Art. 190. — *Minor.*

An unemancipated minor shall have the domicile of his guardian.

Art. 191. — *Interdicted person.*

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

## TITLE II. CAPACITY OF PERSONS

### Chapter 1. General Principles

Art. 192. — *Rule of capacity.*

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

Art. 193. — *General disabilities.*

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

Art. 194. — *Special disabilities.*

(1) Special disabilities may be prescribed by reason of the nationality of persons or of the functions exercised by them.

(2) They shall be as provided by Chapter 5 of this Title (Arts. 389-393) and by special laws.

Art. 195. — *Voluntary restrictions.*

(1) No person may renounce, even partially, the enjoyment or the exercise of civil rights.

(2) Any voluntary restriction imposed on the enjoyment or on the exercise of such rights shall be of no effect unless it is justified by a lawful interest.

Art. 196. — *Proof of disability.*

(1) Capacity is presumed.

(2) Any person who alleges the disability of a physical person shall prove that such person is under a disability.

Art. 197. — *Bodies corporate and property with a specific destination.*

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

## Chapter 2. Minors

### Section 1. General provisions

Art. 198. — *Definition.*

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

Art. 199. — *Disability of minors.*

(1) A minor, as regards the proper care of his person, shall be placed under the authority of a guardian, whom he shall obey.

(2) In matters concerning his pecuniary interests and the administration of his property, a minor shall be represented by a tutor.

(3) The minor may not perform juridical acts except in the cases provided by law.

Art. 200. — *Proof of age.* — 1. *Principle.*

(1) The age of a person shall be established by his record of birth.

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

Art. 201. — 2. *Proof to the contrary.*

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

(2) An appeal shall lie against a decision of a court, disallowing the proof against the particulars of the record of birth.

(3) The act of notoriety may be freely challenged by producing reliable witnesses.

Art. 202. — 3. *Proof of judicial decision.*

(1) Where an act of notoriety is challenged or the proof against the particulars in the record of birth is authorised, the court shall for the solution of the controversy which is submitted to it, determine the age of the person.

(2) For this purpose, it may order that all the measures required for forming its conviction be taken.

Art. 203. — 4. *Appeal.*

(1) An appeal shall lie against a decision of a court of first instance, ordering or refusing to order in this regard a measure to elucidate the case.

(2) The same shall apply to a decision of a court which determines the age of the person.

## Section 2. Organs of protection of a minor

### Paragraph 1. — Guardian and tutor

**Art. 204.** — *Authority of parents.*

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

**Art. 205.** — *Default of one of the parents.*

(1) In case of death, disability, unworthiness or removal of one of the parents the one who remains shall alone exercise such functions.

(2) The mother shall exercise such functions where the father of the child is unknown.

**Art. 206.** — *Divorce of parents.*

(1) In case of divorce of the father and mother, the tutor and the guardian of the child shall be appointed by the family arbitrators.

(2) The surviving father or mother shall not as of right require the exercise of such functions where his or her divorced spouse dies.

**Art. 207.** — *Testamentary guardian or tutor.* — 1. *Principle.*

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

(2) The surviving spouse may restrict the powers of the guardian or tutor or subject the exercise of such powers to specified conditions.

(3) He may stipulate that one or more specified persons may not be appoint as guardian or tutor of the child.

**Art. 208.** — 2. *Condition for appointment.*

The right referred to in Art. 207 shall appertain to the father or mother of the minor only where he or she exercised during his or her lifetime the functions of guardian of the child, or where he or she had been relieved of such functions at his or her request.

**Art. 209.** — 3. *Application to the court.*

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

**Art. 210.** — *Relatives called to exercise such functions.* — 1. *Order to be followed.*

Where the child no longer has his father and mother, and in default of a valid appointment made by the survivor, the functions of guardian and tutor of the child shall devolve, by virtue of the law, on the following persons:

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(a) the paternal grandfather and, in his default, the paternal grandmother of the child; or

(b) in their default, the maternal grandfather and, in his default, the maternal grandmother of the child; or

(c) in their default, the eldest paternal uncle or paternal aunt of the child; or

(d) in their default, the eldest maternal uncle or maternal aunt of the child; or

(e) in their default, the youngest granduncle or grandaunt of the child.

Art. 211. — 2. *Possible modification of such order.*

(1) Any relative of the child by consanguinity or by affinity may apply that the functions of guardian or tutor of the child be accorded to him and not to the person who should perform such functions by virtue of Art. 210.

(2) Such application shall be made to the family council, if the interested persons are in agreement, or, in other cases, to the court, within two months from the day on which the legal guardian or tutor has been vested with his functions.

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

Art. 212. — *When there is no relative enabled in terms of law.*

(1) Where by applying the preceding Articles, a child remains without a guardian and without a tutor, the relative functions devolve on such person as shall be appointed by the court.

(2) The court may take cognizance of the matter of its own motion or on the application of any interested party whether he be a relative of the minor or not.

(3) The authority who has such obligation by virtue of the law shall lay the matter before the court.

Art. 213. — *Appointment by the court.* — 1. *Relative of the minor by consanguinity or affinity.*

The court shall appoint, as far as possible, as guardian and tutor a near relative of the minor, by consanguinity or by affinity, fit to perform such functions and willing to perform them.

Art. 214. — 2. *Institution of assistance.*

(1) The functions of guardian or of tutor may, where necessary, be entrusted by the court to an institution of assistance.

(2) The management of the institution shall in such case delegate one of its members to exercise such functions.

Art. 215. — *Assimilated cases.*

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

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

Art. 216. — *Identity of guardian and of tutor.*

(1) As a rule, the person to whom the care of the person of the minor has been entrusted shall at the same time be his tutor.

(2) The appointment of a guardian or of a tutor of the child, made by the surviving father or mother or by the court shall apply to both functions, unless the contrary results from the circumstances of the case.

Art. 217. — *Right given to father and mother.*

The father or the mother may, where they think fit, appoint a tutor to the child, reserving to themselves the functions of guardian.

Art. 218. — *Right given to the court.*

The court may for good cause appoint as tutor a person other than the guardian, where it has the right to make such appointment.

Art. 219. — *Co-tutor.*

(1) The administration of certain property of the minor may be entrusted to a co-tutor appointed by the court.

(2) Where property is donated or bequeathed to the minor, the donor or testator may appoint a co-tutor who shall be entrusted with the administration of such property during the minority of the donee or legatee.

(3) The same right may be exercised by the father or mother or other ascendants of the child in regard to the property which the minor shall receive from their succession.

Art. 220. — *Tutor "ad hoc".* — 1. *Conflict of interests between tutor and minor.*

(1) Where there is conflict of interests between the tutor and the minor, a tutor "ad hoc" shall be appointed to the latter by the court.

(2) The appointment of a tutor "ad hoc" shall be made on the application of the tutor or any member of the family council.

(3) The assistant tutor, if any, shall be vested by virtue of the law, with the functions of tutor "ad hoc".

Art. 221. — 2. *Conflict of interests of several minors.*

(1) The provisions of Art. 220 shall apply where there is a conflict between the interests of several minors of whom the tutor is the common representative.

(2) The conflicting interests shall in such cases be settled between the tutor and the tutor "ad hoc".

Art. 222. — *Commencement of functions.*

(1) The functions of guardian and of tutor shall commence from the appointment of the guardian or the tutor by virtue of the law or by the court.

(2) No liability shall be incurred by the guardian or tutor so long as he is not aware of the circumstances under which such functions devolve on him.

Art. 223. — *Compulsory nature of functions.*

The functions of guardian or tutor of the minor are compulsory for the person who is vested with them.

Art. 224. — *Application for exemption.*

(1) A person may apply to the court to be exempted from such functions if the performance thereof entails for him particular difficulties or inconveniences.

(2) The guardian and the tutor may on the same conditions apply to be relieved of the functions assumed by them.

Art. 225. — *Legal exemptions.*

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

(a) women; and

(b) any person who has completed his sixty-fifth year; and

(c) any person who has four minor children; and

(d) soldiers in active service; and

(e) public officials who have to live abroad by reason of their office.

Art. 226. — *Obligation to exercise such functions provisionally.*

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

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

Art. 227. — *Termination of functions.*

(1) The functions of guardian and of tutor shall cease where the child dies or attains his majority.

(2) They shall cease where the guardian or the tutor dies or becomes incapable or unworthy or is removed.

(3) They shall cease where a new guardian or tutor is appointed to the minor.

Art. 228. — *Incapacities.* — 1. *Minor.*

A minor is incapable of exercising the functions of guardian or of tutor except as regards his own children.

Art. 229. — 2. *Judicially interdicted persons.*

(1) A person is incapable of being guardian or tutor of a minor if he is under a judicial interdiction.

(2) Where a person during the exercise of such functions is judicially interdicted his tutor shall without delay inform the person who, by virtue of the law, is to replace the interdicted person in those functions.

(3) In default of such person, he shall apply to the court for another person to be appointed in place of the interdicted person.

Art. 230. — *Unworthiness.*

(1) A person may be declared by the court unworthy of exercising the functions of guardian or tutor, where he is sentenced for a criminal offence to a punishment restrictive of personal liberty or to capital punishment.

(2) The court may, in passing such sentence, declare the unworthiness of the convicted person to the extent which it thinks fit, having regard to the circumstances.

Art. 231. — *Removal.* — 1. *Guardian.*

(1) The guardian of a minor may be removed by the court where the minor does not receive the care which his condition requires, a morally sound education or an instruction which accords with his disposition.

(2) For this purpose, regard shall be had to the environment in which the guardian lives and all the circumstances of the case.

(3) The guardian may in particular be removed by the court where the minor has committed a criminal offence and it appears that his be-

haviour is due to bad education or to lack of education on the part of his guardian.

Art. 232. — 2. *Tutor.*

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

Art. 233. — 3. *Removal of ascendants.*

(1) The court shall declare only with extreme caution the removal of the mother or of the father or of the other ascendants as guardians or tutors of their children or descendants.

(2) The court may at any time vary its decision on the application of the person who has been removed.

Art. 234. — 4. *Procedure.*

(1) An application for the removal of the guardian or of the tutor may be made by any relative of the minor, by consanguinity or by affinity, or by the public prosecutor.

(2) Before declaring the removal of the guardian or tutor, the court shall enable the latter to give his reasons whenever this is possible without causing serious danger to the person or property of the minor.

(3) Whenever the court removes the guardian or the tutor it shall proceed to appoint another in his place.

Art. 235. — *Duties and powers of the court.*

(1) Where the court is to appoint or to remove a person as guardian or tutor of a minor it shall before making its decisions consult, insofar as it is possible, the family council of such minor.

(2) Where it thinks fit, it may hear the minor himself.

(3) The court shall decide having regard solely to the interest of the minor and without being bound by the information which it has obtained.

Art. 236. — *Tutor may be remunerated.*

(1) The functions of guardian or tutor constitute a gratuitous office.

(2) An annual compensation may be granted to the tutor where the administration of the property of the minor takes a considerable part of his time or he is not related to the minor either by consanguinity or by affinity.

(3) Such compensation may only be taken from the income of the minor and may not exceed one third of such income.

Art. 237. — *Personal nature of functions.*

(1) The functions of guardian and tutor constitute a personal office which does not pass to the heirs of the guardian or tutor.

(2) The latter shall be liable only for the management of the person whom they succeed, within the limits specified in the Title of this Code relating to "Successions".

Art. 238. — *Duties of heirs.*

(1) The heirs of the guardian or tutor shall without delay inform of his death the person who is by virtue of Art. 210 to replace him in such functions.

(2) In default of such person they shall apply to the court to appoint a new guardian or tutor.

(3) Until they have fulfilled their obligation under sub-art. (1) and (2) they shall remain liable to the minor and third parties.

Art. 239. — *Proof of capacity of guardian or tutor.*

(1) The guardian or tutor may apply to the court to be given a document enabling him to prove his capacity where necessary.

(2) Such document may be given to the guardian or tutor by a notary, if any.

Art. 240. — *Analogy with the tutor.*

The provisions of this Title relating to tutors shall apply to co-tutors and to tutors "ad hoc".

Paragraph 2. — Family Council and Assistant Tutor

A. *Composition of family council*

Art. 241. — *Principle.*

(1) The family council of the minor shall consist of the ascendants of the minor and of his brothers and sisters who are of age.

(2) Where a contract of adoption has been concluded in respect of the minor only the members of his adoptive family shall be members of the family council.

Art. 242. — *Where there are no ascendants.*

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

Art. 243. — *Divorce of father and mother.*

Where the father and mother of the minor are divorced, the family council shall comprise, in addition to the persons mentioned in Arts. 241 and 242, the family arbitrators who have declared the divorce.

Art. 244. — *Additional members.*

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

(2) The mother of the minor shall have the same right.

Art. 245. — *Exclusion of members.*

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

Art. 246. — *Appointment of additional members.*

(1) Where the family council of the minor, composed as provided in the preceding Articles, does not comprise four members, it shall be completed by calling such persons as take an interest in the minor, whether they be his relatives or not.

(2) Such persons shall be appointed by the members of the family council where these are at least two in number.

(3) In other cases, or in default of unanimous agreement between the members of the family council, such persons shall be appointed by the head of the commune where the minor resides, without prejudice to an application to the court by any interested party.

B. *Meetings of family council*

Art. 247. — *Meetings by virtue of the law.*

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

Art. 248. — *Convocation of council.*

(1) The family council shall meet whenever it is convened by the guardian or tutor of the minor or by the court.

(2) It may also be convened by the assistant tutor.

(3) Where no assistant tutor has been appointed, any member of the family council may convene it.

Art. 249. — *Time.*

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

Art. 250. — *Order of the day.*

(1) The convocation of the family council shall be accompanied by an order of the day, showing the matter or matters on which a decision and a vote of the council are required.

(2) The first family council which meets after the death of the surviving father or mother of the minor shall examine in a general manner the condition of the minor and take in accordance with the provisions of the following Articles such measures falling within its jurisdiction as it thinks fit.

Art. 251. — *Meeting place.*

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

(2) The court may on the application of the guardian or tutor of the child authorise for good cause the convocation of the family council in another place.

Art. 252. — *Expenses.*

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

Art. 253. — *Consultation by letter.*

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

Art. 254. — *No representation of members.*

(1) Members of the family council who are prevented from attending the meeting may express their opinions or may vote in writing.

(2) They may not send a representative to the meeting of the council.

Art. 255. — *Majority required.*

(1) The decisions of the family council shall be taken by an absolute majority of votes of the members of the council, whether these are present or not at the meeting.

(2) They shall be recorded in a minute signed by the members of the family council.

(3) For the validity of a decision it suffices that the minute be signed by the majority who approves it.

Art. 256. — *Position of guardian and tutor.*

(1) The guardian and the tutor of the minor shall be present at the deliberations of the family council, even if they are not members thereof.

(2) In the latter case, they may only tender their advice at the deliberations of the council.

Art. 257. — *Position of minor.*

Unless otherwise decided by the family council, the minor shall not attend the deliberations of the family council.

Art. 258. — *Substitution of court for council.* — 1. *Failure to reach majority.*

(1) Where no majority can be reached in the council, owing to the absence or disagreement of its members, the decision which the council could not take shall be taken by the court.

(2) The matter may be laid before the court by the guardian or by the tutor of the minor.

(3) The matter may also be laid before the court by the assistant tutor or, in default of an assistant tutor, by any member of the family council.

Art. 259. — 2. *Urgency.*

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

Art. 260. — *Appeal.*

(1) An appeal shall lie to the court from the decisions of the family council, within one month after they are taken.

(2) The appeal may be lodged by the guardian, the tutor or the assistant tutor of the child, or by any member of the family council.

C. *Assistant Tutor*

Art. 261. — *Appointment.*

The family council may appoint one of its members, or a third party, to exercise the functions of assistant tutor.

Art. 262. — *Supervision of tutor.*

(1) The assistant tutor shall receive the accounts of the tutor in place of the family council.

(2) He shall assist the tutor in the performance of the acts specified by the family council.

(3) He shall convene the family council whenever he thinks fit.

Art. 263. — *Replacement of, or assistance to, tutor.*

(1) The assistant tutor shall replace the tutor, at the request of the latter, where the tutor in a particular matter has interests conflicting with those of the minor.

(2) He shall assist the tutor, at the request of the latter, where there is a conflict between the interests of several minors of whom the tutor is the common representative.

D. *Common provisions*

Art. 264. — *Nature of office.*

(1) The office of member of the family council and of assistant tutor are compulsory, under the same reservations as those relating to the office of tutor.

(2) Such offices are gratuitous.

(3) The provisions relating to the disability and to the unworthiness of the tutor shall apply to the members of the family council and to the assistant tutor.

## Section 3. Powers of the Guardian and of the Tutor

### Paragraph 1. — Care of the person of the minor

Art. 265. — *Residence of minor.*

(1) The guardian shall fix the place where the minor is to reside.

(2) The minor may not abandon such place without the authorisation of the guardian.

(3) If he goes away from such place without authorisation, the guardian may compel him to return thereto.

Art. 266. — *Health of minor.*

(1) The guardian shall watch over the health of the minor.

(2) In case of sickness of the latter, the guardian shall take the necessary measures for his recovery.

Art. 267. — *Education of minor.*

(1) The guardian shall direct the education of the minor.

(2) He may inflict light bodily punishment on the minor, for the purpose of ensuring his education.

Art. 268. — *Social contacts and correspondence.*

(1) The guardian shall supervise the social contacts of the minor.

(2) He may cause the correspondence of the minor to be delivered to him.

(3) The guardian may not, except for good cause, prohibit the child from seeing his ascendants or from corresponding with them.

Art. 269. — *General and professional education.*

(1) The guardian shall ensure that the minor be given general education and as much instruction in a calling as is suitable to his abilities.

(2) He shall conclude the contracts necessary for such education and authorise the minor to pursue a calling.

Art. 270. — *Income of minors.* — 1. *General case.*

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

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

Art. 271. — 2. *Considerable income.*

(1) Where the income of the minor is considerable and the guardian is neither the father nor the mother of the minor, the provisions of Art. 270 (1) may be set aside by the family council.

(2) In such case, the family council shall fix a lump sum, which shall be given each year to the guardian out of the income of the minor, for the normal expenses of the maintenance and education of the latter.

(3) The balance of the income of the minor shall remain in the hands of the tutor to be invested by the latter in the interests of the minor.

Art. 272. — 3. *Work of minor.*

(1) From the age of fifteen years onwards, the minor himself shall receive the income deriving from his work.

(2) He may freely dispose of such income but shall contribute to his own maintenance.

Art. 273. — 4. *Property donated or bequeathed.*

(1) The person who donates, bequeathes or leaves property to a minor, may order that the income from such property shall not during the minority of the child be received by his guardian.

(2) The provisions laid down in the contract of donation or in the will concerning the administration and the use of such income shall be complied with.

Art. 274. — 5. *Assignment or attachment of income.*

(1) The income of the minor which is not yet due may not be assigned

by the guardian nor may it form the subject of an obligation undertaken by the latter.

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

Art. 275. — *Paternity.*

(1) The personal consent of the minor shall be required for acknowledging an illegitimate child.

(2) The minor may freely revoke such acknowledgment so long as his disability lasts and during the year following the cessation of such disability, unless it has been authorised by his guardian.

(3) Such right of revocation is strictly personal to the minor and may not be exercised by his representatives or his heirs.

Art. 276. — *Exercise of authority of father and mother.* — 1. *Principle.*

(1) Where the father and the mother of the child are both vested with the functions of guardian, the father alone shall exercise such functions.

(2) The mother shall exercise them in his stead where the father is not in a position to manifest his will by reason of his being away or for any other cause.

Art. 277. — 2. *Disputes.*

(1) The mother of the child may apply to the family arbitrators, if a dispute regarding the care of the person of the child arises between her and the father of the child.

(2) No person other than the mother may lay such dispute before the family arbitrators.

Art. 278. — *Appeal to the family council.* — 1. *Principle.*

(1) The decision taken by the guardian of the child may be appealed from to the family council by an ascendant of the child.

(2) In default of ascendants, the appeal may be made by any member of the family council.

Art. 279. — 2. *Where the guardian is the father or mother.*

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

(a) the father and mother of the child are divorced from each other; or

(b) the father or the mother who exercises authority on the child is remarried or keeps an irregular union.

Paragraph 2. — Administration of the property of the minor

Art. 280. — *Principle.*

(1) The tutor shall represent the minor in all civil matters.

(2) He shall take care of the pecuniary interests of the minor and administer his property as a "bonus paterfamilias".

Art. 281. — *Inventory and valuation of property.* — 1. *After the tutor assumes his functions.*

(1) Within forty days from assuming his functions, the tutor shall proceed to draw up an inventory of and value the property of the minor in the presence of reliable witnesses chosen, if possible, from among the members of the family council.

(2) Where the minor owes him anything he shall state it in the inventory under pain of losing his right thereto.

Art. 282. — 2. *Succession devolving on the minor.*

(1) Where a succession devolves on the minor, the tutor, before accepting such succession on behalf of the minor, shall cause an inventory thereof to be prepared in the presence of reliable witnesses chosen, if possible, from among the members of the family council, which inventory shall specify the value of the succession.

(2) Where anything is due to him from such succession, he shall state it in the inventory, under pain of losing his right thereto.

(3) The tutor shall be liable to the minor for any damage arising from the absence of an inventory.

Art. 283. — *Property of tutor merged with that of the minor.*

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

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

Art. 284. — *Securities and articles of value to be deposited in a safe place.*

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

Art. 285. — *Convening family council.*

(1) A tutor, who is not the father or the mother, at the beginning of his management, shall convene the family council and explain to it the financial position of the minor.

(2) Until that time, the tutor shall confine himself to performing such acts of administration as are of an urgent nature.

Art. 286. — *Instructions by the family council.*

(1) The family council may give to a tutor, who is not the father or mo-

ther, instructions concerning the management of the property of the minor.

(2) It may prohibit him from performing certain acts or it may subject the performance thereof to some given condition or authorisation.

Art. 287. — *Property donated, bequeathed or devolving on minor.*

(1) A person who donates or bequeathes property to a minor or a person from whose succession a minor inherits property, may order that, for the administration of such property, the tutor shall conform to certain rules.

(2) Where it subsequently appears that the observance of such rules is impossible or prejudicial to the minor, the tutor may apply to the court to vary them.

Art. 288. — *Commercial or other enterprises.*

(1) Where commercial, industrial or other enterprises form part of the estate of the minor, the family council shall instruct a tutor, who is not the father or mother of the child, whether he should liquidate such enterprises or keep them going.

(2) For this purpose, it shall have regard to the time for which the tutorship is to last and the abilities and potentialities of the tutor as well as the interests of the minor.

Art. 289. — *Alienation of certain property.*

(1) The tutor may alienate corporeal chattels, stocks and securities belonging to the minor.

(2) The family council may give to a tutor, who is not the father or mother of the child, instructions concerning such sale or prohibit him from effecting it.

Art. 290. — *Securities to bearer.*

(1) A tutor, who is not the father or mother of the child, shall alienate securities to bearer, or convert them in registered securities, within a period of three months after they devolve on the minor.

(2) The family council may exempt him from such duty.

Art. 291. — *Debts and claims.*

(1) The tutor shall pay the debts which are due by the minor.

(2) He shall receive the capital and income devolving on the minor and give receipt therefor to the person effecting payment.

Art. 292. — *Investment of capitals.* — 1. *Duty of the tutor.*

(1) The tutor shall invest capitals belonging to the minor where such capitals exceed the sum of five hundred Ethiopian dollars.

(2) The family council may vary the amount specified in sub-art. (1).

Art. 293. — 2. *Time.*

(1) Capitals shall be invested within three months from the time when they are at the disposal of the tutor.

(2) The family council may vary such period.

Art. 294. — *Nature of property to be acquired.*

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

Art. 295. — 4. *Sanction.*

(1) The tutor shall be liable to pay to the minor legal interest on the monies which he has failed to invest.

(2) He may be condemned to pay damages, where appropriate.

Art. 296. — *Income.*

(1) The tutor shall deliver to the guardian of the minor the income of the latter to be used for his maintenance and his education.

(2) Such delivery shall be made on such conditions and at such times as shall be fixed by the family council.

(3) In default of such decision, the delivery shall be made every six months at the principal residence of the guardian.

Art. 297. — *Leases.*

Leases made by the tutor shall be binding on the minor for not more than three years after he attains majority, unless they have been entered into with the authorisation of the family council.

Art. 298. — *Successions.*

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

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

Art. 299. — *Donation or bequest.*

(1) The tutor may not refuse a donation or bequest of more than five hundred Ethiopian dollars offered to the minor except with the authorisation of the family council.

(2) He may not make any donation on behalf of the minor, other than small presents which may be required by custom.

Art. 300. — *Contracting suretyship.*

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

Art. 301. — *Compromise.*

A tutor may not enter into a compromise agreement concerning the interests of the minor except with the authorisation of the family council, unless the interest in dispute is less than three hundred Ethiopian dollars.

Art. 302. — *Contracts between tutor and minor.*

(1) A tutor may not buy or take on lease the property of the minor nor may he conclude any other contract with the minor, except with the authorisation of the family council.

(2) He may not accept the assignment of any right or claim against the minor except with the authorisation of the family council.

Art. 303. — *Loans.*

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

Art. 304. — *Consultation of minor.*

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

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

Art. 305. — *Authorisation to act given to the minor.* — 1. *Principle.*

(1) The tutor may authorise the minor to conclude alone those contracts which, considering his age and his financial position, are to be regarded as acts of everyday life.

(2) Such authorisation may be tacit.

Art. 306. — 2. *Acts of everyday life.*

(1) An act may in no case be regarded as an act of everyday life where for its conclusion the law requires the authorisation of the family council.

(2) Nor may an act be ever regarded as an act of everyday life where it entails on the minor an expense or obligations the value of which exceeds one hundred Ethiopian dollars.

Art. 307. — 3. *Effect with regard to the tutor.*

The tutor shall stand surety, in favour of third parties, for the obligations which the minor has assumed with his authorisation.

Art. 308. — *Will.*

(1) The tutor may not make a will on behalf of the minor.

(2) A minor may make a will alone when he attains the age of fifteen years.

(3) The will made before he has attained such age shall be of no effect, notwithstanding that the minor has not revoked it after having attained the age of fifteen years.

Art. 309. — *Marriage contracts.*

(1) The consent of the minor and of the person mentioned in Art. 562 of this Code shall be required for the marriage of a minor.

(2) The person mentioned in Art. 562 of this Code may give his consent through a representative.

(3) No proof of the power of representation shall be required where the representative is himself one of the persons mentioned in Article 562 of this Code.

Art. 310. — *Expenses of management.*

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

Art. 311. — *Rendering of accounts of management.*

(1) In the course of the tutorship, the tutor shall render any account of his management to the family council on such conditions and at such times as shall be fixed by the latter.

(2) The father and the mother of the minor are exempt from such obligation when they exercise the functions of tutor.

(3) They may exempt therefrom the tutor appointed by them.

Art. 312. — *Reference.*

The provisions of Art. 277-280 of this Code shall apply to tutorship and to appeals against the decisions of the tutor.

## Section 4. Sanction of the Rules for the Protection of the minor

### Paragraph 1. — Acts of the minor

Art. 313. — *Principle.*

Juridical acts performed by the minor in excess of his powers shall be of no effect.

Art. 314. — *Application for nullity.*

(1) The nullity of such acts may be applied for only by the minor, his representative or his heirs.

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

Art. 315. — *Good faith of person contracting with minor.*

Contracts entered into by a minor shall be valid where the other contracting party could in good faith believe that the minor had received the authorisation to conclude them and he has not taken advantage of the inexperience of the minor.

Art. 316. — *Payments.*

(1) Where it is proved that the minor has benefitted thereby, payments made to a minor shall be valid to the extent of the enrichment which remains to his benefit on the day when the action of nullity is instituted.

(2) In other cases, such payments shall be null but the minor is not bound to make repayment.

Art. 317. — *Extra-contractual liability and unlawful enrichment* — 1. *Principle.*

The provisions of the Title of this Code relating to extra-contractual liability and unlawful enrichment shall apply to the extra-contractual liability of the minor and to the unlawful enrichment he may have derived (Art. 2027-2178).

Art. 318. — 2. *Mere statement of majority.*

(1) The mere statement made by a minor that he is a major shall not deprive him of the right of availing himself of his minority.

(2) Such statement shall not amount to a fault entailing his extra-contractual liability.

Paragraph 2. — Acts of the Tutor

Art. 319. — *Acts regularly performed.*

(1) Acts performed by the tutor, within the limits of his powers, or with the necessary authorisations, may not be impugned by alleging that they have been performed for a minor.

(2) They shall be binding on the minor as though he had performed them himself, being a major.

(3) They shall not be binding on the tutor personally, saving an explicit undertaking on his part or in the cases provided by law.

Art. 320. — *Violation of legal provisions.*

(1) Acts performed by the tutor in violation of legal provisions shall be subject to the provisions of the Title of this Code relating to Agency in the case in which a representative has exceeded his powers.

(2) The same shall apply to acts which the tutor has performed without the authorisation of the family council, where such authorisation is required by law.

(3) The same shall apply also to acts performed by the tutor with the authorisation of a family council irregularly composed or which has deliberated irregularly.

Art. 321. — *Violation of instructions not laid down by law.*

(1) The fact that the tutor has acted contrary to the instructions of the family council may not be set up against third parties unless they have or should have known, in due time, the limitations imposed by the family council on the powers of the tutor.

(2) The same shall apply to those limitations imposed on the powers of the tutor by a person who has donated, bequeathed or left property to the minor.

(3) The burden of proof of the bad faith of third parties shall lie with the person involving the nullity of the act.

Art. 322. — *Co-tutor and tutor and hoc.*

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

Paragraph 3. — Liabilities which may be incurred

Art. 323. — *Tutors.*

(1) The tutor shall be liable for the damage which may be caused to the minor through his negligence, mismanagement or the fact that he has not obeyed the instructions given to him by the family council or the fact that he has acted in a case where his interests were in conflict with those of the minor.

(2) Except in the case of fraud, he shall not be liable where he has acted in conformity with the instructions given to him by the family council.

(3) The provisions of this Article shall apply to the co-tutor and to the tutor ad hoc.

Art. 324. — *Assistant tutor.*

The assistant tutor shall be jointly and severally liable with the tutor, as regards condemnations, unless he can show that he has committed no fault.

Art. 325. — *Tutor of fact.*

(1) Any person who, without being a tutor, performs the functions of tutor, shall be liable for his management of affairs.

(2) The tutor shall be jointly and severally liable in respect of the condemnations passed upon such person.

Art. 326. — *Husband of a tutrix.*

The husband of a tutrix shall be jointly and severally liable in respect of the condemnations passed on her, by reason of facts which are connected with the tutorship and which have occurred during the marriage.

Art. 327. — *Members of family council.*

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

(2) However, by signing the minute of the meeting of the family council, they guarantee that it has been convened and that it has deliberated in conformity with the law.

## Section 5. Cessation of the disability of the Minor

Art. 328. — *Causes.*

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

### Paragraph 1. - Emancipation

Art. 329. — *Marriage.*

A minor shall be emancipated as of right by marriage.

Art. 330. — *Explicit emancipation.* — 1. *Conditions.*

(1) A minor may be emancipated when he has attained the age of fifteen years.

(2) A decision of the family council shall be required for this purpose.

Art. 331. — 2. *Application.*

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

Art. 332. — 3. *Inadmissibility of application.*

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

Art. 333. — *Effects.*

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

Art. 334. — *Irrevocability.*

(1) Emancipation may not be revoked.

(2) Emancipation resulting from marriage shall retain its effects notwithstanding that the marriage is dissolved.

(3) The court may give a decision to the contrary, where it pronounces the dissolution of the marriage on the ground that one of the spouses had not attained the age prescribed by the law for marriage.

Paragraph 2. — Rendering of accounts of tutorship

Art. 335. — *Principle.*

(1) Where his functions terminate, the tutor shall render an account of his administration to his ex-ward or to the heirs of the latter.

(2) He shall hand over to him the property which belongs to him and prepare for him a statement showing the rights which pertain to him and the debts to which he is bound.

Art. 336. — *Where there is no inventory.*

(1) Where the tutor has failed to draw up an inventory when he assumed his functions or when a succession has devolved on the minor, the minor may prove by all means of which property his estate or such succession consists.

(2) Unless the contrary is proved, property shall be deemed to have pertained to the minor where reliable witnesses make an attestation to this effect.

Art. 337. — *Approval of accounts.*

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

(2) The same shall apply to the exemption from rendering accounts granted by the ward to the tutor.

(3) The provisions of sub-arts. (1) and (2) may not be invoked by the heirs of the minor who have attained majority when they themselves have approved the accounts of the tutor or exempted the tutor from rendering accounts.

Art. 338. — *Limitation.*

(1) Any action of the minor, his representatives or his heirs against the tutor, based on the liability of the latter and relating to acts of the tutorship shall be barred if it is not instituted within five years following the cessation of the functions of the tutor.

(2) Upon the expiry of the above period, the minor shall retain the right to claim the restitution of his property or to institute an action based on unlawful enrichment.

## Chapter 3. Insane Persons and Infirm Persons

Art. 339. — *Definition.*

(1) An insane person is one who, as a consequence of his being insufficiently developed or as a consequence of a mental disease or of his senility, is not capable to understand the importance of his actions.

(2) Persons who are feeble-minded, drunkards or habitually intoxicated, and persons who are prodigals shall in appropriate cases be assimilated to insane persons.

Art. 340. — *Infirm persons.*

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

### Section 1. Insane persons and infirm persons who are not interdicted

Art. 341. — *Notorious insanity.* — 1. *An insane person who is an inmate of an institution.*

A person shall be deemed by law to be notoriously insane where by reason of his mental condition, he is an inmate of a hospital or of an institution for insane persons or of a nursing home, for the time for which he remains an inmate.

Art. 342. — 2. *Rural communes.*

In communes of less than two thousand inhabitants, the insanity of a person shall be deemed to be notorious, where the family of that person, or those with whom he lives, keep over him a watch required by his mental condition, and where his liberty of moving about is, for that reason, restricted by those who are around him.

Art. 343. — *Juridical acts of notoriously insane person.* — 1. *Principle.*

(1) Juridical acts performed by a person at the time and in a place in which his state of insanity was notorious, may be impugned by that person, by his representatives or by his heirs.

(2) The same shall apply to juridical acts performed by a person where the infirmity which renders such person unfit to take care of himself and to administer his property is apparent.

Art. 344. — 2. *Practice.*

(1) Unless the contrary is proved, the consent of such person shall be deemed to be affected by a defect which brings about its nullity.

(2) The provisions of this Code relating to the annulment of contracts on the ground of error shall apply in such case (Art. 1696-1703).

Art. 345. — *Liability incurred.* — 1. *Principle.*

An insane person shall be liable for the damage caused to third parties in good faith by the nullity of contracts they have concluded with him.

Art. 346. — 2. *Proof.*

(1) The good faith of third persons shall be presumed, saving proof to the contrary.

(2) In the case provided in Art. 342 of this Code, a third person shall be deemed to be in bad faith, notwithstanding any proof to the contrary, where he lives in the same commune as the insane person or in an adjacent commune.

Art. 347. — *Persons whose insanity is not notorious.*

(1) Juridical acts performed by a person may not be impugned on the grounds of his insanity where his condition is not notorious.

(2) The insane person may not obtain the annulment of such acts unless he can show that, at the time he performed them, he was not in a condition to give a consent free from defects.

Art. 348. — *Heirs and creditors.* — 1. *Principle.*

The heirs and the creditors of a person whose insanity is not notorious may not demand an annulment of an act performed by that person by alleging that, on account of his insanity, he could not give to such act a consent free from defects.

Art. 349. — 2.*Exceptions.*

(1) The provisions of Art. 348 shall not apply where the mental infirmity of the person who performed the act results from the contents of the act itself.

(2) They shall not apply where the interdiction of the person who performed the act has been demanded, notwithstanding that the demand is made after the act in question, unless the person who performed the act dies before the application for interdiction is decided on.

Art. 350. — *Extra-contractual liability.*

(1) A notoriously insane person shall be extra-contractually liable as though he were of sound mind (Art. 2027-2161).

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(2) An insane person shall be bound as though he were of sound mind, by obligations resulting from any unlawful enrichment derived by him (Art. 2162-2178).

## Section 2. Judicial interdiction

Art. 351. — *Judgment of interdiction.*

(1) The court may pronounce the interdiction of an insane person where his health and his interest so require.

(2) The interdiction may also be pronounced in the interest of the presumptive heirs of the insane person.

(3) It may also be pronounced in the case of a person who is unable through permanent disability to govern himself or to administer his estate (Art. 340).

Art. 352. — *Declaration of notoriety of insanity.*

(1) Where the court pronounces the interdiction of a person, it may declare that the insanity of such person was publicly known since such date as may be fixed in the judgment.

(2) The decision mentioned in sub-art. (1) may be given after the judgment of interdiction.

(3) The date fixed in the judgment may not precede that of the application for interdiction by more than two years.

Art. 353. — *Application for interdiction.*

(1) An application for interdiction may be made by the insane or infirm person himself, or by his spouse, or by any of his relatives by consanguinity or affinity, or by the public prosecutor.

(2) The judgment of interdiction may be given before the person whose interdiction is applied for attains his majority.

(3) If may not be given after the death of the person whose interdiction is applied for.

Art. 354. — *Procedure for interdiction.*

(1) Before pronouncing the interdiction of a person, the court shall be convinced that such measure is necessary.

(2) It may not pronounce the interdiction without having seen the person whose interdiction is applied for.

(3) Where the personal appearance of such person is not possible, the court shall proceed to his examination either by delegating one of its members or by appointing an expert.

Art. 355. — *Appeal.*

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

Art. 356. — *Register of judicially interdicted persons.*

(1) A special register kept in the registry of each Teklay Guezat Court shall contain the list of every person, whose interdiction has been judicially declared, residing within the jurisdiction of the court.

(2) The register shall contain only such details as are necessary to identify such persons and to identify the judgment or judgments relating to the interdiction.

(3) It may be perused by any interested person.

Art. 357. — *Notice of judgment.*

(1) The guardian of the interdicted person shall ensure that the judgment of interdiction be brought to the notice of the registry of the court of the province or provinces where the interdicted person resides or is called upon to reside.

(2) The same shall apply to any judgment modifying the effects of the interdiction.

Art. 358. — *Protection of interdicted person.*

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

Art. 359. — *Guardian and tutor.*

(1) The guardian and tutor of an interdicted person shall in all cases be appointed by the court.

(2) No person, other than the spouse, the ascendants and descendants of the interdicted person, shall be bound to retain the functions of guardian or tutor of an interdicted person for more than five years.

Art. 360. — *Family council.* — 1. *Constitution.*

(1) The provisions of this Title relating to the constitution of the council of the family of a minor shall not apply to an interdicted person.

(2) The council of the family of an interdicted person shall consist of his ascendants, his brothers and sisters who are of age, his spouse and his descendants who have attained majority.

(3) Where the number of the members of the family council thus composed is less than four, the court shall make up that number by calling

on the persons, whether related to the interdicted person or not, who take interest in his condition.

Art. 361. — 2. *Meeting place.*

(1) The family council shall meet in such place as may be fixed by the court.

(2) In default of such place, it shall meet in the place where the interdicted person had his or her principal residence on the day the interdiction has been pronounced.

Art. 362. — *Residence of interdicted person.*

(1) The guardian of the interdicted person shall ensure that the interdicted person live in the place where his disability has been given the publicity required by law.

(2) Where the interdicted person changes his residence, his guardian shall ensure that the publicity required by law be made in the place of the new residence.

Art. 363. — *Income of interdicted person.*

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

(2) It shall be used mainly for the maintenance and care of the interdicted person.

(3) The guardian shall render an account of its use.

Art. 364. — *Appeal against decisions of the guardian.*

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

Art. 365. — *Father and mother of interdicted person.*

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

Art. 366. — *Leases.*

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

Art. 367. — *Donations.*

(1) Donations may be made by the tutor of an interdicted person on behalf of the latter, to the descendants of the interdicted person.

(2) Such donations shall be of no effect unless they have been authorised by the family council.

Art. 368. — *Will.*

(1) An interdicted person may not make a will after his interdiction has been declared.

(2) Any will made by him prior to being interdicted shall be valid.

(3) The court may invalidate in whole or in part the will made by an interdicted person prior to being interdicted where it is of opinion that the provisions contained in such will are contrary to equity or have been affected by the state of health of the testator.

Art. 369. — *Marriage.*

(1) A person who has been judicially interdicted may not contract marriage unless he is authorised for that purpose by the court.

(2) An application to this effect may be made by the interdicted person himself or by his guardian.

(3) Any interested party may apply to the court to declare the nullity of a marriage which an interdicted person has contracted without having obtained the authorisation of the court.

Art. 370. — *Divorce and disowning.*

(1) The personal consent of the interdicted person as well as that of his guardian shall be required for requesting a divorce or putting an end to an irregular union.

(2) The child of an interdicted person may be disowned on the conditions laid down in the Book of this Code relating to Family Relationship (Art. 782-795).

Art. 371. — *Limitation of effects of interdiction.* — 1. *Principle.*

(1) The court may, in pronouncing the interdiction or after such decision, limit the effects of the interdiction.

(2) It may authorise the interdicted person to do certain acts himself.

(3) It may also decide that the tutor of the interdicted person may not perform certain acts without the concurrence of the interdicted person.

Art. 372. — 2. *Effect.*

(1) The limitations imposed by the court to the powers of the tutor of the interdicted person in accordance with Art. 371 may not be set up against third parties in good faith who have had dealings with the tutor.

(2) Saving proof to the contrary, the good faith of third parties shall be presumed.

Art. 373. — *Nullity of the acts of an interdicted person.*

(1) Acts performed by an interdicted person in excess of his powers may be impugned in the same circumstances as if they had been performed by a minor.

(2) The court may not uphold the effect of such acts on the ground that they could have been performed by the insane person during a lucid interval.

Art. 374. — *Liability of guardian of interdicted person.* — 1. *Principle.*

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

Art. 375. — 2. *Good faith.*

A person shall never be deemed to be in good faith where he has contracted with the interdicted person within a province where his interdiction has been given publicity in terms of the law.

Art. 376. — *Liability of Registrar.*

(1) The registrar of the court shall be liable in lieu of the guardian of the interdicted person where the registrar having received notice of the judgment of interdiction, has failed to enter the name of the interdicted person in the special register kept for this purpose.

(2) The same shall apply where he has refused to make the registrar register accessible to a third person who has had dealings with the interdicted person.

Art. 377. — *Withdrawal of interdiction.* — 1. *Application.*

(1) The disability of the interdicted person shall cease where the withdrawal of the interdiction is pronounced.

(2) The withdrawal of the interdiction may at any time be applied for to the court by the persons who may apply for the pronouncement of the interdiction, with the exception of the interdicted person himself.

(3) It may also be applied for by the guardian or tutor of the interdicted person.

Art. 378. — 2. *Pronouncement.*

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

Art. 379. — 3. *Effects.*

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

## Chapter 4. Persons interdicted by law

Art. 380. — *Definition.*

(1) A person interdicted by law is one from whom the law withdraws the administration of his property, as a consequence of a criminal sentence passed on him.

(2) The cases in which a person is to be considered as interdicted by law are determined by penal laws.

Art. 381. — *Rules governing interdiction by law.*

Without prejudice to the provisions of the following Articles the rules governing the interdiction by law shall be the same as those of judicial interdiction.

Art. 382.— *No guardian.*

A person interdicted by law has no guardian.

Art. 383. — *Tutor.* — 1. *Appointment.*

(1) The administration of the property of a person interdicted by law shall be entrusted to a tutor appointed by the court.

(2) The tutor appointed by the court may be replaced at his own request or at the request of the spouse or a relative of the interdicted person or at the request of the public prosecutor.

Art. 384. — 1. *Voluntary nature of office.*

(1) The acceptance of the office of tutor of a person interdicted by law is optional.

(2) A person who has accepted such office may not request to be replaced except for a just reason to the satisfaction of the court.

(3) His request shall be allowed where he has held such office for five years or more.

Art. 385. — *Family council.*

The powers conferred on the family council in the case of judicial interdiction shall, in the case of interdiction by law, be exercised by the court.

Art. 386. — *Acts performed in the exercise of family rights.*

(1) The person interdicted by law may contract marriage or acknowledge an illegitimate child.

(2) He may also ask for a divorce or disown a child.

(3) His tutor may not perform such acts in his name.

Art. 387. — *Nullity of acts of interdicted person.*

(1) Juridical acts performed by a person interdicted by law in excess of his powers shall be of no effect.

(2) The nullity thereof may be required by the interdicted person, the person with whom he has contracted or the public prosecutor, as though the subject matter of the act performed were illicit.

Art. 388. — *Termination of interdiction.*

The interdiction by law shall come to an end when the person interdicted by law has undergone the punishment for the duration of which the disability was to last.

## Chapter 5. Foreigners

Art. 389. — *Assimilation to Ethiopians.*

(1) Foreigners shall be fully assimilated to Ethiopian subjects as regards the enjoyment and exercise of civil rights.

(2) All rights the exercise of which does not imply any participation in the government or administration of the country shall be considered to be civil rights.

(3) Nothing in this Article shall affect such special conditions as may be prescribed regarding the granting to a foreigner of a permit to work in Ethiopia.

Art. 390. — *Restriction regarding ownership of immovable property.* —

1. *Principle.*

No foreigner may own immovable property situate in Ethiopia except in accordance with an Imperial Order.

Art. 391. — 2. *Duty to sell.*

Any foreigner who is found to own immovable property in good faith but does not hold such immovable property in accordance with an Imperial Order issued under Art. 390 shall be required by the competent authority to dispose of such immovable property to an Ethiopian within a period of six months.

Art. 392. — 3. *Penalties.*

(1) Where a foreigner has failed to dispose of such immovable property to an Ethiopian within the period provided in Art. 391, the immovable property shall be seized and sold by the competent authority.

(2) The proceeds of the sale shall be paid to the foreigner less twenty per cent which shall be deducted as a penalty and with a view to covering the expenses of sale.

(3) Ten per cent only shall be deducted where the foreigner acquired the immovable property by succession.

Art. 393. — *Rights assimilated to rights in ownership.*

The provisions of Art. 390-392 shall apply where a foreigner acquires rights or usage for a period exceeding fifty years or a like interest terminable on death.

## TITLE III. BODIES CORPORATE AND PROPERTY WITH A SPECIFIC DESTINATION

### Chapter 1. Administrative bodies and the Church

Art. 394. — *The State.*

(1) The State is regarded by law as a person.

(2) As such it can have and exercise, through its organs, all the rights which are consistent with its nature.

Art. 395. — *Territorial subdivisions of the State.*

(1) Teklay Guezats, Awradja Guezats, Woreda and Mektl-Woreda Guezats and urban and rural communes shall also be the subjects of rights.

(2) As such they can have and exercise, through their organs, all the rights which are vested in them by the administrative laws.

Art. 396. — *Ministries.*

(1) The ministries of the Imperial Ethiopian Government are the subjects of rights.

(2) As such they can have and exercise, through their organs, all the rights which are vested in them by the administrative laws.

Art. 397. — *Public administrative authorities and establishments.*

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

Art. 398. — *Ethiopian Orthodox Church.*

(1) The Ethiopian Orthodox Church is regarded by law as a person.

(2) As such it can have and exercise, through its organs, all the rights which are vested in it by the administrative laws.

Art. 399. — *Dioceses, parishes and monasteries.*

Dioceses, parishes and monasteries which form part of the Ethiopian Or-

thodox Church are likewise the subjects of rights under the conditions and within the limits fixed by the administrative laws.

Art. 400. — *Powers and organs.*

(1) The powers of the bodies referred to in the preceding articles as well as the organs which are authorized to represent such bodies shall be prescribed by administrative laws.

(2) They may impose on such organs the observance of specified conditions or formalities for the exercise of certain rights.

Art. 401. — *Failure to comply with legal requirements.*

(1) Acts performed by the bodies referred to in this Chapter in excess of the powers given to them by law or without the observance of the conditions or formalities required by law shall be of no effect.

(2) The provisions of sub-art. (1) shall apply notwithstanding that nullity is not expressly provided by law in such circumstances.

Art. 402. — *Nullity.*

(1) The nullity provided for in Art. 401 may be invoked by any interested party.

(2) It may no longer be invoked after ten years have elapsed from the date when the act was performed.

Art. 403. — *Extra-contractual liability.*

(1) The bodies referred to in this Chapter shall be liable for any damage arising from the fault or act of their organs or servants in accordance with the provisions of the Title of this Code relating to "Extra-Contractual Liability and Unlawful Enrichment" (Art. 2027-2161).

(2) They shall in accordance with the provisions of the same Title pay back any unlawful enrichment they have derived (Art. 2162-2178).

## Chapter 2. Associations

Art. 404. — *Definition.*

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

Art. 405. — *Partnerships.*

(1) Groupings formed with a view to securing or sharing profits shall be subject to the provisions of the Commercial Code relating to partnerships.

(2) The same shall apply to cooperative and other groupings which tend to satisfy the financial interests of their members by placing them in a position to save money.

Art. 406. — *Trade Unions.*

(1) Groupings formed with a view to a defending the financial interests of their members or to representing a particular calling shall be subject to the special laws concerning trade unions.

(2) In the absence of special laws, they shall be subject to the provisions of this Chapter.

Art. 407. — *Groupings of a religious character.*

(1) Churches, religions, associations other than the Ethiopian Orthodox Church shall be subject to the special laws concerning them.

(2) Failing such special laws, these groupings shall be deemed to be associations falling under the provisions of this Chapter.

## Section 1. Memorandum of Association and Statutes

Art. 408. — *Memorandum of association.*

(1) Associations shall be governed by a memorandum of association agreed to by their founders.

(2) The provisions of such memorandum shall be supplemented or superseded by those of this Chapter, whenever the memorandum is silent or any of its provisions is contrary to the law.

Art. 409. — *Obligation to draw up statutes.*

(1) Notwithstanding any agreement to the contrary, associations shall be provided with statutes whenever any of the associates so requires.

(2) The request that the association be provided with statutes may also be made by the office of associations of the province where the association carries out its activity.

(3) An association may be dissolved by the office of associations where it is not provided with statutes within three months after a request to this effect has been made.

Art. 410. — *Purpose of statutes.*

(1) The memorandum of association shall lapse when the association is provided with statutes.

(2) The association shall thereupon be governed by its statutes.

(3) The provisions of the statutes shall be supplemented or superseded by those of this Chapter, whenever the statutes are silent or any of these provisions is contrary to the law.

Art. 411. — *Contents and form of statutes.*

(1) The statutes of the association shall be of no effect unless they mention the name of the association, its object, the place where the association has its head office and the date when they are made.

(2) They shall be signed by not less than five associates, who shall be known as the founders of the association.

**Art. 412.** — *Adoption of model statutes.*

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

(2) In such cases it shall be sufficient that a special act be prepared, making reference to such statutes and signed by not less than two associates.

(3) Such act shall be of no effect unless it mentions the name of the association, its object, the place where the association has its head office, and the date when it is made.

**Art. 413.** — *Deposit of statutes.*

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

**Art. 414.** — *Communication of statutes.*

(1) The statutes of the association shall be served without delay on any interested party upon a request addressed to the president of the association.

(2) The date on which the statutes are served shall be entered on the copy served.

(3) The prescribed fee may be charged by the association, in addition to the postal expenses arising from service of the statutes, where appropriate.

## Section 2. Associates

**Art. 415.** — *Associates.*

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

**Art. 416.** — *New members.*

Without prejudice to any provision to the contrary, the association may receive new members.

**Art. 417.** — *Promise to join an association.*

A promise to join an association shall be of no effect.

**Art. 418.** — *Equality of associates.*

Without prejudice to any provision to the contrary in the memorandum of association or in the statutes, all associates shall have equal rights.

Art. 419. — *Personal character of the capacity of associate.*

(1) The capacity of associate is inalienable.

(2) It shall not pass to the heirs of the associate.

(3) The provisions of this Article shall apply notwithstanding any provision to the contrary in the memorandum of association or the statutes.

Art. 420. — *Exercise of the rights of an associate.* — 1. *Representation.*

Without prejudice to any provision to the contrary in the memorandum of association or in the statutes, an associate may not exercise his rights as an associate through a third person.

Art. 421. — 2. *Payment of subscriptions.*

An associate may not exercise his rights as an associate unless he has previously paid the subscriptions fallen due which he owes to the association.

Art. 422. — *Subscriptions.*

(1) Without prejudice to any provision to the contrary, the membership subscription shall be paid during the first quarter of each year.

(2) An action may only be brought against an associate for the payment of his subscription for the current year and preceding year.

Art. 423. — *Right to withdraw from the association.*

(1) An associate may at any time withdraw from the association, notwithstanding that it has been constituted for a definite period of time and notwithstanding any provision to the contrary.

(2) An associate who withdraws from the association shall pay the subscriptions which have fallen due and the subscriptions of the current year.

Art. 424. — *Expulsion of an associate.*

(1) An associate may be expelled from the association in the cases and in the manner provided for in the memorandum of association or in the statutes.

(2) In addition to those cases, he may also be expelled from the association for good cause by the general meeting.

(3) The associate who has been expelled may, within three months after he has been informed of his expulsion, appeal to the court against such decision on the ground that the expulsion is not justified.

Art. 425. — *The association does not represent the associates.*

The associates shall not be liable to third parties as a consequence of the activities of the association.

## Section 3. Management

Art. 426. — *Appointment of directors.*

(1) The association shall be managed by one or more directors, appointed in conformity with the memorandum of association or the statutes.

(2) Unless otherwise provided, they shall be appointed by the general meeting.

Art. 427. — *Directors must be members.*

Without prejudice to any provision to the contrary, the directors shall be appointed from among the members of the association.

Art. 428. — *Board of management.*

(1) When there are several directors, they shall form a board of management.

(2) Without prejudice to any provision to the contrary, the decisions concerning the association shall be taken by the board which shall decide by a majority of its members present or represented.

(3) Those who do not agree with the decision taken by the majority may require that their dissenting opinion be recorded in a minute.

Art. 429. — *Powers of directors.* — 1. *Law.*

(1) The directors of an association shall perform all the acts necessary for the management of the association.

(2) They shall represent the association in judicial and extra-judicial matters.

Art. 430. — 2. *Statutes.*

(1) The statutes may limit the powers of the directors or regulate the manner in which such powers are to be exercised.

(2) Their provisions may not be set up against third parties unless the statutes have been deposited in the office of associations or it is proved that the third parties were actually aware of such provisions.

Art. 431. — 3. *Memorandum of association or general meeting.*

(1) The provisions whereby the memorandum of association or the general meeting of the association, limit the powers of the directors, or regulate the manner in which such powers are to be exercised, may not be set up against third parties unless it is proved that such third persons were actually aware of those provisions.

(2) They have as their only sanction the responsibility, in relation to the association, of the director or directors who have contravened them.

Art. 432. — *Provisional director.*

If the persons authorised to act on behalf of the association are not available or are impeded, a provisional director shall be appointed by the court on the application of any interested party.

Art. 433. — *Proof of capacity.*

(1) The persons authorised to act on behalf of the association may require that a document showing their capacity and powers be delivered to them by the office of associations.

(2) Such document shall specify, where appropriate, the period for which the powers have been given.

Art. 434. — *Liability of directors.*

The directors of an association shall be liable to the association in accordance with the rules relating to agency (Art. 2179-2233).

Art. 435. — *Exclusion from right to vote.*

Notwithstanding any agreement to the contrary, directors may not vote in a general meeting called to approve their accounts or to decide on liabilities incurred by them.

## Section 4. General Meeting

Art. 436. — *Character of supreme organ.*

(1) The general meeting of the associates is the supreme organ of the association.

(2) It shall decide on all matters concerning the association which do not fall within the jurisdiction of another organ.

Art. 437. — *Appointment and control of directors.*

(1) Unless otherwise provided, the general meeting shall appoint the directors, control their activity and approve their accounts.

(2) It may give directions regarding the management of the association.

Art. 438. — *Dismissal of directors.*

(1) The general meeting may at any time dismiss the directors without prejudice to their right to the remuneration which has been agreed upon.

(2) This right of dismissal may neither be restricted nor excluded where the directors are dismissed for good cause, in particular where they have committed a serious breach of duties or are unable to manage properly the affairs of the association.

Art. 439. — *Admission and expulsion of members.*

(1) The general meeting shall decide on the admission of new members, or on the expulsion of members of the association.

(2) The power to admit or to expel members may not be entrusted to the organs of management except under reservation of ratification by the general meeting.

Art. 440. — *Amendment of statutes.* — 1. *Principle.*

(1) Without prejudice to any other provision to the contrary, the general meeting may amend the memorandum of association or the statutes of the association.

(2) The power to amend the memorandum of association or the statutes may not be conferred on any other person or organ.

Art. 441. — 2. *Restriction.*

(1) The unanimous consent of the associates shall be required where the decision to be taken aims at modifying the object of the association or at giving unequal rights to the associates.

(2) Privileged rights may not be withdrawn from associates except with the consent of such associates.

Art. 442. — *Convocation.* — 1. *Principle.*

A general meeting shall be convened by the directors in the cases provided for in the memorandum of association or in the statutes and, in cases of urgency, whenever it is in the interest of the association to do so.

Art. 443. — 2. *Right of associates.*

(1) A general meeting shall be convened whenever such number of associates as is fixed by the statutes asks for its convocation.

(2) If the statutes are silent in this regard, a general meeting shall be convened if one-fifth of the associates so require in writing and specify the purpose of the meeting.

Art. 444. — 3. *Convocation by the court.*

(1) Where the board of management fails to convene the general meeting whenever it is bound to do so, the general meeting shall be convened by the court on the application of one or more associates.

(2) In such a case, the court shall make the necessary provisions for the chairmanship of the meeting.

Art. 445. — 4. *Procedure and time.*

(1) The procedure and time of the convocation of a general meeting shall be as provided by the memorandum of association or the statutes.

(2) Unless otherwise provided, they shall be fixed by the directors in a reasonable manner.

Art. 446. — *Voting at meetings.*

(1) Decisions of the general meeting shall be taken by a majority of members who are present or represented.

(2) A decision relating to a point not mentioned in the order of the day shall be of no effect.

Art. 447. — *Equivalence.*

A proposal which has been agreed to in writing by all the associates shall be deemed to amount to a decision of a general meeting.

Art. 448. — *Nullity of decisions of a general meeting.* — 1. *Action.*

(1) Notwithstanding any agreement to the contrary, every associate may appeal to the court against decisions of a general meeting to which he has not adhered and which are contrary to the law or the memorandum of association or the statutes.

(2) The right to appeal to the court shall be barred if not exercised within one month from the day on which the associate knew of the decision.

(3) An associate shall be deemed to know the decisions taken by a general meeting, where it has been convened without fraud and in accordance with the provisions of the memorandum of association, the statutes or the law.

Art. 449. — 2. *Authority of the judgment.*

A judgment which declares the nullity of a decision of a general meeting shall have effect with respect to all persons.

Art. 450. — *Suspension of decisions.*

The court may, on the application of one of the directors of the association or of the office of associations, stay the execution of a decision the annulment of which is demanded.

## Section 5. Rights and obligations of the Association

Art. 451. — *Principle.*

(1) An association is an entity distinct from the persons of whom it is composed.

(2) The rights and obligations of the association are not rights and obligations of its members.

(3) The rights and obligations of the members of the association are not rights and obligations of the association.

Art. 452. — *Name.*

(1) The name of an association is protected in the same manner as that of a physical person (Art. 45 and 46).

(2) Such protection shall not be granted by the law unless the statutes of the association have been deposited in the office of associations or the person who has violated the rights of the association has done so knowing what he was doing and in bad faith.

Art. 453. — *Residence.*

(1) The association shall have its principal residence at the place where its head office is situate, in accordance with the memorandum of association or the statutes.

(2) It has secondary residences in any place where it has or occupies premises permanently.

Art. 454. — *Capacity.* — 1. *Principle.*

(1) An association may perform all civil acts which are consistent with its nature.

(2) It shall perform such acts through its organs of management.

Art. 455. — 2. *Law suits.*

(1) An association may sue or be sued.

(2) For this purpose, it shall be represented by such person or persons as are so authorised by the memorandum of association or the statutes.

(3) Correspondence may be addressed to and notices may be served on the association or its president without it being necessary to specify the organs qualified for receiving such correspondence or notices.

Art. 456. — *Donations and legacies.*

(1) The office of associations may demand to be informed of any donation or legacy made to an association where such donation or legacy exceeds a certain amount.

(2) In such a case, the association shall inform the office of associations within six months from the day on which it received the donation or legacy.

Art. 457. — *Extra-contractual liability of the association.*

(1) An association shall be liable for the acts and omissions of its directors and servants, whenever such acts and omissions have taken place in the execution of the functions which it is their duty to perform and which entail liability.

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(2) An association shall be liable whenever it enriches itself unlawfully.

(3) The provisions of the Title of this Code relating to "Extra-contractual liability and unlawful enrichment" shall apply in this regard (Art. 2027-2178).

Art. 458. — *Surety for the debts of the association.*

A director who has acted on behalf of an association shall stand joint and several surety for the association, by virtue of the law, whenever the association does not function in conformity with the statutes deposited in the office of associations.

## Section 6. Dissolution and liquidation of an association

Art. 459. — *Dissolution.* — 1. *Statutes.*

An association shall be dissolved in such cases as are provided for in the memorandum of association or the statutes.

Art. 460. — 2. *General meeting.*

Notwithstanding any agreement to the contrary, the general meeting may at any time decide to dissolve the association.

Art. 461. — 3. *Court.*

An association shall be dissolved by the court on the application of its board of management, or of one-fifth of the associates, or of the office of associations where :

(a) as a result of the reduction of the number of associates or for any other cause, it is no longer possible to appoint the members of the board of management or to make the association function in conformity with the memorandum of association or the statutes;

(b) the object of the association has been attained or it has become impossible to attain it, or a long inactivity shows that the association has ceased to pursue that object;

(c) the association pursues an object which is different to that which is determined by the memorandum of association or the statutes;

(d) the association has become insolvent.

Art. 462. — 4. *Administrative decision.*

(1) An association shall be dissolved by the office of associations where its object or activities are unlawful or contrary to morality.

(2) An appeal from such decision may be made to the Ministry of Interior by any of the directors of the association within one month after it has been made known to the association.

(3) The court may, pending the decision on the appeal, stay the execution of the decision dissolving the association.

Art. 463. — *State of liquidation.*

(1) An association shall be in a state of liquidation where it is dissolved in conformity with the law.

(2) It continues to be deemed to have a personality until the end and for the requirements of such liquidation.

Art. 464. — *Liquidators.* — 1. *Appointment.*

(1) Unless otherwise provided by the memorandum of association or the statutes or ordered by the court, an association shall be liquidated by such persons as have been entrusted with its management.

(2) In default of such persons, the association shall be liquidated by one or more liquidators, appointed by the court.

Art. 465. — 2. *Powers.*

(1) The liquidator has the powers which appertain to the board of management.

(2) He may not exercise his powers except for the requirements of the liquidation.

(3) He may not undertake any new transaction.

Art. 466. — 3. *Liability.*

(1) The liquidator shall be liable to the association and to the creditors of the association, for the damage which he causes to them through any mistake which he may make in the exercise of his functions.

(2) The question of his liability to the association may be raised by any of the associates who has exercised the functions of director of the association during the five years preceding the institution of the action.

Art. 467. — *Devolution of property.*

(1) The estate of an association which has been dissolved may in no case be partitioned among the associates.

(2) In default of a provision in the memorandum of association or in the statutes, and unless the general meeting validly destined it for another purpose, such estate shall become the property of the State.

(3) The general meeting may not decide on the destination of the property if the association is dissolved by the office of associations.

## Section 7. Control of associations

Art. 468. — *Office of associations.*

(1) An office of associations shall be established in the capital of each province in connection with the governorate of such province.

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(2) The office shall exercise supervision over all associations acting within the province.

Art. 469. — *Deposit of statutes.*

The office of associations shall call upon the founders or the persons managing associations, where appropriate, to draw up and to deposit statutes for the association.

Art. 470. — *Register of declared associations.*

(1) The office of associations shall keep in alphabetical order a register of the associations established in the province and which have been declared to it.

(2) The directors of an association may appeal to the court against a refusal of registration which is made to them by the office of associations.

Art. 471. — *Progressive number.*

(1) Every association entered in the register shall be given a progressive number which refers to the file which the office opens for the association.

(2) Such progressive number shall appear on the statutes and on all the documents making up the correspondence of the association with third parties.

Art. 472. — *File of the association.*

The file of each association entered in the register shall contain:

(a) the name of the association together with its progressive number; and

(b) the statutes of the association, and the amendments made to such statutes, together with the date of such statutes or amendments; and

(c) the name of the directors of the association, or of the persons empowered to represent it; and

(d) an indication of the secondary residences which the association may have; and

(e) the decision taken to dissolve the association and the names of the liquidators, where appropriate.

Art. 473. — *General meetings.* — 1. *Convocation.*

(1) The office of associations shall be informed in due time whenever a general meeting of an association is held.

(2) It may be represented by an observer at such general meeting.

(3) It may prescribe any measure it thinks fit to ensure the good functioning of the general meeting as regards in particular the manner and times of convocation, the order of the day and the holding of the meeting.

Art. 474. — 2. *Decisions.*

The office of associations shall be informed within the month following the holding of the general meeting of all the decisions taken by such meeting which are to be entered in the file of the association kept by the office.

Art. 475. — 3. *Annulment of decisions.*

(1) The office of associations may impugn before the court such decisions of the general meeting as are contrary to the law or to the statutes.

(2) The right to institute such action shall be barred where the action is not instituted within a month from the day when the office of associations has been informed of the decision taken.

Art. 476. — *Amendments of statutes.*

(1) Where statutes have been amended, a copy of the amended statutes shall be deposited with the office of associations, within the month following the approval of the amendment by the general meeting.

(2) Such copy shall bear on the cover the words "Text as amended on ".

(3) Amendments of the statutes may not be set up against third parties, so long as they have not been declared to the office of associations unless it is proved that the third parties were aware of them.

Art. 477. — *Directors of the association.*

(1) The name of the members of the board of management and of the persons empowered to represent the association shall be communicated to the office of associations within the month which follows the appointment of such persons.

(2) Every modification made to such list shall be communicated within the same period.

Art. 478. — *Balance sheet.*

(1) The association shall communicate every year to the office of associations its balance sheet approved by the general meeting.

(2) The Ministry of Interior may prescribe such rules as it thinks fit with a view to ensuring a good presentation and the truthfulness of such balance sheet.

Art. 479. — *Ministry of Interior.*

(1) The Ministry of Interior may prescribe, within the framework of the existing laws, any other measure it thinks fit with a view to placing the offices of associations in a position to exercise an efficient control on the associations.

(2) Such measures may differ according to the object, the importance and the duration of the association.

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(3) Particular measures may also be prescribed for the associations which have their head office in a foreign country, or which carry on an activity in a foreign country or the majority of whose members are foreigners, or which have a board of management in which one or more members are foreigners.

Art. 480. — *Criminal sanctions.* — 1. *Declarations to the office.*

The punishments laid down in the Penal Code shall apply where:

(a) the founders of an association have not deposited the statutes thereof at the office of associations within the period provided by the law; or

(b) the directors of an association have contravened the provisions of this Chapter relating to the declarations to be made to or documents to be deposited in the office of associations.

Art. 481. — 2. *Infringements of various provisions of the law.*

The punishments laid down in the Penal Code shall apply where:

(a) the progressive number of an association has not appeared on the statutes or on a document of correspondence with third persons;

(b) the statutes of an association have not been communicated according to the law to an interested person on a request of the latter.

Art. 482. — 3. *Association declared illegal.*

(1) The directors of an association dissolved by the office of associations who continue to carry on an activity in their said capacity shall be liable to the punishments laid down in the Penal Code.

(2) The members of an association who have continued to take part in its activities being aware of its illegal character shall be liable to the punishments laid down in the Penal Code.

## Chapter 3. Property with a specific destination

### Section 1. Endowments

Art. 483. — *Definition.*

An act of endowment is an act whereby a person destines certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits.

Art. 484. — *Forms.*

(1) An endowment may be constituted either by a donation or by a will.

(2) Its constitution shall be subject, as regards its form and its substance, to the rules relating to donations or wills.

Art. 485. — *Administrative approval necessary.*

(1) An endowment shall not be definitively constituted unless it has been approved by the Ministry of Interior.

(2) Before making its decision, the Ministry of Interior may take where appropriate the advice of other ministries which have an interest in the endowment.

Art. 486. — *Application for approval.* — 1. *During lifetime of founder.*

The approval of the act of endowment may not be sought during the lifetime of the founder, except by the founder himself or his representative.

Art. 487. — 2. *After his death.*

(1) After the death of the founder, it shall be sought by the person to whom the founder has entrusted such task and who has accepted it.

(2) In default of such person, it shall be sought by those persons who have drawn up the act of endowment or who have been witnesses to it or who hold that act in deposit.

(3) Where the persons who are bound to seek the approval of the act fail to do so, the approval of the act of endowment may be sought, three months after the death of its author, by the public prosecutor or by any interested party.

Art. 488. — *Revocation of act of endowment.*

(1) The author of an act of endowment may revoke it freely so long as he has not obtained the approval of such act by the Ministry of Interior.

(2) The heirs of the founder may only exercise such right of revocation where the endowment has not been approved by the Ministry of Interior within two years from an application having been made to such Ministry with a view to obtaining its approval.

Art. 489. — *Retroactivity of approval.*

(1) The administrative decision approving the endowment shall have retroactive effect from the day of the application for the approval if such application has been made by the founder.

(2) It shall have retroactive effect from the day of the death of the founder if the approval has been sought after the death of the founder.

(3) Such retroactivity may not, however, be prejudicial to those persons who, in good faith, have acquired rights on the property of the endowment before such endowment has been approved.

Art. 490. — *Protection and control of endowment.*

(1) The act by which the endowment is approved shall determine the organism which is to be responsible for the protection and control of the endowment.

(2) If no organism is designated for this purpose in that act, the protection and control of the endowment shall be ensured by the office of associations of the province where the endowment has its seat.

Art. 491. — *Statutes of endowment.* — 1. *Role.*

An endowment shall be governed by statutes, in conformity with which it shall be organized and administered.

Art. 492. — 2. *Contents.*

The statutes shall mention in particular the name of the endowment, its object and the place where it has its seat.

Art. 493. — 3. *Drawing up.*

(1) The statutes of an endowment may be drawn up by the founder.

(2) Failing such, they shall be drawn up by the Ministry of Interior, or by the organism for protection and control given to the endowment by such Ministry.

(3) Any interested party may within three years apply to the court to amend the statutes, if these are contrary to the act of endowment.

Art. 494. — *Management.*

(1) The endowment shall be managed in conformity with its statutes by one or more directors.

(2) The provisions of this Title relating to the directors of associations (Art. 428-435) shall apply to the directors of endowments.

Art. 495. — *Committee of management.*

(1) A committee of management constituted in terms of the statutes of the endowment is the supreme organ of the endowment.

(2) The organism for the protection and control of the endowment shall be represented on such committee of management.

Art. 496.— *Functions of committee of management.*

(1) The committee of management shall decide on all the affairs of the endowment which do not fall within the sphere of another organ.

(2) In particular, it shall appoint and dismiss the directors, control their activity and approve their accounts.

Art. 497. — *Amendments of statutes.* — 1. *Principle.*

Amendments of the statutes of the endowment, decided upon by the com-

mittee of management, shall be of no effect until they have been approved by the organism for the protection and control of the endowment.

Art. 498. — 2. *Prohibition by founder.*

(1) The author of the act of endowment may, by an explicit provision, prohibit certain amendments of the statutes of the endowment.

(2) The person appointed by him or the heirs of the founder may apply to the court to declare that the endowment has lapsed, if the statutes are amended against the will of the founder thus expressed.

(3) The right provided in sub-art. (2) may no longer be exercised if three years have elapsed since the date of the amendments of the statutes or thirty years since the death of the founder.

Art. 499. — *Meetings of committee.*

(1) The committee of management shall meet on such dates as are fixed by the statutes.

(2) It is convened by the directors in urgent cases whenever the interest of the endowment requires it.

Art. 500. — *Decisions of committee.*

(1) The decisions of the committee of management shall be taken by an absolute majority.

(2) The organism for the protection and control of the endowment may apply to the court to declare the annulment of such decisions or to stay their execution.

Art. 501. — *Rights and obligations of endowment.*

(1) The provisions of this Title relating to the name, residence and capacity of associations shall apply to endowments (Art. 452-457).

(2) An endowment may accept donations or legacies with the authorisation of the organism for its protection and control.

Art. 502. — *Rights of beneficiaries of endowment.*

(1) The persons in whose favour the endowment is constituted may take legal action to enforce their rights against the endowment.

(2) If the persons interested are not sufficiently determined by the statutes, the directors of the endowment shall determine them according to their equitable discretion.

Art. 503. — *Termination of endowment.* — 1. *Statutes.*

The endowment shall terminate in such cases as are determined by the statutes.

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Art. 504. — 2. *Other cases.*

The endowment is declared terminated by the court on the application of the organism for its protection and control or the public prosecutor where:

(a) its object has been attained or it has become impossible to be attained;

(b) such object has become illicit or contrary to morality;

(c) the endowment pursues an object which is different to that determined by the statutes;

(d) the endowment has become insolvent.

Art. 505. — *Amalgamation of several endowments.*

(1) The court may on the application of the Ministry of Interior authorise the amalgamation of two or more endowments with a view to coordinating their activities, if such amalgamation is desirable in the general interest.

(2) The application to this effect may be made to the court by the organism for the protection and control, if such organism is common to the interested endowments.

(3) New statutes shall be given to the new endowment which is thus formed.

Art. 506. — *Liquidation and control.*

(1) The provisions of this Title relating to the liquidation of associations shall apply to the liquidation of endowments (Art. 463-467).

(2) The provisions of this Title relating to the control of associations shall apply to the control of endowments (Art. 468-482).

(3) The functions exercised by the office of associations shall be exercised by the organism for the protection and control of the endowment where such an organism has been established.

## Section 2. Committees

Art. 507. — *Need of authorisation.*

(1) Committees having the object of collecting money or other property in aid of public collections, fairs or activities of the same nature, in favour of a specific philanthropic work or work of general interest, may not exercise their activity unless they have been authorised in that behalf by the Ministry of Interior, where such activity is to be carried out on a national scale, or by the governor of the province concerned, where such activity is to be carried out on a provincial or local scale.

(2) Whosoever organizes public collections or solicits donations or funds from the public without having received such authorisation, shall be liable to the punishments laid down in the Penal Code.

Art. 508. — *Organization of committee.*

(1) The decision granting the authorisation shall specify the persons who constitute the committee.

(2) It shall specify the purpose and the seat of the committee and the time within which it has to achieve its purpose.

(3) It shall determine where appropriate the manner in which the action of the committee may be exercised and prescribe such measures as are necessary to control the amount and the use of the monies collected by the committee.

Art. 509. — *Donations and subscriptions.*

(1) The committee may receive donations and subscriptions.

(2) The president of the committee may take action against subscribers for the purpose of attaining the fulfilment of their promises.

Art. 510. — *Liability of members.*

(1) The members of a committee shall be personally and jointly and severally liable for its activities and its management.

(2) Any donor or subscriber or the public prosecutor may raise the question of their liability.

Art. 511. — *Termination of committee.*

A committee shall cease to exist upon the expiry of the prescribed time or when it has achieved its purpose or when it has itself decided to dissolve.

Art. 512. — *Dissolution of committee.*

A committee may be dissolved by the authority which authorised it to carry out its activities where:

(a) it deviates from its purpose;

(b) the achievement of its purpose has become impossible or it has become clear in any manner that it has been abandoned.

Art. 513. — *Liquidation.* — 1. *Insufficient property.*

(1) Where the property collected by the committee is insufficient to attain the object which the committee proposed to achieve, or where that object comes to appear impossible, such property shall have the destination prescribed by the decision which has authorised the committee.

(2) In default of a provision to that effect, the property shall be placed at the disposal of the administration which shall destine it for some work of charity.

(3) The persons who have given property to the committee may not take it back unless they have expressly reserved the right to do so.

Art. 514. — 2. *Balance.*

(1) Where the property collected by the committee amounts to more than is necessary for the attainment of the proposed purpose, the balance shall have the destination prescribed by the decision authorising the committee.

(2) In default of a provision to that effect, it shall be placed at the disposal of the administration which shall destine it for some work of charity.

(3) The persons who have given property to the committee may not take it back.

Art. 515. — *Change into an endowment.*

(1) Where under the statutes the property collected by the committee is to be destined to a specific lasting object, an endowment shall be constituted for the attainment of such object.

(2) The rules relating to endowments shall apply in such case (Art.483-506).

## Section 3. Trusts

Art. 516. — *Definition.*

A trust is an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust.

Art. 517. — *Form.*

(1) A trust may be constituted by a donation 'inter vivos' or by a will.

(2) Its constitution shall be subject, as regards the form and substance, to the rules relating to donations or wills.

(3) An express provision in the donation or will is necessary for the constitution of the trust.

Art. 518. — *Beneficiary of trust.*

A trust may be constituted for the benefit of any person, action or idea, provided it does not offend public order or morals.

Art. 519. — *Number of trustees.*

(1) The trust may be administered by one or more trustees, but the number of trustees may not exceed four.

(2) Where more than four trustees have been appointed, the first four alone shall exercise such functions.

(3) The other persons designated as trustees shall replace in the order in which they are designated the trustees, where they refuse to exercise their functions, die, or are incapacitated.

Art. 520. — *Appointment of trustee.*

(1) The trustee may be appointed by the person constituting the trust, or by the person designated by him, or, in default of such person, by the court.

(2) Where the trustee so appointed refuses his office, dies or is incapacitated, a new trustee shall be appointed by the person on whom such power has been conferred by the person constituting the trust, or in default of any such person, by the court.

Art. 521. — *Resignation of trustee.*

(1) A trustee may resign his office if he has a good reason to do so, or if he has exercised his functions for ten years.

(2) He shall remain liable for the administration of the trust until such liability passes to another trustee appointed either before or after his resignation.

Art. 522. — *Dismissal of trustee.*

The court may, on the application of the person constituting the trust or of a person designated by him, or of one of the trustees or of a beneficiary of the trust, revoke the appointment of a trustee, if there is a just reason for so doing, and replace such trustee by a new trustee whom it shall appoint.

Art. 523. — *Proof of trusteeship.*

(1) A trustee may obtain from the court a document showing his capacity and his powers.

(2) Such document shall specify where appropriate the period for which the powers have been granted to him.

Art. 524. — *Several trustees.*

(1) Where there are several trustees, the decisions relating to the administration of the trust shall be taken, without prejudice to any provision to the contrary, by agreement between them.

(2) In case of disagreement, the opinion of the majority shall prevail.

(3) Those who are not in favour of a decision taken by the majority may require that their dissenting opinion be recorded in a minute.

Art. 525. — *Administration of trust.*

(1) The trustee shall administer the trust like a prudent and cautious businessman.

(2) He shall avoid mixing the property forming the object of the trust with his own property.

(3) He shall take all necessary measures appropriate to this purpose.

Art. 526. — *Judicial representation of trust.*

(1) The trustee shall represent the trust in judicial proceedings.

(2) He is sued in his capacity as trustee by those persons who claim to have an interest on the property constituted in trust.

Art. 527. — *Powers of trustee.*

(1) The powers of the trustee on the property which form the object of the trust are those of an owner.

(2) He may not, however, alienate immovable property except with the authorisation of the court, without prejudice to any provision to the contrary in the act of constitution of the trust.

(3) In no case may the trustee alienate the property by a gratuitous title.

Art. 528. — *Directions of person constituting the trust.* — 1. *Principle.*

(1) The trustee shall conform with the express instructions which he has received from the person constituting the trust.

(2) Where the interest of the beneficiary of the trust so requires, the trustee may and shall obtain an authorisation from the court to depart from such instructions.

Art. 529. — 2. *Sanction.*

(1) The provisions whereby the act of constitution of a trust limits the powers of the trustee, or regulates the manner in which such powers must be exercised, may not be set up against third parties unless it is proved that such third parties were or should have been aware of such provisions.

(2) They have as their only sanction the liability of the trustee who has infringed them.

(3) The court may relieve in whole or in part the trustee from such liability where it is of opinion that the trustee has in good faith acted or believed to act in the interest of the trust and that such belief was reasonable.

Art. 530. — *Replacement of property.*

The property acquired by the trustee in substitution for property alienated by him or with the income of the property which forms the object of the trust shall replace or form an addition to the latter property.

Art. 531. — *No personal benefit.*

The trustee may not draw any personal benefit from the trust, apart from the advantages which are expressly granted to him by the act of constitution of the trust.

Art. 532. — *Indemnity.*

The trustee is entitled to be indemnified for all the expenses and obligations arising out of the administration of the trust.

Art. 533. — *Liability of trustee.*

The trustee shall be liable for the good management of the trust, in accordance with the provisions relating to agency, to the beneficiaries of the trust and to the persons who are to receive the property at the termination of the trust.

Art. 534. — *Rendering of accounts.* — 1. *To whom it is made.*

(1) The trustee shall render an account of his administration and of the actual state of the property forming the object of the trust, to the person appointed in the act of constitution of the trust.

(2) In default of such person, he shall render an account to any person who has an interest therein in accordance with the act of constitution of the trust or to the person who replaces him in the office of trustee.

Art. 535. — 2. *When.*

(1) Unless otherwise prescribed by the act of constitution of the trust, such rendering of accounts shall take place every year during the month determined by the trustee at the beginning of his management.

(2) The court may for good cause authorise an interested party to ask for the accounts at an intermediate time, or authorise the trustee to retard or modify the date fixed for the rendering of the accounts.

Art. 536. — *Creditors of trustee.*

The creditors of the trustee have no right whatsoever on the property forming the object of the trust.

Art. 537. — *Creditors of the trust.*

(1) Those persons with whom the trustee has entered into an agreement

relating to the property constituted in trust may enforce their right on all the property forming the object of the trust.

(2) The trustee shall not be liable to them unless he has expressly bound himself or in accordance with the provisions of the Title relating to "Representation" of this Code (Art. 2179-2198).

Art. 538. — *Rights of beneficiary.* — 1. *In relation to the trustee.*

(1) The beneficiary may claim from the trustee the making over of the profits which, according to the act of constitution of the trust, are to accrue in his favour.

(2) Where his rights are jeopardised, he may apply to the court to dismiss the trustee or to compel him to give appropriate guarantees.

Art. 539. — 2. *On the property of the trust.*

(1) The beneficiary of the trust has no right to dispose of or to administer the property forming the object of the trust.

(2) In relation to such property, he may only do those acts which preserve his rights, such as the interruption of a prescription.

(3) He may also make publications with a view to informing third parties or certain third parties of the fact that certain property form the object of the trust.

Art. 540. — *Creditors of beneficiary.* — 1. *Principle.*

(1) The person constituting a trust may declare that the income of the trust shall not be attached in the hands of the trustee by the creditors of the beneficiary of the trust.

(2) Where the income has been declared not liable to attachment it may not even be validly transferred or subjected to obligations by the beneficiary of the trust.

Art. 541. — 2. *Power of the court.*

The court may, however, on the application of the beneficiary of the trust or of one of his creditors, authorise the attachment or the assignment of the income in the cases provided in Article 540, if such is the interest of the beneficiary of the trust or if the claim which is brought forward is in relation to a criminal offence or to a fraud for which the beneficiary of the trust is responsible.

Art. 542. — *Termination of the trust.* — 1. *Normal case.*

A trust shall terminate on the expiry of the period fixed by the person constituting the trust.

**Art. 543.** — 2. *Power of the court.*

(1) The court may at any time on the application of the beneficiary of the trust, declare the termination of the trust where it thinks fit in the circumstances of the case.

(2) The trustee shall be heard during the proceedings.

(3) The person constituting the trust may, by an express provision, prohibit that this power be made use of.

**Art. 544.** — *Liquidation of the trust.*

At the termination of the trust, the property which formed its object, together with the documents which are required to prove the ownership of such property and to justify the administration of the trustee, shall be handed over by the trustee to the persons who are entitled to it in terms of the act of constitution of the trust.

## Chapter 4. Foreign bodies corporate and property with a specific destination

**Art. 545.** — *Bodies corporate.*

(1) Bodies corporate whose head office is situate in a foreign country and which wish to carry out activities in Ethiopia shall apply for an authorisation to the office of associations in Addis Ababa. A copy of the articles of association shall be attached to the application.

(2) The office of associations may refuse to grant the authorisation applied for where the proposed activities are contrary to the law or morals. The office of associations may, before making its decision, consult the Ministry concerned with the proposed activities.

(3) No foreign body corporate may carry out activities nor recruit members in Ethiopia for so long as the authorisation has not been granted by the office of associations.

**Art. 546.** — *Property with a specific destination.*

(1) Endowments, trusts and committees constituted in a foreign country may not carry out any activity in Ethiopia for so long as they have not been granted the necessary approval by the Ministry of Interior.

(2) The Ministry of Interior may refuse its approval where the proposed activity is contrary to the law or morals. The Ministry of Interior may, before making its decision, consult the Ministry concerned with the proposed activity.

**Art. 547.** — *Effect of authorisation or approval.*

(1) Bodies corporates which have been granted the authorisation specified

in Art. 545 and endowments, trusts or committees approved under Art. 546 shall be fully assimilated as regards the enjoyment and exercise of civil rights, to bodies corporate, endowments, trusts or committees established in Ethiopia.

(2) They shall be deemed to enjoy such nationality as is recognized to them in the State where their head office is situate.

Art. 548. — *Restriction.*

(1) The carrying out of regular activities in Ethiopia by foreign bodies corporate, endowments, trusts or committees or certain classes of the same may be prohibited or regulated by the Ministry of Interior.

(2) The restrictions imposed upon foreign physical persons with regard to ownership of immovable property in Ethiopia shall apply to foreign bodies corporate, endowments, trusts and committees.

Art. 549. — *Revocation of authorisation or approval.*

(1) Any authorisation granted under Art. 545 and any approval given under Art. 546 may at any time be revoked for good cause by the office of associations or the Ministry of Interior, as the case may be.

(2) An application to set aside such decision may be made to the court by any of the directors of the body corporate, endowment or committee concerned or any of the trustees within one month from the day on which he was informed of the revocation.

(3) The court may stay the execution of the order of revocation until the application is decided on.

## BOOK II. FAMILY AND SUCCESSIONS
## TITLE IV. BONDS OF RELATIONSHIP BY CONSANGUINITY AND BY AFFINITY
### Chapter 1. Relationship by consanguinity and by affinity in general

Art. 550. — *Natural relationship.*

(1) Bonds of natural relationship derive from community of blood.

(2) A bond of relationship by consanguinity exists, in the direct line, between ascendants and descendants.

(3) In the collateral line, it exists between persons who descend from one or more common ascendants.

Art. 551. — *Degree of relationship by consanguinity.*

(1) The degree of relationship by consanguinity in the collateral line shall be calculated by counting seven generations in each line from the common ancestor.

(2) Relationship by consanguinity shall be of no effect beyond the seventh generation.

Art. 552. — *Affinity.*

(1) Bonds of affinity derive from marriage.

(2) A bond of affinity exists, in the direct line, between a person and the ascendants or descendants of his spouse.

(3) In the collateral line, it exists between a person and the collaterals of his spouse.

Art. 553. — *Limitation up to third degree.*

Affinity shall be of no effect beyond the third degree in the collateral line.

Art. 554. — *Double affinity.*

(1) A bond of double affinity exists between a person and the spouse of the persons to whom he is related by affinity.

(2) Such bond of double affinity shall produce the same effect as a bond of simple affinity.

Art. 555. — *Cessation of affinity.*

A bond of affinity shall subsist in the direct and collateral line notwithstanding that the marriage by which it was created is dissolved.

Art. 556. — *Relationship by adoption.* — 1. *Principle.*

Bonds of consanguinity and affinity may be created by a contract of adoption, in accordance with the provisions of Chapter 11 of this Title (Art. 796-806).

Art. 557. — 2. *Effects.*

Without perjudice to the provisions of Art. 558 an adopted child shall for all purposes be deemed to be a child of the adopter.

Art. 558. — 3. *Saving clauses.*

(1) Adoption shall be of no effect with regard to the ascendants or collaterals of the adopter who have expressly declared to be opposed to the adoption.

(2) The declaration referred to in sub-art. (1) shall be of no effect unless it is registered with a notary or in a court registry within one year from the approval of the contract of adoption.

(3) It shall produce effect in regard to the spouse and the descendants of the person making it.

Art. 559. — *Family of origin.*

(1) The adopted child shall retain his bonds with his family of origin.

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(2) The same shall apply to the spouse and the descendants of the adopted child.

(3) Wherever a choice has to be made between the family of adoption and the family of origin, the family of adoption shall prevail.

## Chapter 2. Betrothal

Art. 560. — *Definition.*

(1) A contract of betrothal is a contract whereby two members of two families agree that a marriage shall take place between two persons, the fiance and the fiancee, belonging to these two families.

(2) Betrothal shall be of no effect unless the family of each of the future spouses consent thereto.

Art. 561. — *Simple promise of marriage.*

(1) A simple promise of marriage, exchanged between two persons, shall not constitute a betrothal.

(2) The breach of such promise may give rise to damages in cases of fault in accordance with the provisions of the Title of this Code relating to "Extra-contractual liability and unlawful enrichment".

Art. 562. — *Representative of the family.* — 1. *First marriage.*

For the spouse who contracts a first marriage, the following persons shall be deemed to be the representative of the family:

(a) the father of such spouse;

(b) in his default or if he is not in a position to give his consent, the mother;

(c) in her default or if she is not in a position to give her consent, one of the grandparents or great-grandparents;

(d) in default of ascendants or if no one of them is in a position to give his consent, an elder brother or a paternal or maternal uncle.

Art. 563. — 2. *Subsequent marriage.*

Any of the persons mentioned in Art. 562 may consent to the betrothal in his capacity as representative of the family, when it is contracted by a person who has been previously married.

Art. 564. — 3. *Absence of legal representative.*

(1) Where either of the future spouses has no ascendant, elder brother or paternal or maternal uncle who may represent the family, he may appoint a person to act as representative of his family for his betrothal.

(2) The same shall apply to future spouses, where the fiance is more than thirty years of age or the fiancee is more than twenty-five years of age.

Art. 565. — *Consent of betrothed couple.*

Betrothal shall be of no effect unless both future spouses consent thereto.

Art. 566. — *Existence of obstacle to marriage.*

(1) Betrothal shall be of no effect unless there is no legal obstacle to the marriage of the future spouses.

(2) In particular, it shall be of no effect until both future spouses attain the marriageable age required by law.

Art. 567. — *Form of betrothal.*

The form of betrothal shall be regulated by the usage of the place where it is celebrated.

Art. 568. — *Witnesses.*

(1) A contract of betrothal shall be of no effect unless it is made in the presence of two witnesses for the future bridegroom and two witnesses for the future bride.

(2) One of the witnesses for the bridegroom and one of the witnesses for the bride may have the character of principal witness.

Art. 569. — *Proof of betrothal.*

(1) Betrothal need not be entered in the registers of civil status.

(2) It may be proved by all means of evidence.

Art. 570. — *Duration of betrothal.*

If, at the time of the betrothal, no period has been agreed upon for the celebration of the marriage, the marriage shall take place within six months from either of the future spouses or the authorised representative of their family having expressed his or her wish that the marriage be celebrated.

Art. 571. — *Breach of betrothal.*

(1) Betrothal shall be broken if either of the future spouses or another person who had consented thereto, refuses to consent to the marriage, without a good cause justifying his delay or his refusal.

(2) It shall also be broken if either of the future spouses or a person who has given his consent to the betrothal, behaves in such a way that the marriage is rendered, in fact or morally, impossible.

Art. 572. — *Effects of breach.* — 1. *Expenses and restitution.*

(1) The person who is responsible for the breach of betrothal shall pay all the expenses incurred in connection with the betrothal.

(2) Presents received on the occasion of the betrothal shall be returned by the person who is responsible for the breach as well as by the members of his family.

Art. 573. — 2. *Moral prejudice.*

(1) A reasonable compensation may be awarded to the fiance or the fiancee who is not responsible for the breach, or to his or her family, in compensation of the moral prejudice caused by the breach of betrothal.

(2) In establishing the amount of the indemnity and who is qualified for requiring it, the court shall have regard to local custom.

(3) The indemnity awarded in compensation of moral prejudice may not exceed one thousand Ethiopian dollars.

Art. 574. — 3. *Penalty.*

(1) If a penalty clause has been attached to the betrothal, the person responsible for the breach of the betrothal shall pay the agreed amount.

(2) Such amount may be reduced having regard to the circumstances of the case.

(3) It may be reduced where it appears that it is manifestly exaggerated.

Art. 575. — *Opposition of ascendant.*

(1) A breach of betrothal shall give rise to no liability where an ascendant of one of the future spouses has not expressly consented to the betrothal and opposes to the marriage.

(2) The presents received by both parties shall then be returned.

Art. 576. — *Limitation.*

All actions based on breach of betrothal shall be barred if not instituted within one year from the day when the betrothal has been broken.

## Chapter 3. Conclusion of marriage

Art. 577. — *Various kinds of marriages.*

(1) Marriages may be contracted before an officer of civil status.

(2) Marriages contracted according to the religion of the parties or to local custom shall also be valid under this Code.

Art. 578. — *Civil marriage.*

A civil marriage shall take place when a man and a woman have appeared before the officer of civil status for the purpose of contracting marriage and the officer of civil status has received their respective consent.

Art. 579. — *Religious marriage.*

A religious marriage shall take place when a man and a woman have performed such acts or rites as are deemed to constitute a valid marriage by their religion or the religion of one of them.

Art. 580. — *Marriage according to custom.*

A customary marriage shall take place when a man and a woman perform such rites as constitute a permanent union between such man and woman under the rules of the community to which they belong or to which one of them belongs.

## Section 1. Conditions common to all forms of marriage

Art. 581. — *Age.*

(1) A man who has not attained the full age of eighteen years and a woman who has not attained the full age of fifteen years may not contract marriage.

(2) His Majesty the Emperor of Ethiopia or a person specially appointed by Him for the purpose may, for good cause, grant dispensations concerning age of not more than two years.

Art. 582. — *Consanguinity.*

Marriage between persons related by consanguinity is prohibited.

Art. 583. — *Affinity.*

Marriage between persons related by affinity is prohibited.

Art. 584. — *Filiation not established legally.*

The existence of a bond of natural filiation which is commonly known is sufficient to render applicable the impediments to marriage referred to in Art. 582 and 583 notwithstanding that the filiation is not established legally.

Art. 585. — *Bigamy.*

A person may not contract marriage so long as he is bound by the bonds of a preceding marriage.

Art. 586. — *Representation not allowed.*

(1) Each of the spouses shall personally consent to the marriage at the time of its celebration.

(2) Representation shall not be allowed unless a dispensation be given for good cause by the Advocate General.

Art. 587. — *Marriage of minors.*

The conditions on which a minor may contract marriage are laid down in the Title of this Code relating to "Capacity of Persons" (Art. 309).

Art. 588. — *Judicially interdicted persons.*

The conditions on which a judicially interdicted person may contract marriage are laid down in the Title of this Code relating to "Capacity of Persons" (Art. 369).

Art. 589. — *Violence.*

(1) No consent shall be valid which has been extorted by violence.

(2) Violence shall be deemed to have occurred where consent is given only with a view to protecting the person who has given it, or one of his ascendants or one of his descendants, from a menace of a grave and imminent evil.

(3) Violence shall not be deemed to have occurred where consent is prompted by reverential fear towards an ascendant or another person.

Art. 590. — *Error of substance.* — 1. *Principle.*

Consent shall be vitiated where it was given only as a result of an error of substance of one of the spouses on the person of his spouse.

Art. 591. — 2. *Restrictive enumeration.*

The following errors only shall be considered as errors of substance:

(a) error on the identity of the spouse, who is not the person with whom a person intended to contract marriage;

(b) error on the religion of the spouse, who does not belong to the same faith as the spouse who is the victim of the error;

(c) error on the state of health or the bodily conformation of the spouse, who is affected by leprosy or who does not have the requisite organs for the consummation of the marriage.

Art. 592. — *Opposition.* — 1. *By whom made.*

(1) Opposition to the marriage may be made by the person mentioned in Art. 562 or by the guardian of the spouse who is a minor.

(2) Opposition may also be made by the public prosecutor.

(3) Opposition may be made by no other person.

Art. 593. — 2. *Time and form.*

(1) Opposition shall be made at the latest when the marriage is celebrated.

(2) It shall be subject to no special form.

**Art. 594.** — 3. *Withdrawal of opposition.*

(1) The withdrawal of the opposition to the marriage may be required by either of the spouses notwithstanding that he or she is a minor.

(2) No appeal shall lie against the opposition made by the father or the mother of one of the future spouses, when the person to whose marriage opposition is made is under twenty years of age.

**Art. 595.** — 4. *Impossibility.*

(1) No opposition may be made to a marriage, when the withdrawal of a previous opposition made to such marriage has been ordered by the court.

(2) No opposition may be made, except by the public prosecutor, to the marriage of a person who has been previously married.

**Art. 596.** — *Period of widowhood.*

(1) A woman may not remarry unless one hundred and eighty days have elapsed since the dissolution of a previous marriage or irregular union.

(2) The provisions of sub-art. (1) shall not apply where the woman gives birth to a child after the dissolution of such union.

(3) The court may dispense a woman from observing a period of widowhood.

## Section 2. Civil marriage

**Art. 597.** — *Competent officer of civil status.*

Civil marriages shall be celebrated before the officer of civil status of the commune where one of the spouses, or one of his parents or ascendants, has his residence established by continuously living there for not less than six months prior to the date of the marriage.

**Art. 598.** — *Undertaking not to marry.*

(1) Any undertaking made by any person not to marry or not to remarry shall be of no effect.

(2) The officer of civil status shall not take it into consideration.

**Art. 599.** — *Request for celebration of marriage.*

The future spouses shall inform not less than one week in advance the officer of civil status of their intention to contract marriage.

**Art. 600.** — *Refusal to celebrate marriage.*

(1) The officer of civil status shall ascertain that the conditions of marriage are satisfied.

(2) He shall refuse to celebrate the marriage if he finds or has good reasons to believe that there exists an obstacle to the marriage.

(3) In such case, the officer of civil status shall give the reason of his refusal to the future spouses.

Art. 601. — *Appeal against refusal.*

(1) Either of the spouses may appeal against a refusal under Art. 600 to the court which shall decide whether such refusal is justified or not.

(2) Where the court finds the refusal of the officer of civil status to be unjustified, such officer may not refuse to celebrate the marriage for any reason whatsoever.

Art. 602. — *Fixing date of marriage.*

The exact date of the celebration of the marriage shall be fixed by agreement between the future spouses and the officer of civil status.

Art. 603. — *Publicity of marriage.*

Marriages shall be celebrated publicly, in the presence of the future spouses and of two witnesses for each of the future spouses.

Art. 604. — *Formalities of celebration.*

(1) The future spouses and the witnesses shall take an oath that, to their knowledge, there exists no obstacle to the marriage.

(2) The officer of civil status shall receive from each of the future spouses, one after the other, a declaration that they want to take one another as husband and wife.

(3) In the name of the law, he shall pronounce them united in marriage and shall immediately draw up the record of marriage, if he is qualified to do so.

## Section 3. Other marriages

Art. 605. — *Religious marriage.*

(1) The conditions on which a religious marriage may be celebrated and the formalities of such celebration shall be as prescribed by the religion of the parties concerned.

(2) The provisions of this Code relating to the conditions common to all forms of marriage shall be complied with in all cases (Art. 581-596).

(3) A record of marriage shall be drawn up in accordance with the provisions of the Title of this Code relating to "Physical persons" (Art. 47-120).

Art. 606. — *Marriage according to custom.*

(1) The conditions on which a marriage according to custom may be cele-

brated and the formalities of such celebration shall be as prescribed by local custom.

(2) The provisions of this Code relating to the conditions common to all forms of marriage shall be complied with in all cases (Art. 581-596).

(3) A record of marriage shall be drawn up in accordance with the provisions of the Title of this Code relating to "Physical persons" (Art. 47-120).

## Chapter 4. Sanction of the conditions of marriage

### Section 1. Conditions common to all forms of marriage

Art. 607. — *Age.* — 1. *Criminal sanction.*

(1) An officer of civil status or authority having celebrated the marriage of a man under eighteen years of age or a woman under fifteen years of age shall be liable to the punishments provided in the Penal Code if he knew or should have known such circumstances.

(2) The bridegroom or the bride who is under eighteen or fifteen years of age respectively, the persons who have consented to the marriage and the witnesses shall be liable to the punishments provided in the Penal Code.

Art. 608. — 2. *Dissolution of marriage.*

(1) The dissolution of the marriage shall be ordered in the case mentioned in Art. 607 on the application of any interested person or of the public prosecutor.

(2) It may no longer be applied for after the conditions of age required by law for marriage are satisfied.

Art. 609. — *Consanguinity or affinity.* — 1. *Dissolution of marriage.*

The dissolution of a marriage celebrated notwithstanding an impediment arising out of consanguinity or of affinity shall be ordered on the application of any interested person or of the public prosecutor.

Art. 610. — 2. *Criminal sanction.*

(1) An officer of civil status or authority having celebrated a marriage between two persons, notwithstanding an impediment arising out of consanguinity or of affinity, shall be liable to the punishments provided in the Penal Code, if he knew or should have known of such circumstance.

(2) The spouses, the persons who have consented to the marriage and the witnesses shall be liable to the punishments provided in the Penal Code, if they knew or should have known of the bond of consanguinity or of affinity.

(3) The punishments referred to in sub-arts. (1) and (2) shall not apply unless the dissolution of the marriage has been ordered by the court.

Art. 611. — *Bigamy.* — 1. *Criminal sanction.*

(1) An officer of civil status or authority having celebrated the marriage of a person bound by the bonds of a previous marriage, shall be liable to the punishments provided in the Penal Code, if he knew or should have known of such circumstance.

(2) The spouses, the persons who have consented to the marriage and the witnesses shall be liable to the punishments provided in the Penal Code, if they knew or should have known of such circumstance.

Art. 612. — 2. *Dissolution of marriage.*

(1) In the case mentioned in Art. 611 the dissolution of the marriage shall be ordered on the application of either of the spouses of the bigamous spouse or on the request of the public prosecutor.

(2) The court shall not order dissolution unless it is established, in an indisputable manner, that the former spouse of the bigamous spouse was alive at the time when the marriage was celebrated.

Art. 613. — 3. *Validation.*

The marriage contracted by the bigamous spouse shall become valid on the day when the former spouse dies.

Art. 614. — *Marriage of incapacitated person.* — 1. *Criminal sanction.*

(1) An officer of civil status or authority having celebrated the marriage of a minor or of an interdicted person without the necessary authorisations shall be liable to the punishments provided in the Penal Code, if he knew or should have known that the spouse was a minor or an interdicted person.

(2) The spouse of such minor or interdicted person and the witnesses shall be liable to the punishments provided in the Penal Code.

Art. 615. — *Dissolution of marriage.*

(1) The dissolution of the marriage may be requested from the court by a minor or by an insane person who is interdicted or by a person who should have consented to the marriage of the minor or by the guardian of the interdicted person.

(2) An application for dissolution may no longer be made by the incapacitated person six months after the termination of his disability.

(3) It may no longer be made by the other persons six months after the day on which they came to know of the existence of the marriage and,

in any case, when the disability of the minor or interdicted person has ceased.

Art. 616. — *Defect of violence.* — 1. *Criminal sanction.*

(1) Whosoever by violence forced a person to consent to a marriage and the witnesses of such marriage shall be liable to the punishment provided in the Penal Code.

(2) An officer of civil status or authority having celebrated such marriage shall be liable to the punishments provided in the Penal Code, if he knew or should have known of such circumstance.

Art. 617. — 2. *Dissolution of marriage.*

(1) A person who has contracted a marriage under the influence of violence may apply to the court to order the dissolution thereof.

(2) Such application may not be made six months after the cessation of such violence and, in any case, two years after the celebration of the marriage.

Art. 618. — *Error.*

(1) Whosoever has contracted a marriage under the influence of an error of substance may apply to the court to order the dissolution thereof.

(2) Such application may not be made six months after the discovery of such error, and, in any case, two years after the celebration of the marriage.

Art. 619. — *Opposition.*

(1) An officer of civil status or authority having celebrated a marriage notwithstanding an opposition validly made to such marriage (Art. 592-594), shall be liable to the punishments provided in the Penal Code.

(2) The spouses who are over eighteen years of age, the persons who have consented to the marriage and the witnesses shall be liable to the punishments provided in the Penal Code.

(3) The dissolution of the marriage may not be ordered for the sole reason that an opposition has not been taken into consideration.

Art. 620. — *Period of widowhood.*

(1) An officer of civil status or authority having celebrated the marriage of a woman before the expiration of the period of widowhood (Art. 596) shall be liable to the punishments provided in the Penal Code".

(2) The spouses, the persons who have consented to the marriage and the

witnesses shall be liable to the punishments provided in the Penal Code.

(3) The dissolution of the marriage may not be ordered for the sole reason that the period of widowhood has not been observed.

## Section 2. Civil Marriage

Art. 621.— *Incompetence of officer of civil status.*

(1) An officer of civil status who celebrates a marriage when the condition of residence required by this Code is not satisfied (Art. 597) shall be liable to the punishments provided in the Penal Code, if he knew or should have known of such circumstance.

(2) The spouses and the witnesses of such marriage shall be liable to the punishments provided in the Penal Code.

(3) The dissolution of the marriage may not be ordered solely on the ground of incompetence of the officer of civil status.

Art. 622. — *Non-observance of formalities.*

(1) An officer of civil status who celebrates a marriage without observing the provisions relating to such celebration (Art. 603 and 604) shall be liable to the punishments provided in the Penal Code.

(2) The dissolution of the marriage may not be ordered on the ground of such circumstances.

## Section 3. Other Marriages

Art. 623. — *Nullity.*

(1) The annulment of a marriage may not be ordered by the court on the ground that some conditions or formalities required by religion or by custom have not been observed.

(2) The annulment of a religious marriage ordered by the religious authorities shall only constitute a serious ground for divorce.

(3) The annulment of a marriage according to custom ordered by the customary authorities shall be of no legal effect.

Art. 624. — *Fine and damages.*

(1) The conditions and formalities required in the case of a religious marriage or of a marriage according to custom may be sanctioned by a condemnation to a fine or by a condemnation to pay damages to the injured party, according to the religion or custom concerned.

(2) Notwithstanding any custom or stipulation to the contrary, the court may reduce the amount of such fine or damages as are due where such amount appears to it to be excessive.

(3) It may also refuse to give effect to the custom relating to such matter if it appears to it to be unreasonable or contrary to equity or to morality.

## Chapter 5. Effects of Marriage

### Section 1. General rules

Art. 625. — *Various forms of marriage equivalent.*

(1) Marriage produces the same legal effects, whatever the form according to which it has been celebrated.

(2) No distinction shall be made as to whether the marriage has been celebrated before an officer of civil status or according to the forms prescribed by religion or custom.

Art. 626. — *Consummation of marriage.*

The effects of marriage shall in no way depend on the real or presumed consummation of the marriage.

Art. 627. — *Contract of marriage.*

(1) The spouses may, before their marriage, regulate by a contract of marriage the pecuniary effects of their union.

(2) They may also specify in such contract their reciprocal rights and obligations in matters concerning their personal relations.

(3) Nothing in this Article shall affect the mandatory provisions of the law.

Art. 628. — *Incapacity of a spouse.*

(1) The consent of the minor and of the tutor shall be required for making the contract of marriage of a minor.

(2) The contract of marriage of a judicially interdicted person shall be of no effect unless it is entered into by the interdicted person himself and approved by the court.

(3) As regards the making of a contract of marriage, a person interdicted by law shall be subject to no incapacity.

Art. 629. — *Form of contract.*

A contract of marriage shall be of no effect unless made in writing and witnessed by four witnesses, two for the husband and two for the wife.

Art. 630. — *Deposit of contract.*

(1) A copy of the contract of marriage shall be deposited in the registry of the court or with a notary.

(2) It may be freely consulted there by any one of the spouses or by any person authorised for this purpose by the spouses or by the court.

Art. 631. — *Restrictions to freedom of contracting.*

(1) A contract of marriage may not impose an obligation upon third parties nor derogate any mandatory provision of law.

(2) It may not refer purely and simply to local custom.

Art. 632. — *Modifications to contract of marriage.*

(1) The family arbitrators may, at the request of both spouses, modify the terms of the contract of marriage.

(2) The arbitrators may, at the request of one of the spouses only, modify such terms if the interest of the family so requires.

(3) A copy of the modifications made shall be deposited in the registry of the court or with a notary.

Art. 633. — *Contracts between spouses.*

(1) Contracts made between spouses during marriage shall be of no effect under the law, unless they have been approved by the family arbitrators or by the court.

(2) Nothing in this Article shall affect the specific provisions of this Code relating to contracts.

Art. 634. — *Legal regime.*

Where there is no contract or the provisions of the contract of marriage or of the contract made between the spouses are not valid, the following provisions shall apply.

## Section 2. Personal effects of marriage

Art. 635. — *Head of the family.*

(1) The husband is the head of the family.

(2) Unless otherwise expressly provided by this Code, the wife owes him obedience in all lawful things which he orders.

Art. 636. — *Respect, support and assistance.*

(1) The spouses owe each other respect, support and assistance.

(2) The contract of marriage may not derogate such rule.

Art. 637. — *Management of family.* — 1. *General case.*

(1) The spouses shall co-operate, under the guidance of the husband, in the interest of the family, to ensure the moral and material direction of the family, to bring up the children and to prepare for their establishment

(2) The undertakings made by the spouses in this regard in the contract of marriage shall be given effect to.

Art. 638. — 2. *Impediment of one spouse.*

(1) Where one of the spouses is under a disability, absent or condemned for abandoning his family, the other shall alone carry out the duties mentioned in Art. 637.

(2) The same shall apply where one of the spouses voluntarily abandons life in common or is not in a state of manifesting his will by reason of his being away or for any other cause.

(3) Any provision to the contrary in the contract of marriage shall be of no effect.

Art. 639. — *Children of previous marriage.*

(1) Each of the spouses shall retain an exclusive right of decision in matters concerning the education of the children whom he had before the marriage.

(2) Any agreement to the contrary shall be of no effect.

Art. 640. — *Cohabitation.*

(1) The spouses are bound to live together.

(2) They shall have with one another the sexual relations normal in marriage, unless these relations involve a risk of seriously prejudicing their health.

(3) Any agreement to the contrary shall be of no effect.

Art. 641. — *Establishment of residence.*

(1) The common residence shall be chosen by the husband.

(2) Where the residence is established by the husband in a manner which is manifestly abusive or contrary to the agreements in the contract of marriage, the wife may appeal to the family arbitrators against the decision of the husband.

Art. 642. — *Separation by agreement.*

(1) The spouses may agree to live separately for a definite or indefinite period of time.

(2) An agreement made to this effect may be revoked at any time by one of the spouses, provided such revocation is not arbitrary.

Art. 643. — *Duty of fidelity.*

(1) The wife owes fidelity to her husband.

(2) The husband owes fidelity to his wife.

(3) An agreement to the contrary shall be of no effect.

Art. 644. — *Husband to give protection.*

(1) The husband owes protection to his wife.

(2) He may watch over her relations and guide her in her conduct, provided this is in the interest of the household, without being arbitrary and without vexatious or other abuses.

Art. 645. — *Occupation of spouses.*

(1) Each of the spouses may carry on the occupation or the activity of his choice.

(2) The other spouse may, in the interest of the household, object to the carrying on of a given occupation or activity.

Art. 646. — *Household duties.*

Where the husband is not in a position to provide his wife with servants, she is bound to attend to the household duties herself.

## Section 3. Pecuniary effects of marriage

Art. 647. — *Personal property of spouses.* — 1. *Property not acquired by onerous title.*

The property which the spouses possess on the day of their marriage or which they acquire after their marriage by succession or donation shall remain their personal property.

Art. 648. — 2. *Property acquired by onerous title.*

(1) Property acquired by an onerous title by one of the spouses during marriage shall also be personal property of such spouse where such acquisition has been made by exchange for property owned personally or with monies owned personally or deriving from the alienation of property owned personally.

(2) The provisions of sub-art. (1) shall not apply unless the family arbitrators, at the request of one of the spouses, have decided that the property thus acquired shall be owned personally by such spouse.

Art. 649. — *Administration of personal property.* — 1. *Principle.*

(1) Each spouse shall administer his personal property and receive the income thereof.

(2) He may freely dispose of his property.

Art. 650. — 2. *Contract of marriage.*

(1) It may be agreed in the contract of marriage that one of the spouses shall administer the property or certain property of the other spouse and that he may dispose of such property.

(2) Unless otherwise agreed, an annual statement of accounts of the management may in such case be required by the spouse who has not the administration of his property.

Art. 651. — 3. *Agency.*

One of the spouses may freely entrust to his spouse the administration of his property or some of his personal property.

Art. 652. — *Common Property.*

(1) The salaries and the income of the spouses shall be common property.

(2) All property acquired by the spouses during marriage by an onerous title and which has not been declared by the family arbitrators to be personal property shall be common.

(3) Property donated or bequeathed conjointly to the two spouses shall be common, unless otherwise stipulated in the act of donation or will.

Art. 653. — *Presumption.*

(1) All property shall be deemed to be common unless one of the spouses proves that he is the sole owner thereof.

(2) The fact that certain property is personal may not be set up by the spouses against a third person unless the latter knew or should have known such fact.

Art. 654. — *Salaries and income.* — 1. *Normal management.*

(1) Each spouse shall receive his earnings and salaries.

(2) Each spouse may have a bank account wherein to deposit his earnings and salaries and the income from his personal property.

(3) He shall, at the request of the other spouse, render an account to the latter of the salaries and income received by him.

Art. 655. — 2. *Rights of spouse.*

(1) A spouse may freely give to the other spouse a mandate to receive the salaries and income which are due to him.

(2) The family arbitrators may at the request of one spouse, authorise such spouse to receive the salaries and income of the other spouse and to give receipt therefor.

(3) They may also authorise a spouse to attach the salary or income of the other spouse in whole or in part in the hands of the person by whom it is due.

Art. 656. — *Administration of common property.*

(1) Common property other than the earnings, salaries and income of the wife, shall be administered by the husband.

(2) Nothing in this Article shall affect the provisions of Art. 638.

(3) The family arbitrators may, at the request of the wife, entrust to her, in the interest of the family, the administration of the common property or certain common property.

Art. 657. — *Duty to give notice.*

The spouse who performs an act of management in respect of common property shall without delay inform the other spouse thereof.

Art. 658. — *Restriction of powers.*

The agreement of both spouses shall be required for:

(a) alienating a common immovable;

(b) alienating a common movable the value of which exceeds five hundred Ethiopian dollars, or securities registered in the name of both spouses:

(c) contracting a loan exceeding one thousand Ethiopian dollars:

(d) making a donation exceeding one hundred Ethiopian dollars or standing surety for a debt of a third party in an amount exceeding one hundred Ethiopian dollars.

Art. 659. — *Debts of spouses.*

(1) Debts due by one spouse may be recovered on the personal property of such spouse and on common property.

(2) Debts incurred in the interest of the household shall be deemed to be joint and several debts of both spouses and may be recovered on the personal property of each spouse and on common property.

Art. 660. — *Debts in the interest of household.*

The following debts shall be deemed to be debts incurred in the interest of the household:

(a) debts contracted in order to ensure the livelihood of the spouses or their children;

(b) debts contracted in order to fulfil an obligation of maintenance to which the spouses or one of them is bound;

(c) other debts which are acknowledged to be such by the family arbitrators at the request of a spouse or creditor.

Art. 661. — *Contribution to household expenses.*

The spouses shall contribute to the household expenses in proportion to their respective means.

## Chapter 6. Dissolution of marriage

Art. 662. — *Various forms of marriage equivalent.*

(1) The causes and effects of dissolution of marriage shall be the same whichever the form of celebration of the marriage.

(2) In this respect, no distinction shall be made as to whether the marriage was celebrated before an officer of civil status or according to the formalities prescribed by religion or custom.

## Section 1. Causes of dissolution of marriage

Art. 663. — *Various causes.*

(1) Marriage shall terminate by the death of the spouses.

(2) It shall terminate where the court orders its dissolution as a sanction of one of the conditions of the marriage.

(3) It may be terminated by divorce.

Art. 664. — *Repudiation.*

Any unilateral repudiation of the wife by the husband or the husband by the wife shall be of no effect.

Art. 665. — *Divorce by mutual consent.*

(1) Divorce by mutual consent is not permitted by law.

(2) Divorce may not be ordered between two spouses except in accordance with the provisions of this Code.

Art. 666. — *Petition for divorce.*

(1) A petition for divorce may be made to the family arbitrators either by the two spouses conjointly or by one of them.

(2) It may be made by no other person.

(3) The death of one of the spouses which occurs before the divorce has been ordered shall put an end to divorce proceedings.

Art. 667. — *Serious causes and other causes.*

The conditions on which a divorce may be ordered and the effects of the divorce differ according to whether the petitioner establishes or not the existence in his favour of a serious cause of divorce.

Art. 668. — *Pronouncement of divorce for serious cause.*

The family arbitrators shall make an order for divorce within three months from the petition having been made where the petitioner establishes in his favour the existence of a serious cause of divorce.

Art. 669. — *Serious causes of divorce.* — 1. *Due to a spouse.*

There is a serious cause for divorce:

(a) when one of the spouses has committed adultery; or

(b) when one of the spouses has deserted the conjugal residence and when, since at least two years, the other spouse does not know where he is.

Art. 670. — 2. *Not due to a spouse.*

There is also a serious cause for divorce:

(a) when one of the spouses is confined in a lunatic asylum since not less than two years;

(b) when the absence of one of the spouses has been judicially declared.

Art. 671. — 3. *Annulment of religious marriage.*

There is also a serious cause of divorce when a marriage contracted according to the formalities of a religion has been declared null by the religious authority.

Art. 672. — *Disappearance of the character of serious cause.*

(1) The fault imputable to one of the spouses shall cease to constitute a serious cause where the other spouse has granted forgiveness.

(2) Notwithstanding any proof to the contrary, such pardon shall be presumed where no petition for divorce has been made within six months from the culpable conduct of the spouse having ceased.

(3) The annulment of a religious marriage shall cease to constitute a serious cause of divorce if the spouses, after having known of the decision pronouncing such annulment, continue living together.

Art. 673. — *Other grounds.*

(1) Any other ground of divorce invoked by one of the parties shall not constitute a serious cause of divorce.

(2) A divorce may validly be ordered on one of such grounds if it be ordered on the conditions and at the times mentioned in the following articles.

Art. 674. — *Provisional measures.*

(1) From the time the matter is brought before them, the arbitrators shall order such provisional measures as are required by the circumstances in particular as regards the maintenance of the spouses and of the children or the management of the property of the spouses.

(2) They may assign or prohibit a determinate residence to the husband or to the wife.

Art. 675. — *Revision may be made.*

Any provisional measure taken by the arbitrators may be revised or annulled by them on the request of any interested person.

Art. 676. — *Attempt to reconcile.*

(1) Where there is no serious cause of divorce, the family arbitrators shall

attempt to reconcile the parties and to make them renounce the petition for divorce.

(2) To this end, they may prescribe to the spouses any measure they think fit.

Art. 677. — *Agreement on conditions of divorce.*

(1) Where the arbitrators fail to reconcile the spouses, they shall attempt to make them agree on the conditions of divorce.

(2) Where such agreement is reached, the judgment of divorce shall be made in accordance therewith.

Art. 678. — *Time for the delivery of judgment.* — 1. *Principle.*

(1) Failing agreement between the parties, the family arbitrators shall pronounce the divorce within one year from the petition for divorce having been made to them.

(2) Such period may be extended to five years by an agreement between the parties concluded either before or after the celebration of the marriage.

Art. 679. — *Contents of judgment.*

(1) The judgment of the arbitrators which pronounces the divorce shall regulate the consequences thereof.

(2) It shall in particular give directions regarding the custody and maintenance of minor children born of the marriage and make such provisions as may be necessary for the liquidation of the relations between the spouses.

Art. 680. — *Supplementary judgment.*

(1) In a first judgment the arbitrators may confine themselves to pronouncing the divorce and may reserve for a supplementary judgment the regulation of the questions or of certain questions which arise out of the divorce.

(2) The supplementary judgment shall be delivered within six months from the judgment of divorce having been given.

Art. 681. — *Custody of children.* — 1. *Principle.*

(1) The custody and maintenance of children born of the marriage shall be regulated having regard solely to the interest of such children.

(2) Unless there be a serious reason for deciding otherwise, the children shall be entrusted to their mother up to the age of five years.

Art. 682.— 2. *Revision may be made.*

The provisions made regarding the custody and maintenance of the chil-

dren may at any time be revised by the arbitrators on the application of the father, mother or other ascendant of the children.

## Section 2. Liquidation of pecuniary relations between spouses

### Paragraph 1. — Case of death of one of the spouses

Art. 683. — *Autonomy of agreements.*

(1) On the death of one of the spouses, the pecuniary relations between the spouses shall be liquidated in accordance with the contract of marriage and with the agreements entered into by the spouses.

(2) In default of agreements or if these have not been validly stipulated, the pecuniary relations between spouses shall be liquidated in accordance with the provisions of this Section.

Art. 684. — *Retaking personal property.*

Each spouse shall retake in kind the property which is owned personally by him where he shows that he is the owner thereof.

Art. 685. — *Withdrawal beforehand from common property.*

(1) If one of the spouses proves that any of his personal property has been alienated and that the price thereof has fallen in the common property, he shall withdraw beforehand therefrom money or things of a value corresponding to such price.

(2) The wife shall make her withdrawal before the husband.

Art. 686. — *Indemnities.* — 1. *Principle.*

Notwithstanding any agreement or final acquittance to the contrary, damages may be awarded to one of the spouses by reason of acts which have been performed by the other spouse and which have affected the common property or the property owned personally by either spouse where:

(a) the spouse who has performed such acts did not have the right to perform them; or

(b) such acts constitute acts of bad administration or have been performed in fraud of the rights of the person making the claim.

Art. 687. — 2. *Inadmissibility of action.*

No claim for indemnity based on Art. 686 may be made by reason of acts which have been performed more than three years before the dissolution of the marriage.

Art. 688. — *Unlawful enrichment.*

Unless otherwise agreed, an indemnity shall be awarded to a spouse who

proves that the personal property of his spouse has been enriched to the prejudice of his own personal property or of common property.

Art. 689. — *Partition of common property.*

(1) Without prejudice to the provisions of the preceding Articles and unless otherwise provided in the contract of marriage or in a contract validly concluded between the spouses, common property shall be divided equally between the spouses.

(2) Those provisions in the Title of this Code relating to Successions which concern the manner of making a partition, the relations between co-heirs after partition and the rights of creditors after partition shall apply mutatis mutandis to the partition of common property (Art. 1079-1113).

Paragraph 2. — Case of divorce

Art. 690. — *General rule.*

(1) Without prejudice to the provisions of the following Articles, pecuniary relations between spouses shall be liquidated in case of divorce as in the case of death of one of the spouses.

(2) The provisions of the following Articles may not be set aside by the contract of marriage nor by another agreement made by the spouses before the dissolution of the marriage.

Art. 691. — *Presents and matrimonial benefits.*

(1) On the request of the persons who have given presents or of their heirs, the family arbitrators may order the restitution of such presents as may have been received by the spouses on the occasion of the marriage or by reason of the existence of the marriage, whether by one spouse from the other or from the ascendants of one of the spouses or from other persons.

(2) They may invalidate such other benefits as may have been made or promised to the spouses or to one of them, by one of the spouses or by a third person on the occasion or in consideration of the marriage.

Art. 692. — *Unequal treatment of spouses.*

(1) The family arbitrators may award to one of the spouses a greater portion or even the whole of the common property.

(2) They may also award to one of the spouses property belonging to the other spouse, provided the value of such property does not represent more than one third of the estate of such other spouse.

Art. 693. — *Responsibility for divorce.* — 1. *Serious cause.*

(1) Where the divorce is ordered for a serious cause imputable to one of

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the spouses, the penalties specified in Art. 691 and 692 shall apply to the prejudice of such spouse.

(2) They may not be applied to the prejudice of the other spouse.

(3) They may not be applied either to one or to the other of the spouses when the divorce is ordered for a cause not imputable to one of the spouses.

Art. 694. — 2. *Absence of serious cause.*

(1) Where the divorce is not ordered for a serious cause, the penalties mentioned in the preceding Articles shall apply to the spouse who has made the petition for divorce.

(2) They may not be applied to the other spouse.

Art. 695. — *Direction to be followed.*

(1) The family arbitrators shall as a rule be bound to apply the penalties mentioned in the preceding Articles.

(2) Notwithstanding the provisions of sub-art. (1) they have a discretionary power whether to apply them or not as well as for establishing in which measure to apply them.

(3) In making their decision, they shall have regard to all the circumstances of the case and in particular to the importance and the gravity of the faults by reason of which the divorce has been ordered and the more or less morally reprehensible nature of the petition for divorce.

Paragraph 3. — Other cases of dissolution of marriage

Art. 696. — *Rule to be followed.*

(1) Where the court orders the dissolution of a marriage as a sanction of the conditions of marriage, it shall regulate according to equity the consequences of such dissolution.

(2) It shall be guided by the rules regarding the liquidation of the relations between spouses in cases of divorce (Art. 690-695).

(3) It shall in particular have regard to the good or bad faith of the spouses, the fact that the marriage has been consummated or not, the interest of the children, if any, born of the dissolved union and the interest of third parties in good faith.

## Chapter 7. Proof of marriage

Art. 697. — *Legal proofs.*

Marriage may be proved only by the modes of proof provided for in this Chapter.

**Art. 698.** — *Record of marriage.*

Marriage is proved by producing the record or marriage drawn up at the time of or after its celebration in accordance with law.

**Art. 699.** — *Possession of status.* — 1. *Definition.*

(1) In default of the record of civil status, marriage is proved by the possession of the status of spouse.

(2) Two persons have the possession of the status of spouses when they mutually consider and treat themselves as spouses and when they are considered and treated as such by their family and by society.

**Art. 700.** — 2. *Proof and contestation.*

(1) The possession of the status of spouse may be proved by producing four witnesses, relatives or not of the interested parties.

(2) It may be also contested by producing four witnesses, relatives or not of the interested parties.

**Art. 701.** — *Act of notoriety.*

In default of possession of status or if the possession of status is contested, the existence of the marriage is proved by an act of notoriety approved by the court.

**Art. 702.** — *Authorisation necessary.*

(1) The existence of a marriage may not be proved by means of an act of notoriety unless the court authorises such mode of proof.

(2) An application to this effect may be made at any time by any interested person.

(3) Save in case of force majeure the spouses or their heirs shall be heard.

**Art. 703.** — *When authorisation may be given.*

The court may authorise the marriage to be proved by an act of notoriety where:

(a) the circumstances mentioned in Art. 146 of this Code have occurred; or

(b) a record of marriage drawn up by a religious authority is produced by the plaintiff; or

(c) a contract of marriage is produced by the plaintiff; or

(d) the defendant spouse acknowledges the existence of the marriage, or there are presumptions or circumstantial evidence resulting from constant and sufficiently serious facts to enable the court to grant the authorisation.

Art. 704. — *Duties of officer of civil status.*

(1) The person requested to draw up an act of notoriety in connection with a marriage shall ensure that such request be given publicity, in conformity with the regulations and with the instructions given to him by the court.

(2) He shall invite third parties to record their opposition, if any, within one month from such publicity.

Art. 705. — *Forms and approval.*

(1) The act of notoriety aiming at proving the existence of a marriage shall indicate, in so far as possible, the date since when the marriage exists and the date, if any, on which it has ceased to exist.

(2) It shall be of no effect unless certified by four witnesses and approved by the court.

Art. 706. — *Probatory value.*

(1) The record of marriage or the act of notoriety approved by the court shall be effective as regards all persons.

(2) The person who alleges the falseness of either of them shall prove against it either that the marriage has not been celebrated or that it has been celebrated on a date different to that resulting from such record or act.

Art. 707. — *Nullity or dissolution of marriage.*

The person who alleges that a marriage is null or has been dissolved shall prove such allegation.

## Chapter 8. Irregular unions

Art. 708. — *Definition.*

An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having contracted marriage.

Art. 709. — *Explanation.*

(1) It is necessary and sufficient in order to have an irregular union that the behaviour of the man and of the woman be analogous to that of married people.

(2) They need not represent themselves to third parties as being married.

(3) The mere fact that a man and a woman keep up sexual relations between them, even if repeatedly and notoriously, is not sufficient,

by itself, to constitute an irregular union between such man and woman.

Art. 710. — *No bond of affinity created.*

(1) An irregular union shall not create any bond of affinity between the man and the relatives of the woman or between the woman and the relatives of the man.

(2) The provisions concerning impediments to marriage in the case of affinity shall however apply in the case of an irregular union.

Art. 711. — *No obligation for maintenance.*

An irregular union shall not create any obligation to supply maintenance between the man and the woman engaged in such union.

Art. 712. — *No community.*

An irregular union shall not create any community of property between the man and the woman engaged in such union.

Art. 713. — *No rights of succession.*

An irregular union shall not create any right of succession between the man and the woman engaged in such union.

Art. 714. — *Surety for debts of woman.*

A man engaged in an irregular union shall stand joint and several surety of the woman, by virtue of the law, in all contracts which are concluded by the woman and which are necessary for the maintenance of the man or of the woman or of the children born of the irregular union.

Art. 715. — *Filiation of children.*

The filiation of the children born of an irregular union shall be established in accordance with the Chapter of this Title relating to "Filiation".

Art. 716. — *Termination of union.* — 1. *By the woman.*

(1) A woman engaged in an irregular union may at any time put an end to such union.

(2) By so doing she shall not be liable for any indemnity or restitution.

Art. 717. — 2. *By the man.*

(1) A man engaged in an irregular union may at any time put an end to such union.

(2) In such a case, if equity so requires, he may be condemned by the court to pay an indemnity to the woman corresponding to the expense of the maintenance of the woman for not more than six months.

Art. 718. — *Proof of union.* — 1. *Principle.*

(1) An irregular union is proved by the possession of status.

(2) A man and a woman have the possession of the status of people living in an irregular union when, although they are not married, they behave as such, and when their families and their neighbours consider that they live as married people.

Art. 719. — 2. *Proof and contestation of possession of status.*

(1) Possession of status shall be proved by producing reliable witnesses.

(2) It may be contested by producing reliable witnesses.

Art. 720. — *Act of notoriety.*

(1) If the possession of status is contested, the existence of an irregular union shall be proved by an act of notoriety approved by the court.

(2) The provisions of Art. 702-706 of this Code shall apply to the proof of an irregular union.

Art. 721. — *Other relations out of wedlock.*

(1) Relations established between a man and a woman out of wedlock or out of an irregular union shall have no juridical effect attached to them.

(2) Neither the interested persons nor third parties may avail themselves in legal proceedings of such relations for any purpose whatever.

(3) Without prejudice to the provisions of this Code relating to acknowledgement or adoption, children born of such relations shall have a juridical bond only with their mother.

## Chapter 9. Conflicts in cases relating to marriages, divorces and irregular unions

Art. 722. — *Existence of valid betrothal.*

Only the court is competent to decide whether a betrothal has been celebrated or not and whether such betrothal is valid.

Art. 723. — *Disputes arising out of betrothal.*

(1) Disputes arising out of a betrothal or out of a breach of a betrothal shall be submitted to the arbitration of the persons who have been the witnesses to the contract of betrothal.

(2) If some persons have been designated as first witnesses, the disputes shall be submitted to their arbitration.

(3) The parties may agree, at the time of the betrothal or subsequently, to have recourse to the arbitration of other persons.

Art. 724. — *Existence of valid marriage.*

Only the court is competent to decide whether a marriage has been contracted and whether such marriage is valid.

Art. 725. — *Difficulties arising out of marriage.*

(1) Difficulties which arise between the spouses during the marriage shall be submitted to the arbitration of the persons who have been witnesses to such marriage.

(2) If some persons have been designated as first witnesses, the disputes shall be submitted to their arbitration.

(3) The parties may agree, at the time of the marriage or subsequently, to have recourse to the arbitration of other persons.

Art. 726. — *Dissolution of marriage by death.*

Disputes arising out of the dissolution of a marriage shall be submitted to the arbitration of the same persons, when the dissolution of the marriage is caused by the death of one of the spouses.

Art. 727. — *Petition for divorce.*

A petition for divorce made by both spouses or one of them shall be submitted to the arbitration of the same persons.

Art. 728. — *Disputes arising out of divorce.*

(1) Disputes arising out of divorce shall be submitted to the arbitration of the arbitrators who have pronounced the divorce.

(2) The interested parties may agree, at the time of the divorce or subsequently, to have recourse to the arbitration of other persons.

Art. 729. — *Existence of divorce.*

Only the court is competent to decide whether a divorce has been pronounced or not.

Art. 730. — *Irregular union.*

(1) Only the court is competent to decide whether an irregular union has been established between two persons.

(2) Only the court is competent to decide on disputes arising out of such union.

Art. 731. — *Appointment of arbitrators.*

If, on applying the rules laid down in the preceding Articles, it is found that no arbitrator has been designated for resolving a dispute which is to be submitted to arbitration, each of the spouses shall appoint two arbitrators.

Art. 732. — *Designation of supplementary arbitrators.*

Notwithstanding any agreement to the contrary, the family arbitrators may by a majority between them agree to complete their jurisdiction by calling one or more supplementary arbitrators.

Art. 733. — *Replacement of arbitrator.* — 1. *Principle.*

(1) Where a person called to give a decision as arbitrator dies or is not in a position to decide without delay the dispute which has arisen, he shall be replaced in the same manner as he has been appointed.

(2) Where he refuses to perform the functions of arbitrator or is dismissed by the court, a new arbitrator shall be appointed by the court.

Art. 734. — 2. *Disagreement on appointment of arbitrator.*

Where the parties required to appoint an arbitrator by agreement between themselves do not agree on such appointment, the arbitrator shall be appointed by the court at the request of either party.

Art. 735. — *Failure to appoint arbitrator.*

Where the party required to appoint an arbitrator fails to do so within fifteen days after having been required to do so or appoints an arbitrator who does not accept his functions or who cannot for whatever reason carry out his duties without delay, an arbitrator shall be appointed by the court on behalf of such party on the application of the other party.

Art. 736. — *Appeal to court against decision of arbitrators.*

The decisions made by the arbitrators, in the cases mentioned in the preceding Articles, may only be impugned before the court by alleging the corruption of the arbitrators or fraud in regard to third persons or the illegal or manifestly unreasonable character of such decisions.

Art. 737. — *Failure by arbitrators to give decision.*

The court may take cognizance of the matter on the application of one of the parties, if the arbitrators fail to make their decision within the period prescribed to them by the law or, in default of such period, within a reasonable period.

## Chapter 10. Filiation

### Section 1. Ascertainment of the father and of the mother

#### Paragraph 1. — General provisions

Art. 738. — *Legal rules mandatory.*

The legal rules concerning the ascertainment of the father and of the

mother may not be derogated by agreement, except in the cases where the law expressly authorises such agreements.

Art. 739. — *Maternal filiation.*

Maternal filiation results from the sole fact of the birth.

Art. 740. — *Paternal filiation.*

(1) Paternal filiation results from the maternal filiation when a relation, provided for by the law, has existed between the mother and a certain man at the time of the conception or of the birth of the child.

(2) It may result from an acknowledgement of paternity made by the father of the child.

(3) It may result from a judicial declaration, in the case of abduction or rape of the mother.

**Paragraph 2. — Presumption of paternity**

Art. 741. — *Presumption of paternity of the husband.*

A child conceived or born in wedlock has the husband as father.

Art. 742. — *Generality of presumption.*

(1) The provisions of Art. 741 shall apply whatever the manner in which the maternal filiation of the child may have been established.

(2) They shall also apply when the record of birth of the child does not indicate the husband as being the father of the child or when it indicates that another man is the father of the child.

(3) In such cases, the record of birth shall merely be corrected.

Art. 743. — *Duration of pregnancy.*

(1) A child shall be deemed to have been conceived in wedlock if he is born more than 180 days after the celebration of the marriage and less than 300 days after its dissolution.

(2) No proof to the contrary shall be admitted.

Art. 744. — *Absence of husband.*

When the birth occurs after a judgment has declared the absence of the husband, a child shall not have the husband as father.

Art. 745. — *Irregular union.*

(1) A child conceived or born during an irregular union has as father the man engaged in such union.

(2) The provisions of Articles 742 and 743 concerning the generality of the presumption and the duration of pregnancy shall apply to such presumption.

Paragraph 3. — Acknowledgement of paternity

Art. 746. — *Principle.*

When the father of the child is not determined by applying the preceding Articles, the paternal filiation of the child may be established by an acknowledgement of paternity.

Art. 747. — *Contents of acknowledgement.*

(1) An acknowledgement of paternity shall result from the declaration made by a man that he considers himself the father of a certain child, born or merely conceived.

(2) Such declaration need not have been made with a view to producing the effects of an acknowledgement of paternity.

Art. 748. — *Form and proof of acknowledgement.*

(1) An acknowledgement of paternity shall be of no effect unless it is made in writing.

(2) Except in the case mentioned in Art. 146 of this Code, the acknowledgement may not be proved by witnesses.

Art. 749. — *Representation.*

(1) The declaration shall be made personally by the father of the child, even though he is a minor.

(2) The mandate to make it may only be given by a special power of attorney approved by the court.

(3) It may be made personally by a person subject to judicial interdiction or in his name by a legal representative, with the permission of the court.

Art. 750. — *Death of father.*

(1) If the father of the child is dead or not in a position of manifesting his will, the acknowledgement of paternity may be made in his name by the paternal grandfather or grandmother.

(2) In default of paternal grandparents it may be made by another paternal ascendant.

Art. 751. — *Admission of the mother.*

(1) The acknowledgement of paternity shall be of no effect unless it has been acknowledged to be well-founded by the mother of the child.

(2) If the mother of the child is dead or not in a position of manifesting her will, the acknowledgement of paternity may be accepted by the maternal grandfather or grandmother of the child.

(3) In default of maternal grandparents, it may be accepted by another maternal ascendant or by the guardian of the interdicted person.

Art. 752. — *Majority of the child.*

The acknowledgement of paternity shall be of no effect unless it has been accepted by the child himself when it is made after the latter has attained majority.

Art. 753. — *Form of acceptance.*

The acknowledgement of paternity shall be deemed to be accepted where the person required to accept it has not raised any protest against such acknowledgement within one month after he has come to know of it.

Art. 754. — *Death of child.*

The acknowledgement of paternity may not be made after the death of the child unless the latter has left descendants.

Art. 755. — *Revocation.*

(1) The acknowledgement of paternity may not be revoked.

(2) A minor who has acknowledged a child may revoke such acknowledgement for so long as he is incapable and within the year following the cessation of his incapacity, unless his guardian consented to the acknowledgement.

(3) This right of revocation may be exercised by the minor only. It may not be exercised by his legal representative nor by his heirs.

Art. 756. — *Annulment.*

(1) It may be annulled on the ground of violence, in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1706-1709 and 1808-1818).

(2) It may not be annulled on the ground of error or fraud, in accordance with the provisions of the same Title, unless it is decisively proved that the child could not have been conceived of the person making the acknowledgement (Art. 1697-1705 and 1808-1818).

Art. 757. — *Several acknowledgements prohibited.*

Where an acknowledgement of paternity has been made in regard to a child and such acknowledgement has been duly accepted, no other acknowledgement of the child by another man shall be permitted unless the first acknowledgement has been annulled.

Paragraph 4. — Judicial declaration of paternity

Art. 758. — *Abduction or rape.*

When, after applying the preceding Articles, the child has no father,

or when he has been disowned, a judicial declaration of paternity may be obtained where the mother of the child has been the victim of an abduction or of a rape at the time when the conception of the child is considered to have taken place.

Art. 759. — *Bringing of action.*

(1) The action for a judicial declaration of paternity may be instituted only by the mother of the child or, if she is dead or not in a position to manifest her will, by the guardian of the child.

(2) It may not be instituted two years after the birth of the child or after the sentence of a criminal court in regard to the abduction or rape.

Art. 760. — *Issue of the action.*

The judicial declaration of paternity shall be made after the facts constituting the abduction or rape are established, unless it is decisively proved that the child has not been conceived of the man who has abducted or raped the mother.

Art. 761. — *No other cases.*

A judicial declaration of paternity may not be demanded or made in any other case.

## Section 2. Conflicts of paternity

Art. 762. — *Regulation of paternity.* — 1. *Principle.*

When, on applying the preceding Articles, a child must be attributed to several fathers, a regulation of paternity may be made between the persons to whom the paternity of the child is thus attributed by the law.

Art. 763. — 2. *Form.*

(1) The contract by which the regulation of paternity is made shall be attested by four witnesses and approved by the court.

(2) Except in the case of force majeure, the mother of the child shall be heard in person.

Art. 764. — *Legal presumptions.*

Failing regulation of paternity, the two following presumptions shall be applied successively, where necessary:

(a) the child shall be attributed to the husband of the mother in preference to the man who has an irregular union with the mother;

(b) the child shall be attributed to the husband or the man with whom the mother is living at the time of the birth, in preference to the

husband or the man with whom she was living at the time of the conception.

**Art. 765.** — *Contractual assignment of paternity.* — 1. *Where permissible.*

Where the child is born more than 210 days after the dissolution of the marriage or the cessation of the irregular union, the husband or the man who lived with the mother may by contract assign the paternity of the child to a third person who declares that he is the father of the child.

**Art. 766.** — 2. *Form.*

(1) The contractual assignment of paternity shall be attested by four witnesses and approved by the court.

(2) Except in the case of force majeure, the mother of the child shall be heard in person.

**Art. 767.** — *Representation.*

(1) The agreements mentioned in this Section shall be concluded by the interested parties themselves.

(2) They may not be concluded in the name of such parties by their legal representative or their heirs.

(3) A mandate to conclude them may only be given by a special power of attorney approved by the court.

**Art. 768.** — *Revocation and annulment.*

(1) The agreements mentioned in this Section may not be revoked.

(2) They may be annulled on the ground of violence in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1706-1709 and 1808-1818).

(3) They may not be annulled on the ground of error or fraud, in accordance with the provisions of the same Title, unless it is decisively proved that the child could not have been conceived of the person who has declared to be his father (Art.1697-1705 and 1808-1818).

## Section 3. Proof of filiation

**Art. 769.** — *Record of birth.*

Both the paternal and the maternal filiation of a person are proved by his record of birth.

**Art. 770.** — *Possession of status.* — 1. *Definition.*

(1) In default of a record of birth, filiation is proved by the possession of the status of child.

(2) A person has the possession of the status of child when he is treated by a man or a woman, by their relatives and by society as being the

child of such man or woman.

Art. 771. — 2. *Proof and contestation.*

(1) Possession of status shall be proved by producing four witnesses.

(2) It may be contested by producing four witnesses.

Art. 772. — *Action of child to claim his status.*

In default of possession of status or where the possession of status is contested or does not correspond with the particulars in the record of birth, filiation is proved by an act of notoriety, approved by the court, upon a decision given on an action of the child to claim his status.

Art. 773. — *Admissibility of action.*

(1) The action of the child to claim his status may not be instituted except with the permission of the court.

(2) Such permission shall not be granted unless there are presumptions or circumstantial evidence resulting from facts which are constant and sufficiently serious to enable the court to grant the permission.

Art. 774. — *Inadmissibility of action.*

No permission to institute the action to claim a status shall be granted where the person whose filiation is to be established has already another filiation resulting from his record of birth and corroborated by a possession of a status in conformity with such record.

Art. 775. — *Person instituting the action.*

(1) The action to claim a status may be instituted by the child, by his guardian or his heirs.

(2) It may be instituted by those who claim to be the father or mother of the child.

(3) It may also be instituted, with a view to disowning his paternity, by the person to whom the paternity of the child would be attributed, should the action be successful.

Art. 776. — *Time.*

(1) The child may institute the action to claim a status at any time during his life.

(2) The guardian of the child and the persons mentioned in sub-arts. (2) and (3) of Art. 775 may institute it only during the minority of the child.

(3) The heirs may not institute it unless the child died before the age of twenty years and within one year after his death.

Art. 777. — *Person against whom action instituted.*

(1) The action to claim a status shall be instituted against the child where the claim is made by the mother.

(2) In other cases, it shall be instituted against the mother or her heirs.

(3) The mother and the person to whom the paternity of the child will be attributed in case the action is successful must be made a party to the suit.

## Section 4. Contestation of status and disowning

### Paragraph 1. — Contestation of status

Art. 778. — *Principle.*

The maternal filiation of the child may be contested at any time by any interested person.

Art. 779. — *Admissibility of action.*

(1) The action to contest a status may not be instituted except with the permission of the court.

(2) Such permission shall not be granted unless there are presumptions or circumstantial evidence resulting from facts which are constant and sufficiently serious to enable the court to grant permission.

Art. 780. — *Inadmissibility of action.*

The authorisation to institute an action to contest a status shall be refused where the filiation which the plaintiff seeks to contest result from the record of birth of the interested party and is corroborated by a possession of status corresponding with such record of birth.

Art. 781. — *Defendant in the suit.*

(1) The action to contest a status shall be instituted against the person whose filiation is contested or against his heirs.

(2) The mother and, where necessary, the father of the child shall be joined as parties in the proceedings.

### Paragraph 2. — Disowning

Art. 782. — *Principle.*

The paternal filiation of a child may be contested only by means of an action to disown.

Art. 783. — *Where there are no relations with the mother.* — 1. *Principle.*

The person to whom the law attributes the paternity of a child may disown such child by proving decisively that he could not have had sexual

relations with the mother during the period included between the 300th and 180th day before the birth of the child.

Art. 784. — 2. *Presumption.*

(1) The spouses shall be deemed to have had no sexual relations with one another during the time when they actually lived separated following a petition for divorce made by one of them or in consequence of a written agreement concluded between them.

(2) Proof to the contrary by any means is admissible and in particular may result from mere presumptions.

Art. 785. — *When paternity is impossible.* — 1. *Principle.*

The person to whom the law attributes the paternity of a child may disown such child by proving decisively that it is absolutely impossible in the particular case that he could be the father of the child.

Art. 786. — 2. *Admissibility of action.*

(1) In the case mentioned in Art. 785, the action to disown may not be instituted except with the permission of the court.

(2) Such permission shall not be granted unless there are presumptions or circumstantial evidence, resulting from facts which are constant and sufficiently serious to enable the court to grant the permission.

Art. 787. — 3. *Presumptions and serious circumstantial evidence.*

(1) The presumptions and serious circumstantial evidence may consist of physical characteristics of the child recognized by science to be incompatible with those of the father.

(2) They may also result from the fact that the mother has concealed the birth or even merely her pregnancy to the husband or to the man with whom she lived, under circumstances which are apt to create doubts as regards his paternity.

Art. 788. — 4. *Adultery or admission of the mother.*

The adultery of the mother or her admission that the child has another father are not sufficient, by themselves, to constitute serious circumstantial evidence.

Art. 789. — *Improbable paternity.*

When the maternal filiation of the child is established by an action to claim a status, the person to whom the paternity of the child is attributed may disown the child by bringing forward any facts apt to prove that he is not the father of the child.

Art. 790. — *Plaintiff in the suit.*

(1) Only the person to whom the paternity of the child is attributed by the application of the legal rules may institute an action to disown.

(2) No application to this effect may be made by the mother or by a man who claims the paternity of the child or by the public prosecutor or by the child himself.

Art. 791. — *Judicially interdicted persons.*

(1) An action to disown may, with the permission of the court, be instituted by the judicially interdicted person himself.

(2) The action may, with the same permission, be instituted in the name of the interdicted person by his guardian.

Art. 792. — *Time.* — 1. *Principle.*

(1) An action to disown shall be instituted within the 180 days following the birth of the child.

(2) Where the maternal filiation is established by an action to claim a status, the action to disown shall be instituted within 180 days from the judgment deciding on the action to claim a status having become final.

Art. 793. — 2. *Exception.*

(1) Where the person to whom the paternity of the child is attributed by law dies or becomes incapacitated within the time fixed by law for instituting the action to disown, the right to disown the child may be exercised, in his stead, by one of his descendants.

(2) In default of descendants, it may be exercised by his father and mother or in their default by another of his ascendants.

(3) In default of ascendants, it may be exercised by one of his brothers or sisters to the exclusion of any other heir or representative.

Art. 794. — *Inadmissibility of action.*

Disowning shall not be allowed where it proved that the child has been conceived by means of artificial insemination with the written consent of the husband.

Art. 795. — *Defendant in the suit.*

(1) The action to disown shall be instituted against the child or, where he is dead, against his heirs.

(2) Where the child is a minor, he shall be represented by a tutor ad hoc appointed by the court.

## Chapter 11. Adoption

Art. 796. — *Adoptive filiation.*

(1) A bond of filiation may be created artificially by a contract of adoption between the adopter and the adopted child.

(2) The bonds of consanguinity or affinity resulting from adoption as regards the relations between the adopter and the family of the adopted child and between the adopted child and the family of the adopter are set forth in Chapter 1 of this Title.

Art. 797. — *Age of adopter.*

(1) Any person of age may adopt.

(2) Where an adoption is made by two spouses, it is sufficient that one of them be of age.

Art. 798. — *Adoption by married person.*

(1) Where the adopter is married, a contract of adoption may not be made unless the two spouses conjointly adopt the adopted child.

(2) The provision of sub-art. (1) shall not apply where a person adopts the child of his spouse.

(3) Nor shall it apply where one of the spouses is not in a position to manifest his will.

Art. 799. — *Adoption of child merely conceived.*

(1) A child merely conceived may be adopted.

(2) The adoption may, in such case, be revoked unilaterally at the will of the mother, before or within three months following the birth of the child.

Art. 800. — *Children of adopter.*

The existence of children of the adopter shall not constitute an obstacle to adoption.

Art. 801. — *Adoption by several persons.*

(1) No person may be adopted by several persons unless these are two spouses.

(2) However, in the case of death of the adopter, a new adoption is possible.

(3) Where a child has been adopted by two spouses and one of such spouses dies, the child may be adopted by the new spouse of the survivor.

Art. 802. — *Parties to the contract.*

(1) The contract of adoption shall be made between the adopter and the adopted child, if the latter is more than fifteen years of age.

(2) In other cases, it shall be made between the adopter and the guardian of the adopted child.

Art. 803. — *Consent of parents of adopted child.*

(1) Both the father and the mother of the child must give their consent to the adoption where they are alive and known.

(2) Where one of them is dead, absent, unknown or incapable to manifest his will, he shall as far as is possible be represented by his nearest ascendants who shall give their consent to the adoption.

(3) Where the child has no ascendant susceptible of giving his consent, the consent of the family council shall be required.

Art. 804. — *Approval of adoption.*

(1) The contract of adoption shall be of no effect unless it is approved by the court.

(2) Before making its decision, the court shall hear the adopted child himself, if he is over ten years of age, and the person to whose custody the adopted child is entrusted, if such person has not given beforehand his consent to the adoption.

Art. 805. — *Conditions for approval.*

Adoption may not take place unless there are good reasons for it and unless it offers advantages for the adopted child.

Art. 806. — *Revocation of adoption.*

Adoption may not be revoked for any reason.

## Chapter 12. Obligation to supply maintenance

Art. 807. — *Subject matter of the obligation.*

The person bound to supply maintenance shall supply to his creditor the means to feed, to lodge, to clothe and to care for his health in a decent manner, having regard to the social condition of the interested persons and local custom.

Art. 808. — *Persons between whom the obligation exists.*

(1) An obligation to supply maintenance exists between relatives by consanguinity or affinity in the direct line.

(2) An obligation to supply maintenance likewise exists between brothers and sisters born of the same parents or born of the same father or of the same mother.

Art. 809. — 1. *Where there is no obligation.*

The obligation to supply maintenance shall not subsist between relatives by affinity in the case where the bond which created the affinity has been dissolved by a divorce.

Art. 810. — 2. *Judicial declaration of paternity.*

In the case of abduction or of rape, the obligation to supply maintenance shall not exist in favour of the person whose paternity has been declared judicially.

Art. 811. — 3. *Condemnation of creditor.*

Nor is maintenance due in the case where the creditor for maintenance has been condemned for having made an attempt on the life of the debtor for maintenance or of an ascendant or of a descendant or of the spouse of the latter.

Art. 812. — *Conditions for the existence of the obligation.*

(1) The obligation to supply maintenance shall not exist unless the person who claims its fulfilment is in need and not in a state of earning his livelihood by his work.

(2) Nor shall such obligation exist where the person from whom maintenance is claimed is not in a position to supply it.

Art. 813. — *Mode of fulfilment of obligation.*

(1) The obligation to supply maintenance shall as a rule be fulfilled by means of a maintenance allowance paid by the debtor to the creditor for maintenance.

(2) The amount of such allowance shall be fixed by taking into consideration the needs of the person claiming it and the means of the person liable thereto.

Art. 814. — *Possibility of revision.*

The decision which fixes the amount of the maintenance allowance may be reviewed at any time upon the demand of the debtor or of the creditor.

Art. 815. — *Place where allowance paid.*

Saving any decision of the court to the contrary, the arrears of a maintenance allowance shall be payable at the residence of the creditor.

Art. 816. — *Arrears.* — 1. *May not be assigned or attached.*

(1) The arrears of a maintenance allowance may neither be assigned nor attached, without prejudice to the provisions of sub-art. (2) and (3).

(2) They may, even before they fall due, be assigned in favour of institutions of assistance which provide for the needs of the beneficiary of the allowance.

(3) The may be attached by the persons who have supplied to the beneficiary of the allowance what was necessary for his subsistence.

Art. 817. — 2. *No accumulation.*

All arrears which have not been received or claimed within three months from their falling due shall cease to be due unless the creditor proves that such arrears were necessary for his subsistence.

Art. 818. — *Creditor may be taken into debtor's house.*

(1) The debtor for maintenance may offer to discharge his obligation by taking the creditor for maintenance into his house.

(2) The court shall decide whether, having regard to all the circumstances, such offer shall be accepted or not.

(3) The debtor for maintenance may never be compelled to take into his house the person entitled to claim maintenance.

Art. 819. — *Plurality of debtors.* — 1. *Principle.*

Where several persons are liable to supply maintenance to a creditor for maintenance, the latter may claim maintenance from any of such persons.

Art. 820. — 2. *Recourse.*

(1) The debtors who have been condemned to pay the allowance shall have recourse against those who have not been made parties to the suit.

(2) The court may condemn the latter to repay the whole or part of the allowance, taking into account their means and their degree of relationship by consanguinity or by affinity with the person claiming maintenance.

Art. 821. — 3. *Order of debtors.*

The different debtors shall finally bear the liability arising out of the obligation to supply maintenance in the following order:

(a) in the first place, the spouse;

(b) in the second place, the descendants, according to their degree;

(c) in the third place, the ascendants, according to their degree;

(d) in the fourth place, the brothers and sisters of the full blood;

(e) in the fifth place, the brothers and sisters of the half blood, whether on the father's or on the mother's side;

(f) in the sixth place, the descendants by affinity, according to their degree;

(g) in the seventh place, the ascendants by affinity, according to their degree.

Art. 822. — 4. *Agreement between co-debtors.*

(1) The debtors for maintenance may validly agree, as regards their reciprocal relations, that maintenance shall be supplied to their common creditor by one of them.

(2) If the creditor for maintenance has adhered to such agreement, he may not make a claim against the other debtors to obtain maintenance unless he has a serious reason for not respecting such agreement.

Art. 823. — *Case of adoption.*

(1) The adopted child, his spouse and his descendants may not claim maintenance from the family of origin of the adopted child unless the adoptive family is not in a position to supply such maintenance.

(2) They shall not be bound to supply maintenance to the ascendants of the family of origin unless the latter cannot claim maintenance from another member of their family.

Art. 824. — *Funeral expenses.*

(1) Whosoever is bound to supply maintenance to a person shall pay the funeral expenses of such person.

(2) The person who has advanced such expenses may claim the repayment from the debtor for maintenance, in accordance with the provisions relating to voluntary management of the affairs of another person (Art. 2257-2265).

Art. 825. — *Particular agreements.*

Any particular agreement providing for exceptions to the provisions of this Chapter shall be of no effect.

# TITLE V. SUCCESSIONS

## Chapter 1. Devolution of Successions

### Section 1. General Provisions

#### Paragraph 1. — Opening of succession and things making up a succession

Art. 826. — *Opening of succession.*

(1) Where a person dies, the succession of such person, called the deceased, shall open at the place where he had his principal residence at the time of his death.

(2) The rights and obligations of the deceased which form the inheritance shall pass to his heirs and legatees, in accordance with the provisions of this Title, unless such rights and obligations terminate by the death of the deceased.

Art. 827. — *Things making up inheritance.* — 1. *Life insurance.*

(1) Monies due in performance of a contract of life insurance to which the deceased was a party, shall form part of the inheritance where the deceased has not determined the beneficiary or the insurance is made to the benefit of the heirs of the deceased without any other indication. .

(2) In other cases, they shall not form part of the inheritance.

Art. 828. — 2. *Pensions and indemnities.*

Pensions or indemnities payable to the relatives or to the spouse of the deceased as a consequence of his death shall not form part of the inheritance.

Art. 829. — *Different kinds of successions.*

(1) The succession of the deceased may be either intestate or testate.

(2) It may be partly intestate and partly testate.

(3) The property of which the deceased has not disposed by will shall devolve upon his heirs-at-law.

Paragraph 2. — Capacity to Succeed

Art. 830. — *Conditions required for succeeding.*

A person may not succeed the deceased unless he survives him and he is not unworthy of succeeding him.

Art. 831. — *Survival of heir to the deceased.*

(1) The proof that a person exists on the day of the death of the deceased shall be made in accordance with the provisions of the Title of this Code relating to "Physical Persons" (Art. 47-153).

(2) The provisions of the same Title shall apply as regards the consequences of absence (Art. 154-173).

(3) Nothing in this Article shall affect the provisions relating to representation in successions.

Art. 832. — *Persons dying simultaneously.*

Where two or more persons are dead and it is not possible to prove which of such persons survived the other, the succession of each one of such persons shall be regulated as if he had been the last survivor without, however, receiving anything from the succession of the other persons.

Art. 833. — *Death of heir.*

Where a person who is called to a succession dies after such succession has opened, his rights relating to the succession shall pass to his heirs.

Art. 834. — *Child merely conceived.*

A child who is merely conceived may be called to a succession as provided in the Title of this Code relating to "Physical Persons" (Art. 2-4).

Art. 835. — *Bodies corporate.*

The capacity of bodies corporate and of property with a specific destination to receive legacies shall be as provided in the Title of this Code relating to "Bodies Corporate and Property with a Specific Destination" (Art. 394-402, 456 and 501).

Art. 836. — *State of legitimate, illegitimate or adopted child.*

(1) The legitimacy or illegitimacy of the deceased or of the heir shall not affect the ascertainment of the heirs or the value of the portion of each of them.

(2) Without prejudice to the provisions of Art. 557 of this Code, adopted children shall be assimilated to the other children.

Art. 837. — *Sex, age, nationality of heir.*

The sex, age and nationality of the heir shall not affect in any way the ascertainment of his rights to the succession.

Art. 838. — *Unworthiness.* — 1. *Crimes or condemnations.*

Any person who has been sentenced for:

(a) having intentionally caused the death of the deceased or the death of a descendant, ascendant or spouse of the deceased; or

(b) having attempted to kill any one of such persons; or

(c) having made a false accusation or testimony which might have entailed the condemnation of any one of such persons to capital punishment or rigorous imprisonment for more than ten years,

shall lose his capacity to succeed the deceased as unworthy.

Art. 839. — 2. *Explanation.*

The loss of capacity provided in Art. 838 shall not take place where the crime or attempted crime has been committed by the person called to the succession after the death of the deceased.

Art. 840. — 3. *Other causes.*

Whosoever:

(a) by taking advantage of the physical state of the deceased, has, within three months prior to the death of the latter, prevented him from making, modifying or revoking his will; or

(b) has intentionally destroyed, caused to disappear or altered the last will of the deceased, without the consent of the latter, or has

availed himself of a false will knowing it to be such,
shall lose his capacity to succeed the deceased as unworthy.

Art. 841. — 4. *Pardon by deceased.*

(1) The loss of capacity provided in Arts. 838 and 840 shall not take place where the deceased has expressly stated in a will that he pardoned his heir.

(2) Nor shall it take place with regard to a legacy, where the legacy has been ordered by the deceased, with full knowledge of the circumstances, after the happening of the event giving rise to unworthiness.

## Section 2. Intestate Successions

Art. 842. — *First relationship.*

(1) The children of the deceased shall be the first to be called to his succession.

(2) Each of them shall receive an equal portion of the succession.

(3) Where the children, or one of the children of the deceased are dead and are survived by descendants, they shall be represented in the successions by such descendants.

Art. 843. — *Second relationship.* — 1. *Principle.*

Where the deceased is not survived by descendants, his father and mother shall be called to his succession.

Art. 844. — 2. *Application.*

(1) Each of them shall receive a moiety of the inheritance.

(2) The predeceased father and mother shall be represented by their children or other descendants.

(3) In default of an heir in one of the lines, all the inheritance shall devolve upon the heirs of the other line.

Art. 845. — *Third relationship.* — 1. *Principle.*

(1) Where the deceased is not survived either by descendants or by his father or mother or their descendants, his grandparents shall be called to his succession.

(2) The grandparents of the paternal line or their descendants shall be entitled to a moiety of the inheritance, and the grandparents of the maternal line or their descendants shall be entitled to the other moiety.

Art. 846. — 2. *Devolution upon another line.*

(1) Where a grandparent of the paternal or maternal line dies without descendants, his portion shall devolve upon the heirs of the same line.

(2) Where the grandparents of one line die without descendants, the whole succession shall devolve upon the heirs of the other line.

Art. 847. — *Fourth relationship.* — 1. *Principle.*

In default of heirs of the third relationship, the great-grandparents of the deceased shall be called to the succession.

Art. 848. — 2. *Application.*

(1) The great-grandparents of the paternal line or their descendants shall be entitled to a moiety of the inheritance and the great-grandparents of the maternal line or their descendants shall be entitled to the other moiety.

(2) Without prejudice to the provisions of sub-art. (1), each of the surviving great-grandparent or his descendants capable of representing him shall receive an equal portion of the succession.

Art. 849. — *Rule "paterna paternis materna maternis"* — 1. *Principle.*

(1) The application of the preceding Articles shall never have the effect that immovable property deriving by way of succession or donation from the paternal line of the deceased be assigned in full ownership to the heirs of the maternal line.

(2) Nor shall it have the effect that immovable property deriving by way of succession or donation from property deriving by way of succession or donation from the maternal line of the deceased be assigned in full ownership to the heirs of the paternal line.

(3) The rules laid down in sub-articles (1) and (2) shall apply up to the second degree so that immovable property deriving by donation or succession from the grandpaternal line be not assigned to an heir of the grandmaternal line and vice-versa.

Art. 850. — 2. *Application.*

(1) Where by reason of the provision of Art. 849, an heir cannot receive the portion which derives to him from the succession, a mere right of usufruct on the immovable property which he cannot receive in full ownership shall be assigned to such heir.

(2) No compensation shall be due to the heir whose rights have been so reduced.

Art. 851. — 3. *Restriction.*

The rule paterna paternis materna maternis shall not apply where there are heirs only in the paternal or maternal line or in the grandpaternal or grandmaternal line.

Art. 852. — *Devolution upon the State.*

In default of relatives, the inheritance of the deceased shall devolve upon the State.

Art. 853. — *Representation.* — 1. *Principle.*

(1) Where representation takes place, the partition shall be made "per stirpes".

(2) The children of the person represented shall take his place and exercise his rights relating to the succession.

(3) Where one or more children of the person represented are dead, they shall themselves be represented according to the same principles.

Art. 854. — 2. *Renunciation to a succession.*

(1) Representation shall not take place where a person who is called to a succession has renounced it.

(2) The person whose succession has been renounced may be represented.

Art. 855. — 3. *Unworthiness.*

The children or other descendants of a person who is unworthy may not represent him in the succession of the deceased.

Art. 856. — 4. *Bond of legal relationship necessary.*

Representation shall not take place where, in terms of the law, there is no bond of relationship between the persons who claim to have the right of representation and the deceased.

## Section 3. Wills

### Paragraph 1. — Conditions for the validity of wills

#### A. *Essential Conditions*

Art. 857. — *Strictly personal nature.*

(1) A will is an act which is strictly personal to the deceased.

(2) Any agreement whereby a person grants to another person the power to make, modify or revoke a will on his behalf shall be of no effect.

(3) A person may not entrust a third person with the task of determining how and on whom his succession is to devolve.

Art. 858. — *Prohibition of joint wills.*

Where several persons make their will by one and the same instrument, such instrument shall be of no effect.

Art. 859. — *Undertakings relating to wills.*

(1) Any undertaking whereby any person binds himself to do, modify or revoke a will shall be of no effect.

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(2) Notwithstanding any stipulation to the contrary, a will may at any time be modified or revoked by the testator.

Art. 860. — *Capacity.* — 1. *Minors.*

The conditions on which a minor may make a will are laid down in the Title of this Code relating to "Capacity of Persons" (Art. 308).

Art. 861. — 2. *Judicially interdicted persons.*

The conditions on which a judicially interdicted person may make a will are laid down in the Title of this Code relating to "Capacity of Persons" (Art. 368).

Art. 862. — 3. *Power of the court.*

(1) The court may maintain in whole or in part the effect of the provisions contained in such wills where it is of opinion that such provisions were not influenced by the state of health of the testator.

(2) No legacy may be thus maintained in effect for a value of more than ten thousand Ethiopian dollars.

(3) The heirs-at-law of the interdicted person shall in any case receive at least three-fourths of the succession.

Art. 863. — 4. *Insanity.*

A will may not be invalidated unless the testator was notoriously insane at the time when he made the will.

Art. 864. — 5. *Legally interdicted persons.*

A legally interdicted person shall be under no disability as regards the making of a will.

Art. 865. — *Execution impossible.*

A testamentary provision which fails to specify in a sufficiently clear manner its beneficiary or its object shall be of no effect.

Art. 866. — *Illicit provisions.*

(1) A provision contained in a will shall be of no effect where its object is contrary to the law or morality.

(2) A provision in a will shall be of no effect where it cannot be enforced.

Art. 867. — *Violence.*

(1) A provision contained in a will shall be of no effect where it has been made by the testator under the influence of violence.

(2) In such case, the provisions of this Code relating to the annulment

of contracts on the ground of violence shall apply by analogy (Art. 1706-1709 and 1808-1818).

Art. 868. — *Undue influence.* — 1. *Principle.*

A provision contained in a will may not be invalidated by alleging an excessive influence which the beneficiary of such provision or any other person had on the testator.

Art. 869. — 2. *Provisions in favour of guardian or tutor.*

(1) The court may reduce or invalidate a testamentary provision made by the testator in favour of his guardian or tutor.

(2) The provisions of sub-art. (1) shall not apply unless the testator dies before he attains the age of twenty years.

(3) The provisions of sub-art. (1) shall not apply where the beneficiary of the testamentary provision is an ascendant of the testator.

Art. 870. — 3. *Physicians and Clergymen.*

(1) The court may reduce or invalidate a testamentary provision made by the testator within six months preceding his death, in favour of a physician or any other person who has professionally bestowed on him bodily care or spiritual assistance.

(2) For the purpose of sub-art. (1), the word "physician" means any person who even illegally has prescribed or applied a medical treatment to the testator.

(3) The provisions of this article shall not apply where the beneficiary of the testamentary provision is a relative by consanguinity or affinity or the spouse of the testator.

Art. 871. — 4. *Notary or witness of will.*

The court may reduce or invalidate a testamentary provision made by the testator in favour of a notary, registrar, witness or interpreter who has taken part in the making of the will.

Art. 872. — 5. *Spouse of testator.*

The court may reduce or invalidate a testamentary provision made by the testator in favour of his or her spouse, where the testator is survived by descendants who are not also the descendants of the spouse.

Art. 873. — 6. *Intermediaries.*

The court may reduce or invalidate a testamentary provision made in favour of a descendant, ascendant or spouse of any of the persons mentioned in the preceding articles.

Art. 874. — 7. *Application for reduction or invalidation.*

(1) Where a testamentary provision is made in favour of the spouse of the testator, its reduction or invalidation may be required from the court only by the descendants of the testator.

(2) In other cases, the request may be made by the descendants, ascendants or spouse of the testator and by no other heir.

(3) The request for reduction or invalidation shall be barred where it is not made within three months following an application by the beneficiary of the provision for the execution of the will.

Art. 875. — 8. *Court to give reasoned decision.*

The court shall give in its judgment the reasons why it deems it equitable to invalidate or reduce a testamentary provision made by the testator.

Art. 876. — *Fraud.*

The provisions contained in a will may not be invalidated on the ground of fraud by alleging that the beneficiary used unfair manoeuvres to gain the testator's favour.

Art. 877. — *Error.*

(1) In the case of error, the provisions of this Code relating to the invalidation of contracts on the ground of error shall apply by analogy (Art. 1697-1705 and 1808-1818).

(2) A provision contained in a will may not be invalidated on such ground unless the error which was committed by the testator and influenced his mind in a decisive manner results from the contents of the will itself, or from a written document to which the will makes reference.

Art. 878. — *Effect of nullity of a provision.*

The nullity of a provision contained in a will shall not entail the nullity of other provisions contained in the same will, unless it appears in a clear manner that there existed in the mind of the testator a necessary connection between the execution of the provision which is null and that of other provisions.

Art. 879. — *Nullity of conditions or burdens.*

(1) Where a testator has made a legacy to depend on a condition or has imposed a burden on a legacy, such condition or burden shall be deemed not to have been attached or imposed where it is impossible or contrary to the law or morality.

(2) In such case, the legacy shall not be null, notwithstanding that the

consideration of the condition or burden induced the testator to make the disposition.

B. *Form and Proof of Wills*

Art. 880. — *Various kinds of wills.*

There are three kinds of wills:

(a) public wills; and

(b) holograph wills; and

(c) oral wills.

Art. 881. — *Public will.* — 1. *Form.*

(1) A public will shall be written by the testator himself or by any person under the dictation of the testator.

(2) It shall be of no effect unless it is read in the presence of the testator and of four witnesses, and mention of the fulfilment of this formality and of its date is made therein.

(3) It shall be of no effect unless the testator and the witnesses immediately sign the will or affix their thumb mark thereon.

Art. 882. — 2. *Number of witnesses.*

A public will shall be valid where it is made in the presence of two witnesses one of whom is a registrar or a notary acting in the discharge of his duties.

Art. 883. — 3. *Capacity of witnesses.*

(1) The witnesses to a public will shall themselves be able to read or to hear what is read and to understand the language in which the will is drawn up.

(2) The will shall be of no effect where such requirements are not fulfilled.

Art. 884. — *Holograph will.* — 1. *Form.*

(1) A holograph will shall be of no effect unless it is wholly written by the testator himself.

(2) It shall be of no effect unless it says in an explicit manner that it is a will.

(3) It shall be of no effect unless each of the leaves which make it up is dated and signed by the testator.

Art. 885. — 2. *Typewritten will.*

A holograph will typewritten by the testator shall be of no effect unless it bears on each of its leaves a handwritten indication of such fact.

Art. 886. — 3. *Testator unable to understand the will.*

A holograph will shall be of no effect where it appears that the testator, being illiterate or not knowing the language in which the will is drawn up, has reproduced graphic symbols without understanding their meaning.

Art. 887. — *Date of will.*

(1) A public or holograph will shall be of no effect where it does not show the day, month and year on which it is made or does not contain other indications to the same effect.

(2) The falseness of the date shown on the instrument shall not entail the nullity of the will where it is evident that it is due to a mere inadvertence and the true date of the will can be established with sufficient accuracy by the aid of indications taken down from the will itself and from other written documents emanating from the testator.

Art. 888. — *Will "per relationem".*

A public or holograph will shall be of no effect where it cannot be understood unless it be supplemented by documents which have not been written and signed by the testator.

Art. 889. — *Erasures, cancellations and words written over.*

(1) A public or holograph will shall be of no effect where it contains erasures, cancellations or words written over others which may modify the will of the testator.

(2) No nullity shall follow where the erasures, cancellations or words written over others have been approved in an explicit manner by a note signed by the testator and in the case of a public will, by the witnesses.

Art. 890. — *Additions.*

(1) The provisions of Art. 889 shall apply where a public will contains additions in the margin or between the lines thereof or after the signatures of the witnesses.

(2) A holograph will shall be not vitiated by such additions.

Art. 891. — *Deposit of wills.*

(1) A public or holograph will may be deposited with a third party, in particular a notary or in a court registry.

(2) A register, showing in alphabetical order the names of the persons whose wills have been so deposited, shall be kept by each notary and in each court registry.

(3) An indication shall be made in the register of the date when the deposit of the will has taken place.

Art. 892. — *Oral will.* — 1. *Form.*

An oral will is that whereby a person who feels that his death is imminent declares verbally the dispositions of his last will to two witnesses.

Art. 893. — 2. *Contents.*

By means of an oral will, a testator may only:

(a) give directives regarding his funeral;

(b) make dispositions for particular legacies the amount of each of which may not exceed five hundred Ethiopian dollars;

(c) make provisions regarding the guardian or the tutor of his minor children.

Art. 894. — 3. *Sanctions.*

(1) Any other disposition made by an oral will shall be of no effect.

(2) Legacies exceeding five hundred Ethiopian dollars ordered by an oral will shall be reduced to that amount.

Art. 895. — *More than one will.*

(1) Testamentary provisions made by a person may be contained in one or more wills.

(2) The provisions contained in various wills shall all be enforced together where such course is possible.

(3) Where the provisions of two wills cannot be enforced together, the provisions contained in the latest will shall prevail.

Art. 896. — *Proof of will.* — 1. *Burden of proof.*

Whosoever claims rights under a will shall prove the existence and the contents of such will.

Art. 897. — 2. *Proof how made.*

(1) The existence and contents of a public or holograph will shall be proved by producing the instrument itself in which such will is contained, or a copy thereof certified to be true by the notary or registrar who has received the will for the deposit thereof in his archives.

(2) They may not be proved by any other means for the purpose of obtaining their execution.

(3) They may be proved by any means for the purpose of obtaining damages from the person who, through his fault or negligence, has caused the will to disappear.

C. *Revocation and Lapse of Wills*

Art. 898. — *Express revocation.*

(1) A will shall be revoked in its entirety where the testator expressly

declares in the forms required for the validity of wills that he revokes his will.

(2) It shall be revoked partially where the testator, in the same forms, makes a disposition which cannot be executed together with a clause of the will.

Art. 899. — *Destruction or cancellation.*

(1) The testator may revoke his will or a provision contained therein, by materially destroying or by tearing or by cancelling the contents thereof, in a manner that shows sufficiently his intention of revoking or modifying his will.

(2) Unless the contrary is proved, the testator shall be deemed to have wanted to revoke his will where he has done any one of the actions hereinbefore referred to.

(3) Unless the contrary is proved, the destruction or cancellation of the will shall be deemed to have been done by the testator.

Art. 900. — *Alienation of the thing bequeathed.*

(1) Any alienation of the thing bequeathed, whether in whole or in part, made willingly by the testator shall operate as a revocation of the legacy in regard to all that which has been alienated.

(2) Such revocation shall remain effective notwithstanding that the thing comes again to belong to the testator at a later date.

Art. 901. — *Effects of revocation.*

(1) Unless otherwise provided, the revocation of a will shall not cause the provisions of a previous will to revive.

(2) Testamentary provisions which have been revoked shall not be executed notwithstanding that the new provisions which have replaced them cannot be enforced owing to the incapacity of the legatee or his renunciation of the legacy or for any other reason.

Art. 902. — *Lapse of oral wills.*

An oral will shall lapse three months after it has been made, where the testator is still alive on such day.

Art. 903. — *Lapse of holograph wills.*

A holograph will shall lapse where it is not deposited with a notary or in a court registry within seven years after it has been made.

Art. 904. — *Birth of child.* — 1. *Principle.*

Notwithstanding any provision to the contrary, legacies, whether by universal or singular title, contained in a will shall lapse where, after

the date of the will, a child is born to the testator and such child accepts the succession.

Art. 905. — 2. *Restriction.*

(1) In the case provided in Art. 904 the court may maintain the effects of the legacies, in whole or in part, where it appears that, had the testator known the circumstances, he would probably have maintained them.

(2) The child of the testator who is born after the making of the will shall in any case receive three fourths of the share which he would receive in the intestate succession.

Art. 906. — *Legacies in favour of spouse.*

Any testamentary provision made by the testator in favour of his spouse shall lapse where the marriage of the testator with that spouse is dissolved through any cause other than death.

Art. 907. — *Lapse of legacies.* — 1. *Principle.*

A legacy made in favour of a person shall lapse where the legatee dies before the testator or he cannot or does not want to take such legacy.

Art. 908. — 2. *Representation.*

Where the legatee named dies before the testator, representation shall take place:

(a) where it is a case of a legacy by universal title; or

(b) where it is a case of a legacy by singular title and where, in default of a legatee, the property bequeathed is to devolve upon the State.

Paragraph 2. — Contents and Interpretation of Wills

Art. 909. — *Different kinds of dispositions.*

The testator may in his will:

(a) appoint one or more legatees by universal title; and

(b) order legacies by singular title; and

(c) disinherit one or more of his heirs or constitute an endowment or trust; and

(d) give directions regarding his funeral; and

(e) make any other declarations of will to which this Code or particular laws acknowledge juridical effects after his death.

Art. 910. — *Interpretation.*

(1) In case of doubt, a will shall be interpreted in conformity with the presumed intention of the testator as resulting from the will itself and other circumstances.

(2) Where the terms of the will are clear, they may not be departed from to seek by means of interpretation the true intention of the testator.

Art. 911. — *Presumption.*

(1) Where the testator has used expressions like "my heirs" or "my property" or "my immovable property", in order to give meaning to such words, he shall be deemed to have envisaged the position at the time of his death.

(2) Proof to the contrary is admitted to rebut such presumption.

Art. 912. — *Legacies by universal or singular title.*

(1) A legacy by universal title is a disposition whereby the testator calls one or more persons to receive the full ownership or the bare ownership of one whole or of a portion of the property.

(2) Any other disposition is a legacy by singular title.

Art. 913. — *Legacies and rules of partition.*

An assignment of a portion of the succession or of property forming part of such succession made by the testator to one of his heirs shall not be deemed to be a legacy but a mere rule for partition, unless the contrary intention of the testator emerges from the disposition.

Art. 914. — *Appointment of legatee by universal title.* — 1. *Form.*

The appointment of a legatee by universal title shall not be subject to any special form.

Art. 915. — 2. ***Effects.***

(1) Unless otherwise expressly provided by the testator, a legatee by universal title shall be assimilated to an heir-at-law.

(2) In particular, he shall be called to receive the whole succession in default of any other legatee or heir-at-law.

(3) The testator may expressly specify that the legatee by universal title shall not receive more than a given portion of the succession.

Art. 916. — *Conditional legacies.* — 1. *Principle.*

Legacies whether by universal or singular title may be made conditional upon the accomplishment of a suspensive or resolutive condition.

Art. 917. — 2. *Condition of marrying or not marrying.*

(1) A condition that the legatee shall marry or shall not marry a particular person shall be valid.

(2) A condition imposed in general terms on the legatee of not marrying or not re-marrying shall be of no effect.

(3) The testator may stipulate that the legatee shall have the usufruct

of certain property or shall receive a specified pension so long as he shall not marry.

Art. 918. — 3. *Presumption.*

(1) Unless otherwise expressly provided by the testator, a legacy made under a condition that the legatee does not do a specified thing shall be deemed to be made under a resolutive condition.

(2) The same shall apply where a legacy is made under the condition that the legatee shall continue to do a specified thing.

Art. 919. — 4. *Security.*

(1) Where a legacy is made by the testator subject to a resolutive condition, the court may, on the application of any interested person, order the legatee to give a security or another guarantee for the restitution of the property bequeathed in the case that the resolutive condition is accomplished.

(2) Where a legacy is made by the testator subject to a suspensive condition, the court may, on the application of the legatee, order the person who is in possession of the thing bequeathed to give a security or another guarantee for the delivery of the thing bequeathed to the legatee in the case that the suspensive condition is fulfilled.

Art. 920. — *Charges.* — 1. *Principle.*

The testator may bind heirs or legatees, on the value of the property, to give something to or to do something for one or more specified persons.

Art. 921. — 2. *Limit of obligation.*

The heir or legatee on whom the charge has been imposed shall be liable for the execution of such charge to the extent only of the value of the portion of the succession or of the legacy which he has received.

Art. 922. — 3. *Execution of charge.*

(1) The person to whose benefit the charge has been ordered may demand its execution.

(2) Where such action is justified in the circumstances, such person may also require the heir or legatee thus charged to give a security or another guarantee for the execution of the charge.

(3) The same rights may be exercised by the person named for this purpose by the testator or, in default of such person, by each of the heirs of the testator or by each of his legatees by universal title.

Art. 923. — 4. *Dissolution of legacies.*

(1) The failure to execute the charge shall not entail the dissolution

of the legacy unless the testator has expressly so disposed and regulated the consequences thereof.

(2) The rights which third parties in good faith have acquired on the property bequeathed shall not be affected.

Art. 924. — *Determination of beneficiary of legacy.*

(1) The beneficiary of a legacy is sufficiently determined where the will binds the heir, the legatee by universal title or another person to select such beneficiary from among a specified category of persons.

(2) The court may, on the application of any interested person, fix a time within which the person who is to designate the beneficiary of the legacy shall make his selection.

(3) Where such person fails or refuses to make such designation, the court shall entrust that task to another person under conditions which are most appropriate for giving effect to the presumed intention of the testator.

Art. 925. — *Legacy in favour of the poor.*

(1) A legacy made in favour of the poor, without any other designation, shall be valid.

(2) Unless the contrary is proved, it shall be deemed to be made in favour of the poor of the place where the testator had his principal residence at the time of his death.

(3) The authority qualified to accept the legacy and to give effect to the intention of the testator shall be prescribed by regulations.

Art. 926. — *Several legatees.*

(1) Where the testator has appointed several legatees by universal title or bequeathed a thing to two or more persons, without specifying the portion of each, the legatees shall have equal rights to the succession or to the thing bequeathed to them.

(2) Where any of such legatees cannot or does not want to accept the disposition made in his favour, his portion shall devolve upon his co-beneficiaries.

Art. 927. — *Determination of subject of legacy.*

(1) The thing forming the subject of a legacy is sufficiently specified where the testator has ordered that the heir or the legatee himself or some other person shall choose it from among various things or from among things of a specified nature or of a specified value.

(2) The legatee shall make the selection himself where the testator has not specified who shall make it or where the person charged with

making it has not made it within a reasonable period given to him by the legatee.

Art. 928. — "*Substitutio vulgaris*".

(1) The testator may order that, in default of a legatee by universal or singular title, some other person shall be called to receive the legacy.

(2) Unless otherwise expressly provided, a disposition to that effect shall benefit the substituted legatee whenever the legatee appointed in the first place cannot or does not want to receive the legacy made in his favour.

Art. 929. — *Entails.* — 1. *Principle.*

(1) The testator may order that his heir or legatee shall, on the expiry of a certain period or on his death or on the accomplishment of a specified condition, pass the property or certain property forming part of the succession to one or more other persons who shall be substituted for him.

(2) The heir or the legatee who receives the property in the first place is called "the holder in tail".

(3) The person to whom he shall pass the property on the opening of the substitution is "the person called to succeed ".

Art. 930. — 2. *Persons who may be called to succeed.*

(1) The person called to succeed need not have the capacity to receive on the day of the death of the testator.

(2) It shall be sufficient that he can be determined and that he have the capacity to receive on the day when the substitution comes into effect.

(3) The substitution may also be made in favour of the descendants or of the heirs of the holder in tail.

Art. 931. — 3. *Effects.*

(1) A disposition made in terms of art. 929 has, in relation to the property to which it refers, the effect of a disposition prohibiting alienation or attachment.

(2) Without prejudice to the provisions of the following Articles, the rules contained in the Title of this Code relating to "Joint ownership, Usufruct and Other Rights in rem" shall apply for the purposes of determining the effects of such disposition (Art. 1426-1443).

Art. 932. — 4. *Limitation of power of the court.*

The court may in no case authorise the alienation or the attachment of immovable property on the application of the holder in tail or his creditors.

Art. 933. — 5. *Time for bringing action.*

(1) The person called to succeed, his representative or the person appointed by the testator for the purpose of having the substitution complied with, may at any time demand the nullity of the alienation or of the attachment which have taken place unduly.

(2) It suffices that they institute their action within two years from the opening of the substitution.

Art. 934. — 6. *Limitation of substitution to one passage.*

(1) A provision whereby the testator declares that property or rights cannot be alienated or attached after they have been transmitted to the person called to succeed shall be of no effect.

(2) A provision whereby the testator seeks to regulate what is to happen to such property or rights after they are transmitted to the person called to succeed shall be of no effect.

Art. 935. — 7. *Refusal by holder in tail.*

(1) Where the holder in tail cannot or does not want to accept what has been bequeathed to him, the provisions contained in the will for this case shall apply, if any.

(2) Failing such provisions, the court shall prescribe such solution as is likely to enforce the testator's intention and to safeguard the interest of the substituted legatee.

Art. 936. — 8. *Default of person called to succeed.*

(1) The holder in tail may dispose freely of the property and the rights forming the subject matter of the substitution, where the person to whom he must deliver such property dies or where, for any other reason, it becomes clear that it will not be possible for the substitution to take place.

(2) Where, on account of the default or refusal of the person called to succeed or for any other reason, the substitution ordered by the testator cannot take place, the property held in tail shall pass to the heirs of the holder in tail.

(3) Unless otherwise stipulated in the will, the heirs of the testator shall have no right on such property.

Art. 937. — *Disherison.* — 1. *Express.*

(1) The testator may, in his will, expressly disinherit his heirs-at-law, or any of them, without appointing a legatee by universal title.

(2) In such case, the succession shall devolve as though the heir or heirs who has or have been disinherited had died before the testator.

Art. 938. — 2. *Special provision regarding descendants.*

(1) An express disherison of a child or other descendant shall be of no effect unless the testator has given in his will a reason which justifies the disherison.

(2) The court shall ascertain whether the reason given by the testator, assuming that it is correct, justifies the disherison.

(3) It may not ascertain whether, in the circumstances of the particular case, the reason given is correct.

Art. 939. — 3. *Tacit disherison.*

(1) Unless otherwise provided, the appointment of a legatee by universal title shall imply the disherison of the relatives of the testator if they are of the second, third or fourth relationship.

(2) It shall not imply the disherison of the descendants of the testator.

(3) Where the testator is survived by descendants and has not expressly disinherited them, the legatee by universal title shall partake of the succession together with such descendants as if he himself were a child of the testator.

Art. 940. — 4. *Prohibition of certain provisions.*

Any provision whereby the testator orders the disherison, in whole or in part, of his heirs or any of them, should they impugn the validity of the will or of any disposition contained therein, shall be of no effect.

Art. 941. — *Dispositions providing for arbitration.*

(1) The testator may order in his will that any dispute between the heirs or the legatees relating to the liquidation or the partition of the succession shall be decided by one or more persons, designated in the will as arbitrators.

(2) The powers vested in the court under the provisions of this Title shall in such a case be exercised by the arbitrators.

## Chapter 2. Liquidation of Successions

Art. 942. — *Guiding principle.*

So long as a succession has not been liquidated, it shall constitute a distinct estate.

Art. 943. — *Security of creditors.*

(1) Pending the liquidation, the creditors of the inheritance shall have the property which forms part of the inheritance as their exclusive security.

(2) They shall have no right on the personal property of the heirs.

(3) Pending the liquidation, the personal creditors of the heirs shall have no right on the property of the succession.

Art. 944. — *What the liquidation consists of.*

The liquidation of the succession consists of:

(a) the determination of the persons who are called to take the property in the inheritance;

(b) the determination of what it is made up:

(c) the recovery of debts due to and the payment of the debts due by the succession which are exigible;

(d) the payment of the legacies by singular title and the taking of such other steps as are required to carry into effect the provisions made by the deceased.

Art. 945. — *Agreement providing for arbitration.*

(1) The heirs and the legatees may agree that any dispute arising between them regarding the liquidation or partition of the succession shall be submitted to one or more arbitrators.

(2) The powers vested in the court under the provisions of this Title shall in such a case be exercised by the arbitrators.

## Section 1. Liquidator of the Succession

Art. 946. — *Principle.*

A succession, whether intestate or testate, shall be liquidated by one or more persons hereinafter referred to as "the liquidators".

Art. 947. — *Designation by the law.*

On the day of death, the capacity of liquidator shall pertain "ipso facto" to the heirs-at-law.

Art. 948. — *Designation by will.*

(1) Where the deceased has left a will, the capacity of liquidator shall pertain to the person designated by the deceased in such will as testamentary executor.

(2) Failing any express disposition, it shall pertain "ipso jure" to the legatees by universal title appointed in the will.

(3) The heirs-at-law shall act jointly with the legatee by universal title as liquidators, unless they are under the will to receive no share in the succession.

Art. 949. — *Liquidator who is a minor or an interdicted person.*

Where, in terms of the preceding Articles, a minor or an interdicted per-

son is the liquidator of a succession, he shall be represented by his tutor for the performance of the functions of liquidator.

Art. 950. — *Judicial liquidation.* — 1. *Unaccepted inheritance or vacant succession.*

(1) The court shall appoint a liquidator, on the application of any interested person, where the heirs are unknown or all the heirs-at-law have declared that they renounce or do not want to liquidate the succession.

(2) It shall appoint a liquidator where the testator has not left heirs and his succession is taken by the State.

(3) The person or authority which is to be appointed liquidator by the court may be prescribed by regulations.

Art. 951. — 2. *Other cases.*

The court may, on the application of any interested person, appoint a notary or some other person to replace the liquidator referred to in the preceding Articles, where:

(a) there is a doubt regarding the designation of a liquidator because the validity of the will whereby he was appointed is contested, or for any other reason; or

(b) there are several liquidators and they are not in agreement on the administration and liquidation of the succession; or

(c) among the heirs, there is a minor or an interdicted person or any other person, who, for any other reason, is not in a position to look after his interests; or

(d) the liquidator remains inactive or is dishonest or is found to be incapable to perform his functions properly.

Art. 952. — *Security.*

The court may at any time, on the application of any interested person, require the liquidator to give a security or some other guarantee for the proper performance of his functions.

Art. 953. — *Voluntary nature of functions.*

No person is bound to accept the functions of liquidator.

Art. 954. — *Resignation.*

(1) The liquidator may at any time resign his functions, unless he has expressly undertaken to bring them to their conclusion or to perform them for a certain time.

(2) The resignation shall involve the liability of the liquidator where it is made at a time which is not convenient.

(3) It shall in no case take effect unless it has been communicated to the other liquidators or a new liquidator has been appointed.

Art. 955. — *Termination of functions.*

(1) The functions of a liquidator shall cease where he is replaced by a new liquidator in conformity with the law, the will or a decision of the court.

(2) They shall cease where the liquidator has accomplished his functions and rendered an account of his management.

Art. 956. — *Duties of liquidator.*

The liquidator shall:

(a) make a search to find out whether the deceased has left a will, and establish who is to receive the property of the succession; and

(b) administer the succession; and

(c) pay the debts of the succession which are exigible; and

(d) pay the legacies ordered by the deceased and take all other measures necessary to execute the will.

Art. 957. — *Limitation of powers.*

(1) The deceased or the court may limit the powers of the liquidator or give him instructions regarding the manner how he shall perform his functions.

(2) The court may, for good cause, modify the instructions referred to in sub-art. (1).

(3) Notwithstanding any stipulation to the contrary, a transgression of such instructions has the liability of the liquidator as its only sanction.

Art. 958. — *Several liquidators.*

(1) Where there are several liquidators they shall act together, without prejudice to any stipulation to the contrary by the deceased or the court.

(2) The liquidators may distribute among themselves the tasks which the liquidation involves, or entrust one of them with a mandate to make such liquidation.

(3) In the absence of such stipulations or mandate, if a liquidator performs by himself an act of the liquidation, the rules relating to voluntary management of the affairs of another person shall apply (Art. 2257-2265).

Art. 959. — *Remuneration of liquidator.*

The liquidator shall be entitled to a remuneration where this is justified by the work he has performed, under the conditions determined by the deceased, or by agreement between the heirs, or by the court.

Art. 960. — *Rendering accounts of management.*

(1) The liquidator shall render the accounts of his management when he has accomplished his functions.

(2) He shall render the accounts thereof before that date, at such times as are agreed upon with the heirs or fixed by the court.

Art. 961. — *Liability.*

(1) The liquidator shall be liable for any damage he causes through his fault of negligence.

(2) He shall be deemed to be at fault where he acts contrary to the provisions of the law, to the provisions of the will or to the instructions given to him by the deceased or by the court.

(3) The court may relieve him in whole or in part of such liability in his relations with the heirs or legatees where it appears that he has acted in good faith with the intention of performing his functions.

## Section 2. Final Determination of the Persons entitled to the Succession

### Paragraph 1. — Provisional Determination of Persons entitled to Succeed

Art. 962. — *Search for a will.*

(1) The liquidator shall in the first place make a search to find out whether the deceased has left a will.

(2) For this purpose, he shall examine the papers of the deceased and make all necessary researches in particular with the notaries and in the registries of the courts of the places where the deceased has resided.

Art. 963. — *Duty to declare will.*

(1) Whosoever has in his possession, finds or knows, in his capacity as a witness, of a will made by the deceased shall make a declaration regarding such will to the liquidator as soon as he comes to know of the death.

(2) He shall make such declaration notwithstanding that the will seems to be affected by nullity.

Art. 964. – *Deposit of will.*

(1) A public or holograph will shall be deposited without delay with a notary or in the registry of the court in the place where it is discovered or conserved, where the liquidator or any interested person makes an application to this effect.

(2) An oral will shall, under the same conditions, be immediately drawn up in writing and deposited by those who have been witnesses thereto.

Art. 965. — *Opening of will.* — 1. *Date.*

(1) A will shall be opened by the liquidator forty days after the death of the deceased.

(2) Where it has been discovered after such date, it shall be opened on a day fixed by the liquidator within the month following such discovery.

(3) In such case it shall first be deposited with a notary or in the registry of the court in conformity with the provisions of Art. 964.

Art. 966. — 2. *Anticipated opening.*

(1) The date mentioned in Art. 965 (1) may be put forward where the deceased has so ordered or this appears necessary for the purpose of making arrangements for his funeral or the majority of the heirs called in the first place by the law agree to the putting forward of the date of the opening.

(2) Where any of the heirs called in the first place is not in a position to be present or represented at the anticipated opening of the will, the will shall, prior to its opening, be deposited with a notary or in the registry of the court in the place where it is to be found.

Art. 967. — 3. *Place.*

(1) The will shall be opened in the office of the notary or in the registry of the court where the will has been deposited during the lifetime of the deceased or after his death.

(2) Failing such deposit, the will shall be opened in the place where the deceased had his principal residence at the time of his death.

Art. 968. — 4. *Publicity.*

(1) The heirs-at-law whom the law calls in the first place to the succession of the deceased shall be invited to be present or represented at the opening of the will.

(2) In any case, at least four persons of age and not interdicted shall be present at the time of the opening of the will.

Art. 969. — 5. *Order of the day.*

(1) At the time of the opening of the will, the liquidator and all persons present shall verify the validity or the form of the will.

(2) The contents of the will shall be read out.

(3) Arbitrators shall, as far as is possible, be appointed to settle any dispute arising out of the succession, and the necessary provisions shall be made to ensure the conservation of the will.

Art. 970. — 6. *Several wills.*

The provisions of the preceding Articles shall apply whether the deceased left only one will or more than one will.

Art. 971. — *Establishing order of partition.* — 1. *Testate succession.*

(1) During the meeting, the liquidator shall determine who are the heirs or legatees of the deceased, and to what portion of the succession each of them is entitled.

(2) He shall inform the interested persons, without delay, of the manner in which he considers that the succession should devolve.

(3) For the purpose of sub-art. (2) the expression "interested persons" means the persons who are called to receive the property of the deceased, and those who, in the absence of a will, would have been called to receive it.

Art. 972. — 2. *Intestate succession.*

(1) Where it appears that the deceased has not left a will, the liquidator shall inform the interested persons of the manner how he considers that the succession should devolve.

(2) Such information shall be given as soon as it appears certain that there is no will and, at the latest, forty days after the death of the deceased.

Art. 973. — *Action of nullity.* — 1. *Persons present.*

(1) Whosoever is present or represented at the opening of the will may within fifteen days from the opening of the will declare his intention to apply for the nullity of the will or of a provision contained in the will, or to impugn the order of partition proposed by the liquidator.

(2) Any such declaration shall be of no effect unless it is made in writing and notified to the liquidator, the court or the arbitrators within the period specified in sub-art. (1).

Art. 974. — 2. *Persons not present.*

(1) With regard to persons who are not present nor represented at the opening of the will, such period shall begin to run from the day when the liquidator informs them of the order of partition proposed by him. It shall run in like manner where there is no will.

(2) The validity of a will and the order of partition proposed by the liquidator may in no case be contested after five years from the day of the opening of the will or, if there is no will, five years from the death of the deceased.

Art. 975. — 3. *Provisional measures.*

The court may, on the application of any interested person and pending

the delivery of a judgment on the applications mentioned in Art. 973 and 974, take all provisional measures it thinks fit to avoid delays in the liquidation of the succession.

Paragraph 2. — Option of Heirs and Legatees by Universal Title

Art. 976. — *No necessary heirs.*

No heir is bound to accept the succession or legacy to which he is called.

Art. 977. — *Personal nature of the option.*

(1) The right to accept or to renounce a succession is strictly personal to the heir.

(2) It may not be exercised by the creditors of the heir.

(3) The rights of the creditors shall not be affected by the heir renouncing the succession in fraud of such rights.

Art. 978. — *Time for renunciation.*

(1) An heir may renounce the succession within one month from the day when the liquidator has informed him that he is called to the succession.

(2) The court may, on the application of the heir, extend up to a maximum of three months the period fixed in sub-art. (1).

Art. 979. — *Form of renunciation.*

(1) The renunciation of a succession shall be of no effect unless it is made in writing or in the presence of four witnesses.

(2) It shall be of no effect unless it is made known to the liquidator before the expiry of the period fixed in Art. 978.

Art. 980. — *Form of acceptance.*

Acceptance may be express or implied.

Art. 981. — *Express acceptance.*

The heir who assumes the status of heir in a written act shall be deemed to have expressly accepted the succession.

Art. 982. — *Implied acceptance.*

(1) The heir who performs any act which shows unequivocally his intention to accept the succession shall be deemed to have impliedly accepted the succession.

(2) The heir who has not renounced the succession within the period fixed by law shall be deemed to have impliedly accepted the succession.

Art. 983. — *Renunciation in favour of others.*

(1) A renunciation made in favour of one or more specified persons shall be deemed to be an assignment of the rights to the succession.

(2) An heir who makes such renunciation shall be deemed to have accepted the succession.

(3) This rule shall not apply where the heir has renounced the succession in favour of all his co-heirs indistinctly without receiving any pecuniary compensation.

Art. 984. — *Acts of preservation or administration.*

The heir who performs acts of preservation, such as those of supervision or the drawing up of an inventory, and urgent acts of administration in relation to the property of the succession, shall not be deemed to have impliedly accepted the succession.

Art. 985. — *Misappropriation or concealment.*

The heir who misappropriates or conceals property forming part of the hereditary estate, shall be deemed to accept the succession.

Art. 986. — *Individual nature of option.*

Where several heirs are called to the succession, some may accept and the others renounce it.

Art. 987. — *Death of heir before making option.*

(1) Where the heir who is called dies before having accepted or renounced the succession, the right to accept or renounce the succession shall devolve on his heirs.

(2) Some may accept the succession and the others renounce it.

(3) Those who have renounced the succession of the heir shall be deemed by so doing to have renounced the succession of the deceased.

Art. 988. — *Option to be pure and simple.*

(1) The acceptance or renunciation of a succession may not be made with a time limit or under a condition.

(2) An heir shall be deemed not to have taken a decision where he has made his acceptance or his renunciation with a time limit or under a condition.

Art. 989. — *Partial acceptance or renunciation.*

(1) The acceptance or renunciation may not be partial.

(2) Whosoever has renounced the succession in his capacity as legatee by universal title may still accept it in his capacity as heir-at-law of the deceased.

(3) An heir in whose favour a legacy by singular title has been ordered may renounce the succession and accept the legacy or, conversely, accept the succession and renounce the legacy by singular title.

Art. 990. — *Acceptance not revocable.*

(1) An acceptance of the succession made by an heir is irrevocable.

(2) It may not be annulled in any case.

Art. 991. — *Revocation of renunciation.* — 1. *Causes.*

(1) A renunciation of a succession made by an heir may be revoked where it has been extorted by violence.

(2) It may also be revoked where it has been obtained through the fraud of a person who is called to the succession, or of a descendant, ascendant, brother, sister or spouse of such person.

(3) It may not be revoked for any other cause.

Art. 992. — 2. *Form and effects.*

(1) An heir who intends to revoke his renunciation shall bring an action before the court, under pain of loss of right, within two years from the cessation of the violence or the discovery of the fraud of which he has been the victim.

(2) The renunciation of a succession may in no case be revoked ten years after it has been made.

(3) The court shall specify the effects of the revocation in accordance with the provisions of the Section relating to "Invalidation and cancellation of contracts" in the Title of this Code dealing with "Contracts in general" (Art. 1808-1818).

Art. 993. — "*Actio Pauliana*".

(1) The creditors of a person who renounces a succession may, within two years from the day when the renunciation has taken place, apply to the court to annul it, if it is prejudicial to them.

(2) The renunciation may not be annulled by the court except in favour of the creditors and only up to the extent of what is due to them.

(3) It may not be annulled for the benefit of an heir who has renounced the succession.

Art. 994. — *Effect of acceptance.*

Acceptance shall be effective from the day of the death of the deceased.

Art. 995. — *Effect of renunciation.*

(1) An heir who has renounced a succession shall be deemed never to have been an heir.

(2) The portion which he has renounced shall devolve upon his co-heirs who have accepted the succession, and, where appropriate, to the heirs who come next.

(3) The heirs who have already accepted the succession may renounce such portion within one month from the day when the renunciation of their co-heir is brought to their knowledge.

Paragraph 3. — Certificate of Heir and "Petitio Haereditatis"

Art. 996. — *Certificate of heir.* — 1. *Issue.*

(1) An heir may apply to the court to be given a certificate of heir of the deceased and the share of the succession which he is called to take.

(2) The court may require the applicant to adduce such evidence and to give such securities as it thinks fit.

Art. 997. — 2. *Effects.*

(1) So long as the certificate has not been annulled, the heir shall be deemed to have the status which the certificate attributes to him.

(2) The acts performed by the heir in such capacity may not be impugned, unless it is proved that the person who avails himself of such acts knew for certain, at the moment when such acts were performed, that the heir had no right.

Art. 998. — 3. *Annulment.*

(1) Where an action of "petitio haereditatis" has been instituted, the court may annul the certificate of heir it issued.

(2) In such case, the heir shall return the certificate.

(3) Where the heir alleges that the certificate has been lost or that for any other reason he is unable to return it, he shall be ordered to give all appropriate securities to ensure that he will not in future make use of the certificate.

Art. 999. — "*Petitio haereditatis*". — 1. *Principle.*

Where a person without a valid title has taken possession of the succession or of a portion thereof, the true heir may institute an action of "petitio haereditatis" against such person to have his status of heir acknowledged and obtain the restitution of the property of the inheritance.

Art. 1000. — 2. *Periods of time.*

(1) An action of "petitio haereditatis" shall be barred after three years from the plaintiff having become aware of his right and of the taking possession of the property of the inheritance by the defendant.

(2) It shall be absolutely barred after fifteen years from the death of the deceased or the day when the right of the plaintiff could be enforced, unless the action relates to family immovables.

Art. 1001. — 3. *Effects.*

(1) The defendant who loses a suit of "petitio haereditatis" shall return to the plaintiff all the property of the inheritance which has remained in his possession.

(2) He may not claim to have become the owner of such property as a result of his good faith.

(3) As regards the rest, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" shall apply (Art. 2162-2178).

Art. 1002. — 4. *Legatees by singular title.*

The provisions of the preceding articles shall apply to legatees by singular title.

## Section 3. Administration of the Succession

Art. 1003. — *Principle.*

The liquidator shall administer the estate of the deceased from the day when he is appointed until the persons having a right to the succession have received the shares or the property to which they are entitled.

Art. 1004. — *Seals.*

(1) The affixing of seals on the effects, or on some of the effects, may be ordered by the court on the application of any interested person, immediately after the death of the deceased.

(2) The expenses of the affixing and removal of seals shall be borne by the person having requested the affixing of seals.

Art. 1005. — *Inventory.* — 1. *What the succession is made up of.*

(1) The liquidator shall establish what the succession is made up of by drawing up an inventory within forty days from the death of the deceased.

(2) Supplementary statements shall be drawn up, where necessary, within fifteen days from any other property having been discovered.

Art. 1006. — 2. *Valuation of property.*

(1) Each of the constituents, whether an asset or a liability, of the succession shall be provisionally valued by the liquidator within the same periods.

(2) Where necessary, the valuation shall be made with the assistance of experts.

Art. 1007. — *Duties of heirs.*

(1) In their relations with the succession, the heirs shall retain all the

rights and obligations which they had against or in favour of the deceased, with the exception of the rights and obligations which came to an end with the death.

(2) In regard to such rights and obligations, the heirs shall give the liquidator all relevant information so as to enable him to draw up the inventory.

Art. 1008. — 4. *Information to interested persons.*

(1) Whosoever is called to receive a share of the succession may require that a copy of the inventory be sent to him at his expense.

(2) The same right may be granted by the court to the creditors of the deceased or of the succession.

Art. 1009. — 5. *Revision of valuation.*

(1) Until the final partition of the succession has been effected, the persons referred to in Art. 1008 may require that the provisional valuation of the property made by the liquidator be revised.

(2) The expenses of the valuation by experts shall be charged to the succession where the provisional valuation is found to be incorrect.

(3) In other cases, the expenses shall be charged to the person who has given cause to them.

Art. 1010. — *General powers of the liquidators.*

(1) The liquidator shall administer the property of the succession with the prudence and zeal of a bonus pater familias.

(2) The heirs acting in agreement between them or the court on the application of any interested person may give him directives concerning such administration.

Art. 1011. — *Acts of preservation.*

The liquidator may in particular:

(a) perform all the acts and institute all the actions necessary for the preservation of the property of the succession, and

(b) contest actions instituted by third parties who claim to have rights on the property of the succession.

Art. 1012. — *Things due to the succession.*

(1) The liquidator may demand payment of what is due to the succession if the debts are exigible.

(2) He is authorised to give acquittance for such debts.

Art. 1013. — *Sale of property pertaining to the inheritance.*

(1) The liquidator may sell the fruits and the crops of the succession, as

well as all movables pertaining to the succession which are rapidly perishable or which, for their custody and preservation, require considerable expense or particular care.

(2) He shall not sell other movable goods unless such sale is necessary to pay the debts of the succession.

(3) He may not sell the immovable property except with the consent of all the heirs, or with the authorisation of the court.

## Section 4. Payment of the debts of the Succession

**Art. 1014.** — ***Order to be followed.***

The debts of the succession shall be paid in the following order:

(a) in the first place, the expenses of the funeral of the deceased;

(b) in the second place, the expenses of the administration and of the liquidation of the succession;

(c) in the third place, the debts of the deceased;

(d) in the fourth place, the debts regarding maintenance;

(e) in the fifth place, the legacies by singular title ordered by the deceased.

**Art. 1015.** — ***Funeral expenses.*** — 1. *Principle.*

(1) Funeral expenses shall not have priority over other debts of the succession unless they are justified, having regard to the social position of the deceased.

(2) They shall not include the expenses for the commemoration of the deceased.

(3) The commemoration of the deceased shall not constitute a juridical obligation of his spouse or relatives.

**Art. 1016.** — ***Expenses of administration.***

The expenses of the administration and liquidation of the succession shall comprise:

(a) the expenses of the affixing of seals and of the inventory and those of the account of the liquidation;

(b) the useful expenses incurred by the liquidator for the ordinary preservation, maintenance and administration of the property of the inheritance;

(c) the expenses of the partition and those of the transmission of the property of the inheritance to the heirs;

(d) estate duty.

Art. 1017. — *Debts of deceased.* — 1. *Search for creditors.*

(1) The liquidator shall take all necessary steps with a view to establishing whether they are any persons who are creditors of the succession.

(2) To this end, he shall examine the registers and papers of the deceased and make the necessary searches in the public registers, in the places where the deceased has resided and in those where he has immovable property.

Art. 1018. — 2. *Publicity and notices.*

(1) Where there is reason to believe that the deceased may have creditors whom search has not disclosed, the liquidator shall make in the places where this seems useful such publicity as is appropriate to inform the creditors of the death of their debtor.

(2) He shall require the creditors to make themselves known to him within three months from the date of the publicity.

Art. 1019. — *Exigible debts.*

(1) The liquidator shall pay such debts of the succession as are exigible, unless opposition has been made to such payment or it appears obvious that the assets of the succession are not sufficient to satisfy all the creditors.

(2) In these two cases, he shall observe the rules laid down in the Code of Civil Procedure relating to the insolvency of a debtor.

Art. 1020. — *Executive title.*

(1) Executive titles enforceable against the deceased are equally enforceable against the liquidator.

(2) However, the liquidator may postpone the payment of all debts till the time when he has made the inventory of the succession.

(3) The court may, on the application of any interested person, compel the liquidator to pay the debts or certain debts before that time, if it is evident that the succession will be in a position to pay such debts.

Art. 1021. — *Debts not exigible.*

(1) The creditors of the succession whose debts are not exigible may require that securities be given to them to ensure the payment of their debts when they fall due.

(2) The provisions of sub-art. (1) shall apply to those persons who have conditional claims to bring forward against the succession.

Art. 1022. — *Property destined for payment.* — 1. *Liquid cash.*

In order to pay the debts of the succession, the liquidator shall make use in the first place of the liquid cash which he finds in the succession.

Art. 1023. — 2. *Property not bequeathed in legacy.*

(1) Where property is to be sold to pay the debts, the liquidator shall offer such property to the heirs before selling it to another person.

(2) He shall sell it to an heir, where the latter offers for it the market value or a higher price.

Art. 1024. — 3. *Property bequeathed in legacy.*

The property bequeathed in legacy by the deceased may not be sold, where the debts can be paid by selling other property.

## Section 5. Debts of the succession relating to maintenance

**Art. 1025. — *Principle.***

Before paying the legacies, the liquidator shall pay the debts relating to maintenance which certain persons may claim against the succession.

Art. 1026. — *Determination of creditors.*

(1) The spouse of the deceased, his descendants, ascendants and brothers and sisters shall have a claim for maintenance, on the conditions laid down in the following Articles.

(2) Where the succession devolves on the State, the persons who lived with the deceased or were maintained by him at the time of his death shall also have a claim for maintenance, on the conditions laid down in the following Articles.

Art. 1027. — *Lack of means of creditors.*

The persons mentioned in Art. 1026 shall have no claim for maintenance, unless they are in need and are not in a position to earn their living by their work.

Art. 1028. — *Creditor being heir-at-law.*

(1) Descendants, ascendants and brothers and sisters shall have no claim for maintenance unless they are called by the law to take the succsesion of the deceased or a part thereof.

(2) They shall have no such claim if they are excluded from the succession as unworthy.

(3) Nor shall they have such claim where, under the law, they are excluded by heirs who have a better right.

Art. 1029. — *Maximum amount of claim for maintenance.*

(1) The descendants, ascendants and brothers and sisters of the deceased who have a claim for maintenance may only get money or things of a

value equal to that which they would have received from the succession by virtue of the law, had the deceased not made testamentary dispositions to their prejudice.

(2) Liberalities made by the deceased during the last three years preceding his death shall be assimilated to testamentary dispositions.

Art. 1030. — *Claim of the spouse for maintenance.*

The spouse who has a claim for maintenance may get from the succession maintenance in conformity with the rules laid down in the Chapter of this Code relating to "Obligation for maintenance" (Art. 807-825).

Art. 1031. — *Claim by creditor.*

(1) A claim made with a view to establishing a debt for maintenance shall be made to the liquidator within one year from the opening of the succession.

(2) In urgent cases, a provisional claim for maintenance may be acknowledged by the liquidator in favour of the interested persons.

(3) A decision of the liquidator refusing to acknowledge a claim for maintenance may be immediately impugned before the court.

Art. 1032. — *Manner of payment.*

(1) Where the creditor is the spouse of the deceased or is at least sixty years old, a claim for maintenance shall be paid by way of a life annuity.

(2) In other cases, it shall be paid by way of a lump sum.

Art. 1033. — *Annuity.* — 1. *Payment and securities.*

(1) Where an annuity is allowed, it shall be payable as from the death of the deceased.

(2) The arrears of such annuity shall be payable at the place where the creditor for maintenance has his residence.

(3) Where appropriate, the court shall order that securities be given to the creditor for the payment of what is due to him.

Art. 1034. — 2. *Revision.*

(1) The amount of the annuity shall be fixed definitely.

(2) Such amount may not be revised unless the entity of the succession has been erroneously appraised when it was established.

(3) An annuity allowed to a surviving spouse shall no longer be due in case he remarries.

Art. 1035. — 3. *Arrears.*

(1) The arrears of an annuity may not be assigned or attached.

(2) They may, however, be assigned even before they fall due, to institutions of assistance which provide for the wants of the beneficiary of the annuity.

(3) They may also be attached by persons who have given to the beneficiary of the annuity what was necessary for his livelihood.

Art. 1036. — *Agreements relating to debts for maintenance.*

(1) Any act or contract concluded during the lifetime of the deceased relating to eventual debts of the succession for maintenance shall be of no effect.

(2) Testamentary dispositions aiming at excluding or modifying the rules laid down in this Section shall be of no effect.

## Section 6. Payment of legacies

Art. 1037. — *Principle.*

The liquidator shall pay the legacies ordered by the deceased unless the payment of a legacy has been imposed by the will on one of the heirs.

Art. 1038. — *Option of the legatee.*

Without prejudice to the provisions of Art. 1039 and 1040, the provisions of this Title relating to the option of the heirs or legatees by universal title shall apply to the acceptance or refusal of legacies by singular title.

Art. 1039. — *More than one legacy.*

A person to whom more than one legacy by singular title has been bequeathed may accept one of such legacies and refuse the other.

Art. 1040. — *Effect of refusal.*

Where a legatee refuses a legacy bequeathed to him, such refusal shall benefit the person who, under the will, has the charge of paying the legacy.

Art. 1041. — *Time of payment.*

The legacies shall be paid as soon as it appears that the succession has sufficient means for paying them.

Art. 1042. — *Reduction of legacies.*

(1) Where the succession has not sufficient means for paying all the legacies, the order expressly laid down by the deceased in his will shall be followed in making payments.

(2) Failing an express disposition, the legacies which, in the will or in another written act emanating from the deceased, are said to have

been ordered as a remuneration for services rendered by the legatee shall be paid in preference.

(3) The other legacies shall be reduced in proportion to their value.

Art. 1043. — *Legacy of determinate thing.*

(1) The liquidator shall deliver to the legatee the thing bequeathed, with its accessories, in the state in which it is found.

(2) The legatee may not request that the thing bequeathed be delivered to him in a good state.

Art. 1044. — *Legacy of thing of a given genus.*

(1) Where the thing bequeathed has not been determined except by its genus, the legatee may select that which he wishes from among the things of that genus belonging to the testator.

(2) Where several legatees are called to select from things of the same genus, the order in which they are to make their selection shall be determined by the drawing of lots.

Art. 1045. — *Legacy of thing pledged or mortgaged.*

(1) Where the thing bequeathed has been given as a pledge or has been mortgaged by the deceased, securities shall be given to the legatee to guarantee the liberation of the thing when the debt falls due.

(2) The legatee who pays the debt secured by the pledge or mortgage when it falls due shall be subrogated in the rights of the creditor whom he has paid against the heirs.

Art. 1046. — *Legacy of thing belonging to others.* — 1. *Thing of a genus.*

Where the deceased has bequeathed a thing of a genus and at the time of his death there is no thing of such genus in the succession, the liquidator shall pay to the legatee the value of the thing bequeathed.

Art. 1047. — 2. *Determinate thing.*

(1) A legacy made by the deceased shall be of no effect where it has for its subject matter a determinate thing on which the deceased had no right at the time of his death.

(2) Notwithstanding the provisions of sub-art. (1), the legacy shall be valid where the deceased has ordered the legacy knowing such circumstance.

(3) In such case, the liquidator shall pay to the legatee the value of the thing bequeathed.

Art. 1048. — *Legacy of a debt.*

(1) A legacy of a debt shall be effective in respect of the amount of

such debt due to the deceased on the day of his death.

(2) The liquidator fulfils the obligation resulting from the will by delivering to the legatee the instrument which makes possible the recovery of the debt.

(3) The succession shall not guarantee the payment of the debt.

Art. 1049. — *Legacy of an annuity.*

Where an annuity has been bequeathed by the deceased, the arrears thereof shall be due as from the day of the death of the testator.

Art. 1050. — *Fruits and interest.*

(1) Where a determinate thing has been bequeathed, the fruits shall be due as from the death of the testator.

(2) Where a sum of money has been bequeathed, interest thereon at the legal rate shall run from the day when the liquidator has been called upon to effect payment.

Art. 1051. — *Expenses of delivery.*

The expenses of the delivery of a legacy shall be charged to the succession.

## Section 7. Closure of the liquidation

Art. 1052. — *Time of closure.*

(1) The liquidation of a succession shall be closed where the creditors of the succession who made themselves known and the legatees by singular title have been paid their claim or legacy.

(2) It shall also be closed where all the property in the inheritance has been disposed of.

Art. 1053. — *Merger of property.*

(1) After the closure of the liquidation, the property which remains from the inheritance shall merge with the other property of the heir.

(2) Where necessary it shall be jointly owned by the joint heirs.

Art. 1054. — *New creditors.*

(1) The creditors of the inheritance who appear after the closure of the liquidation may claim payment of what is due to them from the heir.

(2) They shall have, on the property which the heir received from the succession, no better claim than the personal creditors of such heir.

(3) The heir shall be liable to such creditors to the extent of the value of the property which he received from the succession.

Art. 1055. — *Value to be taken into consideration.*

(1) Saving proof to the contrary by the creditors, the statement contained in the inventory shall, for the purpose of the preceding Articles, show what the succession is made up of and the value of the property.

(2) Where there has been no inventory or such act cannot be produced, the creditor may establish by any means what the succession is made up of and the value of the property.

Art. 1056. — *Case of concealment.*

(1) A creditor shall be believed on his mere affirmation with regard to the value of a thing where he has proved in contestation of the heir that the thing existed in the succession.

(2) Where the heir demands it, he may in such case only confirm on oath that his valuation is made in good faith.

Art. 1057. — *Loss of thing.*

The heir may not free himself from his obligation by alleging facts which have happened after the closure of the liquidation in consequence of which facts the value of the thing which he received has been diminished or has disappeared.

Art. 1058. — *Obligation of legatees by singular title.*

(1) The creditors of the succession who appear after the closure of the liquidation may not claim the payment of what is due to them from a legatee by singular title except up to the extent of the value of the property which such legatee has received from the succession.

(2) A legatee by singular title shall only be liable in default of the heir.

(3) He may exercise against the creditor who sues him the rights given to a guarantor under the Title of this Code relating to "Contracts in General" (Art. 1920-1951).

Art. 1059. — *Recourse of legatee.*

(1) A legatee by singular title who has paid a debt of the succession shall substitute himself for the creditors of the heir.

(2) He shall have no recourse against other legatees by singular title.

## Chapter 3. Partition of successions

### Section 1. Community of hereditary estate and application for partition

Art. 1060. — *Community of hereditary estate.*

(1) A succession shall remain in common between the heirs until it is partitioned.

(2) The rights of the co-heirs on the property of the inheritance which is in common shall be governed by the provisions of the Title of this

Code relating to "Joint ownership, usufruct and other rights in rem" (Art. 1257-1277).

(3) Nothing in this Article shall affect the provisions of Chapter 2 relating to the liquidation of successions and the provisions of the following Articles.

Art. 1061. — *Sale or partition of particular things.*

The co-heirs may not require the sale by auction nor the partition of a particular thing forming part of the property, still held in common, of the succession.

Art. 1062. — *Time of partition.*

When the succession has been liquidated, each of the co-heirs may at any time require that the partition of the inheritance be effected.

Art. 1063. — *Time limit for partition.*

(1) Where the application for partition is made at a time which is not appropriate, the court may order that the community be maintained for a period not exceeding two years.

(2) Unless otherwise authorised by the court, the community shall be maintained where the manner of making the partition depends on the condition of the birth of a child who is merely conceived.

(3) Where necessary, the court shall in such cases appoint a person to administer the property of the inheritance or certain property forming part thereof.

Art. 1064. — *Disposition or agreement concerning community.*

(1) The right of the co-heirs to apply for partition may be excluded by the will of the deceased or by a contract concluded between the co-heirs.

(2) Any stipulation or agreement mentioned in sub-art. (1) shall be effective for not more than five years or for such shorter period as is fixed therein.

(3) Where no period is fixed or a period longer than five years is fixed, the stipulation or agreement shall cease to have effect at the end of five years.

## Section 2. Collation by co-heirs

Art. 1065. — *Principle of collation.*

Any descendant of the deceased who accepts his succession shall bring into the succession the value of the liberalities which he has received from the deceased and which are not exempted from collation.

BACK



Art. 1066. — *Donation subject to collation.*

(1) Collation shall be due for what has been disbursed for establishing one of the co-heirs, or for paying his debts.

(2) It shall be due for the dowry given to one of the co-heirs.

(3) It shall not be due for the expenses incurred for the education of one of the co-heirs.

Art. 1067. — *Exemption from collation.*

(1) No heir shall be bound to collate liberalities which the deceased intended to make to him as a preference or in addition to his share or as exempt from collation.

(2) In the case of donations, an express clause is necessary to establish such intention.

(3) In the case of legacies, the intention of the deceased of exempting his heir from collation may be established by all means of evidence.

Art. 1068. — *Income or premiums.*

(1) No heir shall be bound to collate liberalities which have been made by the deceased out of his income.

(2) Nor shall he be bound to collate the premiums which have been paid by the deceased to constitute an insurance in favour of the heir.

Art. 1069. — *Indirect benefits.*

No heir shall be bound to collate the profits which he has been able to acquire from agreements or associations entered into between himself and the deceased.

Art. 1070. — *By whom collation is due.*

(1) Collation shall only be due by such descendants of the deceased who accept his succession.

(2) It may be imposed by the deceased on his other heirs.

Art. 1071. — *Status of heir acquired after the day of the liberality.*

An heir shall be bound to make the collation notwithstanding that he was not heir presumptive of the deceased on the day when the liberality was made to him.

Art. 1072. — *Representation.*

(1) Whosoever succeeds in representation of another person shall collate the liberalities made to him personally.

(2) He shall collate the donations which the person represented by him has received from the deceased.

Art. 1073. — *Heir who renounces.*

Collation shall be due by an heir only if he accepts the succession.

BACK



Art. 1074. — *Effect of collation.*

(1) For the purpose of forming the mass to be divided between the co-heirs, the value of the property which has been donated or bequeathed in legacy by the deceased and of which collation is due to the succession shall be added to the property left by him.

(2) A co-heir by whom collation is due shall be deemed to have already received his portion of the succession to the extent of the value which he is bound to collate.

Art. 1075. — *Effect of collation limited to relations between heirs.*

(1) Collation shall be effective only as regards the partition of the succession and the relations between the co-heirs thereanent.

(2) It may not be required by the creditors of the succession nor by the legatees.

Art. 1076. — *Principle of collation consists in taking less.*

(1) Collation is made by taking less.

(2) No heir shall collate more than the value to which he has a right in the succession.

(3) Any agreement made before the death of the deceased to the effect that collation shall be made in kind shall be of no effect.

Art. 1077. — *Value to be collated.*

(1) The value to be collated shall be that at which the property donated has been valued in the act of donation.

(2) Failing such valuation, the true value which the thing donated had at the time of the donation shall be collated.

Art. 1078. — *Loss of the property donated.*

Collation shall be made by the heir notwithstanding that the property donated may have perished or he may have ceased to be enriched by reason of the donation.

## Section 3. Partition how made

Art. 1079. — *Partition by whom made.*

(1) A partition shall be effected by agreement between the heirs.

(2) Failing an agreement between the heirs, a plan of partition drawn up by the most diligent amongst the heirs shall be submitted to the court for approval.

Art. 1080. — *Approval by the court.* — 1. *Protection of an heir.*

(1) The approval of the court shall be sought, under pain of nullity, when one of the heirs is absent or is not properly represented.

(2) In such case, the nullity of the partition may not be invoked except by the person without whose concurrence the partition has been effected.

(3) The nullity may be applied for, under pain of loss of right, within the year after that such person has come to know of the partition and, in any case, within ten years from the death of the deceased.

Art. 1081. — 2. *Protection of creditors.*

(1) The approval of the court shall be sought when a creditor of one of the co-heirs makes an application to this effect before the partition between the co-heirs has been made.

(2) The creditor who makes such an application shall be heard in the proceedings relating to approval.

(3) The costs of such proceedings shall be borne by the creditor unless the approval has been refused by the court by reason of fraud committed by the co-heirs.

Art. 1082. — *Rule to be followed.*

(1) The partition shall be made in conformity with the provisions made by the deceased.

(2) Failing such provisions, it shall be made in accordance with the provision of the following Articles.

Art. 1083. — *Valuation of property.* — 1. *Principle.*

(1) The property placed in the shares of the heirs shall be valued on the day when the partition is effected.

(2) The valuation of the property shall be made by the heirs themselves.

(3) Failing agreement between them, the valuation shall be made by arbitrators selected by them or, if they do not agree on the appointment of such arbitrators, by arbitrators appointed by the court.

Art. 1084. — 2. *Appraisement by experts.*

(1) In the case of an appraisement of immovables, the report of the experts shall show the bases of the appraisement.

(2) It shall state whether the thing appraised can be divided conveniently and in which manner.

(3) It shall, in cases of partition, establish each of the shares which can be formed therefrom and their value.

Art. 1085. — *Formation of shares.*

(1) The shares shall be formed by the person chosen by agreement of the heirs between themselves.

(2) Failing agreement, the shares shall be formed by an expert appointed by the court.

Art. 1086. — *Rule of partition in kind.*

(1) As a rule, a partition shall be made in kind, each of the heirs receiving some of the property of the succession.

(2) The inequality of the shares in kind shall be set off by the payment of sums of money.

Art. 1087. — *How shares are made up.*

(1) Without prejudice to the provisions of the following Articles, the heirs shall receive, as far as possible, shares made up in the same manner.

(2) The utmost care shall be taken to give to each of the heirs the things which are most useful to him.

Art. 1088. — *Origin of property.*

In the partition:

(a) the immovables which came to the deceased from predecessors in title in the paternal line shall be assigned to heirs of that line;

(b) the immovables which came to the deceased from predecessors in title in the maternal line shall be assigned to heirs in that line.

Art. 1089. — *Non-Ethiopian heirs.*

If some of the heirs are of Ethiopian nationality and others are foreigners, the immovables situated in Ethiopia shall be assigned to the Ethiopian heirs.

Art. 1090. — *Debts of the heirs.*

Where one of the heirs is indebted towards the succession, his debt shall be placed in his share.

Art. 1091. — *Hypothecary debts of the deceased.*

An heir to whom is assigned mortgaged property or to whom property is given as a pledge for debts of the deceased shall be charged with such debts.

Art. 1092. — *Property which is difficult to divide.* — 1. *Principle.*

If there is in the succession some other thing which cannot be divided without serious inconvenience, and if the heirs do not agree as to who among them shall have that thing in his share, the thing shall be sold and the price divided.

Art. 1093. — 2. *Sale by auction.*

(1) The sale shall be made by auction where one of the heirs so requires.

(2) Failing agreement between the co-heirs, outsiders shall be admitted to such sale by auction.

Art. 1094. — *Family objects.*

(1) Family papers and objects which have a sentimental value may not be sold where any one of the heirs objects to the sale.

(2) Failing agreement between the co-heirs, the court shall, where appropriate, decide whether such objects shall be sold or allotted to one of the co-heirs.

(3) In the latter case, it shall give such directives as are required to ensure that such objects remain in the family.

Art. 1095. — *Nature of rights to be divided.*

(1) The provisions of this Section shall apply without there being need to make a distinction as to whether the deceased was the owner or the lessee or former tenant of the property forming part of the succession or whether he had any other right on such property.

(2) For the purpose of putting such provisions into effect, it is sufficient that, in the circumstances of the particular case, they can be put into effect.

Art. 1096. — *Keeping community between several co-heirs.*

(1) The provisions of this Section which give rights to an heir may be invoked by several heirs if the latter have agreed to exercise such rights conjointly.

(2) No property may be allotted to several heirs conjointly, unless such heirs have given their explicit consent to such conjoint allotment.

## Section 4. Relations between the co-heirs after the partition

### Paragraph 1. — Warranty due by the co-partitioners

Art. 1097. — *Reference.*

(1) In respect of the corporeal things placed in their shares, the heirs owe to each other the warranties which a seller owes to a buyer.

(2) In respect of rights and debts placed in their shares, they owe to each other the warranty provided for in regard to the case of an assignment of a debt by onerous title.

Art. 1098. — *Amount of indemnity.*

The amount of indemnity due shall be fixed according to the value of the thing at the time of the partition.

Art. 1099. — *By whom indemnity is due.*

(1) Indemnity shall be due by each of the co-heirs in proportion to the share of the succession which he has received.

(2) If any one of the co-heirs is insolvent, the part due by him shall be divided between the heirs in whose favour the warranty operates and all the other heirs who are solvent, in proportion to the share of the succession which each has received.

Art. 1100. — *Right to have securities.*

A co-heir to whom a sum of money is due by one of the co-heirs to set off an inequality in the value of shares or in whose share a debt the recovery of which is doubtful has been placed may require from the moment of the partition that securities be given to him to guarantee his rights.

Art. 1101. — *No warranty.*

(1) Warranty shall not be due where the eviction or defect complained of by the co-partitioner is due to his fault or derives from a cause subsequent to the partition.

(2) Nor shall it be due where in the act of partition it has been expressly agreed in regard to certain property that such property has been placed in the share of one of the heirs without warranty.

Paragraph 2. — Annulment of partitions.

Art. 1102. — *Causes of annulment.*

Without prejudice to the provisions of the following Articles, a partition may be annulled in the same circumstances as other contracts.

Art. 1103. — *Property omitted.*

(1) If, after the partition, some other property which forms part of the succession is discovered, a supplementary partition may be made in relation to such property.

(2) The partition previously made shall not be thereby affected.

Art. 1104. — *Concealment of property.*

Where the property newly discovered was in the possession of one of the heirs who, in bad faith, had concealed the existence thereof from his co-heirs, such heir shall be deprived of his portion of the property so concealed.

Art. 1105. — *Correction of partition.* — 1. *Case in which it takes place.*

(1) A correction of a partition shall be made on the application of any of the persons entitled thereto where, by reason of an erroneous valuation of certain property, such person has received in all less than three-fourth parts of what he had a right to.

(2) A correction of a partition may also be made where a donation subject to collation has not been declared by the person who was bound to collate it in favour of his co-heirs.

Art. 1106. — 2. *Time.*

The right to apply for the correction of a partition shall be barred if not exercised within three years after the partition has been made.

Art. 1107. — 3. *Effects.*

(1) Where the court allows an application for the correction of a partition, it shall fix the amount of indemnity due to the applicant, the person by whom and the conditions on which such indemnity shall be paid.

(2) Where a partition is corrected in consequence of a donation subject to collation not having been declared in the partition as corrected, the co-heir who has received such donation shall be deprived of a value equal to that which he was bound to collate.

(3) The court may waive the application of sub-art. (2) where the co-heir proves his good faith.

Art. 1108. — *Payment of indemnities.*

(1) The indemnities due shall in all cases be fixed in money.

(2) The payment of such indemnities may be requested only from the co-partitioners of the person making the request, or from their heirs or legatees.

Art. 1109. — *Actio Pauliana.*

The creditors of one of the co-heirs may only impugn a partition as having been made in fraud of their rights where such partition was made without them notwithstanding an opposition made by them.

## Section 5. Rights of creditors after partition

Art. 1110. — *Division of claim.*

(1) The creditor shall divide his claim among the heirs, in proportion to the value of the share received by each, unless the debt due to him is indivisible.

(2) He may, however, avail himself of agreements made in the partition whereby a larger part or the whole debt is charged to one or more heirs.

Art. 1111. — *Insolvency of one of the co-heirs.*

In case of insolvency of any one of the co-heirs, his portion of the debt shall be divided pro rata among all the others.

Art. 1112. — *Assimilation of legatees to creditors.*

The legatees by singular title shall be assimilated to creditors of the succession as regards the applicability of Art. 1111.

Art. 1113. — *Relations between the heirs.*

(1) An heir who, after the partition, has had to pay a debt of the succession, shall have recourse against his co-heirs where he has paid more than the portion which should finally remain to his charge.

(2) With regard to such recourse, the rules laid down in the Title of this Code relating to "Contracts in general" shall apply in so far as they relate to suretyship (Art. 1920-1951).

## Chapter 4. Conventions relating to an inheritance

### Section 1. Pacts on future successions

Art. 1114. — *Prohibition of pacts on future successions.*

Any contract or unilateral undertaking relating to the succession of a person who is still alive shall be of no effect unless it is expressly authorised by law.

Art. 1115. — *Acceptance or renunciation of a future succession.*

(1) It is not lawful to accept or renounce a succession in advance, or to assign in advance one's eventual rights to a succession.

(2) The stipulations referred to in sub-art. (1) shall be of no effect notwithstanding that the person whose succession is concerned has agreed thereto.

Art. 1116. — *Institution by contract.*

No person may bind himself by contract to leave his succession or to bequeath a legacy to a person contracting with him or to a third person.

## Section 2. Partitions made by donations

**Art. 1117. — *Principle.***

**The father and the mother and the other ascendants may make a distribution and partition of their property among their children and descendants.**

**Art. 1118. — *Forms.***

**A partition made by donation shall be made according to the forms prescribed by the law for donations inter vivos.**

**Art. 1119. — *Subject-matter.***

**It may have for its subject-matter only the property which belongs to the ascendant at the moment when it takes place.**

**Art. 1120. — *Omitted property.***

**Where part only of the property which the ascendant leaves on the day of his death has been included in the partition made by donation, the property which has not been included shall be divided in conformity with the law.**

**Art. 1121. — *Omitted children.* — 1. *Nullity of the donation.***

**Where any one of the children of the donor has been omitted in the partition made by donation or where a child is born to the donor after the day of such donation, the nullity of the partition made by donation may, at the time of the death of the donor, be applied for by the child who has been omitted or by his representatives.**

**Art. 1122. — 2. *Exception.***

**(1) Nullity may not be applied for where the deceased has left a valid will by a disposition of which the omitted child is validly disinherited.**

**(2) In such case, any eventual claim of the disinherited child or his representatives against the succession shall not be affected.**

**(3) Nullity may not be applied for in the case mentioned in Art. 1121 where the deceased has left sufficient property to be allotted to the omitted child besides the property which has formed the subject matter of the partition made by donation.**

**Art. 1123. — *Lesion.***

**(1) Unless otherwise provided in the act of the partition made by donation, the rescission of such partition made by donation may be applied for where one of the descendants has suffered lesion of more than one-fourth part.**

(2) For the purpose of establishing whether there is a lesion, the property shall be valued according to its value on the day of the partition made by donation.

(3) An action of rescission shall be barred if not brought within two years from the death of the ascendant who has made the donation and ten years at most from the date of the partition made by donation.

### Section 3. Assignment of rights to a succession

Art. 1124. — *Rights of heir.*

(1) After the opening of the succession, an heir may assign his rights to such succession in whole or in part.

(2) He may not assign his rights on a determinate thing pertaining to the succession before such thing has been allotted to him as his own.

Art. 1125. — *Pre-emption in case of transfer of rights to a succession.*

(1) The co-heirs have a right of legal pre-emption against the person to whom rights to a succession have been assigned, excepting the case where the assignment has been made in favour of one of the co-heirs.

(2) The provisions of the Title of this Code relating to "Joint ownership, usufruct and other rights in rem" shall apply in regard to such pre-emption (Art.1386-1409).

## BOOK III. GOODS

## TITLE VI. GOODS IN GENERAL AND POSSESSION

### Chapter 1. Goods in general

Art. 1126. — *Various kinds of goods.*

All goods are movable or immovable.

Art. 1127. — *Corporeal chattels.* — 1. *Principle.*

Corporeal chattels are things which have a material existence and can move themselves or be moved by man without losing their individual character.

Art. 1128. — 2. *Securities to bearer.*

Unless otherwise provided by law, claims and other incorporeal rights embodied in securities to bearer shall be deemed to be corporeal chattels.

Art. 1129. — 3. *Natural forces.*

Unless otherwise provided by law, natural forces of an economic value, such as electricity, shall be deemed to be corporeal chattels where they have been mastered by man and put to his use.

Art. 1130. — *Immovables.*

Lands and buildings shall be deemed to be immovables.

Art. 1131. — *Intrinsic elements of goods.* — 1. *Principle.*

Unless otherwise provided, rights on, or dealings relating to, goods shall apply to all instrinsic elements thereof.

Art. 1132. — 2. *Definition.*

(1) Anything which by custom is regarded as forming part of a thing shall be deemed to be an intrinsic element thereof.

(2) Anything which is materially united to a thing and cannot be detached therefrom without destroying or damaging such thing shall be deemed to be an intrinsic element thereof.

Art. 1133. — 3. *Trees and crops.*

(1) Trees and crops shall be an intrinsic element of the land until they are separated therefrom.

(2) They shall be deemed to be distinct corporeal chattels where they are subject to contracts made for their separation from the land or implying such separation.

Art. 1134. — 4. *Rights of third parties.*

(1) A thing which becomes an intrinsic element of a movable or immovable shall cease to constitute a distinct thing.

(2) All the rights which third parties previously had on such thing shall be extinguished.

(3) Nothing shall affect the right of such third parties to make claims based on liability for damages or unlawful enrichment.

Art. 1135. — *Accessories.* — 1. *Principle.*

In doubtful cases, rights on, or dealings relating to, things shall apply to the accessories thereof.

Art. 1136. — 2. *Definition.*

Anything which the possessor or owner of a thing has permanently destined for the use of such thing shall be deemed to be an accessory thereof.

Art. 1137. — 3. *Temporary separation from the thing.*

No accessory shall lose its character of accessory where it is temporarily detached from the thing to which it is destined.

Art. 1138. — 4. *Rights of third parties.*

(1) The rights which third parties may have on a thing shall not be affected by such thing being destined to the use of a movable or immovable.

(2) Such rights may not be set up against a third party in good faith unless they are embodied in a written document dated prior to the thing having been so destined.

Art. 1139. — 5. *Cessation of character of accessory.*

(1) The owner of a thing may put an end to the character of accessory of such thing.

(2) Nothing shall affect the rights of third parties having had dealings with the owner on the faith of such character.

## Chapter 2. Possession

Art. 1140. — *Definition.*

Possession consists in the actual control which a person exercises over a thing.

Art. 1141. — *Direct or indirect possession.*

The possessor may exercise his control over a thing directly or through a third party who holds such thing.

Art. 1142. — *Temporary hindrance.*

The possessor shall not lose his rights where he is temporarily prevented from exercising control over a thing.

Art. 1143. — *Transfer of possession.*

Any transfer of possession made by virtue of a contract shall be effective at the time when the thing is delivered.

Art. 1144. — *Documents representing the thing.*

(1) Possession may be transferred to a new possessor by the delivery of the documents representing the thing and enabling him to dispose thereof.

(2) Where a dispute arises between the holder of the documents and the person who has the actual possession of the thing, the latter shall be preferred unless his bad faith can be proved.

Art. 1145. — *Constructive possession.*

(1) The possession of things which are certain and things pertaining to a generic species which have been individualized shall be deemed to be transferred to the new possessor where the person who exercises actual control over the thing declares that he shall henceforth detain it on behalf of the new possessor.

(2) Nothing in this Article shall affect the rights of the creditors of the person exercising actual control over the thing in the event of his bankruptcy.

Art. 1146. — *Secret or dubious possession.*

(1) Secret or dubious possession shall give rise to no right.

(2) Possession is secret where he who exercises actual control over the thing conceals his status as possessor in circumstances which justify the assumption that he has no right in respect thereof.

(3) Possession is dubious where in the circumstances it is doubtful whether it belongs to him who alleges himself to be the possessor or whether he detains the thing on behalf of another person.

Art. 1147. — *Change of title.*

(1) Unless the contrary is proved, he who began to possess on behalf of another person shall be regarded as a mere holder.

(2) Proof to the contrary may be adduced by any means.

(3) It shall not result from a mere change in the intention of the holder.

Art. 1148. — *Protection of possession.* — 1. *Use of force.*

(1) The possessor and the holder may use force to repel any act of usurpation or interference.

(2) Where the thing has been taken away from him either by violence or secretly, he may take it back forthwith, either by expelling the usurper or by seizing the thing from the hands of a usurper caught in the act or when running away.

(3) He shall refrain from any act of violence which is not justified in the circumstances.

Art. 1149. — 2. *Legal action.*

(1) The possessor or holder who is deprived of his possession or whose possession is interfered with may require the restoration of the thing or the cessation of the interference and claim compensation for damages.

(2) The action shall be barred if it is not brought within one year from the day of the usurpation or interference.

(3) The court shall order the restoration of the thing or the cessation of the interference unless the defendant can prove forthwith and conclusively the existence of a right in his favour justifying his conduct.

Art. 1150. — *Junction of possessions.*

(1) The possessor who is entitled to avail himself of prescription shall benefit by the periods of prescription having run in favour of the former possessor where such former possessor could avail himself of prescription.

(2) The bare owner may similarly avail himself of the taxes paid by the usufructuary.

# TITLE VII. INDIVIDUAL OWNERSHIP

## Chapter 1. Acquisition, transfer, extinction and proof of ownership

### Section 1. Acquisition of ownership

#### Paragraph 1. — Occupation

Art. 1151. — *Principle.*

Whosoever takes possession of a corporeal chattel which has no master with the intention of becoming the owner thereof shall acquire the ownership of such chattel.

Art. 1152. — *Animals.*

(1) Tamed or captive animals shall become things without a master where they escape from the control of their owner and he does not attempt to recapture them within the following month or he ceases for one month to attempt to recapture them.

(2) The provisions of sub-art. (1) shall not apply to animals of the equine or asinine species or cross-breedings thereof nor to camels and animals of the bovine species.

Art. 1153. — *Bees.*

(1) Bee swarms which have left their hive shall be deemed to be things without a master.

(2) The person in whose hive they settle down shall become the owner of such swarms by virtue of occupation.

(3) The former owner may take them back where he chases them and arrives where they have settled immediately afterwards.

Art. 1154. — *Object found.* — 1. *Duties of finder.*

(1) Whosoever finds and takes possession of a corporeal chattel shall comply with the administrative regulations requiring him to report his find.

(2) Failing such regulations, he shall take all appropriate steps to make his find known and make such investigations as are required in the circumstances with a view to informing the owner of his find.

Art. 1155. — 2. *Possession of object.*

(1) The finder who has carried out the duties prescribed by Art. 1154 shall retain in his possession the thing found.

(2) He shall in such a case take all reasonable steps for its preservation.

Art. 1156. — 3. *Sale of object.*

(1) The finder may sell the object found at a public auction where it is exposed to rapid deterioration or its custody is onerous.

(2) The proceeds of the sale shall in such a case replace the thing sold.

Art. 1157. — 4. *Recovery of object by owner.*

(1) The owner of the object may require its restitution so long as he has not lost the ownership thereof.

(2) He shall in such a case refund all expenses incurred by those who have found and kept such object.

Art. 1158. — *Reward to finder.*

(1) The court may, where appropriate, grant to the finder a reward not exceeding one quarter of the value of the object found.

(2) In deciding whether a reward ought to be granted and in fixing its amount, the court shall have regard to the financial position of the parties concerned and the chances the owner had of finding the object himself.

(3) The right to apply for a reward shall be barred where the finder does not exercise it within the year following restitution.

Art. 1159. — *Treasure.*

(1) A treasure shall become the property of the owner of the land or thing in which it was found.

(2) The finder is entitled to a reward equal to one half of the value of the treasure.

(3) Things of which nobody can be shown to be the owner shall be deemed to be treasures where it appears certain, at the time of their discovery, that they have been buried or hidden for not less than fifty years.

Art. 1160. — *Antiques.*

Nothing shall affect the provisions of special laws or regulations relating to archaeological excavations and antiques.

Paragraph 2. — Possession in good faith

Art. 1161. — *Principle.*

(1) Whosoever in good faith enters for consideration into a contract to acquire the ownership of a corporeal chattel shall become the owner thereof by virtue of his good faith when he takes possession of such chattel.

(2) His rights shall not be affected by the fact that the person with whom he contracted had no valid title.

Art. 1162. — *Definition and proof of good faith.*

(1) Whosoever acquires a corporeal chattel shall be deemed to be in good faith where he believes that he is contracting with a person entitled to transfer the thing to him.

(2) The good faith of the acquirer shall be presumed saving evidence to the contrary.

Art. 1163. — *Time when good faith must exist.*

(1) Good faith must exist at the time of the entry into possession.

(2) Discovery by the possessor that he acquired the thing from a person who was not entitled to transfer the ownership thereof shall be of no effect where such discovery occurs after he entered into possession.

Art. 1164. — *When ownership cannot be reclaimed.*

(1) Whosoever voluntarily relinquishes the ownership of a corporeal chattel may not reclaim it from the person who has become owner thereof in good faith.

(2) He may not raise against him the fact that the person into whose hands he relinquished his property acted fraudulently.

Art. 1165. — *Possibility of reclaiming stolen property.*

(1) Any person from whom a corporeal chattel was stolen may reclaim it from the person who has become owner thereof in good faith.

(2) Such claim shall be barred if it is not made within three years from the time when the theft occurred.

Art. 1166. — *Indemnity due to the possessor.*

Where the person from whom the property is reclaimed acquired it from a tradesman dealing in similar articles, in market overt or at a public auction he may require the seller to reimburse him with the price he paid.

Art. 1167. — *Currency and securities to bearer.*

(1) Currency or securities to bearer may in no case be claimed from a person who acquired them in good faith.

(2) They may not be claimed either from a person who acquired them from a third party in good faith.

Paragraph 3. — Usucaption

Art. 1168. — *Principle.*

(1) The possessor who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable:

Provided that no land which is jointly owned by members of one family in accordance with custom may be acquired by usucaption and any member of such family may at any time claim such land.

(2) Nothing in this Article shall affect the provisions of Title VI, Chapter 2, of this Code (Art. 1140-1150).

Art. 1169. — *Reference.*

(1) Those provisions of the Title of this Code dealing with contracts in general which relate to the interruption of limitation periods shall apply in matters of usucaption (Art. 1851 and 1852).

(2) Those provisions of the same Title which lay down the conditions on which limitation may be raised, enforced or waived shall also apply in matters of usucaption (Art. 1853-1856).

Paragraph 4. — Accession.

Art. 1170. — *Increase.*

(1) Whosoever owns a thing shall own the natural fruits thereof.

(2) Periodical products of a thing and anything which may according to usage be derived from a thing in conformity with its purpose shall be deemed to be fruits.

Art. 1171. — *Increase from breeding.*

(1) As regards ownership, increase from breeding shall follow the mother.

(2) The owner of the mother shall be the owner of the increase.

Art. 1172. — *Crops.* — 1. *Against will of landowner.*

(1) Whosoever sows seeds in land the property of another against the clearly expressed will of the landowner may neither till nor reap what he has sown.

(2) Where the harvest has been reaped the whole crop shall be the property of the landowner.

(3) The provisions of this Article shall apply where the landowner was unable to object to the sowing.

Art. 1173. — 2. *Without objection by landowner.*

(1) Whosoever sows seeds in land the property of another without the landowner objecting to the sowing may till and reap what he has sown. He shall clear the land after the harvest has been reaped.

(2) Where the sower acted in the belief that he was the owner of the land or was entitled to sow seeds therein, one quarter of the crop shall devolve upon the sower and three quarters upon the landowner.

(3) Where the sower knew that he was not the owner of the land or was not entitled to sow seeds therein, the whole crop shall be the property of the landowner.

(4) The provisions of this Article shall apply notwithstanding that the landowner was aware of the sowing and failed to object thereto.

Art. 1174. — 3. *Claim by landowner.*

(1) The landowner shall be entitled to the crop or a share therein in accordance with the provisions of Art. 1172 and 1173 regardless of whether his land was previously cultivated or not.

(2) Where the crop has been sold, given away or consumed, the landowner shall be entitled to the value which the crop or his share therein would have had on the day on which he makes his claim.

(3) The right of the landowner to claim the crop or a share therein shall be barred if it is not exercised within one year from the reaping of the crop.

Art. 1175. — *Plantations.* — 1. *Against will of landowner.*

(1) Whosoever plants trees on land the property of another against the clearly expressed will of the landowner shall have no right on such trees.

(2) He shall not be entitled to any compensation for the enrichment thereby occasioned to the landowner.

(3) He shall bear the costs incurred in removing the trees, where the landowner orders their removal.

Art. 1176. — 2. *With landowner's permission.*

(1) Where the plantation was made with the permission of the landowner, the latter may at any time acquire the full ownership of the trees against payment of compensation the amount of which shall be fixed by agreement between the parties.

(2) Failing agreement, the provisions of Art. 1177 shall apply.

Art. 1177. — 3. *Compensation.*

(1) The amount of the compensation provided in Art. 1176 shall be equal to one half of the value of the profits which are likely to be derived from the trees during a period of ten years, where such trees are normally grown for their products.

(2) It shall be equal to one half of the value which the trees are likely to have after a period of ten years, where such trees are normally not grown for their products.

(3) The period of ten years specified in sub-art. (1) and (2) shall run from the day on which the landowner expressed his intention to terminate the joint ownership.

Art. 1178. — *Buildings.* — 1. *Against will of landowner.*

(1) Whosoever has erected a building on land the property of another against the clearly expressed will of the landowner shall have no right on such building.

(2) The landowner may at his option evict the builder or order him to take the building down without compensation in either case.

(3) The provisions of this Article shall apply where the landowner was unable to object to the building.

Art. 1179. — 2. *Without objection by landowner.*

(1) Whosoever has erected a building on land the property of another without the landowner objecting to the building shall be the owner of such building.

(2) The landowner may evict the builder against payment of compensation the amount of which shall be fixed by agreement between the parties or, failing agreement, in accordance with the provisions of Art. 1180. The builder may at any time take the building down at his own expense and clear the land.

(3) The provisions of this Article shall not apply unless the landowner was aware of the building and failed to object thereto.

Art. 1180. — 3. *Compensation.*

(1) The amount of the compensation due to the builder in the case mentioned in Art. 1179 (2) shall be fixed in accordance with the provisions of the Title of this Code relating to "Compromise and Arbitration" (Art. 3307-3346).

(2) Such amount shall be reduced by three-quarters where the builder knew or should have known that he was not the owner of the land or was not entitled to erect a building thereon.

Art. 1181. — *Using material the property of another.*

(1) A landowner who makes buildings, plantations or works with material the property of another shall become the owner of such material.

(2) He shall refund the value of the material and may be ordered to pay damages, where appropriate.

(3) The owner of such material may not take it back.

Art. 1182. — *Specification.*

(1) Where a person has worked with or transformed a substance which did not belong to him, the new article shall become the property of the worker where the labour supplied is of greater value than that of the substance.

(2) Where the worker did not act in good faith, the court may allot the new thing to the owner of the substance even though the value of the labour supplied is greater.

(3) Nothing shall affect the provisions of the Title of this Code relating to "Extra-contractual Liability and Unlawful Enrichment" (Art. 2027-2178).

Art. 1183. — *Merger and embodiment.*

(1) Where things belonging to several owners are mixed together or embodied in such a manner that they cannot be separated without appreciable deterioration or only at the cost of excessive labour or expenses, the parties concerned shall become joint owners of the new thing pro rata to the value of its component parts prior to the mixture or embodiment.

(2) Where two things are mixed together or embodied but one of them must be regarded as an accessory to the other, the new thing shall belong to the owner of the principal thing.

(3) Nothing shall affect the provisions of the Title of this Code relating to "Extra-contractual Liability and Unlawful Enrichment" (Art. 2027-2178).

## Section 2. Transfer of ownership

Art. 1184. — *Cause of transfer.*

Ownership may be transferred by virtue of law or in pursuance of agreements entered into by the parties.

Art. 1185. — *Immovable property.*

An entry in the registers of immovable property shall be required for the purpose of transferring by contract or will the ownership of immovable property.

Art. 1186. — *Corporeal chattels.*

(1) The ownership of corporeal chattels shall be transferred to the purchaser or legatee at the time when he takes possession thereof.

(2) Nothing in this Article shall affect the provisions of special laws or regulations relating to special kinds of corporeal chattels.

**Art. 1187.** — ***Limited ownership.***

**Provisions to the effect that ownership shall be transferred at a different time than that fixed in the preceding Articles shall not affect third parties unless the latter have accepted such provisions or such provisions have been given publicity through registration in a public registry in accordance with law.**

## Section 3. Extinction of ownership

**Art. 1188.** — ***Loss of thing.***

**Ownership shall be extinguished where the thing to which it extends is destroyed or loses its individual character.**

**Art. 1189.** — ***Acquisition by third party.***

**Ownership shall be extinguished where it is acquired by, or transferred to, a third party in accordance with law.**

**Art. 1190.** — ***Striking off register.***

**The ownership of an immovable shall be extinguished where the entry relating to such immovable is struck off the register of immovable property.**

**Art. 1191.** — ***Waiving of right.***

**The ownership of corporeal chattels shall be extinguished where the owner expresses in an unequivocal manner his intention to waive his rights as an owner.**

**Art. 1192.** — ***Prescription.***

**The owner of a corporeal chattel shall lose his rights as an owner where he failed to exercise them for a period of ten years by reason of his not knowing where such chattel was or that he was the owner thereof.**

## Section 4. Proof of ownership

**Art. 1193.** — ***Corporeal chattels.***

**(1) Whosoever is in possession of a corporeal chattel shall be deemed to possess it on his own behalf and to be the owner thereof.**

**(2) Whosoever disputes such ownership shall have to show that the presumption laid down in sub-art. (1) is not justified in the circumstances.**

**Art. 1194.** — ***Immovables.*** — 1. ***Vacant immovables without a master.***

**Immovables situate in Ethiopia which are vacant and without a master shall be the property of the State.**

**Art. 1195.** — *2. Title deeds.*

The issue by the administrative authorities of a title deed to the effect that a given immovable belongs to a given person shall raise a presumption that such person is the owner of such immovable.

**Art. 1196.** — *Proof to the contrary.*

The presumption laid down in Art. 1195 shall be rebutted where it is shown that:

(a) the title deed was not issued in accordance with the law or was issued by an authority having no jurisdiction; or

(b) the title deed was issued on the basis of an invalid act; or

(c) the plaintiff acquired the ownership of the immovable after the day on which the title deed was issued.

**Art. 1197.** — *Duties of administrative authorities.*

(1) Prior to issuing to a person a title deed relating to an immovable, the administrative authorities shall require that the title deed previously issued to another person in relation to the same immovable be returned to them so that it may be cancelled.

(2) Where it is alleged that such previous title deed has been lost or destroyed, the administrative authorities shall require the person applying for a new title deed to produce sufficient security to cover such damage as may be caused to third parties by reason of the previous title deed not having been cancelled.

**Art. 1198.** — *Liability of the State.*

(1) The State shall be liable for any damage caused to a person who has acquired a right on an immovable on the basis of a title deed which was not issued in accordance with the law or was issued by an authority having no jurisdiction.

(2) The State shall be liable for any damage caused to a person who has acquired a right on an immovable on the basis of a title deed which the administrative authorities failed to cancel.

(3) Nothing shall affect the right of the State to make a claim against the public officials at fault.

**Art. 1199.** — *Demarcation of lands.*

(1) The boundaries of lands shall be determined in accordance with the cadastral survey plan and the boundary marks found on the land.

(2) The boundaries appearing in the cadastral survey plan shall prevail where they differ from those pointed out on the land.

Art. 1200. — *Buildings, plantations and works.*

(1) All buildings, plantations and works on land shall be deemed to have been made by the owner at his own expense and to be his property.

(2) Evidence may be produced to rebut the presumption laid down in sub-art. (1).

Art. 1201. — *Party-walls.*

(1) Any wall or fence separating two parcels of land shall be deemed to be jointly owned by the owners of such parcels, unless one parcel of land only is fenced in.

(2) Evidence may be produced to rebut the presumption laid down in sub-art. (1).

Art. 1202. — *Ditches.*

(1) A ditch shall not be deemed to be joint property where the embankment is to be found on one side of the ditch only.

(2) The ditch shall be deemed to be the sole property of the owner of the land on which the embankment is.

(3) Evidence may be produced to rebut the presumptions laid down in sub-art. (1) and (2).

Art. 1203. — *Water, gas and electrical supply.*

(1) Water and gas pipes, electrical and other lines shall be deemed to be accessories of the undertaking from which they originate and to be the property of the owner of such undertaking.

(2) Evidence may be produced to rebut the presumption laid down in sub-art. (1).

## Chapter 2. Rights and duties of owner

### Section 1. General provisions

Art. 1204. — *Definition.*

(1) Ownership is the widest right that may be had on a corporeal thing.

(2) Such right may neither be divided nor restricted except in accordance with the law.

Art. 1205. — *Scope of right.*

(1) Without prejudice to such restrictions as are prescribed by law, the owner may use his property and exploit it as he thinks fit.

(2) He may dispose of his property for consideration or gratuitously, *inter vivos or mortis causa.*

Art. 1206. — *Right to reclaim property.*

The owner may claim his property from any person who unlawfully possesses or holds it and may oppose any act of usurpation.

## Section 2. Special rules regarding immovable property

Art. 1207. — *Fences.*

An owner may fence his land.

Art. 1208. — *Boundary marks.*

Where the boundaries of parcels of land are uncertain, each landowner shall, if so required by his neighbour, assist in ascertaining such boundaries.

Art. 1209. — *Ownership of subsoil.*

Ownership of land shall extend below the surface of the land to the extent necessary for the use of the land.

Art. 1210. — *Excavations or works underground.*

An owner who makes excavations or works below the surface of his land shall not shake his neighbour's land, expose it to damage or endanger the solidity of the works thereon.

Art. 1211. — *Ownership above the land.*

Ownership of land shall extend above the surface of the land to the extent necessary for the use of the land.

Art. 1212. — *Branches and roots.*

(1) An owner whose land is encumbered by branches or roots springing from adjoining land may apply to the court to order his neighbour to cut such branches or roots within one month.

(2) The owner of a land may, without having to make a request, cut as from the boundary all roots rising on his land.

Art. 1213. — *Buildings and plantations.*

An owner may make on his land such buildings or plantations as he thinks fit.

Art. 1214. — *Works above or below land.* — 1. *Principle.*

(1) Buildings and other works constructed above or below a parcel of land or permanently united therewith may have a distinct owner.

(2) The rights of such owner shall be subject to the provisions relating to servitudes (Art. 1359-1385).

Art. 1215. — 2. *Restriction.*

(1) Nothing shall affect the provisions relating to the joint ownership of parts of a building (Art. 1281-1308).

(2) Nothing shall affect the provisions of Art. 1178-1180.

Art. 1216. — *Access prohibited.*

An owner may prohibit third parties from entering on his land.

Art. 1217. — *Trespass necessary.* — 1. *Imminent damage or danger.*

(1) Where a person cannot protect himself or another from an imminent damage or actual danger except by entering on somebody else's land, the owner thereof shall permit access.

(2) The owner may claim compensation for any damage thereby caused.

Art. 1218. — 2. *Repair of wall or building.*

(1) Access to land shall be permitted where it is necessary for the purpose of repairing a wall or building set up on adjoining land.

(2) The owner may claim compensation for any damage thereby caused.

Art. 1219. — 3. *Lost things or animals.*

(1) Where things have been carried away or animals such as cattle, bee swarms or poultry have strayed on somebody else's land by the operation of a natural force or in consequence of a fortuitous event, the owner of the land shall allow the interested person to enter on his land for purposes of search and removal.

(2) The owner may claim compensation for any damage thereby caused and shall have a right to detain the lost thing or animal.

(3) The owner may prohibit access where he himself immediately searches the lost thing or animal and returns it to the interested person.

Art. 1220. — *Pipes.*

(1) An owner shall, against full payment in advance of compensation for the damage thereby caused, allow the installation on his land of water, gas or electrical lines or similar works to the benefit of other lands.

(2) The installation shall be made with minimum disturbance to the land encumbered.

(3) The owner may at any time require that the installation be removed at his own expense and placed on some other part of the land.

Art. 1221. — *Right of way.* — 1. *Principle.*

An owner whose land constitutes an enclave or whose access to public ways is not sufficient to enable him to exploit his land may demand right

of way from his neighbour against payment of compensation proportionate to the damage that may be caused thereby.

Art. 1222.— 2. *Demand against whom made.*

(1) Right of way shall be demanded from the neighbour from whom it is the more reasonable to demand it.

(2) For this purpose, regard shall be had to the position of the lands, the access thereto, the exigencies of the enclosed land and the inconvenience occasioned to the encumbered land.

Art. 1223. — 3. *Division of land.*

Where the enclave arises from the division of land by sale, barter, partition or any other contract, right of way shall be demanded from the original owner.

Art. 1224. — 4. *Works necessary.*

The owner of a right of way shall maintain such right of way and shall cause the least damage possible to the land over which such right of way passes.

Art. 1225. — *Abuse of ownership.* — 1. *Principle.*

(1) The owner shall not cause nuisance or damage to his neighbour.

(2) He shall not cause smoke, soot, unpleasant smells, noise or vibrations in excess of good neighbourly behaviour.

(3) Regard shall be had to local custom, the position of the lands and the nature thereof.

Art. 1226. — 2. *Penalty.*

An owner who is caused or threatened with damage by reason of another owner abusing his rights may require such owner to repair the damage caused or prevent the occurrence of damage without prejudice to any claim for damages.

Art. 1227. — *Restrictions on ownership binding.*

(1) The restrictions on ownership in this Section shall apply without entry in the registers of immovable property.

(2) They may not be waived nor altered by agreement between the parties.

## Section 3. Ownership and use of water

Art. 1228. — *Use by community.*

(1) The community shall have priority in the usage of all running and still water.

(2) Such water shall be controlled and protected by the competent authority.

Art. 1229. — *Appropriation of water.*

Water shall be private property where it is collected in a man-made reservoir, basin or cistern from which it does not flow naturally.

Art. 1230. — *Legal provisions regarding water.*

(1) The conditions on which water may be appropriated or used and the rights of use or servitudes to which it may be subject shall be as laid down in this Title.

(2) Nothing shall affect the provisions of this Code relating to the collective exploitation of irrigation or drainage areas (Art. 1501-1534).

(3) Nothing shall affect the provisions of special laws and administrative regulations, whether of general or local application.

Art. 1231. — *Power of the court.*

(1) In deciding on a dispute arising between two persons to whom water may be of use, the court shall reconcile the conflicting interests with the respect due to ownership.

(2) Unless otherwise provided by law, any infringement of rights of ownership shall give rise to compensation.

Art. 1232. — *Domestic use.* — 1. *Right of owner.*

A landowner may use the water on, below, running through or bordering his land for his personal use, that of the persons living with him and for watering his cattle.

Art. 1233. — 2. *Right of neighbours.*

A landowner who has water in excess of what he requires for domestic purposes shall give his neighbours the water indispensable for their domestic use, where they cannot get water elsewhere except at exaggerated costs.

Art. 1234. — 3. *Right of neighbours how exercised.*

(1) The landowner may regulate in a reasonable manner the exercise of the right granted to his neighbours under Art. 1233.

(2) He may require a fair compensation where his rights as an owner are notably reduced or impaired by the neighbours exercising their right.

Art. 1235. — *Prohibited works.*

(1) Whosoever is entitled to use a well, spring or other water, whether running or still, may object to the construction of any work such as a sewer or latrine, capable of polluting the water used by him.

(2) He may require that any such work done in disregard of his rights be destroyed.

Art. 1236. — *Irrigation.* — 1. *Right of owner.*

(1) An owner whose land is crossed or bordered by running water may use such water for irrigating his land.

(2) Such right may not be exercised to the detriment of those who, on the land or downstream, use such water for domestic purposes or to water their cattle.

Art. 1237. — 2. *Priority of domestic use.*

(1) Where the use of water for purposes of irrigation is or may be detrimental to persons downstream who use such water for purposes other than domestic, the said persons may, where they show the existence of vested rights to their benefit, object to the water being used for irrigation.

(2) There shall be deemed to be vested rights on the use of water for purposes other than domestic where apparent or notorious works or installations have been done on the ground with a view to using the water for such purposes.

Art. 1238. — 3. *Penalty.*

Where the existence of vested rights is proved, the court shall order the cessation or putting out of use of the works or installations done on the land upstream to the extent that they are incompatible with such vested rights.

Art. 1239. — 4. *Compensation.*

The owner of the land upstream shall be entitled to compensation where the exploitation of his land is impaired or rendered impossible by the prohibition from using water crossing or bordering his land.

Art. 1240. — 5. *Amount of compensation.*

(1) The court shall fix in accordance with equity the amount of compensation due under Art. 1239.

(2) In making its decision, the court shall have regard to all the circumstances of the case and in particular to the decrease in the value of the land which the prohibition from using water entails and to the profit derived from the use of the water by the persons downstream.

(3) Compensation shall in all cases include the value of the works or installations the use of which is prohibited by the court and which have been done in good faith without the persons downstream objecting thereto.

Art. 1241. — 6. *Court having jurisdiction.*

Any dispute as mentioned in the preceding Articles shall be settled by the court in whose jurisdiction the immovable on which works or installations are contemplated or have been done, is situate.

Art. 1242. — *Industrial use.* — 1. *Right of owner.*

(1) The owner of land which is crossed or bordered by water may use such water for industrial or commercial undertakings such as water-mills, wash-houses or bathing establishments.

(2) He shall ensure that the water flowing from his land be unsoiled and fit for the uses to which it may normally be put.

Art. 1243. — 2. *Restriction.*

(1) Where the owner prevents the flowing of water from his land or the water flows soiled or unfit for certain uses, the provisions of the preceding Articles regarding the use of water for purposes of irrigation shall apply.

(2) The owner of land shall not be entitled to compensation except as regards works or installations the use of which is prohibited by the court and which have been done in good faith without the persons downstream objecting thereto.

Art. 1244. — *Hydraulic power.*

Only those undertakings which have been granted a concession by the competent authority may do work on rivers with a view to distributing, carrying or selling hydraulic power.

Art. 1245. — *Rainwater.*

(1) The owner of a building shall build the roof so that rainwater falls on his and not on his neighbour's land.

(2) He shall make such gutters or pipes as may be necessary to bring the water to public sewers.

Art. 1246. — *Duties of landowners below.*

(1) The owner of land on a low level shall accept the flow of water from land on a higher level where such water flows naturally and not artificially.

(2) The owner of the land below may not set up a dike to prevent such flow.

(3) The owner of the land above may not increase the responsibilities of the landowner below.

Art. 1247. — *Drainage.*

(1) Where the owner of the land above constructs drainage works on his land, the landowners below shall accept without compensation the water flowing therefrom.

(2) The owner of the land above shall construct such works as are required to reduce to a minimum the damage to be occasioned to landowners below.

(3) The landowners below may require that the water be evacuated by means of underground pipes where, failing such pipes, the water would run on land on which buildings are erected or on gardens or yards pertaining to such buildings.

Art. 1248. — *New springs.*

The provisions of Art. 1247 shall apply where an owner creates springs on his land by boring or underground works.

Art. 1249. — *Taking of water.* — 1. *Right of owner.*

(1) An owner who requires water bordering his land for irrigation or other purposes may build on the neighbouring riparian's land the works necessary for the taking of water.

(2) He shall have access to such neighbouring land for the purpose of constructing or maintaining such works.

Art. 1250. — 2. *Compensation.*

(1) The neighbouring riparian shall be entitled to compensation where the works constructed on his land deprive him permanently of a part of his land.

(2) The neighbouring riparian shall be entitled to compensation where he is unduly or unreasonably inconvenienced as a neighbour by the size or duration of such works.

Art. 1251. — 3. *Use of works.*

(1) The owner on whose land works are to be constructed shall bear one half of the costs of building and maintenance where such works are for his own benefit.

(2) Where the owner of land wishes to use such works to his own benefit during construction or after completion, he shall bear the costs arising from any changes in the works required to adapt them for his use.

Art. 1252. — *Aqueduct.* — 1. *Right of owners.*

An owner who wishes to make use for domestic or irrigation or other purposes of water which does not cross or border his land may apply to the court to be allowed to bring such water through other persons' land against payment in advance of a fair compensation.

Art. 1253. — 2. *Laying out of pipes.*

(1) Regard shall be had to all the circumstances of the case for the purpose of laying out the pipes and determining their siting and nature.

(2) Pipes shall be installed so as to reduce to a minimum any damage to the owners whose land they cross.

(3) Pipes shall as far as possible avoid land on which buildings are erected or gardens or yards pertaining to such buildings.

Art. 1254. — 3. *Compensation.*

(1) The owners whose land is crossed by pipes shall be entitled to compensation.

(2) In fixing the amount of compensation, regard shall be had to the value of the land of which the owners are permanently deprived.

(3) Regard shall also be had to the inconvenience caused to an owner by reason of the installation and maintenance of the pipes.

Art. 1255. — *Underground water.*

(1) Underground accumulations of water and rivers shall form part of the public domain.

(2) No person may without permission construct on his land a drilling exceeding one hundred metres in depth.

Art. 1256. — *Fishing and navigation.*

(1) The right to fish shall be subject to the provisions of special laws.

(2) As shall the right to sail on rivers and lakes.

## TITLE VIII. JOINT OWNERSHIP, USUFRUCT AND OTHER RIGHTS IN REM

### Chapter 1. Joint ownership

#### Section 1. General provisions

Art. 1257. — *Principle.*

(1) A thing may be owned by several persons as joint owners thereof.

(2) Nothing shall affect the rules relating to agricultural communities and official associations of owners laid down in Title IX of this Code. (Art. 1489-1534).

Art. 1258. — *Joint ownership how regulated.*

(1) Without prejudice to the mandatory provisions of the law, the rights and duties of joint owners shall be subject to the instrument wherefrom joint ownership originates and to the agreements entered into by the joint owners.

(2) Such provisions shall apply where no instrument or agreements as mentioned in sub-art. (1) are made or where such instrument or agreements are defective or contrary to law.

Art. 1259. — *Presumption of equality.*

The shares held by each joint owner shall be presumed to be equal.

Art. 1260. — *Rights on share.*

(1) Each joint owner may dispose of or pledge his share.

(2) The creditors of each joint owner may attach his share.

Art. 1261. — *Legal right of pre-emption.*

(1) Joint owners shall be legally entitled to compel any third party who acquires a share in the thing jointly owned to sell it to them.

(2) The right mentioned in sub-art. (1) shall be exercised in the manner prescribed by Chapter 4 of this Title (Art. 1386-1409).

Art. 1262. — *Surrender of share.*

(1) Where a joint owner surrenders his share in a thing jointly owned, such share shall accrue to the other joint owners.

(2) A joint owner who has surrendered his share shall be liable for the debts which he was liable for prior to surrender.

Art. 1263. — *Use of thing.*

Each joint owner may use the thing jointly owned in accordance with the purpose for which it was acquired and with due regard to the rights of the other joint owners.

Art. 1264. — *Increase.*

(1) The fruits of a thing jointly owned shall be jointly owned.

(2) Each joint owner may at any time apply for the partition of such fruits.

Art. 1265. — *Administration of thing jointly owned.* — 1. *Rule of majority.*

(1) A thing jointly owned shall be administered by the joint owners acting together.

(2) Decisions regarding such thing shall be taken by a majority vote of owners representing a majority share.

Art. 1266. — 2. *Decisions requiring unanimous consent.*

The consent of all the joint owners shall be required where the thing is to be disposed of, mortgaged or the purpose for which the thing was acquired changed.

Art. 1267. — 3. *Costs.*

The joint owners shall bear in proportion to their share the costs of administration, taxes and pledging or mortgaging the thing jointly owned and all other charges resulting from joint ownership or charging the thing jointly owned.

Art. 1268. — *Necessary expenses.*

(1) Where a joint owner without authority incurs expenses to avoid loss or damage to the thing jointly owned, the expenses shall be borne by all joint owners.

(2) No refund shall be payable where the expenditure was purposeless or was rendered necessary by the fault of the joint owner or a person responsible to such joint owner.

(3) A joint owner may relieve himself of his duty to share expenses by surrendering his share to the other joint owners.

Art. 1269. — *Expenses not necessary.* — 1. *Principle.*

(1) Where a joint owner without authority has incurred in connection with the thing jointly owned expenditure which was not necessary but increases the value, usefulness or appearance of such thing, he shall not be entitled to any refund of expenditure.

(2) He may restore the thing to its previous condition.

Art. 1270. — 2. *Increase.*

(1) The provisions of Art. 1269 shall not apply to expenditure incurred in the production or collection of fruits or crops.

(2) Where a joint owner without authority has incurred expenditure in the production or collection of fruits or crops, he shall deduct such expenditure before the proceeds from such fruits or crops are divided.

Art. 1271. — *Sale by auction of thing jointly owned.*

(1) Notwithstanding any provision to the contrary, each joint owner may at any time apply for the thing jointly owned, if a corporeal chattel, to be sold by auction.

(2) Where the time for sale is inappropriate the court may order that the thing shall remain jointly owned for a period not exceeding six months.

Art. 1272. — *Division of immovable jointly owned.* — 1. *Principle.*

(1) Each joint owner may at any time apply for the thing jointly owned, if an immovable, to be divided.

(2) Where division is contrary to the nature or purpose of the immovable or would reduce its value considerably or seriously impair the making use of it, the court shall order that the immovable be sold by auction and not divided.

Art. 1273. — 2. *Power of the court.*

(1) Where the time for division or sale by auction is inappropriate the court may order that the thing shall remain jointly owned for a period not exceeding two years.

(2) Where necessary, it shall appoint a person to administer the thing during the period specified in the order.

Art. 1274. — 3. *Agreement prohibiting division.*

(1) The right of a joint owner to apply for division may be prohibited by the act creating the joint ownership or by the subsequent unanimous agrement of the joint owners.

(2) Any such agreement shall be effective for not more than five years or for such shorter period as may have been fixed.

(3) An agreement which does not fix any period or fixes a period longer than five years shall be of no effect after five years.

Art. 1275. — *Provision for arbitration.*

(1) The act creating the joint ownership or an agreement entered into by the joint owners may provide that any dispute arising between joint owners in relation to the thing jointly owned shall be settled by one or more arbitrators.

(2) In such a case, the provisions of Art. 3307-3346 of this Code shall apply.

Art. 1276. — *Perpetual joint ownership.* — 1. *When possible.*

Joint ownership may be perpetual where this is accordance with the nature or purpose of the thing and the sale or division thereof is impossible or would be unreasonable.

Art. 1277. — 2. *Special agrement necessary.*

(1) Where a thing is in perpetual joint ownership, an agreement shall be made regarding the rights and duties of the joint owners and the administration of the thing.

(2) Failing unanimous agreement between the joint owners the court shall settle the terms of the agreement.

## Section 2. Special cases

### Paragraph 1. — Party-wall

**Art. 1278.** — *Liberty of owner.*

No person may compel his neighbour to build or repair a party-wall.

**Art. 1279.** — *Rebuilding party-wall.*

(1) Where a party-wall is destroyed and one of the owners refuses to share in its reconstruction, the other owner may rebuild it.

(2) Any wall thus rebuilt shall be the sole property of the owner who rebuilt it, notwithstanding that it is built partly on the neighbour's land.

(3) The owner who did not share in the reconstruction of the wall may at any time cause such wall to become a party-wall by paying to his neighbour half of the expenses incurred in rebuilding the wall.

**Art. 1280.** — *Rights on party-wall.*

A joint owner may not, without the consent of the other joint owner, raise the height of a party-wall, lean buildings against it, open holes therein or do any act implying full ownership.

### Paragraph 2. — Ownership of stories or suites of a building

**Art. 1281.** —*Parts of buildings deemed to be jointly owned.*

(1) Where floors or parts of a building are owned by different persons, such persons shall, in the absence of any evidence to the contrary, be deemed to be joint owners of the land and of such parts of the building as are not intended for the exclusive use of one owner only.

(2) The walls separating parts of a building shall be jointly owned by the owners of such parts.

**Art. 1282.** — *Joint ownership agreement.*

(1) The rights and duties of each joint owner and the manner in which the immovable jointly owned shall be managed shall be as provided in the joint ownership agreement regarding such immovable.

(2) The agreement shall fix the share of each joint owner in the parts jointly owned of the immovable.

**Art. 1283.** — *Form of agreement.*

An agreement regarding joint ownership shall be of no effect unless made in writing.

**Art. 1284.** — *Deposit of agreement.*

(1) A copy of the agreement shall be deposited with a notary or court registry at the place where the building is situate.

(2) Any interested party may have access thereto and be supplied with a copy thereof.

Art. 1285. — *Drawing up of agreement.*

(1) An agreement regarding joint ownership may be drawn up, prior to the building being built, by the prospective joint owners or by the person who undertakes the construction of the building to be jointly owned.

(2) Where the building has been completed, the agreement shall be drawn up by the syndicate of joint owners on the application of any joint owner.

(3) Failing unanimous consent of the joint owners, the terms of the agreement shall be settled by the court.

Art. 1286. — *Effect of agreement.*

The agreement may be set up against any person who claims to have a right on the building, where such right has been acquired after the agreement has been deposited in accordance with Art. 1284.

Art. 1287. — *Agreement not deposited.*

(1) The agreement whether deposited or not shall bind the joint owners. An instrument referring thereto shall bind such joint owners as have entered into it.

(2) It shall bind the heirs and creditors of such joint owners.

Art. 1288. — *Incomplete or unlawful agreement.*

The provisions of this Chapter shall apply where the agreement is defective or contrary to law.

Art. 1289. — *Parts not jointly owned.* — 1. *Principle.*

(1) Each joint owner shall exercise the rights of a full owner on such parts of the building as are his and are not jointly owned.

(2) He may in particular dispose of, rent or mortgage the part of which he is the full owner.

Art. 1290. — 2. *Application.*

Each joint owner shall have regard to the nature of the building and shall not exercise his rights to the detriment of the other owners.

Art. 1291. — *Parts jointly owned.* — 1. *Use.*

Each joint owner may, in exercising his rights on his share, make use of the parts jointly owned of the building in accordance with their purpose but so as not to disturb the rights of the other joint owners.

Art. 1292. — 2. *Charges.*

(1) Each joint owner shall share in the costs arising from the preservation, maintenance or administration of the parts jointly owned.

(2) Such costs shall be apportioned in accordance with the value of the respective shares.

Art. 1293. — *Syndicate of joint owners.* — 1. *Purpose.*

(1) Joint owners shall constitute a syndicate which shall act as their legal representative.

(2) The syndicate shall, in accordance with the agreement regarding joint ownership, make all decisions relating to the use and administration of the parts jointly owned.

Art. 1294. — 2. *Operation.*

(1) Each joint owner shall have a number of votes proportionate to the value of his share.

(2) He may be represented at meetings and vote by proxy.

Art. 1295. — 3. *Meetings.*

(1) The manager of the syndicate shall convene all meetings of the syndicate at the place where the building is situate.

(2) A meeting of the syndicate shall be convened where not less than five joint owners so require.

(3) The manner of convening and time of the meeting shall be fixed by the manager in a reasonable manner.

Art. 1296. — 4. *Decisions.*

(1) The decisions of the syndicate shall be taken by a majority vote.

(2) They shall be served by the manager on the joint owners who were not present or represented at the meeting.

Art. 1297. — 5. *Appeal.*

(1) Notwithstanding any provision to the contrary, any joint owner may appeal to the court against any decision, taken by the syndicate, to which he has not agreed and which is contrary to law or the agreement regarding joint ownership.

(2) The right of appeal shall be exercised within one month from the decision having been served on the joint owner concerned.

(3) Any judgment invalidating a decision of the syndicate shall be binding on all joint owners.

Art. 1298. — *Manager.* — 1. *Appointment.*

(1) The syndicate shall be managed by a manager who need not be a joint owner.

(2) He shall be appointed by the syndicate.

(3) Where necessary, a manager may be temporarily appointed by the court on the application of a joint owner.

Art. 1299. — 2. *Written authority.*

(1) The manager may require the syndicate to provide him with a written authority specifying his duties and powers.

(2) Where the manager is appointed for a period of time such period shall be specified in the written authority.

Art. 1300. — 3. *Remuneration.*

(1) Unless otherwise agreed, the manager shall not be remunerated.

(2) He shall be paid expenditure incurred on behalf of the syndicate.

Art. 1301. — 4. *Revocation.*

(1) The syndicate may at any time revoke the appointment of the manager, without prejudice to the right of the manager to claim such remuneration as may have been agreed.

(2) Any agreement to restrict revocation of the appointment of the manager for good cause shall be of no effect in particular where the manager commits a serious breach of duties or is incapable of carrying out his duties in a proper manner.

Art. 1302. — 5. *Duties.*

(1) The manager shall be responsible for the maintenance, security, cleanliness and repair of the parts jointly owned of the building.

(2) He shall convene the syndicate and shall enforce its decisions.

(3) He shall represent the syndicate and shall act on its behalf in judicial and extra-judicial relations.

Art. 1303. — *Liability.*

(1) The manager shall be liable to the syndicate in accordance with the provisions relating to agency.

(2) Notwithstanding any agreement to the contrary, an appeal shall lie to the court against any decision of the syndicate approving the accounts of the manager or relating to the manager's liability, where the manager or his representative took part in such decision.

Art. 1304. — *Loss of building.*

Where a building is a total loss by reason of fire or otherwise, any joint owner may apply for the land and remains of the building to be sold by auction.

Art. 1305. — *Partial destruction.* — 1. *Power of syndicate.*

Where a building is partially destroyed, the syndicate shall decide whether or not the building shall be rebuilt or repaired.

Art. 1306. — 2. *Decision to rebuild.*

(1) Where the syndicate decides to rebuild or repair the building, each joint owner shall bear the costs of rebuilding or repair in proportion to his share in the parts jointly owned of the building.

(2) No regard shall be had to the fact that some parts not jointly owned may have been destroyed or damaged and other parts of the same nature have not.

(3) Nothing shall affect cases where the damage caused to the building is attributable to a joint owner or a person for whom a joint owner is responsible.

Art. 1307. — 3. *Decision not to rebuild.*

(1) Where the syndicate decides not to rebuild or repair the building, such building, including the parts thereof as are not jointly owned, shall be sold by auction.

(2) The joint owners shall share in the proceeds of the sale in proportion to their share in the parts jointly owned of the building.

(3) The provisions of Art. 1306 (2) and (3) shall apply in such cases.

Art. 1308. — *Creditors of syndicate.*

Debts incurred following decisions taken by the syndicate shall be secured by the building, including such parts thereof as are not jointly owned, unless the joint owners or manager have personally and expressly undertaken to pay such debts from other property.

## Chapter 2. Usufruct

### Section 1. General Provisions

Art. 1309. — *Definition.*

(1) Usufruct is the right of using and enjoying things or rights subject to the duty of preserving their substance.

(2) It may apply to land, chattels, rights or an inheritance.

Art. 1310. — *References.*

(1) Unless otherwise provided, the rules governing the acquisition, transfer or loss of ownership of corporeal chattels shall apply to the acquisition, transfer or loss of an usufruct relating to corporeal chattels.

(2) Unless otherwise provided, the rules governing the acquisition, transfer or extinction of credits and other incorporeal rights shall apply to the acquisition, transfer and extinction of a right of usufruct relating to credits or other incorporeal rights or an inheritance.

Art. 1311. — *Rights of the usufructuary.*

(1) The usufructuary shall be entitled to the possession, use and enjoyment of the thing.

(2) He shall administer the thing.

Art. 1312. — *Management.*

In the exercise of his rights, the usufructuary shall comply with the rules of sound management.

Art. 1313. — *Upkeep of the thing.*

The usufructuary shall bear the normal costs of upkeep of the thing and management expenses, as well as the payment of interest upon debts charged thereon.

Art. 1314. — *Ordinary charges.*

(1) The usufructuary shall pay, when they are due, annual taxes and other charges on the thing which are normally paid out of the income.

(2) The usufructuary who has paid the land taxes charging an immovable may not claim to have thereby acquired the ownership of or a right on such immovable to the prejudice of the bare owner.

Art. 1315. — *Extraordinary charges.*

(1) Any extraordinary charge on the thing during the course of the usufruct shall be borne by the owner of the land.

(2) Where the usufructuary does not lend him the necessary sums without interest, the owner may, in order to pay such charge, sell things or rights to which the usufruct extends.

Art. 1316. — *Inventory.*

The owner and the usufructuary may at any time require that an inventory be made at the joint cost of both parties of the goods to which the usufruct extends.

Art. 1317. — *Restoration of thing.*

(1) The usufructuary shall restore the thing to the owner upon the termination of the usufruct.

(2) He shall be liable for the loss or deterioration of the thing unless he can show that such loss or deterioration occurred without any fault on his part.

Art. 1318. — *Rights in rem.*

(1) The usufructuary may not charge the thing to which the usufruct extends with any right in rem capable of impairing the rights of the owner.

(2) In particular, he may not give such thing in pledge to the prejudice of the rights of the owner.

(3) Where the usufructuary disregards the prohibitions laid down in this Article without the consent of the owner, the latter may terminate the usufruct without compensation.

Art. 1319. — *Loss of thing.*

(1) The usufruct shall be extinguished by the loss of the thing to which it extends.

(2) The usufruct shall extend to the equivalent value of the thing in case of its expropriation or requisition.

Art. 1320. — *Insurance.*

(1) The owner and the usufructuary may, where they think fit, insure their respective rights.

(2) Unless otherwise provided, the insurance effected by the owner shall not benefit the usufructuary.

(3) Unless otherwise provided, the insurance effected by the usufructuary shall not benefit the owner.

Art. 1321. — *Valuation of the goods.*

(1) Unless otherwise agreed, an assessment of the value of the goods to which the usufruct extends made in an inventory or any other instrument shall not transfer the ownership of the goods to the usufructuary.

(2) The usufructuary shall upon the termination of the usufruct restore the goods themselves to the owner and not the value at which they were assessed.

Art. 1322. — *Extinction of usufruct.*

(1) The usufruct shall terminate upon the death of the usufructuary or where the period of time for which it was created expires.

(2) The usufruct of bodies corporate or property with a specific destination shall terminate after thirty years or such shorter period as may have been fixed.

Art. 1323. — *Owner disposing of thing.*

(1) Without prejudice to the provisions of Art. 1315, any act whereby the owner disposes of the thing or right to which the usufruct extends shall not affect the rights of the usufructuary.

(2) The usufructuary shall retain his rights unless he has expressly waived them.

**Art. 1324.** — *Protection of the owner.*

(1) An owner who can show that his rights are in jeopardy may require sureties from the usufructuary.

(2) He may at any time require sureties prior to restoration where the usufruct extends to consumable goods.

(3) Where the usufructuary fails on request to produce sureties within a reasonable period of time or where after the owner has objected he continues to make unlawful use of the thing the court shall order the thing to be vested in a curatory.

## Section 2. Special rules regarding usufruct of corporeal goods

**Art. 1325.** — *Absence of liability of owner.*

(1) The usufructuary shall take the thing in the condition in which he finds it.

(2) He may not require the owner to repair it.

**Art. 1326.** — *Use of thing.*

(1) The usufructuary of a corporeal chattel may use it for normal purposes having regard to its nature.

(2) He shall not be liable to pay compensation for depreciation caused by ordinary wear and tear.

**Art. 1327.** — *Consumable things.*

(1) Where the usufruct relates to things which cannot be used without being consumed, the usufructuary shall become the owner thereof.

(2) Upon the extinction of the usufruct, he shall pay the value of the things calculated at the time the usufruct was created.

**Art. 1328.** — *Fruits.*

(1) The usufructuary shall become the owner of the natural fruits produced by the thing at the time when such fruits are in good faith separated from the thing according to its destination or custom.

(2) Fruits collected in excess of his entitlement shall be returned to the owner.

**Art. 1329.** — *Treasure.*

The usufructuary shall have no right on a treasure that might be discovered during the currency of the usufruct.

Art. 1330. — *Limits of rights of usufructuary.*

(1) The usufructuary may not abuse his rights.

(2) He may not substantially alter the thing to which the usufruct extends nor change its purpose.

(3) The owner may satisfy himself in a reasonable manner that the usufructuary complies with his duties under this Article.

Art. 1331. — *Leasing of the thing.*

(1) The usufructuary may lease the thing to which the usufruct extends.

(2) He shall become the owner from day to day of the rents produced by the thing.

Art. 1332. — *Termination of lease.*

(1) The leasing of the thing shall terminate when the usufruct itself terminates.

(2) Leases made in respect of a land or building between the usufructuary and a farmer or tenant shall bind the owner and third parties for a period of three years from the termination of the usufruct.

(3) Where the usufruct terminates, the owner may forthwith terminate any such lease where he can show that it was made in abnormal conditions and in fraud of his rights.

Art. 1333. — *Working plan.* — 1. *When necessary.*

The owner or usufructuary may require that a working plan be prepared in respect of the thing where the usufruct extends:

(a) to a thing such as a forest, the normal mode of exploitation of which does not consist in collecting fruits yearly or at shorter intervals; or

(b) to a thing such as a quarry, the substance of which diminishes in consequence of exploitation.

Art. 1334. — 2. *How prepared.*

(1) The working plan shall be prepared by agreement between the parties.

(2) Failing agreement, it shall be prepared by one or more experts appointed by the court and shall be approved by the court.

Art. 1335. — 3. *Alteration.*

The working plan may be altered on the request of either party where exceptional circumstances prevent its being carried into effect or it appears for economic reasons desirable that it be altered.

Art. 1336. — *Improvements.*

(1) Unless otherwise agreed, the usufructuary shall be entitled to no compensation for any improvement he may have made on the thing.

(2) He shall be entitled to no compensation for any building he may have made on the land given in usufruct.

(3) He may, upon the termination of the usufruct, take such building down and restore the land to its previous condition.

Art. 1337. — *Considerable repairs.* — 1. *Definition.*

Considerable repairs are repairs which entail an expense exceeding the average yearly income derived from the thing to which the usufruct extends.

Art. 1338. — 2. *Duties of usufructuary.*

(1) The usufructuary shall inform the owner where considerable repairs need be made for the preservation of the thing.

(2) He shall not himself make such repairs unless he rendered them necessary in particular by failing to maintain the thing since the usufruct originated.

Art. 1339. — 3. *Making of considerable repairs.*

(1) The owner shall not be bound to make considerable repairs on the thing.

(2) Where the owner decides to make considerable repairs, the usufructuary shall accept the inconvenience arising therefrom.

(3) In making the repairs, the owner shall have regard to the interests and convenience of the usufructuary.

Art. 1340. — *Debts under a mortgage.*

(1) The usufructuary shall not be liable for the debts under a mortgage charging the thing to which the usufruct extends.

(2) Where he has been compelled to pay them, he may require the owner to reimburse him.

Art. 1341. — *Action of usufructuary.*

(1) The usufructuary may claim the thing to which the usufruct extends.

(2) He may bring all actions relating to the possession of such thing.

Art. 1342. — *Duty to inform owner.*

(1) The usufructuary shall report to the owner any person who, during the currency of the usufruct, commits acts of usurpation or otherwise interferes with the rights of the owner.

(2) Where he fails so to inform the owner, he shall be liable for any damage as though he had himself caused the damage.

Art. 1343. — *Loss of thing.*

Neither the owner nor the usufructuary shall be bound to rebuild what has collapsed as a result of decay or has been destroyed by accident.

Art. 1344. — *Partial loss.*

Where part of the thing to which the usufruct extends is lost, the usufructuary shall retain his rights on what remains.

Art. 1345. — *Usufruct of flock.*

(1) Where the flock to which the usufruct extends is a loss by reason of accident or disease without the usufructuary being at fault, the usufructuary shall return the hides to the owner or refund their value.

(2) Where the flock is not a total loss, the usufructuary shall replace the animals lost out of the increase from breeding.

Art. 1346. — *Limitation.*

(1) Any claim arising from changes made in or damage occasioned to the thing shall be barred where the owner does not bring it within one year from the thing having been returned to him.

(2) The right of the usufructuary to remove any installation made by him shall be barred after the same period of time.

## Section 3. Special rules regarding usufruct of credits and incorporeal rights

Art. 1347. — *Income.*

The usufructuary of a credit or an incorporeal thing shall acquire the interests, arrears due and dividends on the day on which they mature.

Art. 1349. — *Subscription for new shares.*

(1) The usufructuary shall not acquire the ownership of exceptional profits which may derive from the right to which the usufruct extends.

(2) His right of usufruct shall extend to such profits.

Art. 1349. — *Subscription for new shares.*

(1) Where a preferential right of subscription is granted in respect of a share to which the usufruct extends, the right to subscribe for the new shares shall belong to the owner of the share.

(2) The usufructuary's right shall extend to the new shares subscribed for by the owner or to the proceeds of the sale of the subscription rights.

Art. 1350. — *Capital constituted by credit or right.*

(1) Where the credit or right to which the usufruct extends is satisfied or discharged during the usufruct the principal shall not be paid to the usufructuary unless the owner has agreed thereto.

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(2) Where the owner does not authorise the payment of the sum to the usufructuary, the debt shall be validly discharged where the debtor deposits the sum.

(3) The owner or usufructuary may demand that such deposit be made where the credit has matured.

Art. 1351. — *Usufruct of an annuity.*

The usufruct of an annuity shall enable the usufructuary during the term of the usufruct to collect arrears without being liable for compensation.

Art. 1352. — *Issue of distinct title deeds.*

(1) The owner or the usufructuary may require from the creditor or the establishment which issued the securities to which the usufruct extends that two separate title deeds be delivered to them at their cost evidencing their respective rights as owner and usufructuary.

(2) The provisions of sub-art. (1) shall not apply to bank notes.

## Section 4. Right of occupation of premises

Art. 1353. — *Definition.*

The right of occupation of premises is the right to live in a house or to occupy a part thereof.

Art. 1354. — *Beneficiary of right.*

Unless otherwise provided, whosoever benefits by a right of occupation of premises may live in the house concerned with his spouse, his direct ascendants or descendants and his servants.

Art. 1355. — *Right extending to part of a house.*

Where the right extends to part of a house, the beneficiary of such right may use all installations intended for common use.

Art. 1356. — *Expenses of maintenance.*

(1) The beneficiary shall bear the costs arising from ordinary maintenance repairs of a house or flat intended to be used by him only.

(2) Where the right of occupation is exercised concurrently with the right of the owner, the latter shall bear such costs.

Art. 1357. — *Right not transmissible.*

The right of occupation of premises is inalienable and shall not pass to the heirs of the beneficiary.

Art. 1358. — *Other provisions applicable.*

The provisions regarding usufruct shall apply in addition to those of this Section.

## Chapter 3. Servitudes

Art. 1359. — *Definition.*

(1) A servitude is a charge encumbering a land, hereinafter called the servient tenement, for the benefit of another land, hereinafter called the dominant tenement.

(2) A servitude imposes on the owner of the servient tenement the obligation to submit to the commission of some acts by the owner of the dominant tenement or to refrain from exercising some rights inherent in ownership.

Art. 1360. — *Obligation to do.*

A servitude may only accessorily cast upon the servient owner the burden to commit any act.

Art. 1361. — *Change of owner.*

(1) A servitude shall run with the land notwithstanding that the servient or dominant owner changes.

(2) Servitudes which have been registered in accordance with law shall follow the land into whatever hands it may pass.

Art. 1362. — *Creation of servitude.* — 1. *Contract or will.*

(1) A servitude may be created by agreement between the dominant and servient owner.

(2) It may be created by a will in which the owner of a land divides such land between two or more persons.

Art. 1363. — 2. *Creation evidenced by writing.*

The creation of a servitude shall be of no effect unless it is evidenced by writing.

Art. 1364. — 3. *Effect on third parties.*

A servitude shall be of no effect on third parties unless it has been entered in the register of immovables at the place where the servient tenement is situate.

Art. 1365. — *Interpretation of doubtful clauses.*

Where it is doubful whether a provision in an instrument creates a servitude running with the land or imposes a personal obligation on the owner of such land, such equivocal provision shall be deemed to impose a personal obligation and not to create a servitude.

Art. 1366. — *Acquisition of servitude by prescription* — 1. *Apparent servitude.*

(1) An apparent servitude may be acquired by enjoyment for ten years.

(2) A servitude is apparent where its existence is evidenced by some apparent sign.

Art. 1367. — 2. *Non-apparent servitude.*

A servitude which is not apparent may not be acquired by prescription.

Art. 1368. — 3. *Effect on third parties.*

(1) Whosoever has acquired an apparent servitude by prescription may require that the existence of the servitude be evidenced by an instrument specifying the extent of the servitude and that such servitude be entered in the register of immovables.

(2) A servitude acquired by prescription shall not affect third parties unless it has been entered in the register of immovables.

Art. 1369. — *Licence.*

(1) A licence to use a land in a particular manner shall not be deemed to be a servitude for the benefit of the person to whom such licence was given.

(2) The person who has given such licence may revoke it at any time.

Art. 1370. — *Extent of servitude.*

(1) The rights and obligations created by a servitude shall be as specified in the entry of such servitude in the register of immovables.

(2) Within the limits specified in sub-art. (1), the extent of a servitude may be ascertained having regard to the manner in which the servitude was created or peacefully enjoyed in good faith for a long period of time.

(3) In cases of doubt, the rights and obligations created by a servitude shall be governed by the provisions of the following Articles.

Art. 1371. — *Rights of way and rural servitudes.*

(1) Rights of way such as the right to traverse a parcel of land on foot, with animals, during the dead season, across fields or out of a wood shall be of such extent as is recognized by local custom.

(2) Rights of pasture, wood-cutting, watering animals, irrigation and other rural servitudes shall have the same extent.

Art. 1372. — *Means necessary for the enjoyment of servitude.*

(1) The existence of a servitude shall entail the existence of the means necessary for the enjoyment of such servitude.

(2) Whosoever benefits by a right to draw water from a well shall enjoy a right of way to such well.

**Art. 1373.** — *Necessary works.* — 1. *Principle.*

(1) The dominant owner may take any steps and construct any works necessary for the enjoyment and preservation of the servitude.

(2) Unless otherwise provided in the instrument creating the servitude, such works shall be constructed at the expense of the dominant owner.

**Art. 1374.** — 2. *Surrender of servient tenement.*

Where works as defined in Art. 1373 are under the instrument creating the servitude to be done at the expense of the servient owner, the latter may relieve himself of such obligation by surrendering to the dominant owner the whole servient tenement or such part thereof as is necessary for the enjoyment of the servitude.

**Art. 1375.** — *Duties of dominant owner.*

(1) The dominant owner shall exercise his rights so as to cause minimum inconvenience to the servient owner.

(2) He shall exercise his rights in accordance with the instrument creating the servitude and may not make on the dominant or servient tenement any alteration which would increase the burden of the servitude.

**Art. 1376.** — *New needs of dominant tenement.*

New needs occurring for the dominant tenement shall not increase the burden of the servitude.

**Art. 1377.** — *Division of dominant tenement.*

(1) Where the dominant tenement is divided, the servitude shall be maintained for the benefit of the owner of each new parcel but the burden of the servitude may not be increased in consequence thereof.

(2) For instance, all the dominant owners who benefit by a right of way shall traverse the servient tenement at the same place.

(3) Where the servitude benefits one parcel only, the servient owner may require that the corresponding entry be struck off the register of immovable as regards the other parcels.

**Art. 1378.** — *Division of servient tenement.*

(1) Where the servient tenement is divided, the servitude shall remain annexed to each new parcel of land.

(2) Where the servitude can materially not be exercised on a parcel, the owner thereof may require that it be struck off the register of immovables as regards his parcel of land.

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**Art. 1379.** — *Duties of servient owner.*

The servient owner may do nothing to reduce or impair the use of the servient tenement.

**Art. 1380.** — *Changing extent of servitude.*

Where a servitude is exercised on a part only of the servient tenement, the servient owner may, in appropriate cases and provided he pays all the expenses thereby occasioned, require that the servitude be exercised on such other part of the servient tenement as will be equally convenient to the dominant owner.

**Art. 1381.** — *Extinguishment of servitude.*

(1) A servitude entered in the register of immovables shall be extinguished where the entry is cancelled.

(2) An application for the cancellation of the entry may be made where the dominant owner has expressly released the servitude and such release is evidenced by writing.

(3) Such an application may also be made in respect of an apparent servitude where the apparent signs which evidenced its existence have disappeared or it has not been exercised for ten years.

**Art. 1382.** — *Partial extinguishment.*

A servitude may be extinguished by prescription in the same manner as it was created.

**Art. 1383.** — *Redeeming servitude.* — 1. *When possible.*

A servitude may be redeemed where:

(a) it is contrary to the interests of the national economy or some other public interest; or

(b) the benefits it entails for the dominant tenement are out of proportion with the inconvenience or damage it occasions to the servient tenement.

**Art. 1384.** — 2. *How done.*

(1) Failing agreement between the parties, the redeeming of a servitude shall be ordered by the court on the application of the servient owner.

(2) The court shall fix the amount of compensation (if any) due.

(3) In fixing such amount, the court shall have regard to all the circumstances of the case, in particular the date on which the servitude was created and the change which the servitude occasions to the value of the dominant and servient tenements.

Art. 1385. — *Provision excluding redemption.*

The parties may, in the instrument creating a servitude or in a subsequent instrument, exclude for a period not exceeding ten years the right to apply to the court for the redemption of such servitude.

## Chapter 4. Right of recovery

Art. 1386. — *Definition.*

The right of recovery is the right of a person to recover against payment a particular thing given to a third party in ownership or usufruct.

Art. 1387. — *No right arising from usage.*

No right of recovery shall arise from mere usage even though immemorial.

Art. 1388. — *Right of recovery of joint owners.*

(1) The joint owners shall have a legal right of recovery where a share in the thing jointly owned is disposed of.

(2) The joint owners shall exercise their right of recovery concurrently, in proportion to their share in the thing jointly owned.

(3) Where one or more of them waive their right of recovery, such right may be fully exercised by the other joint owners.

Art. 1389. — *Right of recovery of parents.* — 1. *Principle.*

The relatives by consanguinity of a person who alienates a land shall have a legal right of recovery.

Art. 1390. — 2. *Origin of land.*

(1) A person may not exercise his right of recovery unless he was a relative in the paternal line of the person from whose succession he who alienates the land received it, where such land comes from the paternal line.

(2) A person may not exercise his right of recovery unless he was a relative in the maternal line of the person from whose succession he who alienates the land received it, where such land comes from the maternal line.

Art. 1391. — 3. *Order to be followed.*

The right of recovery of the parents shall be exercised in the order in which such persons are called to an intestate succession (Art. 842-851).

Art. 1392. — 4. *Priority given to certain persons.*

Within the limits laid down in Art. 1390 and 1391, the right of recovery shall be exercised first by those relatives of the person alienating the land who live on such land or participate by their personal work in its exploitation.

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Art. 1393. — *More than one beneficiary.*

(1) Where several persons of the same order may exercise a right of recovery, such persons shall exercise their right together and shall jointly own the land in which they shall have equal shares.

(2) The share of those who have failed to exercise their right shall accrue to the others.

Art. 1394. — *Classification of rights of recovery.*

The rights of recovery provided by law shall be exercised in the following order:

(a) by the joint owners;

(b) by the parents.

Art. 1395. — *Right of recovery may not be exercised against certain persons.*

A person may not exercise his right of recovery against another person who benefits by a right of recovery, even though inferior in order under Art. 1394.

Art. 1396. — *Right of recovery may not be exercised in certain cases.*

The parents may not exercise their right of recovery under the preceding Articles where the land alienated is situate in a town-planning area or the immovable alienated consists mainly of a dwelling-house or some other building.

Art. 1397. — *Right not transmissible.*

(1) All the rights of recovery provided by law shall be personal to him who benefits thereby under the law.

(2) Rights of recovery are inalienable.

(3) They may not be exercised by the creditors of the beneficiaries.

Art. 1398. — *Cases where right of recovery may be exercised.*

The beneficiary of a right of recovery may exercise it where:

(1) the owner or usufructuary of a thing alienates his ownership or usufruct for consideration; or

(2) the thing is seized at the request of a creditor of the owner.

Art. 1399. — *Expropriation.*

The beneficiary of a right of recovery may not exercise it where the immovable is expropriated by the public authorities.

Art. 1400. — *Time for exercising right.* — 1. *Notice of transfer.*

Whosoever intends to exercise his right of recovery shall, under pain of losing his right, declare his intention within two months from having been informed that the ownership or usufruct of the thing has been transferred to a new owner or usufructuary.

Art. 1401. — 2. *Failure to give notice.*

(1) Where the beneficiary, if a joint owner, has not been informed of the transfer, he shall declare his intention to exercise his right within one month from the day when he knew of the transfer.

(2) The parents shall in the same circumstances declare their intention within six months from the day when the new owner or usufructuary took possession of the immovable.

Art. 1402. — *Declaration to whom made.*

Whosoever intends to exercise his right of recovery shall give notice to the new owner or usufructuary thereof within the periods of time laid down in Art. 1400 and 1401.

Art. 1403. — *Duty to produce securities.*

Any declaration by the beneficiary that he intends to exercise his right shall be of no effect unless it be accompanied by securities which are sufficient in the opinion of the court to guarantee payment of the price.

Art. 1404. — *Effect of declaration.*

(1) Where the beneficiary of a right of recovery has declared his intention to exercise his right, such declaration shall only affect the beneficiary.

(2) Any such declaration made by a relative of the former owner acting in such capacity shall affect all the relatives of the same order who may decide to associate themselves with such declaration.

(3) A decision under sub-art. (2) shall be of no effect unless it is made within six months from the declaration and accompanied by sufficient securities to guarantee that the person having made the declaration shall pay the price.

Art. 1405. — *Effect of recovery.*

(1) Where the beneficiary of a right of recovery has declared in the manner provided by the preceding Articles his intention to exercise his right, the owner shall transfer his rights on the immovable to such beneficiary.

(2) He shall do so as soon as the payments due to him have been made.

Art. 1406. — *Right of owner.* — 1. *Payment of price.*

(1) The owner shall be refunded with the price he paid for the thing.

(2) He may not prove that the price shown in the contract is less than what he actually paid.

(3) The beneficiary may prove by all means that the price shown in the contract is higher than the price actually paid.

Art. 1407. — 2. *Value of immovable.*

(1) Where an immovable has been acquired gratuitously, the owner thereof shall be entitled to an amount of compensation equal to the value of the rights of which he is deprived.

(2) Failing agreement between the parties, such amount shall be fixed in accordance with the provisions of Art. 1472-1477.

Art. 1408. — 3. *Accessories.*

(1) The owner shall be refunded with the expenses he made at the time of acquisition and which arise from the making of the transfer deed and transfer charges.

(2) Legal interest on the price and expenses shall run in his favour from the day such price has been paid and expenses made until he is refunded therewith.

(3) The person exercising his right of recovery may relieve himself of the duty to pay interest by surrendering to the former owner the fruits which the immovable produces during one year from the new owner having taken possession thereof.

Art. 1409. — 4. *Expenses.*

The provisions of the Chapter of this Code relating to "Unlawful enrichment" shall apply as regards the expenses made by the owner on the immovable and the deteriorations occasioned to the immovable when it was in the possession of the owner (Art. 2162-2178).

## Chapter 5. Restrictions on the right to dispose of certain things

### Section 1. Contractual rights of purchase or pre-emption

Art. 1410. — *Definition.*

(1) A promise of sale is an agreement whereby the owner of a thing undertakes to sell such thing to a specified person, should such person wish to buy it.

(2) A right of pre-emption is a right deriving from an agreement whereby the owner of a thing undertakes to sell such thing in preference to a specified person, should the owner decide to sell it.

Art. 1411. — *Scope of this Chapter.*

(1) An agreement for a promise of sale or right of pre-emption shall not constitute a restriction on ownership under this Section nor shall it give rise to a right in rem unless it relates to an immovable or a specific chattel.

(2) The rights in obligations which it creates for the parties shall be as provided by Books IV and V of this Code.

(3) The provisions of the following Articles shall only apply to rights in rem created by such agreement.

Art. 1412. — *Conditions for validity.*

An agreement under this Section shall be of no effect unless it is made in writing and specifies the time within which and price for which the person in whose favour the agreement is made may require its performance.

Art. 1413. — *Maximum time limit.*

(1) No agreement under this Section shall be effective for more than ten years.

(2) Where the period fixed in the agreement is longer than ten years, it shall be reduced to ten years.

Art. 1414. — *Expropriation.*

The beneficiary of a right of recovery may not exercise his right with regard to immovable property which is expropriated.

Art. 1415. — *Right not transmissible.*

(1) Unless otherwise agreed, rights granted by agreements under this Section shall attach solely to the person in whose favour the agreement was made.

(2) Such rights may not be alienated by such person nor shall they pass to his heirs.

(3) The creditors of such person may not exercise his rights in his stead.

Art. 1416. — *Promise of sale.* — 1. *Creation of rights in rem.*

(1) Whosoever has promised to sell a thing to another may not alienate such thing nor charge it with a right in rem for so long as the promise is effective.

(2) Notwithstanding the provisions of sub-art. (1), the thing may be pledged or mortgaged but for an amount not exceeding the price fixed in the agreement whereby the promise was made.

Art. 1417. — 2. *Attachment of thing.*

(1) Where the thing to which the promise relates is attached, the owner shall give notice thereof to the person in whose favour the promise was made.

(2) Such person shall lose his right if he fails to exercise it prior to the thing being sold by auction.

Art. 1418. — *Right of pre-emption.* — 1. *Creation of rights in rem.*

(1) Unless otherwise agreed, whosoever has granted a right of pre-emption on a thing may create rights in rem on such thing.

(2) Where he intends to sell the thing, he shall inform the beneficiary of the right of pre-emption of all the charges existing on such thing.

(3) Where the thing is attached, the owner shall give notice thereof to the beneficiary of the right of pre-emption.

Art. 1419. — 2. *Time for exercising right.*

(1) A right of pre-emption shall be exercised within two months from the beneficiary having been informed of the owner's intention to sell.

(2) The parties may by agreement extend this period to one year.

(3) Where a period exceeding one year has been agreed, it shall be reduced to one year.

Art. 1420. — 3. *Failure to exercise right.*

(1) The beneficiary shall lose his right where he fails to exercise it within the time laid down in Art. 1419.

(2) The owner may thereupon freely alienate the thing.

(3) He may also retain the ownership thereof.

Art. 1421. — 4. *Attachment.*

(1) Where the thing to which the right relates is attached, the beneficiary shall lose his right where he fails to exercise it prior to such thing being sold by auction.

(2) Any provision to the contrary shall be of no effect.

Art. 1422. — *Effect on third parties.* — 1. *Conditions.*

Agreements under this Section which relate to registered immovables shall not affect third parties unless they have been entered in the register of immovables.

Art. 1423. — 2. *Other immovables.*

(1) Agreements under this Section which relate to other immovables shall not affect third parties unless they have been registered in the registry of the court of the place where the immovable is situate.

(2) Failing registration, such agreements shall only affect such third parties as knew or should have known them.

Art. 1424. — 3. *Movables.*

Agreements under this Section which relate to movables shall only affect such third parties as knew or should have known them.

Art. 1425. — 4. *Right of beneficiary.*

(1) Where an agreement under this Section may be set up against third parties, the beneficiary may require any third party who has acquired the ownership of an immovable in violation of the rights of the beneficiary to surrender such immovable to him on the conditions laid down in the agreement creating the right of pre-emption.

(2) Notwithstanding any agreement to the contrary, the beneficiary shall lose his right where he fails to exercise it within six months from the third party having taken possession of the immovable.

(3) Nothing shall affect the right of such third party to bring an action against the person from whom he acquired the immovable.

## Section 2. Provisions prohibiting assignment or attachment of certain things

Art. 1426. — *Provisions relating to corporeal chattel.*

(1) Provisions whereby the producer, maker, seller or owner of a corporeal chattel limits its assignment or attachment shall affect such persons only as accept them.

(2) They shall not affect third parties unless they are expressly permitted by law.

Art. 1427. — *Immovable.*

The owner of an immovable may not except in the cases provided by law stipulate that it may not be assigned or attached.

Art. 1428. — *Right of person assigning immovable.*

(1) Whosoever assigns an immovable may prohibit the person acquiring it from assigning such immovable or may subject any further assignment to specific conditions.

(2) He may stipulate that the immovable shall not be liable to be attached in the hands of the person who acquires it.

Art. 1429. — *Interpretation of provisions.*

(1) Any prohibitive or restrictive provision as defined in Art. 1428 shall be interpreted in a restrictive manner.

(2) A provision prohibiting assignment shall thus not be deemed to prohibit attachment.

Art. 1430. — *Form of provision.*

A provision prohibiting assignment or attachment shall be of no effect unless it is made in writing and specifies the duration of the prohibition.

Art. 1431. — *Maximum period.*

(1) No restrictive or prohibitive provision shall be effective for more than twenty years or more than the life of the person who acquires the immovable.

(2) A provision made for more than twenty years shall be effective for twenty years only.

(3) The periods mentioned in this Article may not be reckoned from a day later than that when the ownership of the immovable was transferred.

Art. 1432. — *Effect on third parties.*

A prohibitive or restrictive provision shall not affect third parties unless it has been entered in the register of immovables.

Art. 1433. — *Power of the court.* — 1. *Provision prohibiting attachment.*

Notwithstanding any provision to the contrary, the court may authorise the attachment of an immovable in respect of which a provision prohibiting attachment was made where:

(a) the creditor applying for attachment requires the payment of alimonies due to the owner of the immovable or to another person to whom the owner is bound by an obligation of maintenance; or

(b) the claim arises from a criminal offence committed by the owner.

Art. 1434. — 2. *Provision prohibiting assignment.*

(1) The court may authorise the assignment of an immovable in respect of which a provision prohibiting assignment was made, where it is of opinion that the interest of the owner requires that such immovable be assigned.

(2) The parties may by express agreement set aside the power vested in the court.

(3) The court may not grant an authorisation under sub-art. (1) where the person who has transferred the ownership of the immovable is alive and capable of expressing his will.

Art. 1435. — *Effect of provision prohibiting attachment.* — 1. *Owner of immovable.*

(1) The owner of an immovable in respect of which a provision prohibiting attachment was made may enforce such provision as long as the immovable has not been sold by auction following attachment.

(2) Any anticipated waiving of the right to enforce such provision shall be of no effect.

(3) The owner shall be liable for the costs of attachment where he failed to inform in due time the creditor of the existence of the provision prohibiting attachment.

Art. 1436. — 2. *Other persons.*

(1) A provision prohibiting attachment may be enforced by the person who made this provision or by a third party appointed by such person to ensure compliance with such provision.

(2) Where the owner of the immovable does not propose to enforce this provision himself, he shall give notice of the attachment to the person entitled to enforce it under sub-art. (1).

(3) Notice shall be given to the same person by the creditor proceeding to attachment.

Art. 1437. — 3. *Time for enforcing provision.*

(1) Where a person who has been informed of the attachment proposes to enforce the provision prohibiting attachment, he shall do so under pain of losing his right prior to the attached immovable being sold by auction.

(2) Where such person has not been informed of the attachment, he may enforce the provision within two years from the sale by auction.

(3) The periods of time laid down in this Article may not be extended in the instrument providing for the prohibition of attachment.

Art. 1438. — 4. *Duty of purchaser.*

(1) Whosoever enforces a provision prohibiting attachment may require the person having acquired the immovable at the sale by auction to transfer it to him and shall in such case pay the price fixed in the instrument providing for prohibition or, where no price has been fixed therein, the price at which the immovable was knocked down to the purchaser.

(2) The provisions of the Chapter of this Code relating to "Unlawful enrichment" shall apply as regards the expenses made by the purchaser on the immovable and the deteriorations occasioned to the immovable when it was in the possession of the purchaser (Art. 2162-2178).

Art. 1439. — 5. *Position of subsequent owner.*

(1) Where the purchaser at the auction sale has assigned the immovable, the provision prohibiting attachment may not be enforced against the new owner unless he is shown to have known of the prohibition or he acquired the immovable gratuitously.

(2) Where the provision may be enforced, the new owner shall be in the same position as the purchaser at the auction sale would have been.

(3) The provision shall lapse where it may not be enforced.

Art. 1440. — *Effect of provision prohibiting assignment.* — 1. *Who may enforce it.*

(1) The owner who has assigned an immovable in violation of a provision prohibiting assignment may not invoke such provision to the detriment of the buyer.

(2) The said provision may only be enforced by the person having stipulated the prohibition or by a third party appointed by such person to ensure compliance with such provision.

Art. 1441. — 2. *Time limit.*

A provision prohibiting assignment may not be enforced except within two years from the assignment of the immovable and prior to the expiry of the period fixed in Art. 1431.

Art. 1442. — 3. *Enforcement.*

(1) The person who stipulated the prohibition or such other person as is entitled to do so under the instrument providing for prohibition may, within the period fixed in Art. 1441, exercise a right of pre-emption on the immovable on the conditions laid down in the instrument providing for prohibition.

(2) Nothing shall affect the right of the purchaser to bring an action against the person from whom he bought the immovable.

Art. 1443. — *Trusts.*

Nothing shall affect those provisions in the Title of this Code relating to "Bodies corporate and property with a specific destination" which deal with trusts (Art. 516-544).

# TITLE IX. COLLECTIVE EXPLOITATION OF PROPERTY

## Chapter 1. Public domain and expropriation

### Section 1. Public domain

Art. 1444. — *Provisions applicable to State property.*

(1) Property belonging to the State or other administrative bodies shall be subject to the provisions relating to property privately owned.

(2) Such property shall be subject to the provisions of this Section where it forms part of the public domain.

Art. 1445. — *Public domain.* — 1. *Principle.*

Property belonging to the State or other administrative bodies shall be deemed to form part of the public domain where:

(a) it is directly placed or left at the disposal of the public; or

(b) it is destined to a public service and is, by its nature or by reason of adjustments, principally or exclusively adapted to the particular purpose of the public service concerned.

Art. 1446. — 2. *Immovables.*

The following property, if owned by the State or other administrative bodies, shall be deemed to form part of the public domain:

(a) roads and streets, canals and railways; and

(b) seashores, port installations and lighthouses; and

(c) buildings specially adapted for public services such as fortifications and churches.

Art. 1447. — 3. *Water.*

(1) Waterways, lakes and underground accumulations of water shall be deemed to form part of the public domain.

(2) The ownership and use of water shall be governed by the provisions of Art. 1228-1256 of this Code.

Art. 1448. — 4. *Movables.*

Movables which are placed at the disposal of the public by a public service or entrusted to the custody of a public service shall be deemed to form part of the public domain.

Art. 1449. — *Limits of public domain.*

(1) The competent authorities shall fix the natural limits of waterways and seashores.

(2) Third parties injured by a decision fixing such limits may be granted compensation in accordance with the provisions relating to expropriation, where the court is of opinion that the decision of the authorities is not justified.

(3) The court may not revoke such decision.

Art. 1450. — *Expropriation and alignment.*

(1) The competent authorities may, by way of expropriation proceedings, obtain the land necessary for the creation of roads or streets.

(2) Such authorities may, by way of alignment proceedings, widen or straighten existing roads or streets.

Art. 1451. — *Alignment.* — 1. *Unbuilt land.*

Where an alignment plan shows that unbuilt land is within public ways, such land shall forthwith be incorporated to such public ways.

Art. 1452. — 2. *Built land.*

(1) Where an alignment plan shows that built land is within public ways, such land shall be charged with a servitude to draw back.

(2) The owner of such land may not do any work for the purpose of consolidating any building on such land.

Art. 1453. — 3. *Compensation.*

The provisions of Art. 1470-1477 of this Code shall apply as regards compensation due to persons whose rights are taken away or restricted under Art. 1451 or 1452.

Art. 1454. — *Public domain inalienable.*

Property forming part of the public domain may not be alienated unless it has been declared no longer to form part of the public domain.

Art. 1455. — *Possession in good faith and usucaption.*

Property forming part of the public domain may not be acquired by possession in good faith or usucaption.

Art. 1456. — *Concession.*

Property forming part of the public domain may be given in concession to private persons, provided that no such concession may have the effect of modifying the purpose of such property.

Art. 1457. — *Occupation of public domain.*

(1) No property forming part of the public domain may be occupied by a private person except with the authorisation of the competent authorities.

(2) Such authorisation shall specify whether the person concerned may construct works on the property and the nature of such works.

(3) The authorisation shall specify the time for which it is granted and the dues (if any) to be charged.

Art. 1458. — *Failure to discharge obligations.*

A concession granted under Art. 1456 or authorisation given under Art. 1457 may be revoked at any time where the beneficiary fails to discharge his obligations.

Art. 1459. — *Right of competent authorities.*

(1) Notwithstanding any agreement to the contrary, the competent authorities may at any time order the destruction of any work or the cessation of any activity which impairs the existence or purpose of the property forming part of the public domain.

(2) Any concession granted or authorisation given may in such case be revoked.

(3) Nothing shall affect the right of the person to whom such concession or authorisation was granted to claim compensation in accordance with the provisions of the Title of this Code relating to "Administrative contracts".

## Section 2. Expropriation

Art. 1460. — *Definition.*

Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes.

Art. 1461. — *Other purposes of expropriation.*

(1) Expropriation proceedings may be used for acquiring or extinguishing a right of usufruct, a servitude or other rights in rem on an immovable.

(2) Such proceedings may be used for terminating prior to the agreed term a contract of lease relating to an immovable the property of the public authorities.

Art. 1462. — *Concession.*

Persons who have been granted concessions of whatever nature by the competent authorities may not use expropriation proceedings unless they are entitled to do so under the concession.

Art. 1463. — *Declaration of public utility.*

The project which renders expropriation necessary shall first be declared to serve the public interest by the competent authorities and a notice to this effect shall be published in accordance with Art. 44 of the Constitution.

Art. 1464. — *Concept of public utility.*

(1) Expropriation proceedings may not be used for the purpose solely of obtaining financial benefits.

(2) They may be used to enable the public to benefit by the increase in the value of land arising from works done in the public interest.

Art. 1465. — *Inquiry.*

(1) Where a public inquiry appears to be necessary, the declaration of public utility shall not be made until the public interest has been consulted.

(2) Any interested party may, in the course of such inquiry, express his views or criticise the contemplated project.

(3) The competent authorities shall fix in accordance with regulations the manner and time of such inquiry.

Art. 1466. — *Determining land subject to expropriation.*

(1) Where it has been declared that a project serves the public interest, the competent authorities shall determine which immovables require to be expropriated to enable the carrying out of the project.

(2) The owners, bare owners and usufructuaries shall be personally notified of the contemplated expropriation.

(3) They shall be required to express within a reasonable time fixed by the authorities their views on the necessity of such expropriation.

Art. 1467. — *Expropriation order.*

(1) Immovables shall be expropriated upon expropriation orders being made.

(2) Such orders shall transfer to the competent authorities the ownership of the immovable concerned free of any encumbrance.

(3) Nothing shall affect the claims of third parties against the competent authorities or on the compensation due by such authorities to the owner of an expropriated immovable.

Art. 1468. — *Service of order.*

(1) An expropriation order shall be served on the owner concerned and on any person whose rights on the expropriated immovable have been entered in the register of immovables.

(2) It shall be served on any person whom the owner designates to the competent authorities as having a right on the immovable.

Art. 1469. — *Partial expropriation.*

(1) Where part of a building is expropriated, the owner may demand that the whole building be expropriated.

(2) Where part of a land is expropriated, the owner may demand that the whole land be expropriated where partial expropriation renders useless that part of the land which is not expropriated.

(3) The provisions of this Article shall apply as regards their respective rights to the bare owner and usufructuary of an expropriated immovable.

Art. 1470. — *Fixing amount of compensation.*

The owner, bare owner and usufructuary of an expropriated immovable and any person who benefits by a servitude on such immovable shall, within one month from having been served with the expropriation order, inform the competent authorities of the amount of compensation they claim.

Art. 1471. — *Objection to payment of compensation.*

Any interested party may, within the period mentioned in Art. 1470, inform the competent authorities that he objects to the compensation being fixed below a specified amount or paid in fraud of his rights.

Art. 1472. — *Dispute on amount of compensation.*

Where the competent authorities do not accept the amount of compensation claimed by an interested party, such amount shall be fixed by an arbitration appraisement committee.

Art. 1473. — *Arbitration appraisement committee.*

(1) The arbitration appraisement committee shall comprise such members, conduct their proceedings and make their award as prescribed.

(2) It shall have as its sole duty to fix the amount of compensation to be paid by the competent authorities.

(3) It shall not decide on any dispute regarding the rights giving rise to compensation.

Art. 1474. — *Amount of compensation.* — 1. *Principle.*

(1) The amount of compensation or the value of the land that may be given to replace the expropriated land shall be equal to the amount of the actual damage caused by expropriation.

(2) The amount of damage shall be that which is assessed by the committee on the day when it makes its decision.

Art. 1475. — 2. *Elements to be taken into account.*

(1) In making its decision, the committee shall take into account any statement which the parties concerned may have previously made regarding the value of the property or rights expropriated.

(2) It shall take into account the increase of value arising from the construction of public works.

Art. 1476. — 3. *Elements not to be taken into account.*

(1) The committee shall not take into account any building or improvement made after the service of the expropriation order for the purpose of obtaining a greater amount of compensation.

(2) It shall not take into account any speculative increase of value arising from the announcement that public works are to be constructed.

Art. 1477. — *Appeal.*

(1) An appeal shall lie to the court from the decisions of the committee.

(2) Such appeal shall be made within three months from the decision of the committee having been served on the interested party.

Art. 1478. — *Taking possession of immovable.*

(1) The competent authorities may not take possession of an expropriated immovable until they have paid the amount of compensation fixed.

(2) Where the owner appeals against the amount fixed by the committee, the competent authorities may take possession of the immovable after having paid such amount to the owner. Any additional sum shall be paid where the court so orders. The court may in no case reduce such amount.

(3) Where compensation is paid by way of land given to the owner in substitution for the expropriated land, such land shall be handed to the owner upon the committee having made its decision. The owner may receive additional compensation in cash where the court so orders.

(4) Where the competent authorities appeal against the amount fixed by the committee, the expropriation order may not be executed until the court makes its decision. The owner shall be reinstated in his rights and need not comply with the expropriation order where the amount of compensation is not finally fixed by the court within one year from the appeal having been made.

(5) Where the amount of compensation is in dispute or an objection is made to its payment, the competent authorities may take possession of the immovable after having deposited the amount to which the dispute or objection relates.

Art. 1479. — *Increase of compensation by the court.*

(1) Where in the circumstances defined in Art. 1478 (2) the court increases the amount of compensation, such increase shall be paid to the owner within one month from the judgment having become final.

(2) So shall any additional compensation granted to the owner who was given land in substitution for the expropriated land.

Art. 1480. — *Conditional expropriation.*

(1) The competent authorities may inform all interested parties where a conditional decision to expropriate is made for the purpose of asses-

sing the expenses which the carrying out of the project would entail.

(2) The provisions of the preceding Articles shall in such case apply prior to an expropriation order being made.

Art. 1481. — *Liability.* — 1. *Threat of expropriation.*

No person may require to be indemnified by the competent authorities for any damage that may have been caused to him by a threat of expropriation.

Art. 1482. — 2. *Appraisement expenses.*

(1) Expenses arising from the fixing of the compensation shall be borne by the competent authorities where the amount claimed by the interested party and not accepted by the authorities is ultimately found justified.

(2) Such expenses shall be borne by the interested party who has claimed an amount ultimately found excessive to the extent of such excess.

Art. 1483. — *Abandoning project.* — 1. *Principle.*

Where the project in view of which expropriation was ordered is abandoned, the former owners shall have a right of pre-emption on their former property.

Art. 1484. — 2. *Right of pre-emption.*

(1) The right of pre-emption referred to in Art. 1483, even in the absence of registration, shall be effective with regard to third parties for a period of one year from the competent authorities reselling the immovable or granting to a third party on the immovable a right incompatible with the carrying out of the project.

(2) The conditions and effects of such right shall be as provided by Art. 1410-1425 of this Code.

(3) Whosoever exercises his right of pre-emption shall have to pay as a price the amount he received in compensation for expropriation.

Art. 1485. — *Indirect expropriation.* — 1. *Principle.*

The competent authorities may, without using expropriation proceedings, construct works or set up permanent installations on land privately owned, where such works or installations do not seriously impair the rights of the owner or notably reduce the value of the immovable.

Art. 1486. — 2. *Application.*

The following works may be carried out by way of indirect expropriation:

(a) works executed within less than one month which do not impair the normal exploitation of the immovable; and

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(b) installation of underground pipes, aerial lines, poles or pylons.

Art. 1487. — 3. *Restriction.*

Indirect expropriation may never have the effet of impairing rights on dwelling-houses.

Art. 1488. — 4. *Compensation.*

(1) In cases of indirect expropriation, the owner may claim compensation for the damage caused by the works and installations done on his land.

(2) Failing agreement with the competent authorities, a claim for compensation shall be barred if it is not made within three years from the work having been done.

## Chapter 2. Agricultural communities

Art. 1489. — *Principle.*

Land owned by an agricultural community such as a village or tribe shall be exploited collectively whenever such mode of exploitation conforms to the tradition and custom of the community concerned.

Art. 1490. — *Codification of custom.*

The Ministry of Interior shall take steps to ensure that every community draws up a charter detailing the custom of such community and, where appropriate, the supplementary provisions to give effect thereto.

Art. 1491. — *Contents of charter.*

The charter shall specify in particular:

(a) the persons or families composing the community; and

(b) the land to which the rights of the community extend; and

(c) the manner in which the community is administered and its authorised representative; and

(d) the manner in which the land or other resources of the community are allotted and exploited; and

(e) the conditions on which the charter may be amended.

Art. 1492. — *Discriminations prohibited.*

Any provision or custom creating between the members of a community discriminations based on race, religion or social condition shall be of no effect.

Art. 1493. — *Land inalienable.*

(1) Land owned by an agricultural community may not be acquired by usucaption.

(2) Notwithstanding any custom to the contrary, a community may not alienate or mortgage its land nor charge it with an antichresis except with the written permission of the Ministry of Interior.

Art. 1494. — *Duties and representation of the community.*

(1) The community may enter into agreements through its authorised representative.

(2) It may in the same manner sue or be sued.

(3) The provisions of the Title of this Code relating to "Extra-contractual liability and Unlawful enrichment" (Art. 2027-2178) shall apply to agricultural communities on the same conditions as they apply to associations.

Art. 1495. — *Rights of creditors.*

(1) The creditors of the community may attach such movables belonging to the community as are not necessary for the exploitation of the land or the maintenance of the members of the community.

(2) They may not attach other property except with the written permission of the Ministry of Interior.

Art. 1496. — *Exploitation of land.* — 1. *Principle.*

The mode of exploitation of land owned by a community shall be prescribed by the charter or, failing such, by custom.

Art. 1497. — 2. *Modalities.*

(1) There shall be specified whether the land may be divided into plots allotted for the exclusive use of the members of the community or whether the land shall be exploited collectively.

(2) There shall be specified the respective rights of the community and the members thereof on the land owned by the community.

(3) There shall be specified the time when and conditions on which a decision allotting parcels of land to members may be revised.

Art. 1498. — *Revision of custom.*

(1) The Ministry of Interior shall, as circumstances shall permit, encourage the revision of the custom of communities, so as to ensure the economic progress of such communities and the implementation of the principles of justice and morality enshrined in the Ethiopian Constitution.

(2) Any custom or provision whereby the custom or some usages of the community may not be revised or may be revised on unreasonable conditions only shall be of no effect.

Art. 1499. — *Appeal.*

Any interested party or the public prosecutor may appeal to the court against any decision taken by a community where such decision:

(1) is contrary to the provisions of the Ethiopian Constitution, the mandatory provisions of this Code or other Ethiopian laws; or

(2) has been taken by the authorised representatives of the community in excess of their powers or in violation of fundamental rules of procedure or justice.

Art. 1500. — *Public order.*

Any custom or provision excluding the right of appeal referred to in Art. 1499 or subjecting the exercise of such right to unreasonable conditions shall be of no effect.

## Chapter 3. Official associations of landowners

### Section 1. Formation of association

Art. 1501. — *Areas of improvement.*

Where considerable works are to be done in a given area in consequence of which the value of the parcels of land situate within such area will be altered, such area may be declared to be an improvement area by Imperial Decree and the landowners within the area may by the same Decree be constituted into an official association of landowners.

Art. 1502. — *Formation by owners.*

The owners of land within a given area may of their own motion constitute themselves into an association of landowners for the purpose of exploiting such area collectively or doing within such area collective works for its improvement.

Art. 1503. — *Application for approval.*

An association of landowners which consists of not less than one half of the owners holding not less than one half of the land situate in the area concerned may require the Ministry of Agriculture to approve it and to grant it the character of an official association.

Art. 1504. — *Inquiry.*

The Ministry of Agriculture shall consult with all the landowners concerned with a view to establishing whether the economic and social advantages which an association is expected to produce are such as to justify any modification of rights of ownership which its activities may render necessary.

**Art. 1505.** — *Draft charter.*

(1) Where the inquiry results in conclusions favourable to the granting of official approval, the Ministry of Agriculture shall draw up a preliminary draft of the charter.

(2) All interested parties shall be invited to make observations on such draft.

(3) The final draft shall be drawn up by the Ministry of Agriculture within six months from the preliminary draft having been drawn to the notice of the landowners concerned.

**Art. 1506.** — *Granting of approval.*

Approval of official associations shall be granted by a notice published in the Negarit Gazeta by the Ministry of Agriculture.

**Art. 1507.** — *Contents of Decree or notice.*

(1) A Decree under Art. 1501 or a notice under Art. 1506 shall specify in a precise manner the area within which the association shall carry out its activities.

(2) It shall contain approval of the charter of the association.

**Art. 1508.** — *Control of associations.*

Official associations of landowners shall carry out their activities under the control of the authorities of the province in which the land or the majority of land comprised in the area specified in the Decree or notice is situate.

## Section 2. Functioning of association

**Art. 1509.** — *Meetings of association.* — 1. *Principle.*

(1) All the owners of land situate within the area specified in the Decree or notice shall as of right be members of the official association.

(2) They shall form the general meeting of the association.

**Art. 1510.** — 2. *Meetings.*

(1) The general meeting of the association shall meet every year at such time and place as are fixed by the charter.

(2) Other meetings may be convened from time to time by the managers for urgent business or where one fifth of the members of the association so require.

**Art. 1511.** — 3. *Decisions.*

Decisions shall be taken at meetings by a majority vote of the members who are present or represented.

Art. 1512. — *Managers.*

(1) The meeting shall appoint and dismiss the managers of the association and supervise their activities.

(2) Those provisions in the Title of this Code relating to "Bodies Corporate and property with a specific destination" which apply to the directors of ordinary associations (Art. 426-428) shall apply to the managers of an association of landowners.

(3) The provisions of the same Title which relate to the powers and liability of the directors of ordinary associations (Art. 429-435) shall apply to the powers and liability of the managers of an association of landowners.

Art. 1513. — *Amendment of charter.*

(1) Only such provisions in the charter which the charter itself declares to be capable of modification may be amended by the meeting.

(2) No other provision in the charter may be amended except with the written permission of the Ministry of Interior.

Art. 1514. — *Appeal against decisions of meeting.*

(1) Notwithstanding any provision to the contrary, any member of the association may appeal to the court against any decision taken at a meeting where such decision is contrary to the law or the charter and he has not agreed to such decision.

(2) The right of appeal shall be barred if not exercised within six months from the member having known of the decision and in any case within two years from such decision having been executed.

(3) The court may stay the execution of the decision pending appeal.

Art. 1515. — *Duties and representation of the association.*

(1) The association may enter into agreements through its representatives.

(2) It may in the same manner sue or be sued.

(3) The provisions of the Title of this Code relating to "Extra-contractual Liability and Unlawful Enrichment" (Art. 2027-2178) shall apply to associations of landowners as they apply to ordinary associations.

Art. 1516. — *Ownership of land.*

The charter shall specify whether the members of the association shall retain the ownership of their land or whether such ownership shall pass to the association.

Paragraph 1. Where private ownership is maintained

Art. 1517. — *Principle.*

(1) Unless the charter provides to the contrary, the members of the association shall retain the ownership of their land.

(2) They shall exercise their rights in ownership subject to the provisions of the following Articles.

Art. 1518. — *Restrictions on rights in ownership.*

The association may restrict the rights of the owners of land situate within the area to the extent necessary for the collective exploitation of the area or for the doing of works authorised by the notice published in accordance with Art. 1506.

Art. 1519. — *Compensation.*

The owner whose rights are restricted under Art. 1518 or whose land is charged with a servitude shall be entitled to compensation.

Art. 1520. — *Amount of compensation.*

(1) The association shall be liable for the payment of the compensation provided by Art. 1519.

(2) The amount of such compensation shall be fixed by the meeting of the association.

(3) The owner concerned may appeal to the court against the amount thus fixed within three months from having been informed of the decision of the meeting.

Art. 1521. — *Surrender of land.*

(1) An owner may relieve himself of the obligation to pay such contributions as may be required from him by the association by surrendering his land to the association or such other person as may be designated by the association.

(2) The association shall in such a case forthwith reimburse to the owner the value of his land.

(3) The owner may object to any work being done on his land until he is reimbursed.

Art. 1522. — *Value of land.*

(1) In fixing the value of the land under Art. 1521, regard shall be had to the provisions of the charter.

(2) Failing such provisions, the value shall be fixed by an appraisement arbitration committee in accordance with the provisions of Chapter 1 of this Title (Art. 1473-1476).

BACK



Paragraph 2. — Where ownership passes to association

Art. 1523. — *Time of transfer of ownership.*

Where the charter provides that the land situate within the area where the association carries out its activities shall become the property of the association, the ownership of such land shall be transferred to the association at the time when the notice is published in accordance with Art. 1506.

Art. 1524. — *Effect of transfer.*

(1) The rights which owners or usufructuaries enjoyed on the land prior to its being transferred to the association shall be replaced by a right in ownership or usufruct in a share in the property owned by the association.

(2) Servitudes charging land the ownership of which is transferred to the association shall remain in existence after transfer.

(3) Without prejudice to the provisions of the charter protecting the rights of all interested parties, mortgages or rights of pre-emption or recovery existing on land the ownership of which is transferred to the association shall lapse.

Art. 1525. — *Value of share.*

The value of the share referred to in Art. 1524 shall be fixed by the charter having regard to the value of the land at the time when the charter is drawn up.

Art. 1526. — *Appraisement of land.* — 1. *Principle.*

The value of the land shall be fixed on an uniform basis, having regard to the average value of the hectare in the relevant area.

Art. 1527. — 2. *Adjustment of value.*

(1) The amount assessed under Art. 1526 shall be adjusted having regard to the nature of the land, the facilities it offers for individual exploitation and the value of the works or constructions done by the owner and which become the property of the association.

(2) The provisions of sub-art. (1) shall not apply unless the land concerned was exploited prior to being transferred or works had been done to facilitate its exploitation or increase its yield.

Art. 1528. — *Rights and duties of association.*

(1) The association shall have on the land or other property it owns the same rights as an individual owner.

(2) It shall have the same duties as an individual owner.

Art. 1529. — *Exploitation of land.*

(1) The general meeting of the association shall determine the manner in which the land belonging to the association shall be exploited.

(2) It shall fix in accordance with the charter the rights and duties of the members of the association.

Art. 1530. — *Assignment or attachment of share.*

(1) The members of the association may assign their share in the property of the association for consideration or by gratuitous title.

(2) They may on their death transmit their share to their heirs or legatees.

(3) Their share may be attached by their personal creditors.

Art. 1531. — *Division of share.*

The charter may provide that shares may not be divided or lay down restrictions regarding the division of shares.

Art. 1532. — *Consent of association.*

(1) The consent of the association shall be sought by the assignee, legatee or purchaser of a share unless he be the spouse or descendant of the person from whom he received the share.

(2) Notwithstanding any proof to the contrary, the consent of the association shall be deemed to have been obtained where the association does not notify its refusal within three months from the person concerned having required the consent of the association or having participated in the capacity of member in a meeting of the association.

Art. 1533. — *Consent refused.*

(1) Where it refuses to give its consent, the association shall, if so required, inform the person concerned of its intention to buy the share or name to such person a solvent buyer approved by the association.

(2) The person concerned may retain his share where the association fails to give him notice or to name a buyer within three months.

Art. 1534. — *Conditions of assignment.*

(1) The person to whom notice has been given or a buyer named in accordance with Art. 1533 shall assign his share to the association or other buyer.

(2) The price to be paid for the share shall be fixed in accordance with the provisions of the charter.

(3) Failing such provisions, it shall be fixed by arbitrators.

## Chapter 4. Town-planning areas

Art. 1535. — *Creation of area.*

(1) Town-planning areas may be created by Imperial Decree with a view to promoting the development of towns in an economically sound manner.

(2) The Decree shall fix in a precise manner the limits of the area.

Art. 1536. — *Plan.*

(1) The municipality shall draw up a plan relating to each town-planning area.

(2) The plan and any amendment thereto shall be of no effect unless approved by Imperial Decree and published in the Negarit Gazeta.

Art. 1537. — *Contents of plan.*

(1) The plan shall, where necessary, divide each area into sub-areas.

(2) It shall fix in a general manner the restrictions and servitudes which it may be necessary to impose on the rights of the owners within each sub-area.

Art. 1538. — *Carrying out of plan.*

(1) In carrying out the plan, the municipality may impose the necessary restrictions on the rights of the owners within the area.

(2) It may in particular impose servitudes not to build, rights of way or servitudes relating to municipal sewers and pipes.

(3) It may, where necessary, use expropriation proceedings.

Art. 1539. — *Compensation.*

(1) The owners whose rights are restricted or whose land is expropriated shall be entitled to compensation.

(2) Such compensation shall be fixed by an appraisement arbitration committee in accordance with the provisions of Chapter 1 of this Title (Art. 1473-1476).

Art. 1540. — *Building permit.*

No person may construct a building within a town-planning area unless he has given notice of his intention to build and been granted a building permit in accordance with regulations.

Art. 1541. — *Application for permit.*

The application for a building permit shall specify the nature of the contemplated building.

Art. 1542. — *Particulars in application.*

(1) An application for a permit to build a house shall specify whether such house shall be used as a dwelling-house only or whether it shall be used for commercial or industrial purposes.

(2) An application for a permit to build a factory, a shop or commercial or industrial premises shall specify the nature of the contemplated commerce or industry.

Art. 1543. — *Other particulars.*

The application shall specify the time when the work should begin and the cost of the contemplated building.

Art. 1544. — *Granting of permit.*

The permit shall be deemed to be granted where the municipality fails to inform the applicant of its refusal or of the conditions imposed for the granting of the permit within three months from the application having been made.

Art. 1545. — *Authorised conditions.*

(1) The granting of the permit may be made conditional upon the applicant carrying out street work or laying pipes in connection with the contemplated building.

(2) It may also be made conditional upon the applicant complying with specific requirements as to the size or type of the building or the materials to be used.

Art. 1546. — *Prohibited conditions.*

The granting of the permit may not be made conditional upon the applicant employing specific persons in constructing the building or upon the building being constructed by a particular firm.

Art. 1547. — *Creation of servitudes.*

(1) The granting of the permit may be made conditional upon the applicant causing his neighbours to create in his favour a servitude not to build.

(2) Whosoever has been granted a permit may, failing agreement, compel his neighbours to create such servitude in his favour.

(3) The compulsory creation of a servitude referred to in sub-art. (2) shall be ordered by the court which shall fix the compensation to be paid to the servient owner.

Art. 1548. — *Absence of permit.*

Where the construction of a building is undertaken in the absence of a permit, the municipality may order that the construction be stopped forthwith.

Art. 1549. — *Provisions regarding individual ownership applicable.*

Without prejudice to the provisions of the preceding Articles, the provisions of the Title of this Code relating to "Individual Ownership" (Art. 1151-1256) shall apply as regards the rights of owners of land within town-planning areas.

Art. 1550. — *Official association of landowners.* — 1. *Creation.*

The owners of land within each town-planning sub-area shall as of right be constituted into an official association of landowners.

Art. 1551. — 2. *Composition and functioning.*

(1) The provision of Chapter 3 of this Title relating to the composition and functioning of official associations of landowners shall apply to the associations of owners of land within a town-planning area (Art. 1509-1534).

(2) The secretariate of each association shall be the responsibility of the municipality.

Art. 1552. — *Consultative duties.*

(1) Associations of landowners within town-planning areas shall have consultative duties only.

(2) They shall examine the plans submitted to them by the municipality and make in respect thereof any observation or criticism they think fit.

## TITILE X. REGISTERS OF IMMOVABLE PROPERTY

### Chapter 1. Keeping of registers and publicity

Art. 1553. — *Principle.*

Registers of immovable property shall be kept, in each Awradja Guezat of the Empire of Ethiopia, by the keepers of registers of immovable property.

Art. 1554. — *Organisation of the places of conservation of registers.*

(1) The appointment and the status of the keepers of registers of immovable property and of their assistants shall be as prescribed by the Ministry of Agriculture.

(2) The same Ministry shall prescribe the material organisation of the places of conservation of the registers of immovable property and ensure the regularity of their functioning.

(3) It shall take the necessary measures for the keeping and the conservation of registers of immovable property.

Art. 1555. — *Districts into which the land is divided.*

(1) Registers of immovable property shall be kept, in each place of conservation, according to the districts into which the land is divided.

(2) The Ministry of Agriculture shall fix the boundaries of the districts into which the land is divided.

Art. 1556. — *Principal registers.*

In each place of conservation and for each district, a register of property and a register of mortgages shall be kept.

Art. 1557. — *Register of immovables.*

Where the state of the cadastre allows the adoption of such system, a register of immovables shall be kept in each district.

Art. 1558. — *Register of owners.*

Where the state of the cadastre does not allow the drawing up of a register of immovables, a register of owners shall be kept in each district instead of such register.

Art. 1559. — *Other registers.*

The Ministry of Agriculture may, by a general directive, or by a directive specially applicable to one or more places of conservation, prescribe the keeping of additional registers.

Art. 1560. — *Registers may not be removed.*

The registers of immovable property may in no case be removed from the place where they are kept.

Art. 1561. — *Publicity of registers.* — 1. *Principle.*

The registers of immovable property are public.

Art. 1562. — 2. *Registers of immovables and of owners.*

(1) Keepers of registers shall, on request, deliver a certified true copy of the leaf concerning a particular immovable which is to be found in the registers of immovables.

(2) They shall, on request, deliver a certified true copy of the leaf or leaves concerning a particular owner which are to be found in the register of owners.

(3) They shall, where necssary, deliver a certificate showing that the leaf of an immovable does not contain any registration or that no leaf concerning a particular owner exists in the register.

Art. 1563. — 3. *Principal registers or supporting documents.*

(1) Keepers of registers of immovable property shall on request deliver certified true copies of the acts which are registered in the registers of property or of mortgages.

(2) They shall on request deliver certified true copies of the supporting documents kept by them.

Art. 1564. — 4. *Form of copies or certificates.*

All copies and all certificates delivered by the keeper of registers of immovable property shall be of no effect unless they bear the seal of the place of conservation, the signature of the keeper or of a person authorised to deliver the copy or the certificate, and an indication of the date on which the copy or the certificate was delivered.

Art. 1565. — *Fees to be charged.*

(1) The Ministry of Agriculture shall fix the fees to be charged in respect of the various registrations in the registers of immovable property.

(2) It shall fix the fees to be charged in respect of the delivery of copies or certificates by the keepers of registers.

Art. 1566. — *Liability of keeper.*

(1) Keepers of registers of immovable property shall be liable for the prejudice which they cause to others by the non-performance or bad performance or tardy performance of the obligations incumbent upon them.

(2) The State shall be liable for such prejudice in conformity with the provisions of the Title of this Code relating to "Extra-contractual liability" (Art. 2027-2161).

(3) Nothing shall affect the criminal or disciplinary liability of keepers of registers.

## Chapter 2. Contents of the various registers

Art. 1567. — *Register of property.* — 1. *Principle.*

All acts, public or private, made *inter vivos* or *mortis causa* purporting to recognise, transfer, modify or extinguish the right of ownership of one or more persons over an immovable shall be entered in the register of property.

Art. 1568. 2. *Particular acts concerning property.*

In particular, the following shall be entered in the register of property in conformity with Art. 1567:

(a) acts of sale, donation, contribution in a partnership, partition, compromise and contracts creating joint ownership, where such acts have an immovable as their subject-matter; and

(b) acts by which an heir or a legatee accepts a succession or a legacy relating to an immovable; and

(c) judgments which pronounce the annulment, revocation or dissolution of the acts abovementioned; and

(d) judgments which give a decision as to the ownership of an immovable upon an action for the recovery thereof; and

(e) judgments which pronounce the sale by auction of an immovable as a consequence of an attachment effected by the creditors.

Art. 1569. — 3. *Acts concerning other rights over immovables.*

The following shall also be entered in the register of property:

(a) all acts purporting to create, recognise, transfer, modify or extinguish a right of bare ownership or usufruct or a right of habitation over an immovable; and

(b) all acts purporting to create, recognise, modify or extinguish a servitude; and

(c) all acts purporting to create, transfer, modify or extinguish a contractual restriction of a right of ownership or of usufruct relating to an immovable.

Art. 1570. — 4. *Legal actions.*

Legal actions which aim at obtaining a judgment recognising, transferring, dissolving or extinguishing the right of ownership or another right in rem over immovables shall also be entered in the register of property.

Art. 1571. — 5. *Leases and acts concerning rents not fallen due.*

The following shall be entered in the register of property:

(a) leases relating to a dwelling-house or apartment, concluded for a period of more than five years; and

(b) assignments of rents not fallen due, covenanted for a period of more than three years; and

(c) discharges for rents not fallen due given in advance to a lessee or farmer-tenant for a period of more than three years.

Art. 1572. — 6. *Grants.*

Grants over waters or over mines made by communes, departments or provinces shall be entered in the register of property.

Art. 1573. — *Register of mortgages.* — 1. *Principle.*

The following shall be entered in the register of mortgages:

(a) all acts purporting to create, modify or extinguish a right of mortgage or antichresis; and

(b) all acts purporting to transfer a debt secured by a mortgage or a right of antichresis or purporting to assign the benefit of priority attributed to such right by the law.

Art. 1574. — 2. *Attachment.*

Applications for the judicial sale of an immovable on the initiative of a creditor, whether or not enjoying a right of mortgage on such immovable, shall also be entered in the register of mortgages.

Art. 1575. — *Register of immovables.* — 1. *Principle.*

(1) Every immovable existing within the district shall be registered in the register of immovables under its number in the cadastre, and a leaf be assigned to it.

(2) The register shall contain, on each of its leaves, a summary description of the immovable made with the object of its individualisation.

(3) All acts subject to registration which concern the immovable shall be mentioned on the leaf with an indication of their reference number in other registers and of their date.

Art. 1576. — 2. *Conformity with cadastral survey plan.*

(1) The registration and the description of each immovable in the register of immovables shall be made according to the measurements and indications of the cadastral survey plan.

(2) The register of immovables shall be kept in permanent and absolute conformity with such plan.

Art. 1577. — 3. *Immovable situate in more than one district.*

(1) An immovable situate in more than one district shall be registered in the register of each district with a reference to the register of the other districts.

(2) Requests and registrations shall be entered in the register of the district where the largest part of the immovable is situate.

Art. 1578. — 4. *Public immovables.*

Immovables which are not privately owned and those which serve for a public use shall not be registered in the register of immovables unless there are in relation to them rights in rem which need be registered.

Art. 1579. — 5. *Partition of an immovable.*

(1) Where an immovable is partitioned, the keeper of the registers shall enter each new portion in the register, making reference to the old number.

(2) The new leaves shall contain a reference to the leaf which related to the immovable before its partition.

Art. 1580. — 6. *Separation of a portion.*

(1) Where a portion is separated from an immovable in order to be attached to another, the original leaves shall be retained.

(2) Only a mention of the alteration which has taken place shall be made in the description of the immovable under the heading "Area of the immovable".

(3) Reference shall be made to the act which has caused such alteration and to the date of such alteration.

Art. 1581. — 7. *Union of several immovables.*

(1) The union into one immovable, under a new number, of several immovables belonging to the same owner, may be entered in the register only where there are no mortgages or rights of antichresis registered in the leaves of the different immovables or where the creditors give their consent to such union.

(2) Where the immovables are subject to servitudes, they may not be united unless the persons entitled thereto give their consent to the union.

(3) Where there are servitudes in favour of immovables, the union may not be effected unless the owners of the servient tenements give their consent thereto.

Art. 1582. — 8. *Closed leaves.*

(1) Where a leaf has ceased to be useful in consequence of partition or union, it shall be closed by an annotation to that effect, with an indication of the cause, of the date and of the necessary references, and it shall be struck out diagonally in red ink.

(2) The same rules shall apply where a registered immovable is changed into an immovable not subject to registration.

(3) The closed leaves may in no case be destroyed.

Art. 1583. — *Register of owners.* — 1. *Principle.*

The register of owners shall contain, classed in alphabetical order, leaves relating to each one of the persons who, in an act registered in one of the principal registers, are indicated as being owners of an immovable situate in the district.

Art. 1584. — 2. *Immovable owned in common*

(1) Where an immovable belongs to several owners a leaf shall be drawn up in the name of each joint owner.

(2) The position of each one shall be mentioned in the leaf relating to him.

Art. 1585. — 3. *Ownership of several immovables.*

Where a person owns several immovables in a district, there shall be drawn up in his name as many leaves as he has separate immovables.

Art. 1586. — *Acts registered on the leaf.*

All acts subject to registration which concern a particular immovable shall be mentioned on the leaf of such immovable, with an indication of their reference number in other registers and of their date.

## Chapter 3. Registration of acts in the registers

### Section 1. Procedure of registration

Art. 1587. — *Mode of presentation of registers.*

The registers of property and of mortgages shall consist of files made up of printed forms, made available to private individuals who shall cancel any useless indications and fill in any blanks therein.

Art. 1588. — *Establishing of forms.*

The Ministry of Agriculture shall draw up the forms of the registers of immovable property and determine their format.

Art. 1589. — *Supply of forms.*

(1) The forms required for the keeping of the registers shall be supplied gratuitously to the keepers of the registers of immovable property by the governor of the province who shall receive them from the Ministry of Agriculture.

(2) The keepers of the registers of immovable property shall draw up every six months an inventory of the forms which are in their possession and request, where necessary, that their stocks be repleted according to the exigencies of their service.

Art. 1590. — *Form of registrations.*

(1) The registrations in the register shall be made in very legible writing and without any abbreviation other than those expressly authorised by regulations.

(2) They shall mention the date on which they are effected and the number which is assigned to them in the register in which they are made.

Art. 1591. — *Indication of sums or of areas.*

Where a registration contains the indication of a sum or that of an area, such sum or such area shall be indicated both in figures and in full words.

Art. 1592. — *Indication of dates.*

(1) Dates shall be written simply in figures as regards the year, in a very legible manner.

(2) They shall be written only in words, as regards the month and the day of the month.

Art. 1593. — *Necessity of a request for registration.*

The keeper of the registers of immovable property may not of his own motion effect any registration.

Art. 1594. — *Who may request a registration.*

(1) A request for registration may be made by any interested person.

(2) The person making the request shall pay, at the time when he makes his request, the fixed fee determined for the filing of such request by a tariff officially established.

Art. 1595. — *No reservations*

A request for registration may not be made subject to any reservation or condition.

Art. 1596. — *Manner or making the request.*

(1) The person who requests that a registration be made in the register shall file, in duplicate, a printed form which the administrative authorities shall place at his disposal.

(2) The person making the request shall fill in a very legible manner, by writing with a typewriter or in black ink, the blanks of the form.

(3) He shall cancel the indications which are useless in the form or draw obliquely a line in the blank which corresponds to such indications.

Art. 1597. — *Prohibited indications.*

(1) No indication may be added to those which are set down in the forms placed at the disposal of the public.

(2) The interested parties shall, where appropriate, complete such indications by means of supplementary or supporting documents to which reference shall be made by the form.

Art. 1598. — *Duties of keeper.*

(1) The keeper shall assign to each request, when it is presented to him, a serial number in the register to which such request corresponds.

(2) He shall countersign the forms sent to him and affix thereon the seal of the place of conservation.

Art. 1599. — *Handing back of form.*

The keeper shall hand back to the person making the request one of the forms duly signed by him with the seal of the place of conservation affixed thereon.

Art. 1600. — *Other form.*

(1) The other form shall be incorporated in the register to which it appertains.

(2) The insertion of the forms in each of the principal registers shall be made in the order in which the requests are made.

Art. 1601. — *Record in the complementary registers.*

An act newly registered shall forthwith be entered in the register of immovables or in the register of owners of the district.

## Section 2. Forms used for registration

Art. 1602. — *Indications common to all forms.*

The forms intended for the registers of immovable property shall specify in every case:

(a) the date of the request for registration; and

(b) the immovable to which the registration refers, with the particulars required to individualise such immovable; and

(c) the name, first names, patronymic and residence of the person to whose immovable the registration refers; and

(d) the name, first names and patronymic of the person making the request, as well as a domicile, elected by him, in the town where the registers of immovable property are kept; and

(e) the number, nature and the reference number of the complementary or supporting documents annexed to the request; and

(f) the acts previously registered to which it may be necessary to refer, together with their reference numbers.

Art. 1603. — *Form intended for the register of property.* — 1. *General indications.*

The form intended for the register of property shall specify:

(a) the nature of the act which gives cause for registration; and

(b) the nature of the right affected by such act or event; and

(c) the name, first names, patronymic and residence or elected domicile of the person acquiring the right, lessee, assignee or other beneficiary under the act; and

(d) in the case of different acts or events which give cause for registration, any special stipulations.

Art. 1604. — 2. *Special stipulations.*

The special stipulations referred to in Art. 1603 shall relate:

(a) in the case of sale, contribution in a partnership, sale by auction, promise of sale, donation and other similar acts, to the price or value of the right which has been transferred; and

(b) in the case of a partition, to the amount which may be due to equalise the portions; and

(c) in the case of a lease, to the duration of the lease and the annual rent; and

(d) in the case of assignments of or discharges for rents not fallen due, to the date up to which the rents have been assigned or received; and

(e) in the case of a promise of sale, to the price for which the sale is to take place and the time-limit agreed upon for the promise; and

(f) in the case of other restrictions to the right of ownership, to the date when such restrictions will cease.

Art. 1605. — *Form intended for the register of mortgages.*

The form intended for the register of mortgages shall specify:

(a) the name, first names, patronymic and residence of the mortgagee; and

(b) the amount of the debt; and

(c) the date on which the debt is to be paid back; and

(d) the annual rate of interest which it produces; and

(e) whether the claim is transmissible by endorsement or is to bearer; and

(f) whether the registration is made as a renewal of a preceding registration.

Art. 1606. — *Individualisation of the immovable.* — 1. *Principle.*

(1) The immovable to which the act relates shall be individualised by specifying its nature, the commune where it is to be found and its cadastral number.

(2) Where the immovable is situate in a region where there is no cadastral survey plan, its nature, situation, area and the neighbouring lands by which it is bounded shall as far as possible be mentioned.

Art. 1607. — 2. *Detailed plan.*

(1) The particulars concerning the immovable to which the act relates may be specified by furnishing a detailed plan amongst the supporting documents.

(2) This may be done in particular where the act which is to be registered refers to only a part of an immovable which corresponds to a number in the cadastre.

(3) In such case, the registration which is made shall refer to the numbers of the divisions which appear on the plan annexed to the request for registration.

Art. 1608. — *Registration relating to a body corporate.*

(1) Where the immovable belongs to a partnership or an association, the name or the style of the body corporate shall be indicated instead of the name, first names and patronymic.

(2) The same shall apply where the beneficiary of the act is a partnership, an association or some other body corporate.

Art. 1609. — *Deceased owner.*

A registration relating to the property of a deceased person may be made by indicating the deceased person as the owner of the immovable.

Art. 1610. — *Immovable jointly owned.*

(1) Where an immovable is jointly owned but only one joint owner is interested in the act, only such joint owner shall be mentioned in the form and his share of the property be indicated therein.

(2) Where all the joint owners or several of them are interested in the act, the indication "immovable jointly owned" shall be entered in the form, and a reference be made in the complementary and supporting documents to a document establishing the state of joint ownership of the immovable.

(3) In the register of owners, a mention of the act shall be made on the leaves relating to each of the joint owners mentioned in such document.

Art. 1611. — *Where there are several beneficiaries of an act.*

The provisions of Article 1610 shall apply where several persons are beneficiaries in common of the act subject to registration.

Art. 1612. — *Election of domicile by the person making the request.*

(1) The person making the request shall elect a domicile in the town where the place of conservation of registers of immovable property is situated unless he already has his residence in that town.

(2) All notifications concerning the registration shall be validly served on him at such domicile.

Art. 1613. — *Supporting documents.* — 1. *Principle.*

(1) The person making the request may attach thereto all the documents which he thinks fit.

(2) The keeper of registers may not refuse to accept a request on the grounds that the necessary documents have not been attached to such request.

(3) He may only call the attention of the person making the request to the necessity of such document and to the consequences which the absence thereof may entail.

Art. 1614. — 2. *Most frequent documents.*

The complementary or supporting documents attached to a request may particularly include:

(a) a plan of the immovable; and

(b) a power of attorney or other document whereby the person making the request is authorised to act on behalf of the owner of the immovable or of the beneficiary of the act; and

(c) a copy of the deed, judgment or act which gives cause for registration; and

(d) a copy of the record of death or of the declaration of absence of the owner of the immovable; and

(e) an act showing that legal proceedings relating to the immovable have been instituted by the person making the request; and

(f) a statement of the rights appertaining to various joint owners on the immovable.

Art. 1615. — 3. *Classification of supporting documents.*

(1) The complementary or supporting documents produced in support of requests for registration or for the purpose of obtaining a correction, modification or cancellation of a registration shall be classified in the place of conservation of the registers of immovable property to be kept therein.

(2) Each of them shall be given a special reference number.

Art. 1616. — *Nature of the act.*

(1) Under the heading "Nature of the act" the form shall include the following options: "sale, contribution in partnership, donation, partition, compromise, contract of lease, judgment ordering a sale, renunciation, legal action, annulment of an act, declaration of a right, creation of a right, modification of a right, extinguishment of a right, promise of sale, granting of concession, pre-emption, assignment of or discharge given in advance for rents not fallen due, acceptance of succession rights, agreement prohibiting assignment, agreement prohibiting attachment, refer to the annexed document No. . . . . ".

(2) The person making the request shall choose among such options that or those which best correspond to the nature of the act.

(3) He shall strike out or, where appropriate, complete the indication "refer to the annexed document No. . . . . ".

Art. 1617. — *Nature of the right affected.*

Under the heading "Nature of the right affected" the person who makes the request shall specify whether such right is a right of ownership, or a part of property jointly owned, or a right of bare ownership, usufruct, servitude, or a restriction of a right of ownership.

Art. 1618. — *Amount of debt.*

(1) The amount of the debt secured by a mortgage or by a right of antichresis shall be indicated in Ethiopian currency.

(2) Where the amount of the debt is undetermined, the registration shall be made for a fixed sum representing the maximum of the security of the immovable.

(3) Failing agreement with the person whose immovable is affected by the mortgage, such sum shall be fixed by the court.

Art. 1619. — *Debts transferable to order.*

(1) Where the mortgage secures a debt which is transferable by a mere endorsement of the title, the registration shall be made in the name of the present holder.

(2) Its benefit shall extend to the successive endorsees of the title, without there being need of any formality.

Art. 1620. — *Debts resulting from title to bearer.*

(1) Where the mortgage secures a debt resulting from a title to bearer, a complementary document shall specify the name of the issuer, the date of issue, the series, number and the value of the titles issued.

(2) It shall specify, where appropriate, the name of the person who is authorised to represent the bearers of the titles.

## Section 3. Correction and cancellation of entries

Art. 1621. — *Correction.* — 1. *Principle.*

(1) Where the form sent to the keeper of registers of immovable property and inserted in a register is incomplete or inaccurate, the registration may be corrected.

(2) The registration shall not be null except in the cases provided by law.

Art. 1622. — 2. *Modifications assimilated to a correction.*

Corrections may also be made where:

(a) one of the persons mentioned in the form intends to change the residence or the elected domicile which is assigned to him in the form; or

(b) at least one fourth of the debt secured by a mortgage or by a right of antichresis has been paid; or

(c) the debt secured by a mortgage has been assigned or given as a pledge; or

(d) the act to which the registration relates has been the object of modifications agreed upon by the interested persons or ordered by the court.

Art. 1623. — 3. *Judicial order necessary.*

(1) A correction of a registration may not be made except by virtue of an order given by the court to the keeper of the registers.

(2) Any interested person may apply to the court to order a correction.

Art. 1624. — 4. *Correction how made.*

(1) A correction of a registration shall be made by cancelling with a special ink the particulars in the form which are to be corrected.

(2) The keeper shall write down on the back of the form the word "corrected" together with the date of the correction and a reference to the judgment ordering the correction.

(3) Such judgment shall be kept in the archives of the place of conservation together with the supporting documents.

Art. 1625. — 5. *Annotation in complementary registers.*

The word "corrected" shall be written down, after the registration, in the register of immovables or in the register of owners, together with the date of the correction.

Art. 1626. — 6. *Copies of an act which has been corrected.*

(1) Copies of forms delivered to interested persons shall conform in all respects to the original.

(2) They shall show the contents of the original form and the correction which has been made.

Art. 1627. — 7. *Effects of the correction.*

A correction of a registration shall be effective only from the date on which it is made.

Art. 1628. — *Nullity of a registration.*

A registration of an act in the registers of immovable property shall be of no effect where:

(a) it does not show the date on which it has been made; or
(b) it does not make it possible to identify the immovable to which it refers; or
(c) it does not make it possible to identify the owner of the immovable, or the person who grants the right subject to registration; or
(d) it does not make it possible to identify the person who acquires the immovable or the beneficiary of the right subject to registration; or
(e) it does not show the amount of the debt secured by mortgage; or
(f) it is made by virtue of a title which is null; or
(g) it has been made out of time.

Art. 1629. — *Late registration.*

A registration shall be deemed to have been made out of time where it is incompatible with a registration which has been validly made previously in the registers of immovable property.

Art. 1630. — *Cancellation.* — 1. *Judicial order necessary.*

Where the law declares the nullity of a registration, any interested person may apply to the court to order its cancellation.

Art. 1631. — 2. *Agreement between the interested persons.*

(1) The owner of the immovable to which the registration refers may apply to the court to order the cancellation of the registration where the beneficiary of the right which has been registered gives his consent to such cancellation.
(2) Such consent shall be given where the act which has been registered has had its effects or where, for any other reason, the registration has lost the purpose for which it was made.

Art. 1632. — 3. *Cancellation made "ex officio".*

(1) A registration shall be cancelled by the keeper of registers of immovable property of his own motion where, according to the very terms of the registration, the right which formed its subject-matter was created for a determinate period and such period has elapsed.
(2) A registration of a mortgage shall be cancelled by the keeper of his own motion where it has been made ten years before and its renewal has not been applied for.

Art. 1633. — 4. *Cancellation how made.*

(1) The cancellation of a registration shall be made by drawing across the form two diagonal lines joining the opposite corner of the form.
(2) The keeper shall write on the back of the form the word "Cancelled" together with the date of the cancellation and, where appropriate, a reference to the judgment which has ordered the cancellation.

(3) The judgment shall be kept in the archives of the place of conservation among the supporting documents.

Art. 1634. — 5. *Copy of the act which has been cancelled.*

(1) A registration which has been cancelled shall remain legible in the registers.

(2) The persons interested may request copies thereof.

Art. 1635. — 6. *Annotation in the complementary registers.*

(1) The word "cancelled" shall appear after the registration in the register of immovables or in the register of owners together with the date of the cancellation.

(2) The copies of the leaves of such registers given to the interested persons shall make no mention of the registrations which have been cancelled.

Art. 1636. — *Fee payable in case of correction or cancellation.*

(1) The person who applies for the correction or the cancellation of a registration shall pay the prescribed fee on making the application.

(2) The expenses of a correction shall be borne by the person who is responsible for the error which is to be corrected, or, where no error has been made, by the person who applies for the correction

(3) The expenses of cancellation shall be borne by the person who applies for cancellation.

## Chapter IV. Effects of registration in the registers of immovable property

Art. 1637. — *Duty to register acts.*

(1) The keepers of registers of immovable property may not decide on the validity of acts which are presented to them for registration in the registers.

(2) They shall register such acts without delay when the formalities required by the law have been performed by the interested persons.

(3) The registration of an act in the registers of immovable property shall not constitute a decision as to its validity.

Art. 1638. — *Certain date.*

The registration made in the registers of immovable property shall confer a certain date to the acts to which such registration relates or which are filed in the archives of the place of conservation as complementary or supporting documents.

Art. 1639. — *Prescription or usucaption.*

The registration of an act in the registers of immovable property shall as such be of no effect as regards extinctive prescription or usucaption.

Art. 1640. — *Ignorance of a registration.*

(1) No person may take advantage of the fact that he did not know of a registration entered in the registers of immovable property.

(2) Nothing shall affect the liability of the keeper of the registers and of the State, where such ignorance is due to a fault in the functioning of the service

Art. 1641. — *Conflict between two registrations.*

(1) Where two persons have required from the same person a right subject to registration, the one whose right has been registered first in the registers of immovable property shall be preferred.

(2) The right of the second shall be extinguished insofar as it is in opposition to the right which has been registered first.

(3) Nothing shall affect the rights of such second person against the person from whom he has acquired the immovable.

Art. 1642. — *Rights registered on the same day.*

(1) Where two rights which are incompatible with each other are entered in the register on the same day, preference shall be given to the person whose title is the older.

(2) Where the titles are equally old or the priority of one in relation to the other cannot be established, preference shall be given to that number of the registration which in the register comes before.

Art. 1643. — *Legal action.*

Judgments which acknowledge, transfer, modify or extinguish the ownership of or any other real right over an immovable may be set up against third parties as from the day on which the demand having the object of obtaining them has been registered in the registers of immovable property in the place where the immovable is situate.

Art. 1644. — *Bad faith.*

(1) The bad faith of the person who has requested the registration or required the right to which the registration relates shall not affect the validity of the registration.

(2) In such case the person to whom the registration is prejudicial may claim damages by proving in a clear manner the bad faith of the defendant.

Art. 1645. — *Where there is no registration*

(1) Where, in default of a registration of an act in the registers of immovable property, the right of a person may not be set up against third parties, no person may acquire from such person a right which may be set up against third parties.

(2) The person who has acquired a right under such conditions shall, before entering in the register the act by which he holds his right, register the act by which his transferor held his right.

Art. 1646. — *Notice of registration to the owner.*

(1) The person who has registered a right in the registers of immovable property shall, within eight days, serve on the owner of the immovable to which such right relates a copy, certified by the keeper of the registers, of the form which has been entered in the registers.

(2) He shall be liable for the prejudice that may be caused to the owner of the immovable or to third parties by reason of his failing to comply with such formality.

## TITLE XI. LITERARY AND ARTISTIC OWNERSHIP

Art. 1647. — *Attribution of the right.*

(1) The author of a work of the mind shall have on the work he created, by the mere fact of his creation, an incorporeal right of ownership.

(2) He shall have such right regardless of the nature, form of expression, merit or purpose of the work.

(3) He shall have such right notwithstanding that he executed the work in pursuance of a contract of employment or a contract for the performance of a project entered into with a third party.

Art. 1648. — *Works of the mind.*

The following works shall be deemed to be works of the mind:

(a) literary works such as books, booklets, articles in reviews and newspapers, lectures, speeches, sermons, theatrical and other dramatic works; and

(b) musical compositions with or without text, dramatic-musical works, radiophonic or radiovisual works, choreographic works or pantomimes the production of which is reduced to writing or otherwise; and

(c) the works of the figurative arts such as drawings, paintings, engravings and sculptures, as well as photographic and cinematographic works; and

(d) illustrations, maps, plans, sketches, plastic works pertaining to geography, topography, architecture or other sciences; and

(e) any other work created by the intelligence of their author and presenting an original character.

Art. 1649. — *Translations and adaptations.*

Without prejudice to the rights of the author of the original work, translations, adaptations, musical arrangements and other renderings of a literary or artistic work shall be protected as original works.

Art. 1650. — *Encyclopaediae and anthologies.*

Collections of literary or artistic works such as encyclopaediae or anthologies which by the choice or arrangement of the material constitute intellectual creations shall be protected as such without prejudice to the rights of the authors over each of the works included in such collections.

Art. 1651. — *Official texts.*

(1) Official texts of a legislative, administrative or judicial nature shall not be subject to the provisions of this Title.

(2) They may be freely reproduced.

Art. 1652. — *Right of publication.*

(1) Only the author shall have the right to publish his work.

(2) After his death, this right shall pass to the person named by him or, in default of such person, to the heirs of the author.

(3) Where the heirs do not agree on the expediency or conditions of publication, the court shall settle the matter on the application of any of them.

Art. 1653. — *Production and reproduction of the work.*

(1) Only the author shall have during his life the right to produce his work.

(2) He shall alone have during his life the right to reproduce it.

Art. 1654. — *Adaptations.*

(1) Only the author shall have during his life the right to authorise the adaptation of his work to the theatre, cinematography or television, or any other kind of adaptation.

(2) A work shall be regarded as an adaptation of a third party's work where it explicitly refers to the said work or it is obvious, from the circumstances of the case, that it closely derives its inspiration therefrom.

(3) A parody, pastiche or caricature shall not be regarded as an adaptation of the work.

Art. 1655. — *Translations.*

(1) An author cannot object to the translation of his work.
(2) A translation made without the authorisation of the author shall expressly state this fact at the beginning of the work.
(3) Failing such a statement, it shall be deemed to be prejudicial to the author's rights.

Art. 1656. — *Private performances free of charge.*

The author may not forbid private performances of his work given free of charge at a family gathering or in a school.

Art. 1657. — *Articles and information of topical interest.*

(1) Articles of topical interest published in newspapers and reviews may be reproduced in the press, whether printed or broadcasted, unless such reproduction was expressly reserved.
(2) The source shall always be clearly stated.
(3) Daily news articles on current events which are mere press information may be freely reproduced.

Art. 1658. — *Public speeches.*

Speeches delivered in political assemblies, at public meetings or on the occasion of official ceremonies may be freely reproduced by the press, whether printed or broadcasted, during fifteen days from the day on which they were made.

Art. 1659. — *Collection of speeches or articles.*

Only the author shall have the right to publish his speeches and articles in book form or to issue a collection thereof.

Art. 1660. — *Limitation of the exclusive right of reproduction.*

(1) The author cannot forbid analyses and press reviews of his work.
(2) Copies or reproductions of the work made in a single copy shall be permitted where they are intended for private use only.

Art. 1661. — *Quotations.*

The author cannot forbid short quotations from his work provided they do not exceed, in the work in which they are included, forty lines in the case of a poetical work or ten thousand letters in the case of any other work.

Art. 1662. — *Photographic works.*

(1) Photographic works shall be protected where they form part of a collection or are published in a book.
(2) In other cases, they shall not be protected unless they bear the name and address of the author or his agent.

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Art. 1663. — *Assignment of the work.*

(1) The incorporeal ownership of the author shall be independent of the ownership of the material object which constitutes the protected work.

(2) The rights specified in this Title shall not vest in the acquirer of the object by the mere fact of his acquisition.

(3) The author may not require the owner of the material object to place this object at his disposal so as to enable him to exercise his rights.

Art. 1664. — *Reference to rules governing contracts of publication.*

The conditions on which literary or artistic rights of ownership may be assigned by the author to third parties shall be as provided by the Chapter of this Code relating to "Contracts of publication" (Art. 2672-2697).

Art. 1665. — *Alteration of a work.*

Notwithstanding any stipulation to the contrary, the author may prevent his work, if altered by a third party, from being presented as his own.

Art. 1666. — *Ascertainment of the author.*

(1) Without prejudice to any proof to the contrary, the person in whose name the work was published shall be deemed to be the author thereof.

(2) The author may claim the benefit of the rights deriving from the provisions of this Title notwithstanding that he used a pseudonym, provided that there is no doubt as to his identity.

Art. 1667. — *Anonymous works.*

As regards anonymous and pseudonymous works other than those mentioned in Art. 1666, the publisher whose name appears on the work shall without further proof be deemed to represent the author.

Art. 1668. — *Works produced by several authors.* — 1. *Rights of co-authors.*

(1) A work produced as a result of the cooperation of several authors shall be jointly owned by them.

(2) Author's rights shall be exercised by common agreement between the co-authors.

(3) Where each of the authors contributed a different type of work, each of them may, unless otherwise agreed, utilize separately his personal contribution provided that such utilization is not detrimental to the use of the common work.

Art. 1669. — 2. *Protection of third parties.*

(1) Where a work has been published under the name of a single author, third parties shall be justified in assuming that the said author is the sole author of the work.

(2) Rights of co-authors shall not affect them.

Art. 1670. — *Heirs of the author.* — 1. *Pecuniary rights.*

(1) The author's right to authorise the production, reproduction or adaptation of his work may, after his death, be exercised by his heirs for a period of fifty years from the time of the publication of the work.

(2) Where the heirs do not agree, the court shall settle the matter on the application of any of them.

Art. 1671. — *Moral prejudice.*

The right to prevent a work which has been altered by a third party from being attributed to the author may be exercised individually by the author's spouse, ascendants, children and grandchildren during their life.

Art. 1672. — *Posthumous work.*

A work published after the death of its author shall be protected for a period of fifty years as from the date of publication.

Art. 1673. — *Rights of public authorities.*

(1) Public authorities may in the general interest, notwithstanding the author's opposition, authorise the presentation or reproduction of a work or its adaptation, after such work has been published by its author or his heirs.

(2) The conditions and forms of such authorisation shall be determined by a special law providing in particular for fair compensation to the author.

(3) In no circumstances may public authorities authorise the alteration of a work.

Art. 1674. — *Protection of literary or artistic rights of ownership.*

(1) Any person whose right of literary or artistic ownership is infringed may demand the cessation of such infringement and the destruction of the copies or adaptations of his work made in breach of the law.

(2) He may in addition claim damages for the moral and material prejudice caused to him.

(3) The conditions on which he may act shall be as specified in the Title of this Code relating to "Extra-contractual liability and unlawful enrichment" (Art. 2027-2178).

# BOOK IV. OBLIGATIONS
# TITLE XII. CONTRACTS IN GENERAL

Art. 1675. — *Contract defined.*

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature.

Art. 1676. — *Provisions applicable to contracts.*

(1) The general provisions of this Title shall apply to contracts regardless of the nature thereof and the parties thereto.

(2) Nothing in this Title shall affect such special provisions applicable to certain contracts as are laid down in Book V of this Code and in the Commercial Code.

Art. 1677. — *Scope of application of this Title.*

(1) The relevant provisions of this Title shall apply to obligations notwithstanding that they do not arise out of a contract.

(2) Nothing in this Title shall affect the special provisions applicable to certain obligations by reason of their origin or nature.

## Chapter 1. Formation of contracts

Art. 1678. — *Elements of contract.*

No valid contract shall exist unless:

(a) the parties are capable of contracting and give their consent sustainable at law;

(b) the object of the contract is sufficiently defined and is possible and lawful;

(c) the contract is made in the form prescribed by law, if any.

### Section 1. Consent

#### Paragraph 1. — Elements of consent

Art. 1679. — *Consent necessary.*

A contract shall depend on the consent of the parties who define the object of their undertakings and agree to be bound thereby.

Art. 1680. — *Agreement of the parties.*

(1) A contract shall be completed where the parties have expressed their agreement thereto.

(2) Reserves or restrictions intended by one party shall not affect his agreement as expressed where the other party was not informed of such reserves or restrictions.

Art. 1681. — *Form of offer and acceptance.*

(1) Offer or acceptance may be made orally or in writing or by signs normally in use or by a conduct such that, in the circumstances of the case, there is no doubt as to the party's agreement.

(2) The party who makes an offer may stipulate a special form of acceptance.

Art. 1682. — *Silence.* — 1. *Principle.*

Silence where an offer is made shall not amount to acceptance.

Art. 1683. — 2. *Duty to accept.*

(1) No acceptance shall be required where a party is bound by law or by a concession granted by the authorities to enter into a contract on terms stipulated in advance.

(2) In such a case, the contract shall be completed upon receipt of the offer.

Art. 1684. — 3. *Preexisting business relations.*

(1) An offer to continue or vary an existing contract or to enter into a subsidiary or complementary contract may be accepted by silence.

(2) Such shall be the case where the offer is made in a special document informing the other party that the offer shall be regarded as accepted if no reply is given within a reasonable period of time.

Art. 1685. — 4. *Invoices.*

Particulars entered by a party in an invoice shall not bind the other party unless they conform to a prior agreement or have been expressly accepted by the other party.

Art. 1686. — 5. *General terms of business.*

General terms of business applied by a party shall not bind the other party unless he knew and accepted them or they were prescribed or approved by the authorities.

Art. 1687. — *Declaration of intention.*

No person shall be deemed to make an offer where:

(a) he declares his intention to give, to do or not to do something but does not make his intention known to the beneficiary of the declaration; or

(b) he sends to another or posts up in a public place tariffs, price-lists or catalogues or displays goods for sale to the public.

Art. 1688. — *Sale by auction.*

(1) Whosoever offers a thing for sale by auction shall be deemed to make a declaration of intention and not an offer.

(2) In such a case, the contract shall be completed only where the thing is knocked down upon the last bid being made.

Art. 1689. — *Public promise of a reward.*

(1) A promise published by posters or in any other manner to reward the person who will find an object which has been lost or who will perform a certain act shall be deemed to be accepted where a person brings the object back or performs the act, notwithstanding that he did not know of the promise.

(2) The promisor shall give the promised reward.

Art. 1690. — *Offer with time limit for acceptance.*

(1) Whosoever offers to another to enter into a contract and fixes a time limit for acceptance shall be bound by his offer until the time limit fixed expires.

(2) He shall not be bound where his offer is rejected before the expiry of the time limit fixed.

Art. 1691. — *Offer without time limit.*

(1) Whosoever offers to another to enter into a contract and does not fix any time limit shall be bound by his offer until the time when he can reasonably expect the other party to decide on the offer.

(2) Where acceptance is late, the offeror shall forthwith inform the other party where he does not intend to be bound.

Art. 1692. — *Contract between absent parties.*

(1) A contract made between absent parties shall be deemed to be made at the place where and time when the acceptance was sent to the offeror.

(2) A contract made by telephone shall be deemed to be made at the place where the party was called.

(3) Nothing in this Article shall affect contrary stipulations made by the parties.

Art. 1693. — *Withdrawal of offer and acceptance.*

(1) An offer shall be deemed not to have been made where the offeree knows that it is withdrawn before he knew or at the time when he knows of the offer.

(2) The provisions of sub-art. (1) shall apply where acceptance is withdrawn.

Art. 1694. — *Defective acceptance.*

The offer shall be deemed to be rejected and a new offer shall be deemed to be made where the acceptance is made with a reservation or does not exactly conform to the terms of the offer.

Art. 1695. — *Completion of contract.*

(1) A contract shall not be deemed to be completed unless the parties have expressed their agreement to all the terms of the negotiation.

(2) A contract shall be deemed to be completed where the parties show that they intend to be bound notwithstanding that they have not expressed their agreement to all the terms of the negotiation.

(3) In such a case, the law shall remedy any deficiency in the agreement of the parties.

Paragraph 2. — Defects in consent

Art. 1696. — *Invalidation of contract.*

A contract may be invalidated where a party gave his consent by mistake or under deceit or duress.

Art. 1697. — *Mistake must be decisive.*

The party who invokes his mistake shall establish that he would not have entered into the contract, had he known the truth.

Art. 1698. — *Mistake must be fundamental.*

A contract may be invalidated on the ground of mistake as defined in Art. 1697 where such mistake relates to an element of the contract which the parties deem to be fundamental or which is fundamental, having regard to good faith and to the circumstances in which the contract was made.

Art. 1699. — *Mistake as to the nature or object of the contract.*

A contract may be invalidated on the ground of mistake where:

(a) the mistake relates to the nature of the contract; or

(b) the mistaken party has undertaken to make a performance substantially greater or to receive a consideration substantially smaller than he intended.

Art. 1700. — *Mistake as to the person.*

A contract may be invalidated on the ground of mistake where such mistake relates to the identity or qualifications of the other party and such identity or qualifications are a fundamental element of the contract in the general opinion or having regard to the circumstances of the

Art. 1701. — *Non-fundamental mistakes.*

(1) A contract may not be invalidated on the ground of mistake where such mistake only relates to the motives which led to the making of the contract.

(2) Arithmetical mistakes in a contract shall not affect its validity and shall be corrected.

Art. 1702. — *Good faith of mistaken party.*

(1) The mistaken party may not invoke his mistake in a manner contrary to good faith.

(2) He shall be bound by the contract he intended to make where the other party agrees to perform such contract.

Art. 1703. — *Reparation of damage.*

Whosoever invokes his mistake to avoid the effect of a contract shall make good the damage arising out of the invalidation of the contract unless the other party knew or should have known of the mistake.

Art. 1704. — *Fraud.*

(1) A contract may be invalidated on the ground of fraud where a party resorts to deceitful practices so that the other party would not have entered into the contract, had he not been deceived.

(2) A contracting party who has been deceived by a third party shall be bound by the contract unless the other contracting party knew or should have known of the fraud on the making of the contract and took advantage thereof.

Art. 1705. — *False statements.*

(1) A contract may be invalidated where a party in bad faith or by negligence made false statements and a relationship giving rise to a special confidence and commanding particular loyalty existed between the contracting parties.

(2) The provisions of sub-art. (1) shall apply where a party, by his silence, caused the other party to believe a fact which was untrue.

Art. 1706. — *Duress.*

(1) A contract may be invalidated on the ground of duress where the acts of duress led a party to believe that he, one of his ascendants or descendants, or his spouse, were threatened with a serious and imminent danger to the life, person, honour or property.

(2) Duress must be such as to impress a reasonable person.

(3) The nature of duress shall be determined having regard to the age, sex and position of the parties concerned.

Art. 1707. — *Duress by third party.*

(1) A contract may be invalidated on the ground of duress notwithstanding that duress was exercised by a person other than the party who benefited by the contract.

(2) The party who invokes duress to avoid the effect of a contract shall make good the damage arising out of the invalidation of the contract, where duress was exercised by a third party and the other contracting party did not and should not have known thereof.

Art. 1708. — *Threat to exercise a right.*

A threat to exercise a right shall be no ground for invalidating a contract unless such threat was used with a view to obtaining an excessive advantage.

Art. 1709. — *Reverential fear.*

(1) Fear of an ascendant or a superior shall be no ground for invalidating a contract where no duress was exercised.

(2) The provisions of sub-art. (1) shall not apply where the contract was made with the person inspiring the fear and such person derived an excessive advantage from the contract.

Art. 1710. — *Unconscionable contract.*

(1) A contract may not be invalidated on the sole ground that its terms are substantially more favourable to one party than to the other party.

(2) Where justice requires, any such contract may be invalidated as unconscionable where the consent of the injured party was obtained by taking advantage of his want, simplicity of mind, senility or manifest business inexperience.

## Section 2. Object of contracts

Art. 1711. — *Determination of object.*

The object of a contract shall be freely determined by the parties subject to such restrictions and prohibitions as are provided by law.

Art. 1712. — *Obligation to give, to do or not to do.*

(1) A party may undertake to procure to the other party a right on a thing or to do or not to do something.

(2) The party who undertakes to do something may undertake to procure to the other party a specified advantage or to do his best to procure such advantage.

Art. 1713. — *Contents of contract.*

The parties shall be bound by the terms of the contract and by such incidental effects as are attached to the obligations concerned by custom, equity and good faith, having regard to the nature of the contract.

Art. 1714. — *Object must be defined.*

(1) A contract shall be of no effect where the obligations of the parties or of one of them cannot be ascertained with sufficient precision.

(2) The court may not make a contract for the parties under the guise of interpretation.

Art. 1715. — *Object must be possible.*

(1) The object of a contract must be possible.

(2) A contract shall be of no effect where the obligations of the parties or of one of them relate to a thing or fact which is impossible and such impossibility is absolute and insuperable.

Art. 1716. — *Unlawful or immoral object.*

(1) A contract shall be of no effect where the obligations of the parties or of one of them are unlawful or immoral.

(2) A contract shall be of no effect where it appears to be unlawful or immoral that the obligations assumed by one party be related to the obligations of the other party.

Art. 1717. — *Motive.* — 1. *Principle.*

The motive for which the parties entered into a contract shall not be taken into account in determining the unlawful or immoral nature of their obligations.

Art. 1718. — 2. *Exception.*

The court shall not order a contract to be performed where:

(a) the terms of the contract denote that the parties or one of them have an unlawful or immoral purpose in view; or

(b) the party who requires the performance of a contract produces a document denoting such purpose.

## Section 3. Form of contracts

Art. 1719. — *Form of contracts.*

(1) Unless otherwise provided, no special form shall be required and a contract shall be valid where the parties agree.

(2) Where a special form is expressly prescribed by law such form shall be observed.

(3) The parties may stipulate that the contract shall be made in a special form.

Art. 1720. — *Effect of provisions as to form.*

(1) Where a special form is prescribed by law and not observed there shall be no contract but a mere draft of a contract.

(2) A contract shall be valid notwithstanding that fiscal provisions, such as provisions relating to stamp duty or registration fee, have not been complied with.

(3) Unless otherwise provided, a contract shall be valid notwithstanding that prescribed measures of publication have not been complied with.

Art. 1721. — *Preliminary contracts.*

Preliminary contracts shall be made in the form prescribed in respect of final contracts.

Art. 1722. — *Variations.*

A contract made in a special form shall be varied in the same form.

Art. 1723. — *Contracts relating to immovables.*

(1) A contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or mortgage of an immovable shall be in writing and registered with a court or notary.

(2) Any contract by which an immovable is divided and any compromise relating to an immovable shall be in writing and registered with a court or notary.

Art. 1724. — *Contracts made with a public administration.*

Any contract binding the Government or a public administration shall be in writing and registered with a court, public administration or notary.

Art. 1725. — *Contracts for a long period of time.*

The following contracts shall be in writing:

(a) contracts of guarantee; and

(b) insurance contracts; and

(c) any other contract in respect of which such form is required by law.

Art. 1726. — *Agreed form.*

A contract which the parties agree to make in a special form not required by law shall not be deemed to be completed until it is made in the agreed form.

Art. 1727. — *Written form.*

(1) Any contract required to be in writing shall be supported by a special document signed by all the parties bound by the contract.

(2) It shall be of no effect unless it is attested by two witnesses.

Art. 1728. — *Signature.*

(1) Any party bound by a contract shall affix his handwritten signature thereto.

(2) Where a party cannot write, he may affix his thumb-mark.

(3) The signature or thumb-mark of a blind or illiterate person shall not bind him unless it is authenticated by a notary, registrar or judge acting in the discharge of his duties.

Art. 1729. — *Witnesses.* — 1. *Capacity.*

(1) Where witnesses are required by law or agreement, they shall be of age and not judicially interdicted, unless otherwise expressly provided.

(2) Sex or nationality shall not be considered in determining the capacity to act as a witness.

Art. 1730. — 2. *Duties.*

(1) Where necessary, the witnesses shall certify that a contract was made and the terms thereof.

(2) Unless they act expressly as guarantors, the witnesses shall not guarantee the performance of the contract.

## Chapter 2. Effect of contracts

Art. 1731. — *Principle.*

(1) The provisions of a contract lawfully formed shall be binding on the parties as though they were law.

(2) The contents of the contract shall be determined by the parties subject to the mandatory provisions of the law.

(3) The provisions of this Title shall apply to all contracts where such provisions are of a mandatory nature or their application has not been set aside by the parties.

### Section 1. Interpretation of contracts

Art. 1732. — *Interpretation in accordance with good faith.*

Contracts shall be interpreted in accordance with good faith, having regard to the loyalty and confidence which should exist between the parties according to business practice.

Art. 1733. — *Limits of interpretation.*

Where the provisions of a contract are clear, the court may not depart from them and determine by way of interpretation the intention of the parties.

Art. 1734. — *Common intention of the parties.*

(1) Where the provisions of a contract are ambiguous, the common intention of the parties shall be sought.

(2) The general conduct of the parties before and after the making of the contract shall be taken into consideration to this effect.

Art. 1735. — *General terms.*

A contract shall be deemed to relate to such matters only on which it appears that the parties intended to contract, however general the terms used.

Art. 1736. — *Interpretation in accordance with the context.*

(1) The provisions of a contract shall be interpreted through one another and each provision shall be given the meaning required by the whole contract.

(2) Ambiguous terms shall be given such meaning as is the more likely, having regard to the subject matter of the contract.

Art. 1737. — *Positive interpretation.*

Provisions capable of two meanings shall be given a meaning to render them effective rather than a meaning which would render them ineffective.

Art. 1738. — *Interpretation in favour of the debtor.*

(1) In cases of doubt, a contract shall be interpreted against the party who stipulates an obligation and in favour of the party who assumes it.

(2) Stipulations inserted in general provisions, models or forms of contracts prepared by one party shall be interpreted in favour of the other party.

Art. 1739. — *Gratuitous contracts.*

The obligations assumed by a party who derives no advantage from the contract shall be construed more narrowly.

## Section 2. Performance of contracts

Art. 1740. — *Performance by whom made.*

(1) The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed.

(2) In all other cases, the obligations under the contract may be carried out by a third party so authorised by the debtor, by the court or by law.

Art. 1741. — *Payment to whom made.*

Payment shall be made to the creditor or a third party authorised by the creditor, by the court or by law to receive it on behalf of the creditor.

Art. 1742. — *Creditor incapable.*

Payment to a creditor incapable of receiving it shall not be valid unless the debtor can show that such payment has benefited the creditor.

Art. 1743. — *Payment to unqualified person.*

(1) Payment to a person unqualified to receive on behalf of the creditor shall not be valid unless the creditor confirms it or such payment has benefited him.

(2) Payment shall be valid where it is made in good faith to a person who appears without doubt to be the creditor.

Art. 1744. — *Doubt as to the creditor.*

(1) Where there is a doubt as to who is qualified to be paid, the debtor may refuse to pay and release himself by depositing the amount due with the court.

(2) The debtor shall pay at his own risk where he is aware of litigation and pays to any of the persons who hold themselves out to be creditors.

(3) Where a case is pending in court and the debt is due, any of the persons who hold themselves out to be creditors may require the debtor to deposit the amount due.

Art. 1745. — *Identity of object.*

The creditor shall not be bound to accept a thing other than that due to him, notwithstanding that the thing offered to him is of the same or of a greater value than the thing due to him.

Art. 1746. — *Part payment.*

(1) The creditor may refuse part payment where the debt is liquidated and fully due.

(2) Where part of the debt is contested, the debtor shall pay such part of the debt as is admitted and as the creditor is willing to accept.

Art. 1747. — *Fungible things.* — 1. *Quality due.*

(1) Unless otherwise agreed, the debtor may choose the thing to be delivered where fungible things are due.

(2) The debtor may however not offer a thing below average quality.

Art. 1748. — 2. *Insufficient quantity or quality.*

(1) The creditor may not refuse fungible things on the ground that the quantity or quality offered to him does not exactly conform to the contract, unless this is essential to him or has been expressly agreed.

(2) Where the thing does not exactly conform to the contract, the creditor may proportionately reduce his own performance or, where he has already performed, claim damages.

Art. 1749. — *Money debts.*

(1) A debt consisting in a sum of money shall be paid in local currency.

(2) The sum of money owed by a party may be fixed by reference to the price of raw materials, goods or services or any other element whose value can be ascertained.

Art. 1750. — *Currency not legal tender.*

Where under the contract a debt is to be paid in a currency which is not legal tender at the place of payment, the debt may be paid in local currency at the rate of exchange on the day when the debt falls due, unless the contract contains the words "actual value" or any other provision of the same nature imposing literal performance of the contract.

Art. 1751. — *Legal interest.*

The rate of interest shall be of nine per cent per annum where interest is due and the rate has not been fixed.

Art. 1752. — *Appropriation of payments.* — 1. *Costs, interest, principal.*

Where a debtor is to pay costs and interest in addition to the principal, any part payment made by him shall be appropriated firstly to the costs, secondly to the interest and eventually to the principal.

Art. 1753. — 2. *Choice by the parties.*

(1) Where a debtor owes several debts to the same creditor, he may specify the appropriation of any payment made by him.

(2) Where the debtor does not specify the appropriation of a payment, such payment shall be appropriated to the debt specified by the creditor in the receipt unless the debtor forthwith objects to such appropriation.

Art. 1754. — 3. *Appropriation by law.*

(1) Where no appropriation is specified in the receipt, the payment shall be appropriated to the debt which is due, or, where no debt is due, to the debt which shall first become due.

(2) As between debts due or debts which shall become due on the same day, the payment shall be appropriated to the debt which it was to the greatest advantage to the debtor to pay.

(3) Where the advantages to the debtor are equal, the payment shall be appropriated proportionately.

Art. 1755. — *Place of payment.*

(1) Payment shall be made at the agreed place.

(2) Where no place is fixed in the contract, payment shall be made at the place where the debtor had his normal residence at the time when the contract was made.

(3) Unless otherwise agreed, payment in respect of a definite thing shall be made at the place where such thing was at the time when the contract was made.

Art. 1756. — *Time of payment.*

(1) Payment shall be made at the agreed time.

(2) Where no time is fixed in the contract, payment may be made forthwith.

(3) Payment shall be made whenever a party requires the other party to perform his obligations.

Art. 1757. — *Simultaneous performance.*

(1) Only a party who benefits by a time-limit having regard to the terms or nature of the contract or who has performed or offered to perform his obligations may require the other party to carry out his obligations under the contract.

(2) A party may refuse to carry out his obligations under the contract where the other party clearly shows that he will not perform his obligations or where the insolvency of the other party has been established by the court.

Art. 1758. — *Transfer of risks.*

(1) The debtor bound to deliver a thing shall bear the risks of loss of or damage to such thing until delivery is made in accordance with the contract.

(2) The risks shall pass to the creditor where he is in default for not taking over the thing.

Art. 1759. — *Limit of right to refuse performance.*

Notwithstanding the provisions of Art. 1757 (2), a party shall carry out his obligations under the contract where the other party produces securities sufficient to guarantee that he will perform his obligations at the agreed time.

Art. 1760. — *Costs of payment.*

Unless otherwise agreed, the debtor shall meet the costs of payment.

Art. 1761. — *Receipt.*

(1) The debtor may on payment demand a receipt and, where the debt is fully discharged, the delivery or cancellation of the document supporting the debt.

(2) In cases of part payment or where the creditor has additional rights supported by the some document, the debtor may only demand a receipt and that the payment be mentioned on the said document.

Art. 1762. — *Loss of document supporting the debt.*

Where the creditor alleges that he has lost the document supporting the debt, the debtor may demand the delivery of an attestation to the effect that the document supporting the debt is cancelled and the debt extinguished.

## Section 3. Variation of contracts

Art. 1763. — *Power of the Court.*

The court may not vary a contract or alter its terms on the ground of equity except in such cases as are expressly provided by law.

Art. 1764. — *Modification of the balance of a contract.*

(1) A contract shall remain in force notwithstanding that the conditions of its performance have changed and the obligations assumed by a party have become more onerous than he foresaw.

(2) The effect of such changes may be regulated by the parties, and not by the court, in the original contract or in a new agreement.

Art. 1765. — *Arbitration by third party.*

When making the contract or thereafter, the parties may agree to refer to an arbitrator any decision relating to variations which ought to be made in the contract, should certain circumstances occur which would modify the economic basis of the contract.

Art. 1766. — *Special relationship between the parties.*

The court may vary a contract where the parties do not agree and a family or other relationship giving rise to special confidence exists between the parties and compels them to deal with each other in accordance with equity.

Art. 1767. — *Contracts with a public administration.*

(1) The court may vary a contract made with a public administration where the circumstances in which it was made have changed through an official decision in consequence of which the obligations assumed by the party who contracted with the administration have become more onerous or impossible.

(2) The provisions of the Title of this Code relating to "Administrative contracts" shall apply to contracts made with a public administration (Art. 3191-3193).

Art. 1768. — *Partial impossibility of performance.*

The court may reduce the obligations of one party where the performance by the other party of his obligations has become partially impossible and there is no ground for cancelling the contract.

Art. 1769. — *Balance of the contract.*

In making its decision under Art. 1767 and 1768, the court shall ensure that the balance of the contract be preserved.

Art. 1770. — *Period of grace.*

(1) The court may, with all necessary care, grant a period of grace for the debtor to carry out his obligations under the contract, having regard to the position of the debtor and the requirements of justice.

(2) The period of grace shall not exceed six months.

(3) The parties may provide that no period of grace shall be granted.

## Section 4. Non-performance of contracts

Art. 1771. — *Effect of non-performance.*

(1) Where a party does not carry out his obligations under the contract, the other party may, according to the circumstances of the case, require the enforcement of the contract or the cancellation of the contract or in certain cases may himself cancel the contract.

(2) He may in addition require that the damage caused to him by non-performance be made good.

Art. 1772. — *Notice necessary.*

A party may only invoke non-performance of the contract by the other party after having placed the other party in default by requiring him by notice to carry out his obligations under the contract.

Art. 1773. — *Form and time of notice.*

(1) Notice shall be by written demand or by any other act denoting the creditor's intention to obtain performance of the contract.

(2) Notice may not be given unless the obligation is due.

Art. 1774. — *Time for performance.*

(1) The creditor may in the notice fix a period of time after the expiry of which he will not accept performance of the contract.

(2) Such period shall be reasonable having regard to the nature and circumstances of the case.

Art. 1775. — *Notice when unnecessary.*

Notice need not be given where:

(a) the obligation is to refrain from certain acts; or

(b) the debtor assumed to perform an obligation which the contract allows to be performed only within a fixed period of time and such period has expired; or

(c) the debtor has declared in writing that he would not perform his obligations; or

(d) it is agreed in the contract that notice shall not be required and the debtor shall be in default upon the expiry of the time fixed.

Art. 1776. — *Specific performance.*

Specific performance of a contract shall not be ordered unless it is of special interest to the party requiring it and the contract can be enforced without affecting the personal liberty of the debtor.

Art. 1777. — *Obligation to do or not to do.*

(1) The creditor may be authorised to do or to cause to be done at the debtor's expense the acts which the debtor assumed to do.

(2) The creditor may be authorised to destroy or to cause to be destroyed at the debtor's expense the things done in violation of the debtor's obligation to refrain from doing such things.

Art. 1778. — *Fungible things.*

Where fungible things are due, the creditor may be authorised by the court to buy at the debtor's expense the things which the debtor assumed to deliver.

Art. 1779. — *Creditor refusing to accept the thing.*

Where the creditor refuses without good cause to accept the thing offered to him, the debtor may deposit the thing at the risk and expense of the creditor in a public warehouse or deposit bank or in any other place named by the court of the place where payment is to be made.

Art. 1780. — *Delivery of the thing not possible.*

The provisions of Art. 1779 shall apply and notice under Art. 1772 shall not be required where the creditor is not known or there is a doubt as to who is the creditor or the debtor cannot deliver the thing for a reason within the control of the creditor.

Art. 1781. — *Sale of the thing.*

(1) Where the thing is of a perishable nature or the costs of its deposit or custody are disproportionate to its value, the debtor may be authorised by the court to sell the thing by public auction.

(2) Where the thing is quoted on the Stock Exchange or has a current price or the costs of the sale by public auction are disproportionate to its value, the debtor may be authorised by the court to sell the thing by private agreement.

(3) The proceeds of the sale shall in such a case be deposited with a public deposit bank.

Art. 1782. — *Validity of deposit.*

The debtor shall be released where the court finds that the thing or the proceeds of its sale have been validly deposited.

Art. 1783. — *Withdrawal of deposit.*

(1) The debtor may withdraw the thing or money deposited until the deposit has been accepted by the creditor, notwithstanding that the deposit has been found valid by the court.

(2) The claim shall revive upon withdrawal of the deposit.

(3) The securities attaching to the claim shall not revive where the deposit has been found valid by the court.

Art. 1784. — *Cancellation of contract by the Court.*

A party may move the court to cancel the contract where the other party has not or not fully and adequately performed his obligations within the agreed period of time.

Art. 1785. — *Good faith.*

(1) In making its decision, the court shall have regard to the interests of the parties and the requirements of good faith.

(2) A contract shall not be cancelled except in cases of breach of a fundamental provision of the contract.

(3) No contract shall be cancelled unless its essence is affected by non-performance and it is reasonable to hold for such reason that the party requiring cancellation of the contract would not have entered into the contract without the term which the other party has failed to execute being included.

Art. 1786. — *Cancellation by a party.* — 1. *Under the contract.*

A party may cancel the contract where a provision to this effect has been made in the contract and the conditions for enforcing such provision are present.

Art. 1787. — 2. *Expiry of time limit.*

A party may cancel the contract where the other party has failed to perform his obligations within the period of time fixed in accordance with Art. 1770, 1774 or 1775 (b).

Art. 1788. — 3. *Performance impossible.*

A party may cancel the contract even before the obligation of the other party is due where the performance by the other party of his obligations has become impossible or is hindered so that the essence of the contract is affected.

Art. 1789. — 4. *Party refusing performance.*

(1) A party may cancel the contract where the other party informs him in an unequivocal manner that he will not carry out his obligations under the contract.

(2) The party who intends to cancel the contract shall place the other party in default and the contract shall not be cancelled where the party in default produces within fifteen days securities sufficient to guarantee that he will perform his obligations at the agreed time.

(3) Notice shall not be required and the contract may be cancelled forthwith where a party informs the other party in writing that he will not perform his obligations.

Art. 1790. — *Damage arising out of non-performance.*

(1) Apart from or in addition to the enforcement or cancellation of the contract, a party may require that the damage caused to him by the other party failing to perform his obligations be made good.

(2) Without prejudice to the provisions of the following articles, the provisions of the Chapter of this Code relating to "Extra-contractual Liability" shall apply where the damage is made good under sub-art. (1) (Art. 2090-2123).

Art. 1791. — *Damage when to be made good.*

(1) The party who fails to perform his obligations shall be liable to pay damages notwithstanding that he is not at fault.

(2) He shall not be released unless he can show that performance was prevented by force majeure.

Art. 1792. — *Force majeure.*

(1) Force majeure results from an occurrence which the debtor could normally not foresee and which prevents him absolutely from performing his obligations.

(2) Force majeure shall not exist where the occurrence could normally have been foreseen by the debtor or where it renders more onerous the performance by the debtor of his obligations.

Art. 1793. — *Cases of force majeure.*

The following occurrences may, according to the circumstances, constitute cases of force majeure:

(a) the unforeseable act of a third party for whom the debtor is not responsible; or

(b) an official prohibition preventing the performance of the contract; or

(c) a natural catastrophe such as an earthquake, lightning or floods; or

(d) international or civil war; or

(e) the death or a serious accident or unexpected serious illness of the debtor.

Art. 1794. — *Absence of force majeure.*

Unless otherwise expressly agreed, the following occurrences shall not be deemed to be cases of force majeure:

(a) a strike or lock-out taking place in the undertaking of a party or affecting the branch of business in which he carries out his activities; or

(b) an increase or reduction in the price of raw materials necessary for the performance of the contract; or

(c) the enactment of new legislation whereby the obligations of the debtor become more onerous.

Art. 1795. — *Proof of fault.*

A party may not claim damages on the ground of non-performance of the contract by the other party, unless he can show that the other party is at fault, where:

(a) the debtor has undertaken to do his best to procure something to the other party without guaranteeing that he would succeed; or

(b) such an exception is expressly provided by law in respect of certain contracts.

Art. 1796. — *Grave fault.*

Where the contract is made for the exclusive advantage of one party, the other party shall not be liable to pay damages in cases of non-performance unless he has committed a grave fault.

Art. 1797. — *Notice to other party.*

(1) The debtor shall forthwith inform the other party of the reason which prevents him from performing his obligations.

(2) He shall be liable as though non-performance were attributable to him for any damage caused to the other party which could have been avoided, had notice been given.

Art. 1798. — *Party in default.*

Where performance is prevented by force majeure, damages shall be due where force majeure occurred after the debtor had been placed in default.

Art. 1799. — *Normal amount of damages.*

(1) Damages shall be equal to the damage which non-performance would normally have caused to the creditor in the eyes of a reasonable person.

(2) The nature of the contract, the profession of and the relations between the parties and any circumstances known to the debtor which surrounded the making of the contract shall be taken into consideration in assessing the amount of damages.

Art. 1800. — *Lesser damage.*

Where the debtor can show that the amount of damages assessed in accordance with Art. 1799 is greater than the damage caused to the creditor, he shall be liable to the extent of the damage actually caused.

Art. 1801. — *Greater damage.*

(1) The amount of damages shall be equal to the damage actually caused to the creditor where the debtor on entering into the contract was informed by the creditor of the special circumstances owing to which the damage is greater.

(2) The provisions of sub-art. (1) shall apply where non-performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault.

Art. 1802. — *Duty to limit the extent of the damage.*

(1) The party who invokes non-performance shall take all reasonable measures not involving inconvenience or heavy expenses to limit the extent of the damage caused.

(2) Where he fails to take such measures, the other party may invoke such failure to require that the amount of damages be reduced.

Art. 1803. — *Money debts.* — 1. *Interest for default.*

(1) Where the debtor owes a money debt and he is in default, he shall pay interest for default at the rate fixed by law (Art. 1751) notwithstanding that the contract fixes a lower rate in respect of interest to be paid before the debt is due.

(2) Where a higher rate of interest is fixed in the contract, such interest shall be due in lieu of interest under sub-art. (1).

(3) Interest shall be due notwithstanding that no loss is incurred by the creditor.

Art. 1804. — 2. *Interest on interest.*

(1) Where the debtor fails to make periodical payments which constitute an income for the creditor, such as rents, arrears of life or perpetual annuities or interest on capital, interest for default shall be due from the day on which proceedings for recovery are instituted where the debtor is one year in arrears.

(2) Nothing in this Article shall affect the provisions relating to current accounts.

Art. 1805. — 3. *Greater Damage.*

Where the damage caused to the creditor exceeds the interest for default, such damage shall be fully made good by the debtor where he knew of the circumstances on entering into the contract or where non-performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault.

## Chapter 3. Extinction of obligations

Art. 1806. — *Obligation performed.*

An obligation shall be extinguished where it is performed in accordance with the contract.

Art. 1807. — *Other causes of extinction.*

An obligation shall be extinguished where:

(a) the contract in which it is provided is invalidated or cancelled; or

(b) the parties or one of them enforce a provision made in the contract for the termination of the contract; or

(c) the parties agree to substitute a new obligation for the original obligation; or

(d) the debtor's obligation is set off by an obligation owing from the creditor to the debtor; or

(e) the positions of creditor and debtor are merged in the same person; or

(f) performance of the contract has not been demanded within a fixed period.

## Section 1. Invalidation and cancellation of contracts

Art. 1808. — *Who may require invalidation.*

(1) A contract which is affected by a defect in the consent or by the incapacity of one party may only be invalidated at the request of that party.

(2) A contract whose object is unlawful or immoral or a contract not made in the prescribed form may be invalidated at the request of any contracting party or interested third party.

Art. 1809. — *Party may refuse performance.*

A party who is entitled to require the invalidation of the contract may at any time refuse to perform it.

Art. 1810. — *Action for invalidation.*

(1) No contract shall be invalidated unless an action to this effect is brought within two years from the ground for invalidation having disappeared.

(2) Where a contract is unconscionable and the party injured was of age, the action shall be brought within two years from the making of the contract.

Art. 1811. — *Confirmation of contract.*

(1) The party whose consent was vitiated may waive his right to requir the invalidation of the contract where the cause which vitiated hi consent has disappeared.

(2) Where the contract was made in a special form, waiving as mentione in sub-art. (1) shall be made in the same form.

Art. 1812. — *Putting an end to action.*

Where a party requires the invalidation of an unconscionable contra the other party may put an end to the action by offering to make go the injury.

Art. 1813. — *Partial invalidation.*

Where part only of the contract is vitiated, only that part shall be validated unless such invalidation affects the essence of the contr

Art. 1814. — *Duty to opt.*

(1) The party who is entitled to require the invalidation of the contract or to cancel the contract shall, where he is so asked by the other party, without delay answer whether he intends to confirm or to cancel the contract.

(2) Notwithstanding any proof to the contrary, the contract shall be deemed to be cancelled where answer is not given in due time.

Art. 1815. — *Effect of invalidation or cancellation.*

(1) Where a contract is invalidated or cancelled, the parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made.

(2) Acts done in performance of the contract shall be of no effect.

Art. 1816. — *Rights of third parties.*

Acts done in performance of the contract shall not be invalidated where the interest of third parties in good faith so requires.

Art. 1817. — *Restoring previous position not possible.*

(1) Acts done in performance of the contract shall not be invalidated where such invalidation is not possible or would involve serious disadvantages or inconveniences.

(2) The parties shall as far as possible be reinstated in the position which would have existed, had the contract not been made, by the payment of damages or any other remedy which the court thinks fit.

Art. 1818. — *Expenses.*

Where a party who is to restore a thing following invalidation or cancellation of the contract has altered such thing or incurred expenses in relation thereto, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" (Art. 2168-2178) shall apply in settling the rights or obligations arising out of such alterations or expenses.

## Section 2. Termination of contracts and remission of debt

Art. 1819. — *Consent of the parties.*

(1) A contract may terminate where the parties so agree.

(2) A contract which is terminated shall no longer be performed.

(3) Termination shall have no retrospective effect.

Art. 1820. — *Termination by one party.*

(1) Provisions may be made in the contract to the effect that the parties or one of them may terminate the contract on notice.

(2) Where more than two persons enter into a contract, provisions may be made to the effect that the contract shall terminate with regard to one of them and remain in force with regard to the other parties.

Art. 1821. — *Contracts for an undefined period of time.*

Where a contract is made for an undefined period of time, both parties may terminate it on notice.

Art. 1822. — *Period of notice.*

(1) The party who terminates a contract shall comply with legal or customary periods of notice.

(2) Where the period of notice is not fixed by the law or by custom, it shall be reasonable having regard to the circumstances.

Art. 1823. — *Special relations between the parties.*

A party may apply to the court to order the termination of a contract which requires a special confidence, cooperation or community of views between the parties, where such requirements are no longer present.

Art. 1824. — *Gratuitous contracts.*

The court may order the termination of a contract made for the exclusive advantage of one party where the other party for good cause so requires.

Art. 1825. — *Remission of debt.*

Where the creditor informs the debtor that he regards him as released, the obligation shall be extinguished unless the debtor forthwith informs the creditor that he refuses his debt to be remitted.

## Section 3. Novation

Art. 1826. — *Principle.*

An obligation shall be extinguished where the parties agree to substitute therefor a new obligation which differs from the original one on account of its object or nature.

Art. 1827. — *Effect of novation.*

(1) Unless otherwise expressly provided, securities or privileges attaching to the original obligation shall not be transferred to the new obligation.

(2) Unless otherwise expressly provided, interest due prior to novation may not be recovered thereafter.

Art. 1828. — *Intention to extinguish original obligation.*

Novation shall not occur unless the parties show the unequivocal intention to extinguish the original obligation.

Art. 1829. — *Absence of novation.*

Unless otherwise agreed, novation shall not occur where:

(a) a new document is prepared to support an existing debt; or

(b) the debtor signs a promissory note or bill of exchange in respect of an existing debt; or

(c) new securities are provided to ensure payment of an existing debt.

Art. 1830. — *Current account.*

(1) Novation shall not result from the entry of credit or debit items in a current account.

(2) Novation shall occur where the balance of an account is finalised and admitted.

(3) Unless otherwise agreed, the creditor shall retain such securities as may attach to one of the items entered in a current account notwithstanding that the balance of the account has been finalised and admitted.

## Section 4. Set-off

Art. 1831. — *Principle.*

Where two persons owe debts to one another, set-off shall occur and the obligations of both persons shall be extinguished in accordance with the provisions of the following Articles.

Art. 1832. — *Positive conditions.*

Set-off shall not occur unless both debts are money debts or relate to a certain quantity of fungible things of the same species and both debts are liquidated and due.

Art. 1833. — *Negative conditions.*

Set-off shall occur regardless of the cause of either obligation except where:

(a) the special nature of the obligation requires that the creditor be actually paid, as in the case of maintenance or wages necessary for the livelihood of the creditor and his family; or

(b) the obligation is owing to the State or municipalities; or

(c) the obligation is to restore a thing of which the owner has been unjustly deprived; or

(d) the obligation is to return a thing deposited.

Art. 1834. — *Period of grace.*

The granting of a period of grace shall be no bar to a set-off.

Art. 1835. — *Appropriation of payments.*

Where several debts liable to set-off are owing from the same person, the set-off shall be made in accordance with the provisions of Chapter 2 of this Title relating to appropriation of payments (Art. 1752-1754).

Art. 1836. — *Effect of set-off.*

The debts shall extinguish each other as from the day when they both exist and to the extent of the amount of the lesser debt.

Art. 1837. — *Rights of third parties.*

Set-off shall not affect the rights which a third party may have in respect of one of the debts.

Art. 1838. — *Intention to set-off.*

(1) Set-off shall not occur unless the debtor informs the creditor that he intends to make a set-off.

(2) The court shall not have regard to set-off unless raised.

Art. 1839. — *Waiving of right to set-off.*

The debtor may in advance waive his right to make a set-off.

Art. 1840. — *Contractual set-off.*

(1) Set-off may occur in cases not provided by law where the parties agree.

(2) The parties may in advance specify the conditions of a set-off.

Art. 1841. — *Set-off by the court.*

(1) Where one of the debts is not liquidated, the court may hold that a set-off has been made to the extent of such amount of the debt as is admitted.

(2) Where one of the debts is not liquidated but can be liquidated without delay, the court may suspend judgment against the debtor whose debt is liquidated until the other debt is liquidated.

## Section 5. Merger

Art. 1842. — *Principle.*

Merger shall occur and the obligation shall be extinguished where the positions of creditor and debtor are merged in the same person.

Art. 1843. — *Rights of third parties.*

Merger shall not affect the rights which a third party may have in respect of the obligation.

Art. 1844. — *End of merger.*

The obligation shall revive where merger comes to an end.

## Section 6. Limitation of actions

Art. 1845. — *Period of limitation.*

Unless otherwise provided by law, actions for the performance of a contract, actions based on the non-performance of a contract and actions for the invalidation of a contract shall be barred if not brought within ten years.

Art. 1846. — *Beginning of period.*

The period of limitation shall run from the day when the obligation is due or the rights under the contract could be exercised.

Art. 1847. — *Annuities.*

In respect of annuities, the period of limitation shall run from the day when the first payment not made was due.

Art. 1848. — *Calculation of period.*

(1) The period of limitation shall not include the day from which such period begins to run.

(2) The action shall be barred where the last day of the period of limitation has expired without having been used.

(3) Where the last day of the period of limitation is a holiday at the place of payment, the action shall be barred on the next working day.

Art. 1849. — *Collateral claims.*

Interest and collateral claims shall be barred where the principal claim is barred.

Art. 1850. — *Pledge.*

A creditor whose claim is secured by a pledge may exercise the rights arising out of the pledge notwithstanding that the claim is barred.

Art 1851 — *Interruption.*

The period of limitation shall be interrupted where:

(a) the debtor admits the claim, in particular by paying interest or instalments or by producing a pledge or guarantees; or

(b) the creditor brings an action for the debtor to discharge his obligations.

Art. 1852. — *Effect of interruption.*

(1) A new period of limitation shall begin to run upon each interruption.

(2) Such period shall be of ten years where the debt has been admitted in writing or established by a judgment.

Art. 1853. — *Special relations between the parties.*

(1) The court may set aside a plea based on limitation where it is of opinion that the creditor failed to exercise his rights in due time on account of the obedience he owed to or fear he felt of the debtor to whom he is bound by family relationship or subordination.

(2) In such a case, third parties who guaranteed the payment of the debt shall however be released.

Art. 1854. — *Bad faith.*

A party may plead limitation notwithstanding that he is in bad faith.

Art. 1855. — *Contrary provisions.*

The parties may not in advance waive limitation nor may they fix periods of limitation other than those fixed by law.

Art. 1856. — *Waiving of limitation.*

(1) A party may waive limitation after it has become effective.

(2) The court shall not have regard to limitation unless pleaded.

## Chapter 5. Special terms of obligations or contracts

### Section 1. Provisions as to time

Art. 1857. — *Calculation of period of time.*

Where an obligation is to be discharged or another act of a legal nature is to be performed after a certain period of time from the date of the contract or any other date, such period shall be reckoned in accordance with the provisions of the following Articles.

Art. 1858. — *Period fixed in days.*

Where the period is fixed in days, the debt shall be due on the last day of such period, the day of the making of the contract not being included.

Art. 1859. — *Period fixed in weeks.*

Where the period is fixed in weeks, the debt shall be due on such day of the last week as corresponds by its name to the day of the making of the contract.

Art. 1860. — *Period fixed in months.*

(1) Where the period is fixed in months or so as to include several months, the debt shall be due on such day of the last month as corresponds by its number to the day of the making of the contract.

(2) Where the period is fixed in accordance with the Gregorian Calendar and no day in the last month corresponds to the day of the making of the contract, the debt shall be due on the last day of the last month.

(3) The thirteenth month of the Ethiopian Calendar shall not be taken into account.

Art. 1861. — *Monthly periods.*

(1) Where the period expires at the beginning or at the end of a month, such period shall expire on the first or on the last day of such month.

(2) Where the period expires in the middle of a month, such period shall expire on the fifteenth of such month.

Art. 1862. — *Holidays.*

Where the period expires on a day which is a holiday at the place of payment, such period shall expire on the next working day.

Art. 1863. — *Lapse of time.*

(1) Where an obligation is to be discharged within a specified period of time, the debtor shall discharge his obligations before the expiry of such period.

(2) He shall fix the exact date on which he shall discharge his obligations unless the circumstances are such as to show that the said date is to be fixed by the creditor.

Art. 1864. — *Period extended.*

Where the period is extended, the new period shall, unless otherwise agreed, begin to run from the day following the day on which the first period expired.

Art. 1865. — *Benefit of period of time.*

The period of time shall be deemed to be fixed for the benefit of the debtor unless the contract or the circumstances show that it is also fixed for the benefit of the creditor.

Art. 1866. — *Waiving of benefit of time.*

(1) The debtor may discharge his obligations before the expiry of the agreed period of time unless the contrary intention of the parties can be inferred from the terms or nature of the contract or from the circumstances.

(2) Payments made before the expiry of the agreed period of time may not be recovered.

Art. 1867. — *Rights of creditor.*

(1) The creditor may not demand performance before the expiry of the agreed period of time unless such period was fixed for his exclusive benefit.

(2) Where the period is fixed for the exclusive benefit of the creditor, he shall, where necessary, grant a reasonable period of time for the debtor to discharge his obligations.

Art. 1868. — *Loss of benefit of time.*

The debtor whose insolvency has been established or who has reduced the value of the securities given by him to the creditor shall lose the benefit of the agreed period of time.

## Section 2. Condition

Art. 1869. — *Principle.*

A contract shall be deemed to be conditional where it relates to an obligation whose existence depends on the occurrence or non-occurrence of an uncertain event.

Art. 1870. — *Good faith.*

A party may regard a condition as fulfilled where the other party has prevented its fulfilment in a manner contrary to good faith.

Art. 1871. — *Condition precedent.*

Unless otherwise agreed, the contract shall be effective as from the day when the condition is fulfilled.

Art. 1872. — *Condition subsequent.*

(1) A contract whose cancellation depends on the occurrence of an uncertain event shall be effective forthwith.

(2) It shall cease to be effective where the event occurs.

Art. 1873. — *Non-interference.*

The parties shall refrain from doing any act likely to prevent the regular performance of the contract upon the fulfilment of the condition.

Art. 1874. — *Acts of management.*

Acts of management done prior to the fulfilment of the condition by the party who exercises the right shall remain valid where the condition is fulfilled. Damages may be claimed where such acts were done in bad faith.

Art. 1875. — *Acts beyond management.*

(1) Acts beyond management done by the party who exercises the right may be invalidated where the other party so requires.

(2) Any interested party may require the other party to state within a reasonable period of time whether he will require the acts beyond management to be invalidated.

(3) The effects of invalidation shall be as provided by Art. 1808-1818.

Art. 1876. — *Fruits and profits.*

The party who exercises the right prior to the fulfilment of the condition shall, where the condition is fulfilled, retain the fruits and profits he received in good faith prior to the fulfilment of the condition.

Art. 1877. — *Protective measures.*

A party whose conditional rights are imperilled may take such protective measures as he could take, were his rights not conditional.

Art. 1878. — *Impossible, unlawful or immoral condition.*

The provisions relating to the impossible, unlawful or immoral object of a contract (Art. 1715 and 1716) shall apply where the condition on which a contract depends is impossible, unlawful or immoral.

Art. 1879. — *Condition depending on a party.*

(1) An obligation assumed subject to a condition the fulfilment of which depends solely on the party who assumes the obligation shall be of no effect.

(2) An obligation shall be deemed to be assumed under sub-art. (1) where the promisor's liability for non-performance of the contract is excluded in the contract.

## Section 3. Alternative obligations

Art. 1880. — *Principle.*

A debtor who is to discharge alternative obligations shall be released where he discharges either of the duties provided in the contract.

Art. 1881. — *Rights of debtor.*

(1) The debtor may choose which duty he will discharge unless such right is expressly conferred on the creditor or a third party.

(2) Where the party entitled to choose does not exercise his right on being required to do so, such right shall pass to the other party.

Art. 1882. — *Performance impossible.*

(1) Where the discharge of one of the duties is or becomes impossible, the debtor shall discharge the other duty.

(2) Damages shall be due where such impossibility is due to the fault of a party who was not entitled to choose the duty to be discharged.

## Section 4. Earnest

Art. 1883. — *Effect of earnest.*

The giving of earnest shall be proof of the making of the contract.

Art. 1884. — *Performance of contract.*

Unless otherwise agreed, the party who has received earnest shall return it or deduct it from his claim where the contract is performed.

Art. 1885. — *Non-performance of contract.*

(1) Unless otherwise agreed, the party who has given earnest may cancel the contract subject to forfeiture of the earnest given by him.

(2) Unless otherwise agreed, the party who has received earnest may cancel the contract subject to repayment of double of the amount received by him.

## Section 5. Provisions as to liability

Art. 1886. — *Extension of liability.*

The parties may extend their liability under the contract and provide that they will be liable for non-performance notwithstanding that performance is prevented by force majeure.

Art. 1887. — *Limitation of liability.*

The parties may limit their liability under the contract and provide that they will not be liable unless they commit a fault.

Art. 1888. — *Acts of employees.*

(1) The parties may provide that they will not be liable where non-performance is caused by a fault of their employees or auxiliaries.

(2) Any such provision shall be of no effect where it is made to the prejudice of a party who is the employee of the other party.

Art. 1889. — *Penalty.*

The parties may fix the amount of damages which will be due, should a party fail to discharge his obligations or to discharge them completely and in due time.

Art. 1890. — *Rights of creditor.*

(1) Unless otherwise agreed, the creditor may require the performance of a contract which includes a penalty.

(2) He may not require both the enforcement of the contract and the penalty unless the penalty was provided in respect of delay or the non-performance of a collateral obligation.

Art. 1891. — *Conditions of application.*

The penalty shall be due whenever the creditor is entitled to claim damages by reason of non-performance of the contract.

Art. 1892. — *Actual damage.*

(1) The penalty shall be due notwithstanding that no actual damage was caused to the creditor.

(2) Damages may not be claimed above the amount of the penalty unless non-performance is due to the debtor's intention to cause damage or to his gross negligence or grave fault.

Art. 1893. — *Variation of penalty.*

The agreed amount of the penalty due for non-performance may not be reduced by the court unless partial performance has taken place.

Art. 1894. — *Invalidation.*

(1) A penalty shall be of no effect where the contract in which it is prescribed is invalidated.

(2) A contract shall remain in force notwithstanding that the penalty is not valid.

Art. 1895. — *Contractual sanctions.*

Where a contract provides that a party may apply certain sanctions, should the other party fail to carry out one of his duties, the court shall, notwithstanding any provision to the contrary, verify whether the agreed sanctions may be applied.

## Chapter 5. Plurality of debtors or creditors

### Section 1. Debtors jointly and severally liable

Art. 1896. — *Cases of joint and several liability.*

Unless otherwise agreed or provided by law, co-debtors shall be jointly and severally liable.

Art. 1897. — *Principle of joint and several liability.*

(1) The creditor may require all the debtors or one of them to discharge the obligation in whole or in part.

(2) Each debtor shall be liable until the obligation is fully discharged.

Art. 1898. — *Res judicata.*

Proceedings instituted against one of the debtors shall be no bar to similar proceedings being instituted against the other debtors.

Art. 1899. — *Notice.*

Notice placing one debtor in default shall be effective against all the debtors.

Art. 1900. — *Nullity of obligation.*

(1) Any debtor may set up against the creditor defences based on the nullity of the obligation.

(2) Where the obligation is null owing to a defect in the consent or to the incapacity of the debtor, such nullity may be raised by that debtor only.

Art. 1901. — *Payment and limitation.*

Any debtor may set up against the creditor defences based on the total or partial payment of the debt or on limitation.

Art. 1902. — *Remission of debt.*

(1) Where the debt is remitted to one debtor, all co-debtors shall be released.

(2) Notwithstanding the provisions of sub-art. (1), the creditor may specify that the debt is remitted for the exclusive advantage of one debtor.

(3) A remission under sub-art. (2) shall not release the co-debtors unless the debt ultimately rests with the debtor for whose advantage the remission was made.

Art. 1903. — *Novation.*

(1) The provisions of Art. 1902 shall apply where the creditor agrees with one debtor to substitute a new debt for an existing debt.

(2) The creditor may specify that novation shall only apply to the share of that debtor.

Art. 1904. — *Set-off.*

Where the creditor owes a debt to one debtor, the co-debtors shall not be released unless the debt ultimately rests with the debtor with whom the set-off was made.

Art. 1905. — *Merger.*

Where one debtor becomes the creditor, merger shall not release the co-debtors unless the debt would ultimately have rested with the debtor who became the creditor.

Art. 1906. — *Liability.*

(1) A debtor who is jointly and severally liable may do nothing to increase the liabilities of the co-debtors.

(2) A debtor shall be liable to the co-debtors where he fails to raise defences common to all the co-debtors.

Art. 1907. — *Share in the debt.*

Unless otherwise agreed or provided by law, each debtor shall share equally in payments made to the creditor.

Art. 1908. — *Claims as between co-debtors.*

(1) A debtor who pays in excess of his share may claim the amount paid in excess from the co-debtors in proportion to their share.

(2) Any amount which cannot be recovered from one of the debtors shall be repaid by the other debtors in proportion to their share.

Art. 1909. — *Substitution.*

(1) A debtor who may claim under Art. 1908 shall substitute himself for the creditor to the extent of the amount paid by him to the creditor.

(2) The creditor shall hand to the debtor who makes the payment all documents and make all formalities to enable the debtor to claim from the other debtors.

(3) Where the creditor makes substitution impossible, he shall be liable for the damage caused by him to the debtor.

## Section 2. Joint creditors

Art. 1910. — *Scope of application.*

Unless otherwise agreed or provided by law, joint creditors shall not be jointly and severally entitled to claim payment.

Art. 1911. — *Principle.*

(1) Each joint creditor may require the debtor to pay the whole debt.

(2) Payment made to one of the creditors shall be effective against all the creditors.

(3) The debtor may, at his option, pay any of the joint creditors until he is informed that proceedings have been instituted by one of them.

Art. 1912. — *Limitation.*

Any act interrupting the period of limitation as regards one joint creditor shall interrupt it for the benefit of all.

**Art. 1913.** — ***Remission of debt.***

**A remission of debt made by one joint creditor shall release the debtor in respect of the share of that creditor only.**

**Art. 1914.** — ***Novation.***

**The provisions of Art. 1913 shall apply to a novation agreed upon between one joint creditor and the debtor.**

**Art. 1915.** — ***Set-off.***

**Where the debtor becomes creditor of one joint creditor, he may invoke a set-off against the other co-creditors only to the extent of such creditor's ultimate share in the claim.**

**Art. 1916.** — ***Ultimate sharing.***

**(1) Unless otherwise provided by the contract or by law, each joint creditor shall be entitled to an equal share of the debtor's payment.**

**(2) A creditor receiving more than his share shall account for the excess to the other creditors.**

## Section 3. Obligations other than joint obligations

**Art. 1917.** — ***Indivisibility.***

**The provisions regarding joint obligations shall apply by analogy to obligations which are indivisible owing to their nature.**

**Art. 1918.** — ***Plurality of debtors.***

**(1) Obligations which are neither joint obligations nor indivisible owing to their nature shall be divided between the persons liable for the debt.**

**(2) Each debtor shall be liable for his lawful share or for such other share in the debt as may be prescribed by the contract or by law.**

**(3) Nothing in this Article shall affect the case where one debtor has acted as surety and guaranteed payment of the debt by the principal debtor.**

**Art. 1919.** — ***Plurality of creditors.***

**(1) Obligations which are neither joint obligations nor indivisible owing to their nature shall be divided between the creditors.**

**(2) Each creditor may only demand payment of his lawful share or of such other share as may be prescribed by the contract or by law.**

## Section 4. Suretyship

Art. 1920. — *Principle.*

Whosoever guarantees an obligation shall undertake towards the creditor to discharge the obligation, should the debtor fail to discharge it.

Art. 1921. — *Consent of debtor.*

A guarantee may be given without any request from the debtor for whom it is undertaken or without his knowledge.

Art. 1922. — *Form.*

(1) A guarantee shall not be presumed.

(2) It shall be express and may not be extended beyond its contractual limits.

(3) The contract of guarantee shall be of no effect unless it specifies the maximum amount for which the guarantee is given.

Art. 1923. — *Principal obligation void.*

(1) A guarantee may not be given except in respect of a valid obligation.

(2) A debt resulting from a contract which, owing to mistake or incapacity, is not binding on the debtor, may validly be guaranteed where the guarantor, on undertaking the guarantee, was aware of the defect pertaining to the debtor which vitiated the contract.

Art. 1924. — *Limits of a guarantee.*

(1) A guarantee may not exceed the amount owed by the debtor, nor be contracted on more burdensome terms.

(2) It may be contracted in respect of part only of the debt and subject to less burdensome terms.

(3) A guarantee which exceeds the amount of the debt, or which has been contracted on more burdensome terms, is not void but merely reducible to the amount of the primary debt.

Art. 1925. — *Future or conditional obligations.*

(1) A guarantee may be undertaken in respect of future or conditional obligations.

(2) Where the time during which the guarantor is to be bound has not been stipulated in the instrument creating the guarantee, the guarantor may put an end to his undertaking so long as the primary debt is not yet due.

Art. 1926. — *Extinction of primary debt.*

(1) The guarantor shall be released when the primary debt is discharged for any reason whatsoever.

(2) The guarantor may set up against the creditor all the defences available to the debtor, and the fact that the principal debtor might have waived them cannot be set up against him.

(3) The fact that the obligation of the principal debtor is null by reason of a defect in the latter's consent or of his incapacity shall not affect the guarantor, where he bound himself with full knowledge of these circumstances.

Art. 1927. — *Substituted performance.*

The voluntary acceptance by the creditor of an immovable or of any other asset in satisfaction of the primary debt shall discharge the guarantee even though the creditor may subsequently be evicted.

Art. 1928. — *Variation of primary debt.*

(1) Contracts entered into between the creditor and the principal debtor after the making of the contract of guarantee may not increase the liabilities of the guarantor.

(2) The guarantor shall be released where the creditor, without his being expressly authorised to do so, allows time for payment to the debtor.

Art. 1929. — *Limitation.*

Proceedings instituted against the principal debtor shall interrupt the period of limitation as regards the guarantor.

Art. 1930. — *Interest.*

Where the debt guaranteed bears interest, the guarantor shall, unless otherwise agreed, guarantee the payment of the interest within the limits of the maximum amount stated in the instrument of guarantee.

Art. 1931. — *Legal costs.*

The guarantor shall be liable, even beyond the limits of the maximum amount stated in the instrument of guarantee, for the costs of any actions brought against the principal debtor, provided he received sufficient notice thereof enabling him to forestall them by discharging the debt.

Art. 1932. — *Maturity of debt.*

(1) The guarantor may not be required to pay prior to the time fixed for the payment of the primary debt notwithstanding that the debt became mature at an earlier date owing to the bankruptcy of the debtor.

(2) Where the primary debt is exigible only after previous notice is given to the debtor, such notice shall also be given to the guarantor.

(3) The period of notice shall run as regards the guarantor from the day he was notified.

Art. 1933. — *Joint guarantee.*

(1) Where the person undertaking the guarantee described himself as joint guarantor, co-debtor, or used equivalent terms, the creditor may sue him without previously demanding payment from the debtor or realizing his securities.

(2) The relevant provisions of this Chapter shall apply to joint guarantee.

Art. 1934. — *Simple guarantee.*

(1) Apart from the case mentioned in Art. 1933, a guarantor shall not pay the creditor unless the principal debtor fails to discharge his obligation.

(2) The guarantor may demand that the creditor, before requiring him to pay, should discuss the principal debtor's assets and, in particular, realize the real securities available.

Art. 1935. — *Benefit of discussion.*

(1) The creditor shall not discuss the principal debtor unless the guarantor so requires as soon as he is first proceeded against.

(2) The guarantor may not claim the benefit of discussion where the insolvency of the debtor has been judicially established.

Art. 1936. — *Assets to be discussed.*

(1) A guarantor requiring discussion shall indicate the debtor's assets to the creditor and advance sufficient money for the costs of their discussion.

(2) He may not indicate such debtor's properties as are subject to litigation, or situate outside the country of payment, or mortgaged as security for the debt but no longer in the debtor's possession.

Art. 1937. — *Failure to proceed.*

Where the guarantor has indicated the assets as provided in Art. 1936 and has supplied sufficient money for their discussion, the creditor is answerable to the guarantor, up to the value of the assets thus indicated, for an insolvency of the principal debtor due to the creditor's failure to proceed.

Art. 1938. — *Summons to proceed.*

(1) Where the primary obligation has fallen due, the guarantor may demand that the creditor sue the principal debtor within six weeks for the enforcement of his rights.

(2) The guarantor shall be released where the creditor fails to comply with this summons or to continue the proceeding with reasonable diligence.

Art. 1939. — *Tender of payment.*

(1) Where the primary obligation has fallen due, the guarantor may require that the creditor accepts the payment from him.

(2) The guarantor shall be released where the creditor does not accept such payment or refuses to transfer to the guarantor the securities he enjoys.

Art. 1940. — *Guarantor's indemnity claim.*

(1) The guarantor who has paid shall be indemnified by the principal debtor, whether the guarantee had been given with or without the latter's knowledge.

(2) Such indemnity claim shall apply to the principal, interest and costs incurred.

(3) The guarantor may claim to be refunded with such costs only as he incurred since he notified the principal debtor of the proceedings directed against himself.

Art. 1941. — *Damages.*

(1) The guarantor may claim damages from the debtor where it was owing to the latter's fault or negligence that the guarantor had to pay the creditor.

(2) The amount of such damages shall be fixed in accordance with the rules laid down in Chapter 2 of this Title (Art. 1790-1805).

Art. 1942. — *Lapse of indemnity claim.*

(1) The guarantor has the right and the duty to set up against the creditor all the defences available to the principal debtor unless they are excluded by the nature of his guarantee.

(2) The guarantor who fails to set up such defences is debarred from his remedy in so far as they would have relieved him of payment.

(3) The provisions of sub-art. (2) shall not apply where the guarantor can prove that he was in ignorance thereof without his fault.

Art. 1943. — *Second payment.*

(1) The guarantor shall lose his indemnity claim where the debtor pays a second time because the guarantor failed to inform him of his own payment.

(2) He may claim from the creditor what the latter unduly received from the debtor.

Art. 1944. — *Subrogation.*

(1) The guarantor shall be subrogated to the rights of the creditor to the extent of his payment to him.

(2) The benefit of such subrogation may not be waived in advance.

Art. 1945. — *Duties of creditor.*

The creditor shall hand over the documents of title to the guarantor who pays him and perform such formalities as will enable the guarantor to exercise his remedy and realize the securities available to the creditor.

Art. 1946. — *Impossibility of subrogation.*

The guarantor shall be relieved of his obligation towards the creditor where the guarantor's subrogation to the rights, mortgages and liens of the creditor can no longer be effected owing to the creditor's act or omission.

Art. 1947. — *Debtor's bankruptcy.*

(1) Where the debtor becomes bankrupt the creditor shall prove in the bankruptcy.

(2) He shall inform the guarantor of the bankruptcy as soon as he is aware of it.

(3) Where the creditor fails to comply with these rules, he shall lose his rights against the guarantor to the extent of the latter's loss resulting from such failure.

Art. 1948. — *Securities due to guarantor.*

The guarantor, even before he has paid, may take action against the debtor and demand securities from him where:

(a) the debtor has been given notice to pay his debt;

(b) the debtor has been declared bankrupt;

(c) either by reason of the losses the debtor has suffered or as result of a fault committed by him, the guarantor runs a considerably greater risk than when he undertook the guarantee.

Art. 1949. — *Counter-guarantor.*

The counter-guarantor guarantees towards the guarantor the effectiveness of his indemnity claim against the principal debtor.

Art. 1950. — *Secondary guarantor.*

(1) A person may stand surety not only for the principal debtor but also for his guarantor.

(2) The secondary guarantor shall be in the same position towards the guarantor as a simple guarantor is towards the principal debtor.

(3) Merger between the principal debtor and the guarantor shall not extinguish the creditor's right of action against the secondary guarantor.

Art. 1951. — *Plurality of guarantors.*

(1) Where several persons became at the same time guarantors of the same debtor in respect of the same debt, each of them shall be liable as simple guarantor for his share and as secondary guarantor for the shares of the others.

(2) Where the guarantors entered into their undertakings by successive acts, he who bound himself in the second place shall be held liable as secondary guarantor of the guarantor who bound himself before him.

(3) Where the guarantors expressly bound themselves as joint guarantors either with the principal debtor or as between themselves, each of them shall be answerable for the whole debt, subject to contribution from the others proportionate to their shares.

## Chapter 6. Third Parties in Relation to Contract

Art. 1952. — *Relative effect of contract.*

(1) Except in the cases provided in this Code, contracts shall produce effects only as between the contracting parties.

(2) Nothing in this Article shall affect the provisions relating to extra-contractual liability (Art. 2056).

(3) Nothing in this Article shall affect the provisions relating to agency (Art. 2179-2265).

### Section 1. Promises and Stipulations Concerning Third Parties

Art. 1953. — *Option to substitute third party.*

At the time of the making of a contract, a party may reserve the option to substitute for himself another person assuming the rights and obligations under the contract.

Art. 1954. — *Effect.*

(1) Where the appointment thus provided is made within the following three days, the contract shall be effective as if it had been entered into by representation.

(2) Where the appointment is not made within three days, the contract shall be effective as between the parties who made it.

Art. 1955. — *Promise for third party.*

A person may stand promisor for a third party by promising an act or omission by the said third party.

Art. 1956. — *Effect.*

(1) Where the third party ratifies the promise concerning him, the person who stood promisor shall be released.

(2) Unless otherwise agreed, such person shall not guarantee the proper performance of the contract.

(3) Where the third party does not ratify the contract, the person who stood promisor for him shall be liable towards the other contracting party for the damage resulting from the non-performance of the contract.

Art. 1957. — *Stipulation for benefit of third party.*

Parties to a contract may stipulate that one of them shall perform an obligation for the benefit of a third party.

Art. 1958. — *Rights of stipulator.*

(1) Unless otherwise agreed, he who stipulates for the benefit of another may reserve for himself the benefit of the contract or appoint a new beneficiary under the stipulation, as long as the option has not been offered to the third party mentioned in the contract, or where the said party has refused the benefit of the stipulation.

(2) Where the beneficiary of the stipulation has accepted it, the stipulator shall retain the right to vindicate the rights resulting from the non-performance of the contract where the promisor fails to perform his obligation.

Art. 1959. — *Option of beneficiary.*

The person for whose benefit the stipulation was made may, when the option is offered to him in accordance with the contract, accept or refuse as he pleases the benefit of the stipulation.

Art. 1960. — *Heirs of stipulator.*

(1) Where the obligation undertaken by the promisor is to be performed upon the death of the stipulator, the person whom the latter appointed as beneficiary of the stipulation shall, where he claims the benefit of the stipulation, acquire his right against the promisor on the day of the beneficiary's death.

(2) The heirs of the stipulator may not revoke the appointment made by him of the beneficiary of the stipulation.

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Art. 1961. — *Rights of beneficiary.*

(1) Upon his acceptance, the beneficiary of the stipulation shall irrevocably acquire the rights which the contract confers upon him as against the promisor.

(2) The promisor may set up against him any defences of a purely personal nature which he may have against the stipulator.

## Section 2. Assignment of Obligatory Rights and Subrogation

Art. 1962. — *Assignment of rights.*

A creditor may assign his rights to a third party without the consent of the debtor, unless such assignment is forbidden by law or the contract, or is barred by the very nature of the transaction.

Art. 1963. — *Scope of assignment.*

Arrears of interest shall be deemed to have been assigned with the principal of the debt.

Art. 1964. — *Warranty.*

(1) Where the assignment is for consideration, the assignor shall guarantee the existence of the right at the time of the assignment.

(2) He shall not guarantee the solvency of the debtor, unless he expressly accepted such liability.

(3) Where the assignment is gratuitous, the assignor shall not guarantee the existence of the right.

Art. 1965. — *Scope of guarantee.*

(1) An assignor bound by the guarantee shall be liable to the assignee only to the extent of the amount he received in principal and interest.

(2) He shall in addition be liable for the costs of the assignment and of any unsuccessful proceedings against the debtor.

Art. 1966. — *Valid defences.*

(1) The debtor may set up against the assignee, as he could have done against the assignor, any defences which were available to him upon his becoming aware of the assignment.

(2) Where he had a claim against the assignor which was not yet demandable at the time, he may invoke a set-off, provided his claim does not fall due later than the assigned claim does.

Art. 1967. — *Opposability of assignment to debtor.*

(1) The debtor shall be released where, before the assignment was brought to his knowledge either by the assignor or the assignee, he pays the assignor in good faith.

(2) Where the same claim was assigned to several assignees, regard shall be had to the date on which the assignments have been notified to the debtor or agreed by the latter in a document with an authenticated date.

(3) The debtor shall pay to the assignee who avails himself of the earliest date.

Art. 1968. — *Subrogation by creditor.*

(1) A creditor who is paid by a third party may subrogate him to his rights.

(2) Subrogation shall be express and effected at the time of payment.

Art. 1969. — *Subrogation by debtor.*

A debtor who borrows money or other fungible things to pay his debt may subrogate the lender to the rights of the creditor, even without the consent of the latter.

Art. 1970. — *Conditions.*

(1) Subrogation by the debtor implies that the instrument evidencing the loan bears an authenticated date and that the use of the sum lent is expressly specified therein.

(2) The receipt for the loan shall bear an authenticated date and include an express statement that the payment was made by means of the borrowed money.

(3) The creditor may not refuse to include this statement in the receipt where the debtor so requires him.

Art. 1971. — *Legal subrogation.*

Subrogation to the rights of the creditor shall take place by virtue of the law, to the extent of the amount paid:

(a) for the benefit of any person who, being bound with others or on behalf of others for the payment of a debt, discharged the debt and is thereby entitled to indemnity or contribution from his co-debtors; and

(b) for the benefit of any person who, being owner of a property or enjoying over it a right of lien, mortgage or pledge, paid a creditor who enjoyed over the same property a right of lien, mortgage or pledge; and

(c) whenever the law so provides.

Art. 1972. — *Partial payment.*

(1) Subrogation may not be made to the detriment of a creditor who has been only partly paid.

(2) The creditor may exercise his rights in respect of the balance still due in priority to the person from whom he received partial payment.

Art. 1973. — *Effect of subrogation or assignment.*

(1) The subrogated creditor or the assignee of a right may exercise the liens, securities and other accessory rights attached to it.

(2) He may not enter into possession of the thing received in pledge by the creditor without the consent of the pledger.

Art. 1974. — *Duties of original creditor.*

(1) He who assigned a right or was paid by a third party shall hand over to the assignee or to the subrogated creditor the document of title relating to the debt and furnish him with any available means of proof, as well as with the necessary information enabling him to vindicate his rights.

(2) In cases of partial assignment or payment, the original creditor shall supply a copy certified by two witnesses of the documents evidencing the claim.

Art. 1975. — *Exceptions.*

(1) Nothing in the preceding Articles shall affect the special rules governing the assignment of certain specified rights.

(2) Nothing shall affect the cases where the claim is embodied in a registered document or an instrument to order or to bearer.

## Section 3. Delegation, and Assignment of Obligations

Art. 1976. — *Principle of delegation.*

A debtor may with the consent of the creditor, or without such consent in cases provided by law or usage, delegate to another the performance of his obligations.

Art. 1977. — *Acceptance by creditor.*

(1) Unless the contrary has been expressly stipulated, the creditor who has agreed to such a delegation shall retain his right against the original debtor.

(2) He may not demand satisfaction from the original debtor before demanding it from the delegate debtor.

Art. 1978. — *Acceptance by delegate.*

Subject to usage, the delegate shall not be bound to accept the delegation notwithstanding that he is the debtor of the person appointing him as delegate.

Art. 1979. — *Revocation of delegation.*

(1) The delegator may no longer revoke the delegation after the delegate accepted the liability towards the creditor or effected the payment.

(2) The delegate may accept the liability or perform the obligation even after the death of the delegator or after the delegator having become incapable.

Art. 1980. — *Rights of delegate.*

(1) The delegate may not set up against the creditor defences deriving either from his personal relationship with the delegator, or from the relationship between the creditor and delegator.

(2) He may set up against the creditor defences deriving from his personal relationship with him.

Art. 1981. — *Insolvency of delegate.*

(1) A creditor who has released the original debtor has no remedy against him where the delegate debtor becomes insolvent, unless the delegation instrument contains an express reservation on this point.

(2) He shall retain his remedy against the original debtor where the insolvency of the delegate had been already judicially recorded at the time of the delegation.

Art. 1982. — *Securities.*

Third parties who have secured the debt upon their property or are guarantors shall not be liable to the creditor unless they consented to the delegation.

Art. 1983. — *Assignment of estate.*

(1) He who acquires an estate or an undertaking with assets and liabilities shall be personally liable for the debts to creditors as soon as he notified them of the transfer or published it in the newspapers.

(2) The former debtor shall be jointly liable with the new debtor for a period of two years.

(3) This period shall run, in respect of mature debts, from the day of the notification or publication and, in respect of other debts, from the date of maturity.

Art. 1984. — *Amalgamation of undertakings.*

Where two undertakings amalgamate by the mutual transfer of their assets and liabilities, the new undertaking shall be liable for all the debts of each of them.

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Art. 1985. — *Formation of partnership.*

(1) The provisions of Art. 1984 shall apply where an individual undertaking is converted into a general or limited partnership.

(2) The new partnership shall be liable for the debts of the individual undertaking it absorbed.

## Section 4. Heirs of the Parties

Art. 1986. — *Principle.*

The heirs of a person shall be substituted for him in contracts to which he was a party, unless the contrary was stipulated or flows from the nature of the contract.

Art. 1987. — *Stipulation for benefit of third party.*

A stipulation for the benefit of a third party shall be performed for the benefit of his heirs where he dies after having accepted it but before it was performed.

## Section 5. Creditors of the Parties

Art. 1988. — *Attachment.*

(1) The performance by the debtor of his obligations shall be secured by all his assets, with the exception of those which cannot be attached at law.

(2) The rules relating to attachment, and in particular to the attachment of claims vested in the debtor, are contained in the Code of Civil Procedure.

Art. 1989. — *Agreements entered into by debtor.* — 1. *Principle.*

(1) Agreements entered into by a person may be set up against his creditors.

(2) Agreements entered into by a person in respect of a certain thing may be set up against third parties who acquire from that person a particular right in respect of such thing, as from the time their date is authenticated or, where the law provides for the publication of such agreements, as from the day of publication.

Art. 1990. — 2. *Preferred creditors.*

The provisions of Art. 1989 shall not apply where the law so provides, in particular where a preferential right or lien is conferred upon the creditor by law or contract, or where the debtor has been deprived, by judicial decision, of the management of his properties.

Art. 1991. — 3. *Apparent acts.*

(1) The provisions of Art. 1989 shall not apply in cases of simulation.

(2) Counter-deeds shall bind the contracting parties only.

(3) The creditor of one of the parties may avail himself of such apparent act on the basis of which he contracted.

Art. 1992. — *Preservatory measures.*

A creditor may take in the name of the debtor any preservatory step required with a view to preventing the extinction of a right of the debtor.

Art. 1993. — *Exercise of debtor's rights.*

(1) A creditor may, with the authorisation of the court, exercise as representative of the debtor all the rights of the debtor so as to prevent such impoverishment of the debtor as would jeopardize the payment of the debt.

(2) The authorisation to act shall be refused to the creditor where the right he intends to exercise is, by nature or under the law, inherent in the person of the debtor.

(3) The authorisation shall be refused where the creditor's rights are not imperilled by the inaction of the debtor whose insolvency is not in view.

Art. 1994. — *Simulation.*

A creditor may have established, by judicial decision, that a transaction effected by a debtor was a simulated one which, by agreement, was not intended to be carried out.

Art. 1995. — *Debtor's fraud.*

A creditor may, in his own name, challenge the validity of acts whereby the debtor, in fraud of the creditor's rights, alienated property or entered into obligations.

Art. 1996. — *Fraudulent acts.*

(1) An act shall be deemed to have been done in fraud of the rights of creditors where it was done by the debtor so as to become insolvent, or with the knowledge that he was thereby increasing his insolvency.

(2) The payment of mature debts may not be challenged by the creditors.

Art. 1997. — *Third parties in good faith.*

A third party who is prejudiced by the creditor's action may set up his good faith as a defence against such action where the act which is challenged, or a contingent act conferring rights on the third party, was done for consideration.

Art. 1998. — *Time.*

The creditor's action shall be brought within two years from the date of the act which is challenged.

Art. 1999. — *Effect.*

(1) A debtor's act declared to be fraudulent may not be set up against the creditor who brought the action.

(2) It shall remain valid as between the parties and in regard to other creditors.

Art. 2000. — *Bankruptcy.*

The provisions of the preceding Articles shall not affect the rules concerning the exercise by creditors of the debtor's rights or the action of creditors against the debtor's fraudulent acts in the event of the latter's bankruptcy.

## Chapter 7. Proof in Relation to Contracts

### Section 1. Burden and Admissibility of Proof

Art. 2001. — *Burden of proof.*

(1) He who demands performance of an obligation shall prove its existence.

(2) He who alleges that an obligation is void, has been varied or is extinguished shall prove the facts causing such nullity, variation or extinction.

Art. 2002. — *Means of evidence.*

Proof may be adduced by writings, witnesses, presumptions, a party's admission or oath, in accordance with the rules set out in this Chapter and the forms prescribed in the Code of Civil Procedure.

Art. 2003. — *Contracts to be in writing.*

Where the law requires written form for the completion of a contract, such contract may not be proved by witnesses or presumptions unless it is established that the document evidencing the contract has been destroyed, stolen or lost.

Art. 2004. — *Agreements relating to evidence.*

Parties are not allowed to provide in their contracts exceptions to the rules which bar or restrict the admissibility of certain means of evidence.

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## Section 2. Written Evidence

Art. 2005. — *Probatory value of written instrument.*

(1) A written instrument shall be conclusive evidence, as between those who signed it, of the agreement therein contained and of the date it bears.

(2) It shall have the same probatory value for persons represented in the act and the heirs of the parties.

Art. 2006. — *Contrary proof.*

(1) Statements contained in a written instrument may be challenged by those who signed it only by tendering an oath to the party who avails himself thereof.

(2) No proof by witnesses nor any presumption is admissible against such statements.

Art. 2007. — *Disallowance of handwriting.*

(1) He against whom a non-authenticated instrument is set up shall, where he intends not to recognize it as his own, formally disclaim his alleged handwriting and signature.

(2) It shall be sufficient for heirs to declare that they do not recognize the writing or signature of their ascendant.

Art. 2008. — *Verification of handwriting.*

Where a party disclaims his handwriting or signature or his heirs declare that they do not recognize them, their verification shall be ordered by the court.

Art. 2009. — *Third parties.*

(1) Third parties may prove by all means the falsity of statements contained in an instrument, unless the instrument was drawn up or received by a public officer.

(2) They may, in particular, prove by all means the falsity of the date on the instrument, unless such date is authenticated.

Art. 2010. — *Authentic deed.*

(1) Where the instrument was drawn up or received by a duly qualified public officer, third parties may freely challenge such statements only in the instrument as originated from the parties and could not be verified personally by the public officer.

(2) Statements which the public officer personally verified may not be challenged except with the permission of the court.

Art. 2011. — *Copies of authentic deeds.*

(1) Copies or photostat copies of original authentic deeds shall have the same probatory value as the originals where they are certified by a duly qualified public officer.

(2) The same rule shall apply to photostat copies of parts of the originals.

Art. 2012. — *Public records.*

Copies of public or private instruments kept in public registers, issued in accordance with regulations by the registrar to whom the instruments are entrusted, shall have the same authentic value as the originals.

Art. 2013. — *Collation and photographs.*

(1) In the cases provided in the preceding articles, the parties may not require the production to the court of the original instrument, but may require, at their own cost, the collation of the copy produced with the original text or, failing such text, with the copy kept in public registers.

(2) They may, at their own cost, demand a photostat copy of the instrument being collated.

Art. 2014. — *Loss of original.*

Failing an original text or a copy kept in public registers, copies made in accordance with the preceding articles shall retain their authenticity where on their face appear no erasures, alterations or any other particularity justifying suspicion.

Art. 2015. — *Authenticated date.*

An instrument shall acquire an authentic date:

(a) where the instrument was drawn up or received by a public officer, at the date of its drawing up or reception; or

(b) where the instrument is referred to in another instrument drawn up or received by a public officer, at the date of the drawing up or reception of the other instrument; or

(c) where one of those who signed the instrument has died or become physically incapable of signing it, at the date of the death or of the occurrence of the incapacity.

Art. 2016. — *Trade books.*

(1) Entries in trade books are no evidence in favour of those who made the entries.

(2) They are evidence against those who made the entries, but a party wishing to avail himself thereof may not sever them so as to discard entries contrary to his claim.

Art. 2017. — *Domestic records and papers.*

Domestic records and papers are no evidence in favour of the person who wrote them.

Art. 2018. — *Evidence against author.*

Such records and papers are evidence against the person who wrote them where:

(a) they formally mention a payment; or

(b) they include an express statement that the entry was made to make good the lack of document of title in favour of the person for the benefit of whom they state an obligation.

Art. 2019. — *Proof of cause.*

(1) Where a person promised to make a payment or acknowledged a debt, the person in whose favour the promise was made or the debt acknowledged need not prove a cause justifying them.

(2) The existence of a valid agreement shall be presumed, subject to proof to the contrary.

(3) Where proof of simulation of the cause is adduced, the party alleging that the obligation has another lawful cause shall prove it.

## Section 3. Presumptions of Payment

Art. 2020. — *Presumption of Payment.* — 1. *Handing over of document of title.*

The handing over of the document of title to the debtor shall raise a presumption that the debt has been discharged.

Art. 2021. — 2. *Creditor's entries.*

Entries made by the creditor at the end, in the margin or at the back of a document of title, which remained at all times in his possession, shall be conclusive evidence although not signed or dated by him, where they tend to establish the debtor's release.

Art. 2022. — 3. *Prior or concomitant debt.*

(1) In the case of interests or other periodical dues, the creditor who gives a receipt for a given period, without making any reservation, shall be deemed to have collected the dues for the previous periods.

(2) Where the creditor gives a receipt for the principal, the debtor shall be deemed to have paid the interest.

Art. 2023. — 4. *Presumption of payment after six months.*

The following debts shall be deemed to have been paid where six months have elapsed since they fell due:

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(a) debts in respect of wages owed to clerks, office employees, servants, daily workers and workmen; and

(b) debts due to masters or teachers in respect of lessons given monthly; and

(c) debts due to hotel-keepers, inn-keepers or managers of boarding-houses in respect of lodging and food; and

(d) debts due to merchants in respect of goods and foodstuffs supplied by them to private persons for consumption or common use.

Art. 2024. — *Presumption of payment after two years.*

The following debts shall be deemed to have been paid where two years have elapsed since they fell due:

(a) debts due to physicians, surgeons, dentists, midwives, pharmacists or veterinary surgeons in respect of professional services or supplies; and

(b) debts due to advocates, notaries or other members of the legal profession in respect of professional services; and

(c) debts due to handicraftsmen in respect of work done by them; and

(d) debts due in respect of rents for houses or agricultural estates; and

(e) arrears of periodical dues; and

(f) interest on loans and generally any sum payable annually or at shorter periodical intervals.

Art. 2025. — *Contrary proof.*

The presumptions laid down in the preceding Articles shall not apply where:

(a) the debtor has acknowledged the debt in writing; or

(b) prior to the expiry of the period prescribed by law, the creditor has instituted proceedings with a view to the debtor paying the debt.

Art. 2026. — *Oath.*

(1) No proof shall be admitted to rebut the presumptions laid down in Art. 2020-2024.

(2) The creditor may require the debtor or the debtor may require the creditor to take an oath as to whether or not the debt has been paid.

(3) The heirs of the creditor or debtor may be required to take an oath as to whether they know if the debt has been paid or not.

# TITLE XIII
# EXTRA-CONTRACTUAL LIABILITY AND UNLAWFUL ENRICHMENT
## Chapter 1. Extra-Contractual liability

Art. 2027. — *Sources of extra-contractual liability.*

(1) Irrespective of any undertaking on his part, a person shall be liable for the damage he causes to another by an offence.

(2) A person shall be liable, where the law so provides, for the damage he causes to another by an activity in which he engages or by an object he possesses.

(3) A person shall be liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from the law.

### Section 1. Liability arising from an offence

#### Paragraph 1. — General rules

Art. 2028. — *General principle.*

Whosoever causes damage to another by an offence shall make it good.

Art. 2029. — *Types of offence.*

(1) An offence may consist in an intentional act or in mere negligence.

(2) An offence may consist in an act or failure to act.

Art. 2030. — *Public morality.*

(1) A person commits an offence where he acts or refrains from acting in a manner or in conditions which offend morality or public order.

(2) Regard shall be had to the behaviour of a reasonable man.

(3) Unless otherwise provided by law, the offence shall be assessed without regard to the age or mental state of the person concerned.

Art. 2031. — *Professional fault.*

(1) A person practising a profession or a specific activity shall, in the practice of such profession or activity, observe the rules governing that practice.

(2) He shall be liable where, due regard being had to scientific facts or the accepted rules of the practice of his profession, he is guilty of imprudence or of negligence constituting definite ignorance of his duties.

Art. 2032. — *Intent to injure*

(1) A person commits an offence where he acts with intent to injure another notwithstanding that he seeks no personal gain from his act.

(2) A person commits an offence where, with full knowledge of the facts, he causes substantial damage to another in seeking personal gain disproportionate to the damage caused.

Art. 2033. — *Abuse of powers.*

(1) A person commits an offence where he turns to his own advantage powers conferred upon him in the interest of another.

(2) A public servant commits an offence where he turns to his own advantage or to the advantage of another individual, powers conferred upon him in the public interest by his office.

Art. 2034. — *Purpose of rights.*

Subject to the provisions of the preceding Articles, the manner in which a right is used may not be challenged on the ground that it is contrary to the economic or social purpose of that right.

Art. 2035. — *Infringement of a law.*

(1) A person commits an offence where he infringes any specific and explicit provision of a law, decree or administrative regulation.

(2) Ignorance of the law is no excuse.

Art. 2036. — *Hierarchical order.*

(1) The fact that an act has been carried out on the orders of a higher authority shall not necessarily relieve the doer of liability.

(2) The doer commits an offence where he is aware of the illicit nature of the order, in particular by reason of the lack of competence of the person giving the order, and the criminal nature of the act ordered.

(3) There is no offence where, in the circumstances of the case, and in particular having regard to the strict exigencies of administrative or military discipline, the doer was placed in such a position that he could not discuss the order received or act otherwise than he did.

Art. 2037. — *Non-performance of a contract.*

(1) A person shall not commit an offence involving his extra-contractual liability where he fails to discharge his obligations under a contract.

(2) The provisions regarding the non-performance of contracts shall apply in such case.

Paragraph 2. — Special cases

Art. 2038. — *Physical assault.* — 1. *Principle.*

(1) A person commits an offence where he intentionally makes contact with the person of another against the latter's will.

(2) An offence shall be committed regardless of whether the bodily harm done to the other person is caused by personal contact or by the use of an object, animate or inanimate.

(3) Unless otherwise provided, the mere threat of physical assault on another shall not constitute an offence.

Art. 2039. — *Justification.*

No offence shall be deemed to have been committed where:

(a) the defendant could not reasonably have foreseen that the plaintiff would object to his act; or

(b) the act was done, in a reasonable manner, in legitimate self-defence, or in the legitimate defence of another, or to safeguard property of which the defendant is the lawful owner or possessor; or

(c) the act consists in reasonable corporal punishment inflicted by the defendant on his child, ward, pupil or servant; or

(d) the plaintiff was a dangerous lunatic whom it was necessary to restrain from doing harm, and the act was done in a reasonable manner; or

(e) there are any other circumstances such as to justify the defendant's action in the eyes of a reasonable person.

Art. 2040. — *Interference with the liberty of another.* — 1. *Principle.*

(1) A person commits an offence where, without due legal authority, he interferes with the liberty of another person, even for a short time, and prevents him from moving about as he is entitled to do.

(2) In such a case, an offence shall be deemed to have been committed notwithstanding that no injury is done to the plaintiff's person.

(3) It shall be sufficient for the plaintiff to have been compelled to behave in a certain manner by the threat of a danger of which he could not be unaware.

Art. 2041. — 2. *Lawful authority.*

No offence shall be deemed to have been committed where the constraint has been imposed in a reasonable manner on a person in the legal custody of the defendant and for the purpose of enforcing the authority conferred upon the latter by law.

Art. 2042. — 3. *Criminal offence.*

(1) No offence shall be deemed to have been committed where the person who has interfered with the liberty of another had good reason to believe that the latter had committed a criminal offence.

(2) The person interfering with the liberty of another shall be liable in the case provided for in sub-art. (1) where he fails to hand over forthwith the person under his constraint to the police.

Art. 2043. — 4. *Bail.*

A person who has provided bail for another, guaranteeing to the authorities that the latter will reside in a certain place, may lawfully interfere with the liberty of the person on bail where he has good reason to believe that he is preparing to abscond.

Art. 2044. — *Defamation.* — 1. *Principle.*

A person commits an offence where by his words, his writings or by any other means he acts in such a way as to make another living person detestable, contemptible or ridiculous and to jeopardize his credit, his reputation or his future.

Art. 2045. — 2. *Absence of intent to injure.*

(1) The intent to injure shall not be deemed to be an essential requirement for defamation.

(2) No defamation shall be deemed to have been committed where the author of the utterances or writings alleged to be defamatory had no intention of referring in such utterances or writings to any particular person.

(3) In such a case, the author of the utterances or writings shall be liable only where in the circumstances he ought reasonably to have foreseen that his words or writings would inflict injury on another.

Art. 2046. — 3. *Matters of public interest.*

(1) A person shall not be deemed to have committed an offence where he confined himself to expressing his opinion on matters of public interest, notwithstanding that such opinion inflicts injury on another by bringing him under public obloquy.

(2) In this case, defamation shall not be deemed to have been committed unless the defendant has made against the plaintiff charges which to his certain knowledge are false.

Art. 2047. — 4. *Truth of the alleged facts.*

(1) No defamation shall be deemed to have been committed where the defendant adduces proof of the accuracy of his charges.

(2) In this case, he shall not be liable unless he has acted solely with intent to injure.

Art. 2048. — 5. *Immunity.*

(1) No liability shall be incurred in respect of utterances made in parliamentary debates or in the course of legal proceedings.

(2) A person who repeats such utterances in their exact form shall be liable only where he has acted solely with intent to injure.

Art. 2049. — 6. *Justification.*

(1) Where defamation is committed by way of publications, no liability shall be incurred where the defendant has acted without intent to injure and without gross negligence, provided that at the plaintiff's request he publishes immediately a withdrawal and an apology.

(2) Where the defamation is committed by way of a periodical which appears at intervals of more than one week, the plaintiff may require the withdrawal and apology to be published immediately in a periodical of his choice.

(3) In other cases, the withdrawal and apology shall be published in the periodical in which the defamatory matter was published.

Art. 2050. — *Injury to the rights of spouses.* — 1. *Principle.*

(1) A person commits an offence where, knowing her to be married, he or she induces a woman to leave her husband against the husband's will.

(2) A person commits an offence where, knowing him to be married, he or she induces a married man to leave his wife against the wife's will.

(3) A person commits an offence where he receives, harbours or detains a married woman against the will of her husband, in full knowledge of the husband's opposition.

Art. 2051. — 2. *Justification*

No offence shall be deemed to be committed in the case provided in Art. 2050 (3) where:

(a) the husband and wife have agreed to live apart; or

(b) the husband has been guilty of cruelty to his wife or the defendant had good reason to think so and has received the woman out of humanenesss.

Art. 2052. — *Duty to educate and to supervise.*

(1) A person commits an offence where he fails to take in respect of persons entrusted to his charge or supervision by law or in conformity with the law the measures of education and supervision which may

reasonably be expected of him, having regard to the circumstances and custom.

(2) He shall be liable where, as a consequence of his default, damage is suffered by the person in his charge.

(3) He shall be liable where, as a consequence of his default, the person subject to his supervision causes damage to a third party.

Art. 2053. — *Trespass.*

A person commits an offence where, without due legal authority, he forces his way on the land or into the house of another, against the clearly expressed will of the lawful owner or possessor of the land or house.

Art. 2054. — *Assault on property.*

A person commits an offence where, without due legal authority, he takes possession of property against the clearly expressed will of the lawful owner or possessor of the property.

Art. 2055. — *Pre-contractual negotiations.*

A person commits an offence where, having declared his intention of entering into a contract and having induced others to incur expense with a view to concluding a contract with him, he arbitrarily abandons his intention.

Art. 2056. — *Disregard of contractual liability.*

(1) Whosoever is aware of the existence of a contract between two other persons commits an offence where he enters into a contract with one of those persons thereby rendering impossible the performance of the first contract.

(2) He shall not be liable where the party complaining of the breach of the first contract has failed to take the necessary measures which would have ensured the effective performance of that contract.

Art. 2057. — *Unfair competition.*

A person commits an offence where, through false publications, or by other means contrary to good faith, he compromises the reputation of a product or the credit of a commercial establishment.

Art. 2058. — *Simulation.*

Where, by his declarations or conduct or by nonfeasance, a person induces third parties, or certain third parties, to believe in a certain state of affairs, he commits an offence where, in breach of good faith, he takes action against such third parties based on the true state of affairs.

Art. 2059. — *False information.* — 1. *Principle.*

A person who, intentionally or by negligence, supplies false information to another commits an offence where:

(a) he knows that the person to whom the information is supplied or another given person, will act upon the information and thereby suffer damage; or

(b) he is bound by the rules of his profession to give correct information.

Art. 2060. — 2. *Exception.*

(1) The person supplying the incorrect information shall not be liable where the statement made by him relates to the qualifications, conduct, solvency, competence or undertaking of another person and was made with the object of securing credit, money or goods for that person.

(2) In such a case the author of the statement shall not be liable unless he has made it in the form of a signed document.

Art. 2061. — *Witnesses.*

(1) Witnesses who testify to the occurrence or non-occurrence of a given event or to the existence or non-existence of a given fact shall guarantee the accuracy of their statements.

(2) They shall be liable to third parties having acted on the faith of such statements, where such statements are inaccurate.

(3) Nothing shall affect the right of witnesses in good faith to bring an action against the person who led them into error.

Art. 2062. — *Advice or recommendation.*

A person shall not be deemed to have committed an offence where he confined himself to giving advice or making a recommendation to another.

Art. 2063. — *Distraint.*

A person commits an offence where, in order to secure payment of a debt due to him, he unnecessarily seizes goods in the possession of his debtor to an extent disproportionate to the amount of the debt.

Art. 2064. — *Execution of a court order.*

(1) A bailiff does not commit an offence by executing a court order which is made in the prescribed form.

(2) An offence shall be deemed to be committed where the order is not in the prescribed form or the bailiff exceeds his instructions or carries them out without due regard for the provisions of the law.

Art. 2065. — *Limitation of action.*

A person does not commit an offence by invoking usucaption or time-limit which has operated to his benefit.

## Section 2. Liability in the absence of an offence

Art. 2066. — *Necessity.*

(1) A person shall be liable for any damage he deliberately causes to another in order to save himself or another from an imminent damage to person or property.

(2) No liability shall be incurred where the damage is due to the victim's fault.

Art. 2067. — *Bodily harm.* — 1. *Principle.*

(1) A person shall be liable where by his act he inflicts bodily harm on another.

(2) No liability shall be incurred where the act causing the harm was ordered by law or was done in legitimate self-defence, or where the harm is due solely to the victim's fault.

Art. 2068. — 2. *Sporting activities.*

No liability shall be incurred where, in the exercise of a sporting activity, a person injures another taking part in the same activity, or present as a spectator, provided that there is no deceit or gross infringement of the rules of the sport.

Art. 2069. — *Dangerous activities.* — 1. *Principle.*

(1) A person who exposes another to abnormal risk, by using or storing explosive or poisonous substances, or by erecting high-tension electric transmission lines, or by modifying the lie of the land, or by engaging in an exceptionally dangerous industrial activity, shall be liable where the danger he has created materialises, thereby causing damage to another.

(2) The provision of sub-art. (1) shall apply notwithstanding that the author of the danger is the State or has received an authorisation from the public authorities.

Art. 2070. — 2. *Potential danger.*

Except in the case of fault, no liability shall be incurred where the value of neighbouring property is reduced in consequence of an abnormal risk being created.

Art. 2071. — *Liability for animals.* — 1. *Owner.*

The owner of an animal shall be liable for any damage caused by the animal, notwithstanding that it has eluded his control accidentally or the damage caused was unforeseeable.

Art. 2072. — 2. *Custodian.*

(1) A person who has taken possession of an animal for purposes of personal gain shall be liable for any damage caused by the animal while in his custody.

(2) The provisions of sub-art. (1) shall apply where a person has hired or borrowed the animal, or has taken possession of it in order to take care of it, or for any other reason.

(3) An employee attending to an animal, or making use of it for the owner's account or for the account of another person, shall not be liable for any damage caused by the animal unless it is due to his own fault.

Art. 2073. — 3. *Transfer of liability.*

(1) The owner who has paid compensation to the victim may recover from the person in whose charge the animal was.

(2) He may claim to be indemnified in full, unless the damage be due to his own fault or that of a person for whom he is liable.

Art. 2074. — 4. *Surrender of animal by the owner.*

(1) Where damage is caused by a domestic animal, the owner of the animal may relieve himself of his liability by surrendering the ownership of the animal to the person who has suffered the damage.

(2) He may not relieve himself of liability under sub-art. (1) where the damage is the consequence of an offence committed by himself or by a person for whom he is liable.

(3) Only those animals which it is customary to keep for purposes of pleasure or gain shall be deemed to be domestic animals.

Art. 2075. — 5. *Surrender of animal by custodian.*

(1) The person in charge of the animal shall only be liable to the value of the animal at the time when the damage was caused.

(2) His liability shall not be limited where the damage was caused by an animal other than a domestic animal or arises from an offence committed by himself or by a person for whom he is liable.

Art. 2076. — 6. *Victim's guarantee.*

(1) In order to secure compensation which may be due to him, the owner or possessor of land may seize and take charge of animals belonging to another person which have caused damage to his property.

(2) He may kill them where circumstances require this in order to prevent substantial damage disproportionate to the animal's value.

(3) He shall in both events notify the owner of the animals without delay or, where the owner is unknown to him, take the necessary measures to ascertain him.

Art. 2077. — *Buildings.* — 1. *Principle.*

(1) The owner of a building shall be liable for any damage due to the building even where the damage was unforeseeable.

(2) The owner may claim compensation from the person who built the building, from the occupier or from the person by whose fault the damage was caused.

Art. 2078. — 2. *Surrender of building.*

(1) The owner may relieve himself of his liability by surrendering the ownership of the building to the person who has suffered the damage.

(2) He may not relieve himself of liability under sub-art. (1) where the damage is the consequence of an offence committed by himself or by a person for whom he is liable.

Art. 2079. — 3. *Threat of damage.*

A person endangered by another's building may require the owner thereof to take the necessary measures to avert the danger.

Art. 2080. — 4. *Objects falling from a building.*

The occupier of a building shall be liable for any damage caused by objects falling from it.

Art. 2081. — *Machines and motor vehicles.* — 1. *Owner.*

(1) The owner of a machine or motor vehicle shall be liable for any damage caused by the machine or vehicle, notwithstanding that the damage was caused by a person who was not authorised to operate, handle or drive the machine or vehicle.

(2) He shall not be liable where he proves that, at the time when the damage was caused, the machine or vehicle had been stolen from him.

Art. 2082. — 2. *Keeper or agent.*

(1) A person who has taken possession of the machine or vehicle for purposes of personal gain shall be liable for any damage caused by the machine or vehicle while in his possession.

(2) An agent who has charge of the machine or vehicle for the owner's account or for the account of another person shall not be liable for any damage caused by the machine or vehicle, except in cases of fault.

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Art. 2083. — 3. *Transfer of liability.*

(1) The owner who has paid compensation to the victim may recover from the person in whose keeping the machine or vehicle was.

(2) He may claim to be indemnified in full, unless he has committed an offence or an offence has been committed by a person for whom he is liable.

Art. 2084. — *Collision between vehicles.*

(1) Where two motor vehicles are in collision, each of the vehicles shall be deemed to have contributed equally to the accident.

(2) The owner of each vehicle, or the person responsible for it, shall bear half the total amount of the damage resulting from the accident.

(3) The provisions of this Article shall not apply where it is proved that the accident was due, entirely or chiefly, to the fault of one of the drivers.

Art. 2085. — *Manufactured goods.*

(1) A person who manufactures goods and sells them to the public for profit shall be liable for any damage to another person resulting from the normal use of the goods.

(2) No liability shall be incurred where the defect which has caused the damage could have been discovered by a customary examination of the goods.

Art. 2086. — *Exemption from liability.*

(1) The persons declared legally liable for the creation of an abnormal risk or for a damage caused by animals, buildings, machines, motor vehicles or manufactured goods, may relieve themselves of their liability to the victim by proving that they have committed no offence, or that it was impossible to establish the cause of the damage, or that it was not within their power to prevent the damage or that the damage was due to the fault of a third party.

(2) They shall be relieved of their liability, entirely or in part, only where the damage is due solely or partly to the fault of the victim.

Art. 2087. — *Other objects.*

Without prejudice to the provisions of the preceding Articles, the owner or keeper of an object shall be liable for any damage caused by the object only where he has committed an offence or an offence has been committed by a person for whom he is liable.

Art. 2088. — *Contractual obligations.*

(1) The rules relating to liability arising out of abnormal risks, or out of animals, buildings or objects, may not be invoked by a person who, under a contract concluded by the person legally responsible, is connected with the dangerous industrial activity, animal, building or object which has caused the damage.

(2) The consequences of the damage shall in this case be settled in accordance with the rules governing the agreement reached.

Art. 2089. — *Disinterested parties.*

(1) The rules governing liability arising out of animals, buildings or objects may not be invoked by a person who, even in the absence of a contract, was at the time of the damage making use of the animal, building or object without the owner or keeper thereof deriving benefit from such use.

(2) In such a case, the owner or keeper shall not be liable unless he has committed an offence.

## Section 3. Mode and extent of compensation

### Paragraph 1. — Damages

#### A. *Material damage*

Art. 2090. — *Modes of compensation.*

(1) Unless otherwise provided, the damage shall be made good by awarding the victim an equivalent amount in damages.

(2) The court may, subject to the liberty of persons and to the rights of third parties, order in lieu of or in addition to damages any appropriate measures to make good or limit the damage.

Art. 2091. — *Extent of damages.*

The damages due by the person legally declared to be liable shall be equal to the damage caused to the victim by the act giving rise to the liability.

Art. 2092. — *Future damage.*

A future damage which is certain to occur shall be made good without waiting for it to materialise.

Art. 2093. — *Insured victim.*

(1) Where the victim is insured, he may claim compensation for the damage he has suffered on the same terms as though he had not been insured.

(2) The insurer may not claim compensation on his own behalf from the person who by his act has brought about the risk covered by the insurance contract.

(3) The insurance contract may, however, provide for the subrogation of the insurer to the victim's claim against the person liable.

Art. 2094. — *Victim pensioned off.*

(1) Where the victim receives a pension as a result of the act which caused him damage, he may claim compensation for the damage he has suffered on the same terms as though he had not received a pension.

(2) The person paying the pension may not claim compensation on his own behalf from the person who by his act has caused the pension to fall due.

(3) The bond joining him to the victim may make provision for subrogation to the victim's claim against the person liable.

Art. 2095. — *Fatal accidents.* — 1. *Rights of certain next of kin.*

(1) In the case of a fatal accident, the spouse of the victim, his ascendants and his descendants may claim compensation on their behalf for the material damage they have suffered as a result of his death.

(2) In this case the compensation for the damage shall be in the form of a maintenance allowance.

(3) The maintenance allowance shall be due notwithstanding that the plaintiffs have relatives whom they can ask to support them.

Art. 2096. — 2. *Other persons.*

Other persons may not claim compensation on their own behalf in cases of fatal accidents, even where they show that they were materially assisted or supported by the victim.

Art. 2097. — *Good faith.*

(1) Compensation for the damage may not be claimed contrary to good faith.

(2) The victim may not claim compensation for the damage he has suffered in so far as, by acting in a reasonable manner, he could have avoided or limited the damage.

Art. 2098. — *Fault of the victim.*

(1) Where the damage is due partly to the fault of the victim, the latter shall be entitled to partial compensation only.

(2) In fixing the extent to which the damage shall be made good, all the circumstances of the case shall be taken into consideration, in particular the extent to which the faults committed have contributed to causing the damage and the respective gravity of these faults.

Art. 2099. — *Powers of equity.* — 1. *Unawareness of offence.*

(1) The court may, where equity so requires, reduce the compensation awarded where the offence giving rise to the liability was committed by a person who was not in a state to appreciate the wrongful nature of his conduct.

(2) In this matter, regard shall be had to the respective financial positions of the parties and the consequences for the author of the offence of his liability to make the damage good.

Art. 2100. — 2. *Hierarchical order.*

(1) The court may, where equity so requires, reduce the compensation awarded where a sense of duty deriving from discipline or obedience moved the author of the offence to commit it.

(2) Regard shall be had to the degree of imperativeness of the duty.

Art. 2101. — 3. *Unforeseeable damage.*

(1) The court may, where equity so requires, reduce the compensation to be paid by a person who caused a damage which, in consequence of unforeseeable circumstances, expanded beyond what could reasonably be expected.

(2) No reduction may be ordered under sub-art. (1) where the damage arises from an intentional offence.

Art. 2102. — 4. *Difficulty of assessment.*

(1) Where the exact amount of the damage cannot be calculated, the court shall fix it equitably, taking into account the ordinary course of events and the measures taken by the injured party.

(2) No indemnity may be awarded in respect of a damage of which the very existence, and not only the amount, is doubtful.

Art. 2103. — 5. *Necessity.*

The court shall fix equitably the amount of compensation due from a person who, without committing an offence, caused damage to the property of another in order to save himself or another from an imminent damage or danger.

Art. 2104. — *Nominal damages.*

Damages of a purely nominal amount may be awarded where the action has been brought solely with a view to establishing that a right of the plaintiff has been infringed, or that a liability has been incurred by the defendant.

B. *Moral injury*

Art. 2105. — 1. *Principle.*

(1) The author of a misdeed shall make good the moral harm resulting from his misdeed wherever adequate procedure exists for such redress.

(2) Unless otherwise expressly provided by law, moral harm may not be made good by way of damages.

Art. 2106. — *Intentional offence.*

Where moral harm has been inflicted upon the plaintiff deliberately, the court may, by way of redress, order the defendant to pay fair compensation to the plaintiff or to a charity named by the plaintiff.

Art. 2107. — *Physical assault.*

Where the defendant has forced an unpleasant or repulsive contact on the plaintiff's person, the court may, by way of redress, order the defendant to pay fair compensation to the plaintiff or to a charity named by the plaintiff.

Art. 2108. — *Unlawful restraint.*

Where the plaintiff has been unlawfully deprived of his liberty by the defendant, the court may, by way of redress, order the defendant to pay fair compensation to the plaintiff or to a charity named by the plaintiff.

Art. 2109. — *Defamation.*

Fair compensation may be awarded by way of redress to the plaintiff or to a charity named by him, in the case of insult or defamation where:

(a) the injurious or defamatory charges are that the plaintiff has committed a crime or an offence punishable under the criminal law; or

(b) they allege that the plaintiff is incompetent or dishonest in the exercise of his profession; or

(c) they allege that the plaintiff, if a business man, is insolvent; or

(d) they allege that the plaintiff is suffering from a contagious disease; or

(e) they allege that the plaintiff is of low morals.

Art. 2110. — *Injury to the rights of spouses.*

Fair compensation may be awarded by way of redress to the plaintiff or to a charity named by him, where the defendant has injured his or her rights as a spouse (Art. 2050).

Art. 2111. — *Abduction of child.*

Fair compensation may be awarded by way of redress to the plaintiff or to a charity named by him, where the defendant has been sentenced by a criminal court for having abducted a child which is in the plaintiff's lawful custody.

Art. 2112. — *Assault on property.*

Fair compensation may be awarded by way of redress where the defendant has, against the clearly expressed will of the plaintiff, forced his way into his land or house or seized property of which the plaintiff is the lawful owner.

Art. 2113. — *Physical injuries or death.*

Fair compensation may be awarded by way of redress to the victim of bodily injuries or, in the event of his death in consequence thereof, to his family.

Art. 2114. — *Indecent assault.*

(1) Where a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of redress.

(2) In such an event, compensation may also be awarded to the husband of the woman, or to the family of the girl who has been raped.

Art. 2115. — *Injury to a wife.*

(1) Fair compensation may be awarded by way of redress to a husband against a person who, by inflicting bodily injury on the wife, renders her companionship less useful or less agreeable to the husband.

(2) The action which the husband may bring on this ground shall be independent of the action for damages which the wife may bring in respect of the injury she has suffered.

Art. 2116. — *Custom.*

(1) In fixing the amount of the fair compensation provided for in the preceding Articles, and in establishing who is qualified to act as representative of the family, the court shall have regard to local usages.

(2) The court may not disregard such usages unless they are anachronistic or manifestly contrary to reason or morals.

(3) The compensation awarded for moral injury may in no case exceed one thousand Ethiopian dollars.

Art. 2117. — *Representative of the family.*

In the absence of any applicable local usage, the following shall alone be considered as qualified to represent the family:

(a) the victim's husband or wife; or

(b) failing such or where he or she is incapable, the victim's eldest child who is capable under the law; or

(c) failing such or where he or she is incapable, the victim's father; or

(d) failing such or where he is incapable, the victim's mother; or

(e) failing such or where she is incapable, the eldest of the victim's brothers or sisters who is capable under the law.

Paragraph 2. — Other modes of compensation

Art. 2118. — *Restitution.*

(1) The court shall order the return to the plaintiff of property which has been improperly taken away from him, and of the emblements yielded by the property since the date of its removal.

(2) Where the property has been lost or destroyed the defendant shall repay its value, notwithstanding that the loss is due to force majeure.

(3) Where the defendant has incurred expense on the property which he is required to return, the provisions relating to unlawful enrichment shall apply (Art. 2168-2178).

Art. 2119. — *Restitution in kind.*

(1) The court may, where it thinks fit, order the property which has been damaged or destroyed to be replaced or put in order at the expense of the person responsible for the destruction or deterioration.

(2) In this case, the court shall fix the way in which the property is to be replaced or put in order.

(3) This mode of compensation may not be prescribed where the duty to compensate falls on the State.

Art. 2120. — *Honour and reputation.*

In the case of dealings directed against the honour or reputation of an individual or individuals, the court may order such publicity to be made at the defendant's expense as is likely to counter the effect of the dealings.

Art. 2121. — *Injunctions.*

(1) The court may grant an injunction restraining the defendant from committing, from continuing to commit or from resuming an act prejudicial to the plaintiff.

(2) An injunction shall be granted only where there are good reasons to believe that the act prejudicial to the plaintiff is likely to be carried out and where the injury with which he is threatened is such that it cannot be redressed by an award of damages.

Art. 2122. — *Unfair competition.*

In the case of unfair competition, the court may order the abandonment of the dishonest practices used by the defendant.

Art. 2123. — *Simulation.*

Acts done by third parties on the faith of a pretence may be declared demurrable against the person who, by his behaviour or by non-feasance, has created the pretence.

## Section 4. Liability for the actions of others

Art. 2124. — *Father's liability.*

The father shall be liable under the law where his minor child incurs a liability.

Art. 2125. — *Other guardians of the child.*

The following persons shall be liable in lieu of the father:

(a) the mother, where she exercises the paternal authority over the child;

(b) the person in whose charge the child has been placed, where the child lives outside the family home;

(c) the headmaster or the employer during the time when the child is at school or serving an apprenticeship;

(d) the employer where, under the terms of the following Articles, his liability is involved in consequence of an act committed by the child.

Art. 2126. — *Liability of the State.* — 1. *Principle.*

(1) Any civil servant or government employee shall make good any damage he causes to another by his fault.

(2) Where the fault is a professional fault, the victim may claim compensation from the State, provided that the State may subsequently claim from the servant or employee at fault.

(3) The State shall not be liable where the fault is a personal fault.

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Art. 2127. — 2. *Professional fault.*

(1) A fault shall be deemed to be a professional fault where the person who committed it believed in good faith that he acted within the scope of his duties and in the interest of the State.

(2) A fault shall be deemed to be a personal fault in other cases.

(3) Unless the contrary is proved, the servant or employee shall be deemed to have acted in good faith.

Art. 2128. — 3. *Assimilated cases.*

The provisions of Art. 2126 and 2127 shall apply to the liability of servants or employees of a territorial subdivision of the State or of a public service with legal status.

Art. 2129. — *Liability of bodies corporate.*

Bodies corporate shall be liable under the law where one of their representatives, agents or paid workers incurs a liability in the discharge of his duties.

Art. 2130. — *Employer's liability.*

The employer shall be liable under the law where one of his employees incurs a liability in the discharge of his duties.

Art. 2131. — *Discharge of duties.*

(1) For the purpose of Art. 2129 and 2130, a liability shall be deemed to have been incurred in the discharge of duties where the wrongful act or the abstention was committed for the purpose of carrying out the duties.

(2) The fact that the wrongful act or abstention was ultra vires, or that its author was strictly forbidden to commit it, shall not release the person who is legally responsible from his liability unless the victim knew or ought to have known of that fact.

Art. 2132. — *Presumption.*

(1) Where the damage is caused by the representative or agent of a body corporate or by a paid worker at the place where or during the time when he is normally employed, he shall be deemed to have caused the damage in the discharge of his duties.

(2) Proof to the contrary is admissible to rebut such presumption.

Art. 2133. — *Non-discharge of duties.*

The liability shall not be deemed to have been incurred in the discharge of duties where such duties have merely provided their author with an opportunity of committing the wrongful act or abstention which caused the damage.

Art. 2134. — *Independent workers.*

A person shall not be liable for the faults or offences committed by another while carrying out work which he has asked him to do, where the author of the offence is not subject to the former's authority and is to be considered as having retained his independence

Art. 2135. — *Defamation.*

The managing editor of the newspaper, the printer of the pamphlet or the publisher of the book shall be liable under the law for defamation committed by the author of a printed text.

Art. 2136. — *Cumulation of liabilities.*

(1) A person who caused damage shall repair it notwithstanding that another person is declared by law to be liable for such damage.

(2) The person who caused the damage and the person whom the law declares to be liable for such damage shall be jointly liable to repair such damage.

(3) The person under the law liable for the action of another may demand that the author of the damage be made a party to the proceedings brought by the victim for compensation.

## Section 5. Action for damages

Art. 2137. — *Legal immunity.* — 1. *The Sovereign.*

No action for liability based on an offence committed by Him may be brought against His Majesty the Emperor of Ethiopia.

Art. 2138. — 2. *Ministers, members of Parliament and judges.*

No action for liability may be brought as the result of an act connected with their functions against:

(a) a member of the Imperial Ethiopian Government; or

(b) a member of the Ethiopian Parliament; or

(c) a judge of the Ethiopian courts.

Art. 2139. — *Exception.*

The provisions of Art. 2138 shall not apply where the persons mentioned therein have been sentenced by a criminal court for acts pertaining to their office and invoked by the plaintiff.

Art. 2140. — *Reference to the administrative law.*

Where the State is liable, the rules of administrative law determine against whom the action shall be brought and which department or service shall finally assume the burden of the debt.

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Art. 2141. — *Burden of proof.*

The victim of the injury shall establish the amount thereof and prove the circumstances which render the defendant liable to make it good.

Art. 2142. — *Undiscovered author of damage.*

(1) Where damage has been caused by one or other of several persons and it is impossible to ascertain which of the persons involved is the author, the court may, where equity so requires, order the damage to be made good jointly by the group of persons who could have caused it and among whom the author of the damage is certainly to be found.

(2) In such case, the court may order the damage to be made good by the person who is beyond doubt liable under the law for the undetermined author of the damage.

Art. 2143. — *Period of limitation.*

(1) The action shall be brought by the victim within two years from the time at which he suffered the damage for which he is claiming compensation.

(2) Where the damage arises from the commission of a criminal offence in respect of which the Penal Code prescribes a longer period of limitation, the latter period shall apply to the action for damages.

(3) Nothing in this Article shall affect the right of the victim to make a claim for the recovery of his property or to invoke the provisions relating to unlawful enrichment (Art. 2162-2178).

Art. 2144. — ***Heirs.***

(1) The victim's heirs may claim compensation for the material damage he has suffered.

(2) Unless otherwise provided by law, they may not claim compensation for moral injury suffered by the victim unless an action for compensation for such injury has been initiated by the victim during his lifetime.

(3) The succession of the person who is liable for the injury shall be liable as he himself was to make good the damage.

Art. 2145. — *Victim's creditors.*

(1) The creditors of a person may not claim compensation on behalf of the debtor for an injury done to him where such injury is connected with his person, his physical integrity or his honour.

(2) They may, on the conditions laid down in Art. 1993, bring their debtor's action where the debtor has, after the date on which they became his creditors, suffered an injury affecting solely his financial interests.

Art. 2146. — *Claim may not be assigned.*

(1) The victim's claim against the person liable for the damage may not be assigned so long as it has not been upheld by a decision of the court and the amount fixed.

(2) It may thereupon be assigned in accordance with the provisions of Art. 1962-1975.

Art. 2147. — *Agreement excluding liability.*

(1) A person may not relieve himself of the consequences of an offence.

(2) A person may stipulate by contract that he will not be liable for offences committed by a person for whom is liable under the law.

(3) A person may stipulate by contract that he will not be liable, except in the case of an offence, for damage which, under the provisions of this Title, is to be made good in the absence of any offence.

Art. 2148. — *Compromise.*

After damage has been caused, the parties may agree that it shall not entail compensation or may compromise on the conditions on which it shall be made good.

Art. 2149. — *Effect of criminal on civil action.*

In deciding whether an offence has been committed, the court shall not be bound by an acquittal or discharge by a criminal court.

Art. 2150. — *Date of assessment of damage.*

(1) The court shall assess the damage suffered by the victim as on the day on which it renders judgment.

(2) Where it is impossible finally to evaluate the damage on that date, the court may give a provisional judgment and authorise an application for reconsideration of such decision.

(3) The application for reconsideration may not be made later than two years from the date of the provisional judgment.

Art. 2151. — *Res Judicata.*

(1) Without prejudice to the provisions of Art. 2150, the court's evaluation of the damage shall be final.

(2) The victim may not bring a fresh action for compensation for other damage he has suffered unless such damage was caused independently of that for which he has already claimed compensation.

Art. 2152. — *No appeal.*

No appeal shall lie against the judgment of the court of first instance relating to the amount of damages to be paid.

Art. 2153. — *Exceptions.*

The provisions of Art. 2152 shall not apply where:

(a) the court has taken into consideration circumstances which it should not have taken into account or has failed to take into consideration circumstances which it should have taken into account; or

(b) the amount of damages fixed by the court is manifestly unreasonable and could only have been inspired by prejudice or improper motive; or

(c) the amount of damages is due to an error of calculation on the part of the court.

Art. 2154. — *Allowance.*

(1) Where such mode of payment is justified by the nature of the damage or by the circumstances attending the case, the court may order the damage to be made good by means of an allowance.

(2) In such case, the debtor shall provide security for the payment of the allowance.

Art. 2155. — *Joint liability.*

(1) Where several persons are required to make good the same damage, they shall do so jointly.

(2) No distinction shall be made between instigator, principal and accomplice.

(3) Persons required to make good the same damage shall be jointly liable regardless of whether the liability has its source for one or other of them in a contract or in an extra-contractual liability.

Art. 2156. — *Sole liability.* — 1. *Principle.*

Where only one of the persons liable has committed an offence, he shall alone finally bear the burden of the debt.

Art. 2157. — 2. *Fair division of liability.*

(1) Where the offence has been committed in the discharge of his duties by the representative or agent of a body corporate or by a paid worker, the court may decide that the debt shall finally be borne, either wholly or partly, by the body corporate or the employer.

(2) Where the offence consists in a professional fault committed by a civil servant or employee, the court may decide that the debt shall

finally be borne, either wholly or partly, by the State or its territorial subdivision or the public service concerned.

Art. 2158. — 3. *Directions to follow.*

(1) In making its decision, the court shall take account of the gravity of the offence and whether it was due to the author's desire to carry out his duties as conscientiously as possible.

(2) No regard shall be had to the respective financial positions of the persons declared liable.

Art. 2159. — 4. *Restriction.*

No division of liability may be granted by the court where:

(a) the act giving rise to the liability was committed with intent to harm; or

(b) the act is a criminal offence the author of which has been sentenced by a criminal court.

Art. 2160. — *Collective liability.*

(1) Where several persons have contributed by their fault or offence to the same damage, the court shall fix on the basis of equity what proportion of the debt is finally to be borne by each of the persons liable.

(2) In making its decision, the court shall have regard to all the circumstances, in particular the extent to which the several offences contributed to the damage and the gravity of each such offence.

Art. 2161. — *Subrogation.*

(1) A person who has paid the whole debt although he is not bound finally to bear more than a part thereof shall be entitled to recover from those liable with him.

(2) For the purpose of such recovery he shall be subrogated to the victim's claim.

(3) The court may in its judgment subrogate the person sentenced to the victim's possible claims against other persons liable for the damage.

## Chapter 2. Unlawful Enrichment

### Section 1. General provisions

Art. 2162. — *General principle.*

Whosoever has derived a gain from the work or property of another without just cause shall indemnify the person at whose expense he has enriched himself to the extent to which he has benefited from his work or property.

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Art. 2163. — *Loss of enrichment.*

(1) Restitution shall not be ordered to the extent to which the person who has received the undue gain can show that he is no longer enriched at the time of the claim for recovery.

(2) Restitution shall be due where the defendant has alienated the enrichment in bad faith or where, at the time of alienating it, he ought to have been aware that he was bound to make restitution.

(3) Where the unlawful enrichment has been transferred without consideration to a third party, the claim for restitution may be brought against the third party.

## Section 2. Undue payments

Art. 2164. — *Undue payment.*

(1) Whosoever has paid what he was not required to pay may recover it.

(2) He may demand restitution of the fruits of the property, or legal interest, from the date on which the payment was made, where the person to whom the payment was made acted in bad faith.

Art. 2165. — *Absence of mistake.*

Recovery shall not be admitted where a person pays voluntarily and in full knowledge of the facts what he knew he was not bound to pay.

Art. 2166. — *Sufficient cause.*

(1) Recovery shall not be admitted where the payment was made in the discharge of a barred debt or of a moral obligation.

(2) Recovery shall be admitted in such case where the person who made the payment was not competent to alienate without consideration.

Art. 2167. — *Recovery precluded.*

(1) The receiver of the undue payment shall owe no restitution where, as a consequence of the payment, he has in good faith destroyed or annulled his title, relinquished the security for his claim or allowed his action against the true debtor to lapse.

(2) In such case, the person who made the undue payment shall have legal redress against the true debtor only.

## Section 3. Expenses

Art. 2168. — *Scope of this Section.*

Where a person is required to return property which has been in his possession for some time, his rights and obligations arising out of any modi-

fications he may have made to the property shall, unless otherwise provided for by law or contract, be subject to the provisions of the following Articles.

Art. 2169. — *Necessary expenses.*

The person who is required to make restitution shall be entitled to the reimbursement of the expenses he has incurred in preventing the loss or deterioration of the property, unless the expenses were not useful or were rendered necessary by the person's own fault or by the fault of another person for whom he is liable.

Art. 2170. — *Cost of upkeep.*

The person who is required to make restitution shall not be entitled to any indemnity for the cost of maintaining the property or in respect of taxes he has paid as a consequence of his possessing it.

Art. 2171. — *Value added to the property.*

(1) Where expenses incurred on the property have increased its value, the person required to make restitution shall be entitled to their reimbursement.

(2) He may not claim more than the increase in value calculated at the time of restitution, resulting from the expenses he has incurred.

Art. 2172. — *Bad faith.*

(1) The court may, where equity so requires, reduce or refuse any indemnity as provided in Art. 2171 where, at the time when he incurred the expense, the defendant knew or ought to have known of his liability to return the property.

(2) The court may, where equity so requires, grant the plaintiff a period of grace not exceeding two years for payment of the indemnity provided in Art. 2171.

Art. 2173. — *Jus tollendi.*

A person who is required to make restitution may before returning any part of the property remove anything he has joined to it which can be separated without appreciable damage to the property.

Art. 2174. — *Right of retention.*

(1) The person required to make restitution may refuse to return the property until he has received payment of the indemnity due to him under the terms of the preceding Articles or until he has received adequate security for its payment on the day on which it is due.

(2) The right of retention may not be invoked by a thief or by a person who, at the time when he took possession of the property, knew that he had no legal right, or right deriving from a valid contract, to it.

Art. 2175. — *Deterioration.*

(1) The person required to make restitution shall indemnify the true owner where the former has caused the property to deteriorate.

(2) He shall be liable for any deterioration of the property, even where caused by force majeure, where, at the time when it occurred, he knew that he had no legal right, or right deriving from a valid contract, to the property.

Art. 2176. — *Loss of the property.*

(1) The provisions of Art. 2175 shall apply in the case of total or partial loss of the property.

(2) They shall apply where for any reason whatsoever the property cannot be returned in kind to the person entitled to it.

Art. 2177. — *Extent of indemnity.*

(1) The indemnity due shall be equal to the value of the property at the time at which it becomes impossible to return it in kind.

(2) Where the person required to make restitution knew at that time that he had no legal right, or right deriving from a valid contract, to the property, additional damages may be claimed from him.

(3) In such case, the person entitled to restitution shall be placed in the position he would have been in, had he retained uninterrupted possession of his property.

Art. 2178. — *Fruits.*

(1) The person required to make restitution shall retain the fruits of the property he has received.

(2) He shall pay to the plaintiff their value where he knew at the time of taking possession of the property that he had no legal right, or right deriving from a valid contract, to it.

# TITLE XIV. AGENCY
## Chapter 1. General provisions

Art. 2179. — *Source of authority.*

The authority to act on behalf of another may derive from the law or a contract.

Art. 2180. — *Form of authority.*

Where the law requires that a contract be made in a prescribed form, the authority to enter into such contract on behalf of another shall be given in the same form.

Art. 2181. — *Scope of power of attorney.*

(1) The scope of a power of attorney given by contract shall be fixed in accordance with the contract.

(2) Where the agent informs a third party of his power of attorney, the scope of his authority shall, as regards such third party, be fixed in accordance with the information given to him by the agent.

(3) The scope of a power of attorney shall be interpreted in a restrictive manner.

Art. 2182. — *Extinction of power of attorney.*

(1) Unless otherwise agreed, a power of attorney given by contract shall be extinguished where the principal or the agent dies, is declared absent, becomes incapable or is adjudged bankrupt.

(2) The provisions of sub-art. (1) shall apply where a body corporate ceases to exist.

Art. 2183. — *Revocation of authority.*

(1) The principal may at any time restrict or revoke, as regards third parties, the authority he gave to the agent to make contracts in his name.

(2) Any waiving of such right shall be of no effect.

Art. 2184. — *Document to be returned.*

(1) The agent shall upon the authority coming to an end return to the principal the document, if any, evidencing his authority.

(2) He may not retain such document until final settlement of his accounts or claims with the principal.

Art. 2185. — *Loss of document.*

Where the agent alleges to have lost the document evidencing his power, the principal may, at the expense of the agent, apply to the court to declare that the document is revoked.

Art. 2186. — *Justification of authority.*

Whosoever has dealings with an agent may at any time require him to produce a justification of his authority and, where his authority is evidenced by a document, to produce a copy of such document duly signed by the agent.

Art. 2187. — *Conflicting interests.*

(1) A contract made by an agent in a case where his interests conflict with those of the principal may be cancelled at the request of the principal where the third party who entered into the contract knew or should have known of the conflict.

(2) The principal shall, within two years from his knowing of such circumstances, declare whether or not he intends to cancel the contract.

(3) The contract shall be cancelled where the third party concerned fails to declare his intention to be bound by the contract within two months from having been informed of the principal's intention to cancel the contract.

Art. 2188. — *Contract with oneself.*

(1) A contract made by an agent may be cancelled at the request of the principal where the agent made the contract with himself, whether he acted on his own behalf or in the name of a third party.

(2) The provisions of sub-art. (2) and (3) of Art. 2187 shall apply in such case.

(3) Nothing in this Article shall affect the special provisions applicable to commission agents (Art. 2248 and 2252).

Art. 2189. — *Complete agency.*

(1) Contracts made by an agent in the name of another within the scope of his power shall be deemed to have been made directly by the principal.

(2) The principal may avail himself of any defect in the consent of the agent at the time of the making of the contract.

(3) Any fraud committed by the agent may be set up against the principal by the third party who entered into the contract with the agent.

Art. 2190. — *Abuse or lapse of power.*

(1) Contracts made by an agent in the name of another outside the scope of his power may be ratified or repudiated at his option by the person in whose name the agent acted.

(2) The provisions of sub-art. (1) shall apply where the agent acted under an authority which had lapsed.

Art. 2191. — *Option of principal.*

(1) The third party having entered into the contract with the agent may demand that the person in whose name the agent acted immediately declare whether he intends to ratify or to repudiate the contract.

(2) Failing immediate ratification, the contract shall be deemed to be repudiated.

Art. 2192. — *Effect of ratification.*

Where the contract is ratified, the agent shall be deemed to have acted within the scope of his power.

Art. 2193. — *Effect of repudiation.*

(1) The provisions of Art. 1808-1818 of this Code shall apply where the contract is repudiated.

(2) The third party having entered into the contract with the agent may demand that the damage caused to him by reason of his having in good faith believed in the existence of a valid authority be made good in accordance with the provisions of the following Articles.

Art. 2194. — *Liability.*

(1) The agent shall be liable to pay compensation to the third party in the case referred to in Art. 2193.

(2) The agent shall not be liable where he acted in good faith not knowing the reason by which his authority had come to an end.

(3) The principal shall in such case be liable to pay compensation.

Art. 2195. — *Liability of principal.*

The principal shall be jointly liable with the agent where:

(a) he informed a third party of the existence of the power of attorney but failed to inform him of the partial or total revocation of such power; or

(b) he failed to ask the agent to return the document evidencing the power of attorney and failed to seek a judicial decision to the effect that such document was revoked; or

(c) he caused in any other manner, in particular by his statements, behaviour or failure to act, a third party to believe that the person with whom he was dealing was authorised to act on behalf of the principal.

Art. 2196. — *Exclusion of liability.*

(1) Except in cases of fraud, a third party who has dealings with the agent may not claim compensation from the agent on the ground that he acted outside the scope of his authority where such third party,

prior to entering into the contract, took cognizance of the document evidencing the authority of the agent.

(2) A third party may not claim compensation where the personal qualifications of the person with whom he has dealings is not essential to him and the agent agrees to be personally bound by the act he has done on behalf of another.

Art. 2197. — *Agent acting on his own behalf.*

(1) An agent who acts on his own behalf shall personally enjoy the rights or incur the liabilities deriving from the contracts he makes with third parties, notwithstanding that such third parties know that he is an agent.

(2) Third parties shall in such case have no direct action against the principal and may only exercise against him, on behalf of the agent, the rights pertaining to the agent.

Art. 2198. — *Rights of principal.*

(1) Without prejudice to the rights of third parties in good faith, the principal may recover any movable which the agent acquired on his behalf while acting in his name.

(2) He may substitute himself for the agent with a view to enforcing the claims acquired on his behalf.

(3) The principal may not exercise his rights under this Article unless he discharges his obligations towards the agent.

## Chapter 2. Agency

Art. 2199. — *Definition.*

Agency is a contract whereby a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts.

### Section 1. Formation and object of agency

Art. 2200. — *Form of agency.*

(1) Authority may be conferred upon an agent either expressly or impliedly.

(2) Where the act to be performed by the agent is under the law to be made in a prescribed form, such form shall be complied with in conferring authority upon the agent.

Art. 2201. — *Acceptance of agency.*

(1) Acceptance by the agent of his appointment may be either express or implied.

(2) The appointment as an agent shall be deemed to be accepted, unless it be immediately refused, where it refers to functions which the agent carries out in an official capacity or professionally, or where he holds himself out publicly for such functions.

Art. 2202. — *Scope of agency.*

(1) Where the scope of the agency is not expressly fixed in the contract, such scope shall be fixed according to the nature of the transaction to which it relates.

(2) The agency may either be special for a particular affair or certain affairs only, or general for all the affairs of the principal.

Art. 2203. — *General agency.*

Agency expressed in general terms shall only confer upon the agent authority to perform acts of management.

Art. 2204. — *Acts of management.*

(1) Acts done for the preservation or maintenance of property, leases for terms not exceeding three years, the collection of debts, the investment of income and the discharge of debts shall be deemed to be acts of management.

(2) The sale of crops, goods intended to be sold or perishable commodities shall be deemed to be acts of management.

Art. 2205. — *Special agency.*

(1) Special authority shall be required where the agent is called upon to perform acts other than acts of management.

(2) The agent may not without special authority alienate or mortgage real estate, invest capitals, sign bills of exchange, effect a settlement, consent to arbitration, make donations or bring or defend an action.

Art. 2206. — *Authority of special agent.*

(1) Special agency shall confer upon the agent authority only to conduct the affairs specified therein and their natural consequences according to the nature of the affair and usage.

(2) An act performed by the agent outside the scope of his authority shall not bind the principal unless he ratifies it, or in accordance with the principles governing unauthorised agency.

Art. 2207. — *Obligation to ratify.*

(1) The principal shall, where good faith so requires, ratify the act done by the agent notwithstanding that he departed from his terms of reference.

(2) The provisions of sub-art. (1) shall apply where it is reasonable to admit that, in the circumstances, the principal would have extended the scope of the agent's authority, had he been aware of the situation.

(3) The agent may not require the principal to ratify where, before acting, he had the possibility of securing authority from the principal or where, after having acted, he omitted forthwith to inform the principal.

## Section 2. Duties of agent

Art. 2208. — *Strict good faith.*

(1) The agent shall act with the strictest good faith towards his principal.

(2) He shall disclose to his principal any circumstance which would justify the revocation of the agency or a variation of its terms.

Art. 2209. — *Effect.*

(1) The agent shall act in the exclusive interest of the principal and may not, without the latter's knowledge, derive any benefit from any transaction into which he enters in pursuance of his authority.

(2) He may not make use to the detriment of the principal of any information obtained by him in the performance of his duties as agent.

Art. 2210. — *Accounts.*

(1) The agent shall account to the principal for all sums received by him and all profits accruing to him in the course of his employment, notwithstanding that the sums he received were not owed to the principal.

(2) Where the agent converted to his own use monies he owed to the principal, he shall be liable for the payment of interest as from the day of such use, without it being necessary that notice be given to him.

Art. 2211. — *Diligence required of agent.*

(1) The agent shall exercise the same diligence as a bonus pater familias in carrying out the agency as long as he is entrusted therewith.

(2) He shall be liable for fraud and for defaults in the performance of his duties.

(3) Whosoever undertakes without consideration to act as an agent shall not be liable unless he has not applied to the affairs of the principal the same degree of care as to his own.

Art. 2212. — *Non-liability of agent.*

(1) Unless otherwise agreed, the agent, notwithstanding that he acted in his own name, shall not be liable to the principal for the performance of the obligation of the person with whom he contracted.

(2) The provisions of sub-art. (1) shall not apply where he contracted with a person whose insolvency he knew or ought to have known at the time of the making of the contract.

Art. 2213. — *Duty to account.*

(1) The agent shall at any time account to the principal at his request for his management of affairs.

(2) He shall inform his principal without delay that he has accomplished his agency.

Art. 2214. — *Approval of management.*

(1) The principal shall be deemed to have approved the management of the agent where, after having received from him a statement thereupon, he remains silent for a longer period than warranted by the nature of the affair or usage.

(2) The provisions of sub-art. (1) shall apply notwithstanding that the agent departed from the instructions he received or exceeded the scope of his authority.

Art. 2215. — *Delegation of authority.* — 1. *Possibility.*

(1) The agent shall carry out the agency in person unless he was authorised by the principal to appoint a substitute.

(2) Such authorisation shall be implied where from usage it appears a matter of indifference whether the agent acts personally or by deputy.

(3) The agent shall appoint a substitute, where the interest of the principal so requires, when unforeseen circumstances prevent him from carrying out the agency and he is unable to inform the principal of these circumstances.

Art. 2216. — 2. *Liability of agent.*

(1) The agent shall be liable for the acts of any person whom he appointed without authorisation as his substitute as if they were his own.

(2) Where the agent has been authorised to appoint a substitute, he shall be liable only for the care with which he selected his substitute and gave him instructions.

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Art. 2217. — 3. *Relationship between the principal and the substituted agent.*

(1) The relationship between the principal and the substituted agent shall be as though the substituted agent had received authority to act as agent directly from the principal, where the substituted agent had reasons to believe that the agent was authorised to appoint a substitute.

(2) In the contrary case, the provisions of Art. 2257-2265 shall apply.

Art. 2218. — *Plurality of agents.*

(1) Unless otherwise agreed, where several persons have been appointed as agents by the same instrument, the contract of agency shall not be effective unless it has been accepted by all the persons concerned.

(2) Where several persons have been appointed as agents by the same instrument, only the acts done by them jointly shall bind the principal, unless otherwise agreed.

## Section 3. Duties of principal

Art. 2219. — *Contractual remuneration.*

(1) The agent shall be entitled to the remuneration fixed in the contract.

(2) The court may reduce the remuneration fixed in the contract where it appears excessive and out of proportion to the services rendered by the agent.

Art. 2220. — *Remuneration not fixed by contract.*

(1) In the absence of a stipulation in the contract, the agent shall not be entitled to remuneration unless he carried out the agency within the scope of his professional duties or where such remuneration is customary.

(2) Failing agreement between the parties, the court shall fix the remuneration in conformity with recognised rates and usage.

Art. 2221. — *Outlays and expenses.*

(1) The principal shall advance to the agent the sums necessary for carrying out the agency.

(2) He shall reimburse outlays made and expenses incurred by the agent in the proper carrying out of the agency.

(3) Interest on such outlays and expenses shall be due by the principal as from the day when they were incurred without it being necessary to place the principal in default.

Art. 2222. — *Liabilities and damages.*

(1) The principal shall release the agent from any liabilities which he incurred in the interest of the principal.

(2) He shall be liable to the agent for any damage he sustained in the course of the carrying out of the agency and which was not due to his own default.

Art. 2223. — *Set-off.*

(1) The principal may not refuse to pay the sums due by him to the agent under the pretext that the transaction was unsuccessful.

(2) He may set-off these sums against those owed to him by the agent, in particular by reason of the latter's default in the performance of the agency.

Art. 2224. — *Agent's lien.*

Until the payment of the sums due to him by reason of the agency, the agent shall have a lien on the objects entrusted to him by the principal for the carrying out of the agency.

Art. 2225. — *Plurality of principals.*

Where the agent has been appointed by several principals for a common affair, the principals shall be jointly liable to the agent for all the consequences of the contract.

## Section 4. Termination of agency

Art. 2226. — *Revocation of agency.*

(1) The principal may revoke the agency at his discretion and, where appropriate, compel the agent to restore to him the written instrument evidencing his authority.

(2) Any provision to the contrary shall be of no effect.

Art. 2227. — *Effect of revocation.*

(1) The principal shall indemnify the agent for any damage caused to him by the revocation where such revocation occurs prior to the agreed date or under conditions detrimental to the agent.

(2) The principal shall incur no liability where the date was agreed upon in his own interest exclusively or he has a just motive for revocation.

Art. 2228. — *Plurality of principals.*

(1) Where the agent has been appointed by several principals for a common affair, the revocation of the agent may be effected only by all the principals.

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(2) One of the principals may not without the others' consent revoke the common agent unless such revocation is founded upon a just motive.

Art. 2229. — *Renunciation of agent.*

(1) The agent may renounce the agency by giving notice to the principal of his renunciation.

(2) Where such renunciation is detrimental to the principal, he shall be indemnified by the agent unless the latter cannot continue the performance of the agency without himself suffering considerable loss.

Art. 2230. — *Death or incapacity of agent.*

(1) Unless otherwise agreed, a contract of agency shall terminate by the death of the agent or where he is declared absent, becomes incapable or is adjudicated a bankrupt.

(2) The heirs or the legal representative of the agent who are aware of the agency shall inform the principal of these circumstances without delay.

(3) They shall, until such time as the necessary steps can be taken by the principal, do whatever is required in the circumstances to safeguard the principal's interests.

Art. 2231. — *Plurality of agents.*

(1) Where several agents have been appointed for the same affair and are required to act jointly. any cause of termination of the agency occurring in respect of the person of one of the agents shall terminate the authority of all, unless otherwise agreed.

(2) The other agents shall notify the principal upon becoming aware of the cause of termination of the agency and shall in the meantime do whatever is required in the circumstances to safeguard the principal's interests.

Art. 2232. — *Death or incapacity of principal.*

(1) Unless otherwise agreed, a contract of agency shall terminate by the death of the principal or where he is declared absent, becomes incapable or is adjudicated a bankrupt.

(2) The agent shall in such event continue his management where he had commenced it and there is no danger in delay until the heirs or the legal representative of the principal are in a position to take it over themselves.

### Section 5. Effect of agency as regards third parties

Art. 2233. — *Application of rules on representation.*

The legal relations of principal, agent and third parties shall be subject to the provisions of Chapter 1 of this Title (Art. 2179-2198).

## Chapter 3. Commission

### Section 1. Commission to buy or to sell

Art. 2234. — *Definition.*

(1) The commission to buy or to sell is a contract of agency whereby the agent, called the commission agent, undertakes to buy or to sell in his own name but on behalf of another person, called the principal, goods, securities or other fungible things.

(2) The rules governing agency shall apply to this contract subject to such special provisions and exceptions as are laid down in this Section.

Art. 2235. — *Measures of preservation.*

(1) The commission agent shall take all necessary steps for the preservation of the goods sent to him on behalf of the principal and safeguard the latter's rights against the carrier when the goods seem to have been damaged or their arrival has been delayed.

(2) He shall forthwith notify these incidents to the principal, as well as the fact that the goods have not arrived.

(3) Such duties shall be carried out by a person notwithstanding that he has not accepted the commission, where the commission falls within his professional activity.

Art. 2236. — *Sale of goods.*

Where there is a risk that the goods consigned for sale will quickly deteriorate, the commission agent may and, where it is in the interest of the principal, shall have them sold with the assistance of the competent authorities at the place of their location.

Art. 2237. — *Anticipated payment.*

The commission agent shall act at his own risk where, without the principal's consent, he pays the seller before delivery has taken place.

Art. 2238. — *Sale on credit.*

(1) The commission agent may grant time for payment to the buyer where such is the custom of trade at the place of sale and the principal has not given him contrary instructions,

(2) The commission agent who grants time for payment shall inform the principal as to the person of the buyer and the period of time granted for payment.

(3) Failing such notification by the commission agent, the transaction shall be deemed to be made on a cash basis and the provisions of the following Article shall apply.

Art. 2239. — *Unauthorised credit.*

(1) Where the commission agent grants time for payment contrary to the instructions of the principal or usage, the principal may demand immediate payment.

(2) In such a case, the commission agent may retain the benefits he received in granting time for payment.

Art. 2240. — *Guarantee given by commission agent.*

(1) The commission agent shall be liable to the principal for the payment or the performance of other obligations by the persons with whom he contracted where he acted as del credere agent.

(2) Unless otherwise agreed, a commission agent entrusted with the purchase or sale of securities shall be deemed to be a del credere agent.

(3) A commission agent entrusted with the purchase or sale of goods shall be deemed to be a del credere agent where such is the custom of trade in the place where he resides or where he guaranteed the solvency of the persons with whom he contracted.

Art. 2241. — *Del credere agent.*

(1) The del credere commission agent is a guarantor jointly liable with the person with whom he contracted.

(2) He shall in all cases be liable to the principal for the performance of the contract he entered into unless non-performance was due to the principal's default.

Art. 2242. — *Insurance.*

The commission agent shall not be bound to insure the goods unless the principal instructed him to do so.

Art. 2243. — *Remuneration of commission agent.*

(1) Where the remuneration of the commission agent has not been agreed upon between the parties, it shall be fixed in accordance with the custom of the place where the contract was entered into by the commission agent.

(2) Failing such custom, the court shall fix it on the basis of equity having regard to the work performed by the commission agent, the expenses he incurred and the risks he assumed.

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(3) Where he acted as del credere agent, the commission agent shall be entitled to a special remuneration to be fixed under the terms of the contract or in accordance with usage or equity.

Art. 2244. — *When remuneration is due.*

(1) The commission agent shall be entitled to his remuneration for a specific transaction entrusted to him where the transaction is completed or where failure to complete it is due to a reason attributable to the principal.

(2) He shall not be entitled thereto where the transaction was not completed for other reasons, subject to any contrary usage in the place of his professional activity.

Art. 2245. — *Forfeiture of right to remuneration.*

(1) The right to remuneration shall be forfeited where the commission agent acts dishonestly towards the principal.

(2) It shall be forfeited in particular where he pretends that he purchased at a higher price or sold at a lower price than he actually did.

Art. 2246. — *Outlays and advances.*

(1) The commission agent shall be entitled to be reimbursed with interest all outlays and advances made by him in good faith to carry out the transactions entrusted to him by the principal.

(2) Unless otherwise agreed, such reimbursement shall be due to him notwithstanding that the transaction entrusted to him could not be effected.

Art. 2247. — *Lien.*

(1) The commission agent shall have a lien for the payment of the sums due to him by the principal.

(2) He may exercise this right on all goods in his possession which he was instructed to buy or to sell on behalf of the principal.

(3) He may exercise it on the monies he received from a buyer for the principal.

Art. 2248. — *Dealings on own account.*

(1) The commission agent entrusted with the sale or purchase of goods quoted on the Stock Exchange or having a market value may, in the absence of contrary instructions by the principal, effect the transaction as a third party on his own account and conclude the contract with himself.

(2) In such a case, he shall remain entitled to the remuneration agreed upon or resulting from usage.

(3) The price fixed for the transaction may not be less than the price intimated to him by the principal nor than the price quoted on the Stock Exchange or the market price.

Art. 2249. — *Presumption.*

Where the commission agent who is himself entitled to act as buyer or seller notifies the principal of the carrying out of a transaction without naming the person with whom he contracted, he shall be deemed to have assumed the obligations of buyer or seller on his own account.

Art. 2250. — *Termination of commission.*

The commission shall not terminate where the principal or the commission agent dies, becomes incapable or is declared absent where the heirs or representatives of the principal or commission agent continue his commercial activity.

## Section 2. Forwarding agency

Art. 2251. — *Forwarding agency.*

(1) The forwarding agency is a contract of agency whereby the agent, called the commission agent, shipper or forwarding agent, undertakes to enter in his own name but on behalf of another person, called the principal, into a contract for the forwarding of goods.

(2) The rules governing the contract of commission to buy or to sell shall apply to this contract.

Art. 2252. — *Insurance and dealings on own account.*

(1) Unless otherwise agreed, the forwarding agent shall not be bound to insure the goods.

(2) He may himself undertake to effect their transport.

(3) In such a case, he shall have the same rights and duties as a carrier.

# Chapter 4. Authority granted by the court

Art. 2253. — *Principle.*

The authority to do an act or acts of a certain kind on behalf of another may be given by the court to a person hereinafter called the curator.

Art. 2254. — *Application for appointment.*

(1) An application for the appointment of a curator may be made to the court by a relative or by the spouse of the person to be represented.

(2) It may be made by no other person.

Art. 2255. — *Decision of the court.*

(1) The court shall not grant the application unless the person to be represented is not in a position to appoint an agent by reason of his being away, ill or for any other cause.

(2) The court shall authorise the curator it appoints to carry out such acts as are of an urgent nature.

(3) The court shall make such order as it thinks fit to safeguard the interests of the person represented and to ensure that the curator will execute any sentence that may be passed upon him in relation to his liabilities to the person represented.

Art. 2256. — *Effect.*

(1) The curator appointed by the court shall as soon as possible inform the person whom he represents of his appointment.

(2) The respective rights and obligations of the person represented and the curator appointed by the court shall be subject to the provisions of Chapter 2 of this Title (Art. 2199-2233).

## Chapter 5. Unauthorised agency

Art. 2257. — *Scope of application.*

Unauthorised agency occurs where a person who has no authority to do so undertakes with full knowledge of the facts to manage another person's affairs without having been appointed an agent.

Art. 2258. — *Management against principal's will.*

(1) Where the management was undertaken against the principal's will, the provisions relating to unlawful enrichment and, where appropriate, those relating to extra-contractual liability shall apply (Art. 2027-2178).

(2) The provisions of this Chapter shall not apply in such a case unless the principal ratifies the acting person's management.

Art. 2259. — *Management not undertaken in the principal's interest.*

(1) Where the management was undertaken by the acting person in his own interest and not in that of the principal, the provisions relating to unlawful enrichment and, where appropriate, those relating to extra-contractual liability shall apply (Art. 2027-2178).

(2) The provisions of this Chapter shall apply where the acting person managed the other party's affair at the same time as his own by reason of the fact that both affairs were so closely connected together that one of them could not be managed separately.

Art. 2260. — *Duties of acting person.*

(1) The acting person shall as soon as possible inform the principal concerned in the affair that he has undertaken the management.

(2) He shall continue the management undertaken by him and bring it to completion as long as the principal concerned in the affair is not in a position to take it over himself.

(3) He shall be subjected to the same rules as an agent as regards the duty to render accounts (Art. 2213 and 2214).

Art. 2261. — *Diligence and liability.*

(1) The acting person shall manage the affair he has undertaken with the same care as a bonus paterfamilias.

(2) The court may, having regard to the circumstances that induced him to undertake the management, reduce the damages to which he may be liable owing to his default.

Art. 2262. — *Disability of acting person.*

Where the acting person was under a disability as to contracting, he shall only be liable to the extent of his enrichment or the benefits with which he parted in breach of good faith.

Art. 2263. — *Good faith.*

(1) The acting person shall act with the strictest good faith towards the principal.

(2) The provisions governing agency shall apply in this respect (Art. 2208-2212).

Art. 2264. — *Duties of principal.*

(1) Where the principal's interest required that the management be undertaken, he shall ratify the acts done by the acting person in his name.

(2) He shall indemnify the acting person for all liabilities he personally undertook, reimburse him the expenses incurred in his interest and compensate him for any damage he suffered in connection with the management and not due to his default.

(3) Expenses made by the acting person shall produce interest as from the day they were made without it being necessary that the principal be placed in default.

Art. 2265. — *Effect of ratification.*

Where the principal is bound by law to ratify the transaction or he in fact ratifies it, the provisions governing agency shall apply (Art. 2233).

# BOOK V. SPECIAL CONTRACTS
# TITLE XV
# CONTRACTS RELATING TO THE ASSIGNMENT OF RIGHTS
## Chapter 1. Sale

Art. 2266. — *Definition.*

A contract of sale is a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him.

Art. 2267. — *Application of this Chapter.* — 1. *Corporeal chattels.*

(1) The provisions of this Chapter shall apply to the sale of corporeal chattels.

(2) Nothing in this Article shall affect the special provisions relating to the sale of certain kinds of corporeal chattels.

Art. 2268. — 2. *Intrinsic parts of immovable.*

(1) The sale of intrinsic parts of an immovable shall be deemed to be a sale of movables where such parts are, under the contract, to be separated from the immovable and transferred as corporeal chattels to the buyer.

(2) The provisions of sub-art. (1) shall apply in particular where the sale relates to crops, materials of a building under demolition or products of a quarry.

Art. 2269. — *Sale on delivery.*

For the purpose of this Chapter, a contract for the delivery of corporeal chattels to be manufactured or produced shall be deemed to be a sale where the party who undertakes delivery is to provide the main materials necessary for the manufacture or production.

### Section 1. Formation of contract

Art. 2270. — *Subject of sale.*

(1) A sale may relate to an existing thing belonging to the seller.

(2) A sale may also relate to a future thing which the seller undertakes to make for delivery to the buyer.

(3) It may also relate to a thing belonging to a third party.

Art. 2271. — *Price estimated by third party.*

(1) The price may be referred to the arbitration of a third party.

(2) There shall be no sale where such third party refuses or is unable to make an estimate.

Art. 2272. — *Terms of the contract.*

(1) A contract of sale may be pure and simple or contain special terms.

(2) Unless otherwise expressly stipulated, the obligations it imposes on the parties shall not be deemed to be conditions affecting the existence of the contract.

## Section 2. Performance of contract

### Paragraph 1. — Obligations of seller

Art. 2273. — *General provisions.*

(1) The seller shall deliver the thing to the buyer in accordance with the provisions of the contract and of this Code.

(2) He shall transfer the ownership of the thing to the buyer and warrant him against certain defects in the thing.

(3) He shall in addition be liable for any other obligation imposed upon him by the contract of sale.

#### A — *Obligation to deliver*

Art. 2274. — *Essence of obligation.*

Delivery consists in the handing over of a thing and its accessories in accordance with the contract.

Art. 2275. — *Quantity fixed approximately.*

(1) Where the seller undertakes to deliver "about a certain quantity" of specified goods, it shall be for him to determine the exact quantity to be delivered, unless it appears from the circumstances that such stipulation has been included in the contract in the sole interest of the buyer.

(2) The difference between the approximate quantity fixed in the contract and the quantity actually delivered may not be more than ten per cent, where the sale relates to the whole cargo of a ship, or five per cent in other cases.

Art. 2276. — *Time of delivery.*

Where the date of delivery cannot be inferred from the will of the parties, the seller shall deliver the thing as soon as the buyer requires him to do so.

Art. 2277. — *Delivery during a given period.*

Where the parties have agreed that delivery shall take place during a

given period, it shall be for the seller to fix the exact date of delivery unless it appears from the circumstances that it is for the buyer to do so.

Art. 2278. — *Simultaneity with payment.*

(1) Unless otherwise provided in the contract, delivery of the thing shall be simultaneous with the payment of the price.

(2) The seller may in such case retain the thing until payment is made.

Art. 2279. — *Place of delivery.* — 1. *Principle.*

Unless otherwise agreed, the seller shall deliver the thing at the place where, at the time of the contract, he had his place of business or, failing such, his normal residence.

Art. 2280. — 2. *Exception.*

(1) Where the sale relates to a specific thing and the parties know the place where such thing is at the time of the contract, the seller shall deliver the thing at such place.

(2) The provisions of sub-art. (1) shall apply where the contract relates to fungible things selected from a stock or a specified supply or to things which are to be made or produced in a place known to the parties at the time of the contract.

B — *Obligation to transfer ownership*

Art. 2281. — *Steps necessary for the transfer of ownership.*

The seller shall take the necessary steps for transferring to the buyer unassailable rights over the thing.

Art. 2282. — *Warranty against dispossession.* — 1. *Principle.*

The seller shall warrant the buyer against any total or partial dispossession which he might suffer in consequence of a third party exercising a right he enjoyed at the time of the contract.

Art. 2283. — 2. *Legal limits.*

(1) Where, at the time of the contract, the buyer knows that he risks dispossession, the seller shall not warrant the thing unless he has expressly undertaken to do so.

(2) Warranty shall however be due where dispossession is due to the falling in of a pledge made by the seller.

Art. 2284. — *Provisions excluding or restricting warranty.*

(1) Provisions which exclude or restrict the warranty due from the seller against dispossession shall be construed strictly.

(2) Unless otherwise expressly agreed, such provisions shall impose on the seller the obligation to return the price to the buyer, in whole or in part, in cases of dispossession.

(3) A provision excluding or restricting the warranty shall be of no effect where the seller has intentionally concealed that a third party had a right on the thing or dispossession is due to the act of the seller.

Art. 2285. — *Joining seller as party to proceedings.*

(1) Where the buyer is sued for dispossession, he shall join the seller as a party to the proceedings instituted against him.

(2) Where the seller is joined in the proceedings in due time, he shall make good his warranty unless he can show that dispossession is due to the act of the buyer.

(3) Where the seller is not joined in the proceedings without any fault on his part, he shall be released from his warranty where he can show that the proceedings might have had a more favourable issue, had he been joined in in due time.

Art. 2286. — *Compromise.*

Where the buyer acknowledges the right of a third party outside judicial proceedings or he has entered into a compromise with such third party, he may not avail himself of the warranty given by the seller unless he can show that the latter could not have prevented dispossession.

C — *Warranty against defects in the thing*

Art. 2287. — *Principle.*

The seller shall guarantee to the buyer that the thing sold conforms to the contract and is not affected by defects.

Art. 2288. — *Conformity with contract.*

The thing shall not be deemed to conform to the contract where:

(a) the seller delivered to the buyer part only of the thing sold or a greater or lesser quantity than he had undertaken in the contract to deliver; or

(b) the seller delivered to the buyer a thing different to that provided in the contract or a thing of a different species.

Art. 2289. — *Warranty against defects.*

The warranty shall become effective where the thing:

(a) does not possess the quality required for its normal use or commercial exploitation; or

(b) does not possess the quality required for its particular use as provided expressly or impliedly in the contract; or

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(c) does not possess the quality or specifications provided expressly or impliedly in the contract.

Art. 2290. — *Time when defects are to be considered.*

(1) The conformity with the contract and the absence of defects shall be ascertained having regard to the condition of the thing at the time of the transfer of risks.

(2) Where no transfer of risks occurs as a result of the cancellation of the contract having been declared or the replacement of the thing having been required, regard shall be had to the time when the risks would have been transferred, had the thing been in conformity with the contract.

(3) The seller shall be held to his warranty where non-conformity or defects occur at a date later than that specified in this Article and are caused by the seller or a person for whom he is liable.

Art. 2291. — *Examination of thing by buyer.*

(1) As soon as the buyer has the opportunity, he shall without delay examine the thing.

(2) Unless otherwise agreed, such examination shall be made as provided by the usages of the place of examination.

(3) Where the buyer intends to avail himself of the results of the examination, he shall in due time invite the seller or his representative to attend such examination, unless the thing is likely to perish.

Art. 2292. — *Notification of defects.*

(1) Where examination discloses non-conformity with the contract or a defect in the thing, the buyer shall without delay give notice thereof to the seller.

(2) In notifying the defect, the buyer shall indicate its nature in accordance with custom and good faith.

Art. 2293. — *Absence of notification.*

(1) Where the buyer has not notified the seller as provided in Art. 2292, he may no longer avail himself of the non-conformity or defects unless the seller admitted their existence.

(2) Where a defect is subsequently discovered which could not be discovered by the normal process of examination, the buyer may avail himself of such defect where he notifies the seller as soon as he discovers it.

(3) The seller who has intentionally misled the buyer may not avail himself of the fact that the notification of defects has not been sufficiently precise or made in due time.

Art. 2294. — *Warranty limited by agreement.*

Where the seller has warranted during a specified period certain qualities or the good working condition of the thing, it shall be sufficient for the buyer to inform the seller of the defect before the expiry of such period.

Art. 2295. — *Buyer knowing of defects.*

(1) Where the seller can prove that the buyer knew of the defects at the time of the contract, he shall not be liable on his warranty against defects.

(2) In such a case, an express warranty given by the seller shall itself be void.

Art. 2296. — *Gross negligence of buyer.*

(1) The seller shall not be liable on a warranty against defects which are so obvious that the buyer could overlook them only as a result of gross negligence.

(2) The warranty shall however hold where the seller has expressly declared that the thing was free from defects or he has expressly warranted certain qualities.

Art. 2297. — *Provisions excluding or restricting warranty.*

Any provision excluding or restricting the warranty shall be of no effect were the seller has fraudulently concealed from the buyer the defects in the thing.

Art. 2298. — *Period for suing on a warranty.*

(1) The buyer shall, under pain of losing his right, bring proceedings on a warranty against defects within one year from his having given notice to the seller, unless the seller intentionally misled him.

(2) The parties may not shorten this period.

(3) Where specified qualities or the good working condition of the thing have been warranted by the seller for a specified period, the time within which the buyer may bring proceedings shall be reckoned from the day when this period has expired.

Art. 2299. — *Position of buyer upon expiry of period.*

(1) After the expiry of the period fixed in Art. 2298, the buyer may no longer avail himself of the defect or non-conformity.

(2) The buyer may, however, where he has not paid the price and he notified the defect or non-conformity in due time, set off against the demand for payment a claim for reduction in price or damages.

Art. 2300. — *Seller may put right defects.*

(1) In a sale of fungible things, the seller may replace defective things by new ones within the period provided for in the contract.

(2) In a sale of goods to be manufactured or produced by the seller on the specifications of the buyer, the seller may put right the defects within a reasonable time, even after the expiry of the period fixed for delivery, provided that the delay causes the buyer no substantial inconvenience or expense.

(3) Nothing shall affect the right of the buyer to claim damages.

D — *Other obligations of seller*

Art. 2301. — *Handing over documents.*

(1) Where it is customary for the seller to hand over to the buyer documents concerning the thing sold, the seller shall, in addition to delivery, hand such documents over.

(2) The documents shall be handed over as carefully and quickly as possible at the place fixed in the contract or provided by custom.

(3) The buyer shall not be bound to accept the documents unless they conform to the contract.

Art. 2302. — *Insurance.*

Where the seller must know from the circumstances that a carriage insurance is the custom and where the seller is not bound to contract such insurance himself, he shall provide the buyer with the necessary information to enable him to contract an insurance, where the buyer requires such information from him.

Paragraph 2. — Obligations of buyer

Art. 2303. — *General provision.*

(1) The buyer shall pay the price and take delivery of the thing.

(2) He shall be bound by any other obligation imposed upon him by the contract of sale.

Art. 2304. — *Obligation to pay the price.*

(1) The obligation to pay the price shall include the obligation to take any step provided by the contract or by custom to arrange for or guarantee the payment of the price.

(2) The buyer may thus be compelled, according to the circumstances, to accept a bill of exchange, to open a credit account, to provide bank security or otherwise.

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Art. 2305. — *Price determined by weight.*

Where the price is determined by the weight of the thing, the net weight shall be taken into account in cases of doubt.

Art. 2306. — *Thing at current price.*

Where the thing sold is quoted on the market or has a current price. the parties shall be deemed to have concluded the sale at this price, having regard to the time when and place where delivery is to take place.

Art. 2307. — *Thing usually sold by seller.*

(1) Where the sale relates to a thing which the seller normally sells, the parties shall be deemed to have concluded the sale at the price normally charged by the seller, having regard to the time when and place where delivery is to take place.

(2) The amount shown in the invoice presented by the seller shall be deemed to conform to such price.

Art. 2308. — *Quantity greater than agreed.*

(1) Where the seller delivers a quantity greater than that provided in the contract, the buyer may accept or refuse such quantity as exceeds the agreed quantity.

(2) Where he accepts the whole quantity, he shall pay a price increased in proportion to the quantity delivered to him.

Art. 2309. — *Place of payment.*

(1) The buyer shall pay the price at the place fixed in the contract.

(2) Where no place is fixed, he shall pay the price at the address of the seller.

(3) Where the contract provides that the price shall be paid when the thing or documents are handed over, the price shall be paid at the place where, under the contract, such thing or documents are to be handed over.

Art. 2310. — *Date of payment.* — 1. *Sale for cash on delivery.*

Where payment is due on delivery, the buyer shall not be bound to pay the price until he has had an opportunity to examine the thing.

Art. 2311. — *Credit sale.*

Where the contract relates to a sale on credit and no date of payment is fixed, the buyer shall pay the price as soon as the seller demands it after the date when delivery is to be made.

Art. 2312. — *Co-operation in delivery.*

The buyer shall, where appropriate, take such steps as may be required of him to enable the seller to carry out his obligation to deliver the thing.

Art. 2313. — *Taking delivery.*

The buyer shall, after delivery, take such steps as may be necessary for completing the delivery of the thing.

**Paragraph 3. — Common obligations of seller and buyer**

**A — *Expenses***

Art. 2314. — *Expenses of contract.*

The expenses of a contract of sale shall be borne by the buyer.

Art. 2315. — *Expenses of payment.*

(1) The expenses of the payment shall be borne by the buyer.

(2) Where the seller has changed the address of his place of business or residence after the making of the contract, he shall bear any additional expenses arising therefrom.

Art. 2316. — *Expenses of delivery.*

(1) The expenses of delivery shall be borne by the seller.

(2) Such expenses shall include the cost of counting, measuring and weighing the thing.

Art. 2317. — *Expenses after delivery.*

Any expense arising after delivery shall be borne by the buyer.

Art. 2318. — *Expenses of transport.*

(1) The expenses of transport shall be borne by the buyer where the thing sold has to be sent to another place than the place of delivery.

(2) Such expenses shall however be borne by the seller where delivery is to be carriage-free.

(3) Where the transport of the thing is interrupted by an event beyond the control of either party, the additional transport expenses shall be borne by the party who bears the risks.

Art. 2319. — *Customs duties.*

(1) Where import customs duties or other duties charging the imported thing are to be paid by the seller and such duties increase after the contract is made, such increase shall be added to the price.

(2) Where, however, a delivery bearing such duties has been delayed by the act of the seller or of a person for whom the seller is liable, the additional duties shall be paid by the seller whenever the buyer can show that the increase would not have been due, had the delivery been made at the time fixed in the contract or provided by law.

(3) Whenever there is a decrease in customs duties, the price shall be reduced accordingly.

B — *Preservation of the thing*

Art. 2320. — *Obligation of the seller.*

(1) Where the buyer is late in taking delivery of the thing or in paying the price, the seller shall ensure the preservation of the thing at the buyer's expense.

(2) He may retain the thing until he has been indemnified by the buyer for the expenses he incurred in preserving the thing.

Art. 2321. — *Obligation of the buyer.*

(1) Where the thing sold has been received by the buyer, he shall, where he intends to refuse it, ensure its preservation at the seller's expense.

(2) He may not return the thing to the seller without further formality.

(3) He may retain the thing until he has been indemnified by the seller for the expenses he incurred in preserving the thing.

Art. 2322. — *Consignment or sale of the thing.*

The seller and the buyer may relieve themselves of the obligation to preserve the thing by consigning or selling it in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1779-1783).

C — *Transfer of risks*

Art. 2323. — *Principle.*

Where the risks are transferred to the buyer, he shall pay the price notwithstanding that the thing is lost or its value altered.

Art. 2324. — *Delivery of thing.*

(1) The risks shall be transferred to the buyer from the day when the thing has been delivered to him in accordance with the provisions of the contract or of this Code.

(2) The provisions of sub-art. (1) shall apply notwithstanding that the thing delivered does not conform to the contract, where the buyer has neither cancelled or required the cancellation of the contract nor required that the thing be replaced.

Art. 2325. — *Delay of buyer.*

(1) The risks shall also be transferred to the buyer from the day he is late in paying the price.

(2) Where the sale relates to fungible things, the delay of the buyer shall not transfer the risks to him unless the thing, clearly designated for the performance of the contract, has been especially allocated to the buyer and the seller has sent notice to the buyer to that effect.

(3) Where fungible things are of such a nature that the seller cannot set aside part of them until the buyer takes delivery, it shall be sufficient for the seller to have performed all the acts necessary to enable the buyer to take immediate delivery.

Art. 2326. — *Thing under voyage.*

(1) Where the sale relates to a thing under voyage, the risks shall be transferred to the buyer from the day when delivery has taken place by the thing having been handed over to the carrier.

(2) The provisions of sub-art. (1) shall not apply where, at the time of the making of the contract, the seller knew or should have known that the thing had perished or was damaged.

Art. 2327. — *Provision relating to expenses.*

Any provision relating to expenses stipulated by the parties, in particular a provision whereby expenses are to be borne by the seller, shall not in itself transfer the risks.

Art. 2328. — *Goods shipped in common.*

Where goods are shipped in common with others, the risks shall be allocated to each of the buyer in proportion to his share from the day when delivery has taken place by the goods having been handed over to the carrier, where the seller has sent to the buyer the bill of lading or other document showing that the shipment has taken place.

## Section 3. Non-performance of contract

### Paragraph 1. — Forced performance of the contract

Art. 2329. — *Non-performance of obligation to deliver.* — 1. *Principle.*

Where the thing has not been regularly delivered, the buyer may demand the forced performance of the contract where it is of particular interest to him.

Art. 2330. — 2. *Possibility of purchase in replacement.*

The buyer may not demand the forced performance of the contract where the sale relates to a thing in respect of which a purchase in replacement conforms to commercial practice or such purchase can be effected by him without inconvenience or considerable expense.

Art. 2331. — 3. *Delay.*

(1) The buyer shall lose the right to demand the forced performance of the contract where he fails to inform the seller, within a short period after he has ascertained the delay, of his intention to demand such performance.

(2) Such period shall be estimated with particular strictness where the date fixed for the performance of the contract is a compulsory date.

Art. 2332. — *Non-conformity or defects.*

(1) The buyer who has regularly given notice of the defects may require the seller to deliver new things or the missing part or quality of the thing where the forced performance of the contract may be demanded.

(2) He may require that the defects be made good by the seller within a reasonable time where the sale relates to a thing which the seller has to make or produce on the specifications of the buyer and where such defects can be made good.

Art. 2333. — *Non-payment of price.*

Where the buyer fails to pay the price, the seller may demand payment unless the sale relates to a thing in respect of which a compensatory sale is imposed by custom.

Art. 2334. — *Sale according to specifications.* — 1. *Right of seller.*

Where the buyer's right to decide later as to the form, measurements or other details of the thing is reserved in the contract and he has failed to give such specifications within the time fixed in the contract or on the expiry of a reasonable period of time notified to him, the seller may himself make the specification according to the requirements of the buyer as he knows them.

Art. 2335. — 2. *Method and penalties.*

(1) The seller shall inform the buyer of the specifications of the thing where he has determined them and fix him a reasonable period of time for giving different specifications.

(2) Where the buyer fails to give his specifications within such time, the specifications made by the seller shall be binding.

Paragraph 2. — Cancellation of contract

A — *Reasons for cancellation by the buyer*

**Art. 2336.** — *Principle.*

(1) The buyer may require the court to order the cancellation of the contract or may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1784-1789).

(2) Nothing shall affect the provisions of the following Articles.

**Art. 2337.** — *Compulsory date for delivery.*

(1) The date fixed for delivery shall be deemed to be a compulsory date where the thing has a market price on markets to which the seller can apply to obtain it.

(2) The date fixed by the seller or the buyer, where it is for either of them to fix such date within a period of time provided in the contract, shall also be deemed to be a compulsory date.

**Art. 2338.** — *Additional time.* — 1. *Possibility.*

(1) Where the date fixed for delivery is not a compulsory date, the court may grant the seller a period of grace within which he shall perform his obligations.

(2) The buyer may, in the same circumstances, grant the seller an additional period of time fixed in a reasonable manner and inform him that he shall refuse the thing upon the expiry of this period.

(3) The contract shall be cancelled as of right where the seller fails to deliver the thing within such additional period.

**Art. 2339.** — 2. *Inadequate time.*

(1) Where the period fixed by the buyer is not reasonable, the seller may, within a short time, inform the buyer that he shall only deliver the thing upon the expiry of a reasonable period.

(2) Failing such declaration, the seller shall be deemed to accept the period of time fixed by the buyer.

**Art. 2340.** — *Place of delivery.*

(1) Where the seller delivers the thing at another place than that where he is bound to make delivery, the court shall not cancel the contract on the application of the buyer unless the manner in which the contract was enforced constitutes a fundamental breach of contract.

(2) The contract may not be cancelled where the breach can be made good by the seller within such period of time as is fixed by the contract or by law.

Art. 2341. — *Whole ownership not transferred to buyer.*

(1) The contract may be cancelled where, as a result of a defect affecting his title, the seller has not procured for the buyer the thing free from all the rights belonging to third parties.

(2) The contract may however not be cancelled where the buyer, on buying the thing, knew of the encumbrance.

(3) The contract may not be cancelled where the right with which the thing is encumbered is of small importance and it appears that the buyer would have bought the thing, had he known of the encumbrance.

Art. 2342. — *Dispossession.*

(1) The contract shall be cancelled as of right where the buyer is totally ousted from the thing and the seller is bound to warrant the buyer against dispossession.

(2) The contract may be cancelled where the buyer is partially ousted from the thing.

(3) The contract may however not be cancelled where dispossession only affects a part of the thing of minor importance and it appears that the buyer would have bought the thing, had he known that he would be dispossessed of such part.

Art. 2343. — *Partial delivery.*

(1) Where part of the thing only has been delivered or does not conform to the contract, the buyer may not cancel the contract for the whole unless it appears that he would not have entered into the contract, had he known how it would be executed.

(2) In case of delay in the delivery of part of the thing, the buyer may cancel the contract for the whole notwithstanding that the remaining part of the thing is delivered subsequently, where the date of delivery constituted a compulsory date for the whole.

(3) Where the buyer is not entitled to cancel or require the cancellation of the contract, he may cancel it partially or require that it be partially cancelled and confine himself to paying a price proportionate to the value of such part as has been duly delivered to him.

Art. 2344. — *Defects.*

(1) The contract may be cancelled where the thing is affected by a defect against which the seller warranted the buyer.

(2) The contract may however not be cancelled where the defect is of small importance and it appears that the buyer would have bought the thing, had he known of the defect.

Art. 2345. — *Defect of part of the thing.* — 1. *Principle.*

(1) Where the sale is of several things at a time or of a collection of articles and only some of them are defective, the contract may be cancelled with regard to such defective things or articles only.

(2) The buyer shall in such case pay to the seller a price proportionate to the value of the things or articles which have been delivered to him free from defects.

Art. 2346. — *Exception.*

(1) The contract may however be cancelled for the whole where the defective thing or article cannot be separated, without considerable inconvenience to the buyer or seller, from those which are free from defects.

(2) The cancellation which relates to the principal thing shall extend to accessories notwithstanding that they have been sold for a separate price.

B — *Reasons for cancellation by the seller*

Art. 2347. — *Principle.*

(1) The seller may apply to the court to order the cancellation of the contract or may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to " Contracts in general " (Art. 1784-1789).

(2) Nothing shall affect the provisions of the following Articles.

Art. 2348. — *Non-payment of the price.*

(1) The seller may forthwith declare the cancellation of the contract in case of non-payment of the price where this right has been expressly given to him by the contract of sale.

(2) Failing an express stipulation, the seller may cancel the contract on the expiry of a reasonable period fixed by him in the notice placing the buyer in default, where the sale relates to things which are quoted on the stock market or have a current price or where this right has been expressly given to the seller by the contract.

(3) The seller may also declare the cancellation of the contract upon the expiry of the period of grace, where such period has been granted by the court to the buyer.

Art. 2349. — *Default in taking delivery.*

Where the buyer fails to take delivery of the thing on the conditions laid down in the contract, the seller may require the cancellation of the contract where the failure of the buyer justifies the fear that he will not

pay the price or it appears from the circumstances that taking delivery was an essential stipulation of the contract.

Art. 2350. — *Failure to make specifications.*

Where the buyer has reserved in the contract the right to decide later on the form, measurements or other details of the thing and he fails to give such specifications at the date agreed as being compulsory or upon the expiry of a reasonable period granted to him by the seller, the seller may declare the cancellation of the contract.

C — *Reasons for cancellation by both parties*

Art. 2351. — *Contracts for successive deliveries.*

(1) Where, in contracts for successive deliveries, by reason of the non-performance or the defect of one of the performances due by a party, the other party is justified in fearing that the future performance will not be made or will be affected by defects, such party may require that the contract be cancelled for the future.

(2) The buyer may also require the cancellation of future deliveries or deliveries already made, or both, where he proves that, by reason of their connection, these deliveries are of no use to him without those which have not been made or were affected by defects.

Art. 2352. — *Impossibility of performance.*

A party may declare the cancellation of the contract where, even before the date fixed for performance, the performance of his obligations by his contracting party becomes impossible or is delayed in such a way that the very basis of the contract is affected.

Art. 2353. — *Anticipatory breach of contract.*

Where, before the date fixed for performance, a party has informed the other party that he will not carry out the contract, the latter party may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1789).

D — *Conditions and effect of cancellation*

Art. 2354. — *Cancellation in case of delay.*

Where a party, being late in the performance of an obligation which constitutes an essential stipulation of the contract, asks the other party whether he still consents to the execution of the contract, the contract shall be cancelled as of right where the other party does not answer within a short time.

Art. 2355. — *Effect of cancellation.*

(1) Where a contract is cancelled, the parties shall be released from their obligations under the contract, without prejudice to such damages as may be due.

(2) Where a party has performed his obligations in whole or in part, he may claim the restitution of what he has supplied including the expenses incurred.

(3) Where both parties have performed their obligations, each of them may refuse the restitution due by him until the other party has effected his.

Art. 2356. — *Interest on price and profit.*

(1) Whenever the seller is required to refund the price, he shall in addition pay interest on such price calculated from the day of payment.

(2) The buyer shall restore, in addition to the thing, the profits he has derived therefrom.

Art. 2357. — *Where thing cannot be returned in its previous condition.*

(1) The buyer shall retain the right to require or declare the cancellation of the contract or to avail himself of cancellation already declared where the thing or part thereof has perished or been damaged without this being due to his own act or that of a person for whom he is liable.

(2) He shall in particular retain this right where the thing has been damaged as a result of an examination made by him in accordance with custom.

(3) The contract may not be cancelled where the buyer is unable to restore the thing because he has assigned or transformed it or it has perished or been damaged by his act.

Art. 2358. — *Transformation of thing.*

Where the thing is transformed, the buyer shall retain the right to require or declare the cancellation of the contract where:

(a) the thing or part thereof has been transformed by him before he was able to discover the defect of which he avails himself to require or declare the cancellation of the contract; or

(b) the alteration of the thing is of no importance.

Art. 2359. — *Expenses.*

(1) As regards outlays made by the buyer on the thing, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" shall apply (Art. 2168-2178).

(2) The buyer may only claim from the seller the payment of these outlays in the case of dispossession where he is unable himself to be indemnified by the third party by whom he is dispossessed.

Paragraph 3. — Damages

Art. 2360. — *General provisions.*

(1) Where the non-performance of one of his obligations by his contracting party is detrimental to him, the seller or the buyer may claim that the damage thus caused be made good by way of damages.

(2) Damages may be claimed whether the contract is cancelled or upheld, where the contract has not been regularly and exactly performed.

A — *Case where the contract is not cancelled*

Art. 2361. — *Amount of damages.*

(1) Where the contract is not cancelled, the amount of damages shall be fixed in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1790-1805).

(2) In case of delay in the payment of the price, the buyer shall pay interest at the legal rate (Art. 1803).

(3) Compound interest shall not be included unless there is a current account between the buyer and the seller.

B — *Case where the contract is cancelled*

Art. 2362. — *Thing having a current price.* — 1. *Principle.*

(1) Where the contract is cancelled and the thing has a current price, damages shall be equal to the difference between the price fixed in the contract and the current price as on the day when the right to declare the cancellation of the contract could be exercised or on the day following that when the contract was cancelled by the court or as of right.

(2) Regard shall in addition be had to the normal expenses of a purchase in replacement or compensatory sale.

(3) The price to be taken into account shall be that on the market where the buyer or seller would, in the normal course of business, buy or sell the thing to which the contract relates.

Art. 2363. — 2. *Purchase in replacement or compensatory sale.*

(1) Where the buyer has effected a purchase in replacement or the seller has effected a compensatory sale, the price paid for such purchase or obtained for such sale shall be taken into consideration in calculating the amount of damages.

(2) Such amount may be reduced where the other party proves that the purchase in replacement or compensatory sale has been effected in bad faith or in abnormal business conditions.

Art. 2364. — 3. *Greater damage.*

(1) Damages shall be equal to the prejudice actually caused where the party who suffered such prejudice shows that, at the time of the making of the contract, he had informed the other party of the special circumstances by reason of which the prejudice caused is greater.

(2) The provisions of sub-art. (1) shall also apply where the party shows that non-performance is due to the other party's intention to harm, gross negligence or grave fault.

Art. 2365. — *Thing having no current price.*

(1) Where the thing has no current price, damages shall be equal to the prejudice which non-performance would normally cause to the creditor in the eyes of a reasonable person.

(2) Damages shall be equal to the prejudice actually caused where the circumstances mentioned in Art. 2364 have obtained.

Art. 2366. — *Anticipatory breach of contract.*

(1) In cases of anticipatory breach of contract, damages shall, where the thing has a current price, be calculated having regard to the market price of the thing on the last day of the period fixed in the contract for the performance of the obligation.

(2) Where no period has been fixed in the contract, damages shall be calculated having regard to the market price of the thing on the day when the right to declare the cancellation of the contract could be exercised.

(3) Damages may however not exceed the price actually paid for a previous purchase in replacement nor the difference between the price fixed in the contract and the price actually received for a previous compensatory sale.

Art. 2367. — *Dispossession.*

Where the buyer is dispossessed of the thing, the seller shall, without prejudice to other damages, reimburse him the judicial and extra-judicial expenses of the proceedings he had to institute, with the exception of the expenses he could have avoided by informing the seller of the proceedings.

## Section 4. Various forms of sale

### Paragraph 1. — Sale of cattle and other living animals

Art. 2368. — *Principle.*

Without prejudice to the provisions of the following Articles, the sale of cattle and other living animals shall be subject to the provisions of the preceding Articles.

Art. 2369. — *Contagious diseases.* — 1. *Legal warranty.*

On making delivery, the seller shall guarantee that the animal sold by him does not suffer from any of the following diseases:

Rabies in all species of animals, Rinderpest in all ruminants, Pleuro-pneumonia of cattle (Contagious Bovine Pleuro-Pneumonia), Glanders, Farcy, Dourine and Epizootic Lymphangitis of horses and their crosses (Mules), Anthrax and Piroplasmosis of horses, cattle, sheep and goats.

Foot-and-Mouth Disease of cattle, sheep, goats, pigs and camels.

Blackquarter or Malignant Oedema and Tuberculosis of cattle.

Sheep Pox, and Scabies of sheep and pigs, Swine Fever, Pneumo-enteritis and pox of pigs, Tuberculosis of pigs.

Trypanosomiasis of equines, donkeys and their crosses and in camels.

Spirillosis of horses, donkeys and their crosses.

Oesophagostomiasis of sheep.

Brucellosis of cattle, sheep and goats.

Rickettsiosis, infectious anaemia of equines.

Psittacosis, contagious diseases of bees.

Isle of While Disease, Nosema.

Art. 2370. — *Contrary stipulation.*

Any stipulation contrary to the provisions of Art. 2369 shall be of no effect.

Art. 2371. — *Defects.* — 1. *Legal warranty.*

Warranty shall be due by the seller where the animal sold is affected by a defect such that it is not fitted for the purpose to which it is destined by its nature or under the contract.

Art. 2372. — 2. *Contractual provisions.*

(1) The parties may by an express provision in the contract exclude with regard to a given defect the warranty due in accordance with Art. 2371.

(2) The parties may extend the warranty and provide that the seller shall warrant that the animal possesses a given quality.

Art. 2373. — *Cancellation of contract.*

Where the animal suffers from a contagious disease or is affected by a defect for which warranty is due under the law or the contract, the buyer may require that the sale be cancelled.

Art. 2374. — *Loss of animal.*

Where the animal sold dies in consequence of a disease or defect for which warranty is due or of a fortuitous event caused by such defect, the loss shall be borne by the seller who shall refund the price he received.

Art. 2375. — *Damages.*

The seller shall make good the damage caused to the buyer where:

(a) the seller has expressly guaranteed that the animal was not affected by the disease or defect by reason of which the sale is cancelled; or

(b) the seller is shown to have known, at the time of delivery, of the disease or defect by reason of which the sale is cancelled.

Art. 2376. — *Contract maintained.*

(1) The buyer shall lose his rights against the seller where he fails to cause the disease or defect to be ascertained by experts and to inform the seller of such disease or defect within the time fixed in writing by the parties.

(2) Where no time has been fixed, the buyer shall lose his rights where he fails to cause the disease or defect to be ascertained by experts and to inform the seller of such disease of defect within thirty days from the animal having been delivered.

Paragraph 2. — Sale by sample

Art. 2377. — *Qualities guaranteed by the seller.*

(1) In a sale by sample or pattern, the qualities of the thing shall conform to those of the sample or pattern.

(2) Where there is a discrepancy between the sample and the manner in which the thing is described in the contract, the sample shall prevail.

(3) Where there are differences but no discrepancy, the thing shall combine the qualities of the sample and those of the description.

Art. 2378. — *Exhibiting of sample.*

The party to whom the sample was entrusted shall have to prove that the sample exhibited is identical to the sample received.

Art. 2379. — *Application of this Paragraph.*

There shall not be a sale by sample or pattern where the seller proves that the sample or pattern was only presented to the buyer by way of information without any undertaking as to conformity.

Paragraph 3. — Sale on trial

Art. 2380. — *Time for acceptance.*

(1) Where the sale has been made upon trial, the buyer shall, within the period fixed in the contract, declare whether he accepts or refuses the thing.

(2) Where no period is fixed in the contract, the seller may give the buyer a reasonable period of time to decide.

Art. 2381. — *Silence of buyer.*

(1) Where the buyer fails to inform the seller of his decision within the period provided in Art. 2380, the sale shall be deemed to be concluded where the thing has been delivered to the buyer so that he may try it.

(2) The thing shall be deemed to be refused in the contrary case.

Art. 2382. — *Implied acceptance.*

The sale shall be deemed to be concluded where the buyer pays without reservation all or part of the price or disposes of the thing otherwise than is necessary to try it.

Art. 2383. — *Risks.*

The risks shall be borne by the seller notwithstanding that the thing has been delivered to the buyer, as long as the buyer has not accepted it.

Paragraph 4. — Sale by instalments

Art. 2384. — *Right of option of the seller.*

Where the thing has been sold and delivered on the condition that the price will be paid by instalments and the buyer is in arrears with one of the part payments, the seller may proceed to recover the unpaid instalment or, where such right has been expressly reserved to him, declare the cancellation of the contract.

Art. 2385. — *Cancellation of contract.*

(1) Where the contract is cancelled, the seller and the buyer shall return the payments which they have made to each other.

(2) The seller may however claim a fair rent and an indemnity for the wear and tear of the thing.

(3) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Art. 2386. — *Exigibility of balance.*

(1) Where the exigibility of the balance of the claim has been stipulated in the case of default of payment of an instalment, the seller

may not avail himself of this stipulation unless the buyer is in arrears for two consecutive payments representing together not less than one tenth of the price of the sale.

(2) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Paragraph 5. — Sale with ownership reserved

Art. 2387. — *Effect on third parties.*

(1) A provision whereby the seller reserves to himself, until payment of the price, the ownership of a thing the possession of which has been transferred to the buyer shall not affect third parties unless it has been entered in a public register kept for this purpose at the place where the buyer resides.

(2) Where the third party who acquired the thing is bankrupt, such provision shall not affect his creditors except on the conditions laid down in the Commercial Code.

Art. 2388. — *Risks.*

The risks shall be borne by the buyer from the time when the thing is delivered to him.

Art. 2389. — *Cancellation of sale.*

(1) Where the sale is cancelled, the seller shall return to the buyer all partial payments which he received.

(2) He may however claim a fair rent and an indemnity for the wear and tear of the thing.

(3) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Paragraph 6. — Sale with right of redemption

Art. 2390. — *Sale with right of redemption.*

The seller may reserve to himself the right to redeem within a given period of time the thing which he sold to the buyer.

Art. 2391. — *Time for redemption.*

(1) The period for exercising the right of redemption may not exceed two years.

(2) It shall be of two years where a shorter period has not been fixed.

Art. 2392. — *Penalty.*

(1) The buyer may not assign the thing to which the right of redemption extends.

(2) The prohibition laid down in sub-art. (1) shall not affect third parties unless the clause providing for redemption has been entered in a public register kept for this purpose at the place where the buyer resides.

Art. 2393. — *Obligations of seller.*

(1) The seller who exercises his right of redemption shall refund to the buyer the price which he has received and the expenses of the contract of sale.

(2) Unless otherwise agreed, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" (Art. 2168-2178) shall apply as regards the expenses incurred by the buyer on the thing.

Paragraph 7. — Sale with obligation to forward the thing

Art. 2394. — *Care of transport.*

Where the seller is bound by the contract to forward the thing, he shall make, on the usual conditions and by the usual means, the contracts of carriage necessary for the thing to be actually forwarded to the place fixed in the contract of sale.

Art. 2395. — *Delivery.* — 1. *Principle.*

(1) Where the contract of sale implies the carrying of the thing, delivery shall, unless otherwise agreed, be effected by the handing over of the thing to the carrier.

(2) Where the seller uses his own means of transport or means of transport hired by him for the purpose of effecting part of the carrying, delivery shall be effected by the handing over of the thing to the carrier with whom the contract of carriage is made on behalf of the seller.

(3) Where the thing is to be carried by successive carriers and the seller is bound by the contract of sale to enter into one or more contracts of carriage covering the whole transport, delivery shall be effected by the handing over of the thing to the first carrier.

Art. 2396. — 2. *Thing not intended for the execution of the contract.*

Where the thing handed over to the carrier is manifestly not intended for the execution of the contract, by reason of an address written thereon or otherwise, the duty to make delivery shall not be deemed to have been carried out unless the seller gave notice of the transport to the buyer and sent him, where appropriate, a document describing the thing.

Art. 2397. — 3. *Carriage by water.*

(1) Where the carrier to whom the thing is handed over in accordance with the provisions of the preceding Articles is required to carry the thing by water, delivery shall be effected by the thing being put on board or by the ship according to the terms of the contract.

(2) Nothing shall affect the case where the seller may under the contract present to the buyer a bill of lading "received for loading" or any other document of a similar nature.

Art. 2398. — *Right of retention of seller.*

(1) The seller may postpone the forwarding of the thing until he is paid, where the contract of carriage does not give him the right to dispose of the thing under voyage.

(2) The provisions of sub-art. (1) shall not apply where it has been agreed that delivery would take place at the place of arrival or the price is to be paid after delivery.

(3) Where the seller has forwarded the thing because he had the right to dispose thereof after the beginning of the voyage, he may, until the price is paid, object to the thing being handed over to the buyer at the place of destination.

Art. 2399. — *Payment against documents.*

(1) Where a bill of lading or other document has been issued which permits to obtain the delivery of the thing or the possession of which is necessary to be able to dispose of the thing, the payment of the price may only be demanded against transfer of the document provided by the contract or by custom.

(2) In such case, the buyer may not refuse to pay the price on the ground that he was not able to examine the thing.

(3) The obligation to transfer the documents shall be deemed to be an essential provision of the contract where the document is a bill of lading or any other document which permits to obtain the delivery of the thing or the possession of which is necessary to be able to dispose of the thing.

Art. 2400. — *Stoppage in transit.*

(1) Where, after having forwarded the thing, the seller comes to know that the buyer has been declared insolvent, he may object to the thing being delivered to the buyer notwithstanding that the buyer is already in possession of the bill of lading or any other document which permits to obtain the delivery of the thing.

(2) The seller may not object to the delivery where it is required by a third party regularly in possession of the bill of lading or above-mentioned document.

(3) In such case, the seller may not object to the delivery unless the bill of lading or other document contains reservations regarding the effect of its transmission or he can show that the holder, in acquiring the bill of lading or other document, knowingly acted to the detriment of the seller.

Art. 2401. — *Obligation to take delivery.*

(1) Where the thing has been forwarded to the buyer and placed at his disposal at the place of destination, the buyer shall, if he intends to refuse the thing, take possession thereof on behalf of the seller where he can do so without payment of the price and without inconvenience or considerable expenses.

(2) The provisions of sub-art. (1) shall not apply where the seller is present at the place of destination or there exists at such place a person qualified to receive the thing.

Art. 2402. — *Examination of thing.*

(1) Where a thing is forwarded, the buyer shall examine it at the place of destination.

(2) Where the thing is re-dispatched by the buyer without transhipment and where the seller, at the time of the making of the contract, knew or should have known of the possibility of re-despatching, the examination shall be postponed until the thing arrives at its new destination.

Paragraph 8. — Sale by auction

Art. 2403. — *Formation of contract.*

(1) In the case of sale by auction, the contract of sale shall be concluded by the auction which the seller or the auctioneer makes of the thing.

(2) The person who conducts the auction shall be deemed to be entitled to knock down the thing to the highest bidder, where the seller has expressed no contrary intention.

Art. 2404. — *Obligations of bidder.*

(1) The bidder shall be bound by his offer on the terms of the conditions of sale.

(2) Unless otherwise provided, he shall be released where a higher bid is made or his offer is not accepted immediately after the usual calls.

Art. 2405. — *Payment in cash.*

(1) Unless otherwise provided in the conditions of sale, the bidder shall be bound to pay cash.

(2) The seller who is not paid cash or according to the conditions of sale may forthwith cancel the contract.

Art. 2406. — *Warranty due by seller.*

(1) In a public and voluntary sale by auction, the seller shall give the same warranty as in ordinary sales.

(2) In compulsory auctions, the seller shall not give warranty except in the case of fraud on his part.

Art. 2407. — *Warranty due by distrainer.*

(1) He at whose request the auction takes place shall warrant the conformity of the thing with the description given of it in the conditions of sale.

(2) He shall also be liable for any fraud he may commit.

## Chapter 2. Contracts allied to sale

### Section 1. Barter contract

Art. 2408. — *Differences from sale.*

(1) Each of the exchangers shall, as regards the things subject to the exchange, have the same rights and obligations as a seller.

(2) The exchanger who is bound by the barter contract to pay a balance shall, as regards the payment of such balance, have the same obligations as a buyer.

(3) Unless otherwise agreed, the exchangers shall share equally in the expenses of the barter contract.

Art. 2409. — *Reference to provisions regarding sale.*

The provisions applicable to contracts of sale shall for the remainder apply to barter contracts.

### Section 2. Transfer of rights other than ownership

Art. 2410. — *Transfer of usufruct.*

(1) The provisions applicable to contracts of sale shall apply where a person transfers for consideration the usufruct of a thing.

(2) The obligation of the seller to transfer the ownership of the thing shall in such case be replaced by the obligation to transfer the usufruct of such thing.

Art. 2411. — *Transfer of incorporeal rights.*

(1) The provisions applicable to contracts of sale shall, as far as possible and without prejudice to the provisions of special laws, apply where a person transfers for consideration an incorporeal right.

(2) The transfer of choses in action shall be subject to the provisions of the Title of this Code relating to "Contracts in general" (Art. 1962-1975).

## Section 3. Hiring sale

Art. 2412. — *Assimilation to sale.*

Without prejudice to the provisions of the following Articles, the provisions applicable to contracts of sale shall apply where the parties have described their contract as one of hiring a thing, if it has been provided that the tenant of the thing will become the owner thereof upon payment of a given number of instalments.

Art. 2413. — *Risks.*

The risks shall be borne by the tenant from the time when the thing has been delivered to him.

Art. 2414. — *Termination of contract.*

The tenant may at any time terminate the contract by returning the thing to the lessor.

Art. 2415. — *Cancellation of contract.*

(1) Where the contract is cancelled, the lessor shall return to the tenant the rents which he has collected.

(2) He may only claim a fair rent and an indemnity for the wear and tear of the thing.

(3) Any provision imposing more onerous obligations on the tenant shall be of no effect.

## Section 4. Contract of supplies

Art. 2416. — *Definition.*

A contract of supplies is a contract whereby a party undertakes for a price to make in favour of the other party periodical or continuous deliveries of things.

Art. 2417. — *Object of contract.*

(1) Where the quantity to be supplied has not been fixed, the supplier shall supply such quantity as corresponds to the normal needs of his

contracting party, having regard to the time when the contract was made.

(2) Where the parties have only fixed a maximum and a minimum limit for the whole of the supplies or for each delivery, the person with whom the supplier contracted may fix, within these limits, the quantity to be supplied to him.

(3) Where the quantity is to be fixed according to his needs, the person with whom the supplier contracted shall take all he needs, notwithstanding that this quantity exceeds the minimum fixed in the contract.

Art. 2418. — *Price.*

Where supplies are to be made periodically, the price for each delivery shall, failing an express provision in the contract, be fixed in accordance with the provisions of Chapter 1 of this Title.

Art. 2419. — *Time of payment.*

(1) Where supplies are to be made periodically, the price shall be due at the time of each delivery.

(2) Where supplies are to be continuous, the price shall be due on the usual maturity dates.

Art. 2420. — *Term.*

(1) The time fixed for the various performances shall be deemed to have been fixed in the interest of both parties.

(2) Where the party entitled to the supplies is allowed to fix the time when each performance shall be made, he shall inform the supplier of such time by giving him reasonable notice.

Art. 2421. — *Non-performance of contract.*

(1) Where one of the parties fails to carry out his duties regarding a given performance, the contract may be cancelled where non-performance is of importance and capable of destroying the confidence in the regularity of the performance of future obligations.

(2) The supplier may only cancel the contract or suspend its performance after having given reasonable notice to his contracting party.

(3) Any provision to the contrary shall be of no effet.

Art. 2422. — *Preference clause.* — 1. *Duration.*

(1) A provision whereby a person undertakes to get supplies in preference from a given supplier, should he need certain kinds of goods, shall not be effective for more than three years.

(2) It shall be reduced to three years where it has been made for a longer period.

Art. 2423. — 2. *Application.*

(1) Whosoever has entered into an undertaking as defined in Art. 2422 shall inform the supplier of the terms offered to him by third parties.

(2) The supplier shall, under pain of loss of right, declare within the time fixed in the contract or within a reasonable time whether he intends to avail himself of the preference clause.

Art. 2424. — *Exclusive clause binding the client.*

(1) Where provision has been made in a contract to the effect that a person shall supply himself exclusively with certain things from a given supplier, such person may not receive from third parties supplies of the things of the nature provided in the contract.

(2) Unless otherwise agreed, such person may not himself manufacture or produce things of the nature provided in the contract.

Art. 2425. — *Exclusive clause binding the supplier.*

(1) Where it has been agreed that the supplier shall supply his products to a given person only, the supplier may not, in the area provided in the contract and during the currency of the contract, directly or indirectly supply third parties with goods of the nature provided in the contract.

(2) Where the contracting party has undertaken to develop, in the area provided in the contract, the sale of the things which have been reserved to him, he shall be liable where he fails to carry out this obligation, notwithstanding that he sold the minimum quantity provided in the contract.

Art. 2426. — *Termination of contract.*

Where the duration of the contract of supplies has not been fixed in the contract, each party may terminate the contract by giving notice as provided in the contract or, where not provided, reasonable notice.

## Chapter 3. Donation

Art. 2427. — *Definition.*

A donation is a contract whereby a person, the donor, gives some of his property or assumes an obligation with the intention of gratifying another person, the donee.

Art. 2428. — *Donation mortis causa.*

A donation to be carried into effect on the death of the donor shall be subject to the provisions regarding wills.

Art. 2429. — *Donation on the occasion of marriage.*

(1) A donation made on the occasion of a marriage shall be subject to the provisions regarding ordinary donations.

(2) It shall in no case be deemed to be done for consideration.

(3) Nothing in this Article shall affect the special provision regarding a donation made on the occasion of a marriage (Art. 2457).

Art. 2430. — *Gratuitous services.*

The fact of rendering gratuitous services or enabling another to dispose of a thing free of charge shall not be deemed to constitute a donation.

Art. 2431. — *Renunciation.*

The fact of renouncing rights in an inheritance, refusing a legacy or failing to fulfil a condition on which the acquisition or preservation of a right depends shall not be deemed to constitute a donation.

Art. 2432. — *Natural obligations.*

A payment made in performing a moral obligation shall not be deemed to constitute a donation.

Art. 2433. — *Reward.*

A payment made in accordance with usage to reward services rendered to the donor or his family shall not be deemed to constitute a donation.

Art. 2434. — *Personal nature of donation.*

(1) A donation is an act purely personal to the donor.

(2) The authority given to make a donation shall be of no effect unless it specifies the property to be donated and the donee.

Art. 2435. — *Promise to make a donation.*

(1) A promise to make a donation shall give rise to no obligation.

(2) Where such promise is broken, the promisor shall refund the other party such expenses as may have been made in good faith on the basis of such promise.

Art. 2436. — *Acceptance by donee.*

(1) A contract of donation shall not be complete until the donee has expressed his intention to accept the liberality.

(2) Such acceptance shall not be valid where it is expressed after the death of the donor or his having become incapable.

(3) A donation may be accepted on behalf of the donee by his legal representative but not by his heirs.

Art. 2437. — *Donor of unsound mind.*

A donation may not be invalidated on the ground that the donor was of unsound mind unless:

(a) the donor was interdicted at the time of the donation and the donation was not regularly made by his tutor; or

(b) an application for the interdiction of the donor was made during his life and the donor died before the application was decided on by the court; or

(c) the insanity of the donor can be inferred from the terms of the contract of donation.

Art. 2438. — *Unlawful motive.*

(1) A donation shall be null and void where it was exclusively or principally inspired by an immoral or unlawful motive.

(2) No donation shall be null in such case unless the immoral or unlawful motive can be inferred from the contract of donation or other documents written by the donor.

Art. 2439. — *Undue influence.* — 1. *Reference to successions.*

(1) The court may reduce or invalidate a donation on the same conditions as it may reduce or invalidate a testamentary provision (Art. 868-873).

(2) An application for reduction or invalidation may be made notwithstanding that the donee is a relative by consanguinity or affinity or the spouse of the donor.

(3) In cases of a donation made to a guardian or tutor, the age of the donor shall not be taken into account.

Art. 2440. — 2. *Donation in consideration of a dispute.*

An application for the invalidation of a donation may be made where such donation had as its purpose to cause the donee or some other person to use his influence or give his assistance for the settlement of a dispute affecting the interests of the donor or the spouse or a relative of the donor.

Art. 2441. — 3. *Application how made.*

(1) An application for the reduction or invalidation of a donation shall, under pain of loss of right, be made within two years from the donation.

(2) After the death of the donor, it may only be made by the persons who are authorised by law to require the invalidation of a testamentary provision on the ground of undue influence (Art. 874).

Art. 2442. — *Mistake or fraud.*

(1) The heirs of the donor may not apply for the donation to be invalidated on the ground of a mistake committed by the donor except on the conditions on which they may apply for the invalidation of a testamentary provision on the ground of mistake (Art. 877).

(2) The heirs of the donor may not apply for the donation to be invalidated on the ground of fraud.

(3) The heirs may in any case continue proceedings for the invalidation of the donation on the ground of mistake or fraud which have been instituted by the donor during his life.

Art. 2443. — *Form.* — 1. *Immovables.*

A donation relating to an immovable or a right on an immovable shall be of no effect unless it is made in the form governing the making of a public will (Art. 881-883).

Art. 2444. — 2. *Corporeal chattels and bearer titles.*

(1) Corporeal chattels and bearer titles may be donated by mere delivery.

(2) They may also be donated in the form governing the donation of immovables.

Art. 2445. — 3. *Other rights and credits.*

(1) Other rights and credits may be donated in the form governing their assignment for consideration.

(2) A donation may be made by remitting the donee's debt.

(3) It may also be made by naming the donee as beneficiary of a stipulation for a third party contained in a contract made between the donor and another person.

Art. 2446. — *Disguised donation.*

(1) A donation may be made in the form of an act made for consideration.

(2) The substantive rules governing donations shall apply to disguised donations.

Art. 2447. — *Proof of donation.*

(1) Whosoever alleges that a donation has been made shall prove its existence.

(2) The possession of corporeal chattels or bearer titles shall not be proof of the existence of a donation unless such possession is unequivocal.

Art. 2448. — *Revocation for ungratefulness.* — 1. *By the donor.*

(1) Notwithstanding any provision to the contrary, a donation may be revoked on the ground of ungratefulness of the donee, where the donee has committed an act which would make him unworthy to succeed the donor.

(2) The donation may not be revoked where the donor has forgiven the donee.

(3) Notwithstanding any evidence to the contrary, such forgiveness shall be deemed to have been granted where the donor has not informed the donee of his intention to revoke the donation within one year from his becoming aware of the possible ground for revocation.

Art. 2449. — 2. *By the heirs of the donor.*

A donation may not be revoked by the heirs of the donor unless:

(a) the donor, before his death, unequivocally informed the donee of his intention to revoke the donation; or

(b) the donee has intentionally caused the death of the donor; or

(c) the alleged act of ungratefulness occurred after the death of the donor; or

(d) the donee prevented the donor from exercising his right of revocation.

Art. 2450. — *Birth of child.*

Unless otherwise provided in the contract of donation, a donation may not be revoked where a child is born to the donor.

Art. 2451. — *Object of donation.*

(1) A donation may only relate to property belonging to the donor on the day of the donation.

(2) A donation shall be of no effect to the extent that it relates to future property.

Art. 2452. — *Disputed property.*

A donation shall be null and void to the extent that it relates to property which, on the day of the donation, is the subject matter of a dispute.

Art. 2453. — *Usufruct reserved.*

The donor may reserve for himself the usufruct of property donated by him.

Art. 2454. — *Donation of periodical dues.*

Unless otherwise expressly provided, a donation relating to periodical dues shall lapse on the death of the donor.

Art. 2455. — *Conditions or charges.*

(1) A donation may be made subject to a condition or charge.

(2) The provisions of the Title of this Code relating to "Successions" which concern conditions or charges in respect of legacies shall apply to conditions and charges in respect of donations (Art. 916-923).

Art. 2456. — *Impossible or unlawful condition or charge.*

(1) Where the donor has made the donation subject to a condition or charge which is impossible or contrary to law or morals, such condition or charge shall be deemed not to have been imposed.

(2) The donation shall not be null and void in such case, notwithstanding that the condition or charge was essential to the donor.

Art. 2457. — *Donation on the occasion of marriage.*

(1) A donation to a future spouse shall be subject to the condition that the marriage be celebrated.

(2) So shall a donation made, on the occasion of a marriage, to the father, mother or other relatives of one of the future spouses.

(3) The effect of the cancellation or dissolution of the marriage on such donation shall be as prescribed in the Title of this Code relating to "Family relationship" (Art. 684 and 689).

Art. 2458. — *Duty to maintain donor.*

(1) Unless otherwise expressly provided, the donation shall be subject to a charge compelling the donee to supply maintenance to the donor, should the donor be in need.

(2) The donor may in his discretion require maintenance from the donee or from other persons legally bound to supply him maintenance.

(3) Such persons may claim from the donee, where they have supplied maintenance to the donor.

Art. 2459. — *Charge for the payment of debts.*

A charge compelling the donee to pay the debts of the donor shall not be valid unless it specifies the amount of the debts to be paid by the donee.

Art. 2460. — *Returning donated property.*

(1) The donor may stipulate that property donated by him shall be returned to him, should the donee die before him.

(2) Unless otherwise expressly provided, a stipulation for the return of property may not be enforced where the deceased donee has left descendants.

(3) A stipulation for the return of property shall have the same effect as a provision prohibiting assignment and shall be subject to the same formalities.

Art. 2461. — *Substitution.*

(1) The donor may stipulate that the donee shall keep the property donated and transmit it, on his death or on the expiry of a given period of time or on the fulfilment of a given condition, to one or more persons who shall substitute themselves for the donee.

(2) Such stipulation shall be effective on the conditions and subject to the formalities laid down in this Code in respect of substitution made by will (Art. 929-934).

Art. 2462. — *Execution of charge.*

(1) The donor may demand that the charge stipulated in the contract of donation be executed.

(2) Execution may also be demanded by the person in whose favour the charge was stipulated, by the person appointed for this purpose by the donor or by the heirs of the donor.

(3) The duty of the donee to execute the charge shall be restricted to the value of the property donated as on the day of the donation.

Art. 2463. — *Endowment and trust.*

The donee may constitute an endowment or trust in accordance with the provisions of the Title of this Code relating to "Bodies corporate and Property with a specific destination" (Art. 483-544).

Art. 2464. — *Cancellation for failure to execute charge.*

(1) A donation may, on the application of any of the persons mentioned in Art. 2462, be cancelled on the ground that the donee has failed to execute the charge.

(2) It may not be cancelled on the application of the heirs of the donor unless the donor made an express provision to this effect and regulated the effect of such cancellation.

(3) The conditions on which a donation may be cancelled and the effect thereof shall be as prescribed by the Title of this Code relating to "Contracts in general" (Art. 1808-1818).

Art. 2465. — *Warranty against eviction.*

(1) The donor shall warrant the donee against eviction where he has expressly given such warranty or eviction is due to his default or a fraud committed by him.

(2) Such warranty shall be subject to the provisions of this Code regarding contracts of sale (Art. 2282-2286).

(3) The donee who has been evicted may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the donation and as have not been compensated by the acquisition of the fruits of the property donated.

Art. 2466. — *Warranty against defects.*

(1) The donor shall not warrant the donee against defects in the property donated unless he has expressly given such warranty or he has committed fraud.

(2) Such warranty shall be subject to the provisions of this Code regarding contracts of sale (Art. 2287-2300).

(3) The donee may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the defects and as have not been compensated by the acquisition of the fruits of the property donated.

Art. 2467. — *Actio pauliana.*

(1) The creditors of the donor may apply for the cancellation of any donation made by him in fraud of their rights.

(2) The provisions of the Title of this Code relating to "Contracts in general" shall apply in such case (Art. 1995-1999).

Art. 2468. — *Creditors for maintenance.* — 1. *Principle.*

Whosoever has a claim for maintenance against the estate of a deceased donor may, where such estate is insufficient, claim against any person who has received a donation from the deceased within three years before his death.

Art. 2469. — 2. *Value to be taken into account.*

(1) The donee shall be liable to the extent of the value of the property donated to him.

(2) Such value shall be assessed as on the day of the donation.

(3) Where appropriate, the value of the charges to which the donation was made subject shall be deducted.

Art. 2470. — 3. *Plurality of donations.*

(1) Where the deceased made several donations within three years before his death, each donee shall be liable to satisfy claims for maintenance in proportion to the value of the property donated to him.

(2) The date on which each donation was made shall not be taken into account.

## Chapter 4. Loan of money and other fungibles

Art. 2471. — *Definition.*

The loan of money and other fungibles is a contract whereby a party, the lender, undertakes to deliver to the other party, the borrower, a certain quantity of money or other fungible things and to transfer to him the ownership thereof on the condition that the borrower will return to him as much of the same kind and quality.

Art. 2472. — *Proof of loan.*

(1) Where the sum lent exceeds five hundred Ethiopian dollars, the contract of loan may only be proved in writing or by a confession made or oath taken in court.

(2) The contract of loan may not be proved by any other means.

(3) The provisions of this Article shall apply as regards the manner of proving the repayment of any sum exceeding five hundred Ethiopian dollars.

Art. 2473. — *Relations between bankers and their clients.*

(1) The provisions of Art. 2472 shall not apply to the relations between persons or companies mainly concerned with banking business and their clients.

(2) The contract of loan or the repayment of the loan may in such cases be proved by witnesses or presumptions.

Art. 2474. — *Obligations of lender.*

(1) The provisions of the Chapter on "Sale" concerning the obligations of the seller shall apply to the lender (Art. 2273-2302).

(2) The obligations of the lender shall however be construed with less strictness where the loan is made gratuitously.

(3) In such case, the lender shall only warrant such defects of the thing as are known to him.

Art. 2475. — *Insolvency of borrower.*

(1) The lender may refuse to deliver the promised thing where the borrower has become insolvent since the making of the contract.

(2) He may do so notwithstanding that the insolvency arose before the making of the contract where he has known it only after having contracted.

Art. 2476. — *Expenses and safe keeping of thing.*

(1) The provisions of the Chapter on "Sale" concerning the obligations of the parties relative to expenses or to the safe keeping of the thing shall apply to the loan (Art. 2314-2322).

(2) In this respect, the lender shall assume the obligations of the seller and the borrower, those of the buyer.

Art. 2477. — *Risks.*

(1) The borrower shall become the owner of the thing lent.

(2) He shall bear the risk of its loss or deterioration from the moment of delivery.

Art. 2478. — *Interest.* — 1. *When due.*

The borrower shall not owe interest to the lender unless the payment of interest has been stipulated.

Art. 2479. — 2. *Rate of interest.*

(1) The parties may not stipulate a rate of interest exceeding twelve per cent per annum.

(2) Where it has been agreed that the loan will bear interest but a higher rate has not been fixed in writing, the borrower shall owe interest at the rate of nine per cent per annum.

(3) The borrower shall also owe interest at the rate of nine per cent per annum where a rate exceeding twelve per cent per annum has been agreed in writing.

Art. 2480. — 3. *Exigibility.*

Unless otherwise agreed, interest shall be paid at the end of each year reckoned from the making of the contract.

Art. 2481. — *Compound interest.*

(1) The parties may not agree in advance that interest will be added to capital and itself produce interest.

(2) Nothing shall affect the rules for the calculation of compound interest on current accounts.

Art. 2482. — *Time for restitution.* — 1. *Agreed time.*

(1) The borrower shall return the things lent in the same quantity and quality at the time agreed.

(2) Where the loan does not bear interest, he may return them before the time agreed after having informed the lender of his intention to restore them to him.

(3) Notwithstanding any agreement to the contrary, the provisions of sub-art. (2) shall apply where a rate of interest exceeding twelve per cent has been fixed in writing.

Art. 2483. — 2. *Absence of agreed time.*

(1) Where no time has been fixed, the borrower shall return the thing lent within one month from the day when the lender claims the restitution of them from him.

(2) He may in the same circumstances return them to the lender one month after having informed the latter of his intention to restore them to him.

Art. 2484. — 3. *Special stipulation.*

Where it has been agreed that the borrower will repay when he can or when he has the means to do so, the court shall fix a time for payment, according to the circumstances, which cannot exceed six months.

Art. 2485. — *Object of restitution.* — 1. *Sum in Ethiopian dollars.*

(1) Where the thing lent is a sum of money expressed in Ethiopian dollars, the borrower shall discharge his obligation by paying an equal numerical sum in notes or cash being legal tender on the day of payment.

(2) No regard shall be had to variations in the purchasing power of this sum since the date of the loan.

(3) No regard shall be had to any change which may have occurred in the definition of the Ethiopian dollar since the date of the loan.

Art. 2486. — 2. *Sum in foreign currency.*

(1) Where the thing lent is a sum of money expressed in a foreign currency, the borrower shall discharge his obligation by paying a sum numerically equal to the same sum in foreign currency in notes or cash being legal tender on the day of payment in the country of this currency.

(2) He may, if he prefers, free himself by paying the equivalent on the day of payment of this sum in Ethiopian dollars.

Art. 2487. — 3. *Commodities or ingots.*

(1) Where the thing lent consists of ingots, wares or commodities, the borrower shall free himself by returning the same quantity and quality.

(2) No regard shall be had to the variations in the price of such ingots, wares or commodities since the date of the loan.

(3) Where it is impossible for the borrower to restore the thing or this restitution is very difficult for a reason beyond his control, the borrower shall free himself by paying the lender the value of the thing estimated on the day and at the place where the restitution should take place.

Art. 2488. — *Delay of borrower.* — 1. *Cancellation of contract.*

(1) In the case of non-payment of interest, the creditor may not demand the repayment of the loan, unless the borrower is in arrears for two consecutive payments representing together at least one tenth of the capital lent.

(2) The provisions of sub-art. (1) shall apply where it has been agreed that the capital lent shall be repaid by instalments.

(3) Any provision to the contrary shall be of no effect.

Art. 2489. — 2. *Damages.*

(1) Where the borrower is late in returning the thing lent or in paying the interest due by him, he shall pay legal interest in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1790-1805).

(2) Any provision increasing the liability of the borrower shall be of no effect.

## Chapter 5. Contract for periodical payments

Art. 2490. — *Definition.*

(1) The contract for periodical payments is a contract whereby a party confers on the other the right to demand the periodical payment of a certain sum of money or of a certain quantity of fungible things in exchange for the alienation of a thing or the assignment of capital.

(2) The stipulation for such payments may also be agreed on as counterpart of a liberality.

Art. 2491. — *Title evidencing the debt.*

(1) The creditor may compel the debtor to supply him with a new title where nine years have elapsed since the date of the title which he possesses.

(2) The new title shall be established at the expense of the creditor.

Art. 2492. — *Perpetual annuity and life annuity.*

The annuity may be set up in perpetuity or as a life annuity.

Art. 2493. — *Payment of arrears.*

(1) Unless otherwise agreed, the arrears of annuities shall be paid at the end of each year calculated from the conclusion of the contract.

(2) The parties may not agree in advance that unpaid arrears shall themselves bear interest.

Art. 2494. — *Reference to rules governing loans.*

The provisions of Chapter 4 of this Title shall in addition apply to the contract for periodical payments.

Art. 2495. — *Saving clause.*

Nothing shall affect the rules concerning Government loans or loans issued by other public collectivities.

## Section 1. Perpetual Annuity

Art. 2496. — *Power of redemption.* — 1. *Principle.*

The annuity set up in perpetuity may be redeemed by the debtor notwithstanding any contrary stipulation.

Art. 2497. — 2. *Possible limitations.*

(1) The parties may however agree that the redemption shall not take place before the death of the creditor or the expiration of a period not to exceed ten years.

(2) They may also agree that the redemption shall only take place after notice of one year given to the creditor.

(3) Where longer periods of time have been agreed, the maximum periods provided in sub-art. (1) and (2) shall be substituted therefor.

Art. 2498. — *Obligation of redemption.*

The debtor of an annuity set up in perpetuity may be compelled to redeem it where:

(a) he ceases to fulfil his obligations for two years; or

(b) he fails to furnish the lender with the sureties promised by the contract or new sureties equivalent to those which have failed; or

(c) the insolvency of the debtor is judicially established.

Art. 2499. — *Capital due in case of redemption.*

(1) In the case of redemption of the annuity, the debtor shall pay the creditor a sum corresponding to the capitalisation of the annuity effected on the basis of the rate of the legal interest.

(2) Any stipulation increasing the liability of the debtor in this respect shall be of no effect.

## Section 2. Life Annuity

Art. 2500. — *Duration of the annuity.* — 1. *Life of a person.*

(1) The life annuity may be set up on the life of the creditor, of the debtor or of a third party.

(2) Unless otherwise agreed, it shall be deemed to be set up on the life of the creditor.

Art. 2501. — 2. *Lives of several persons.*

(1) The life annuity may be set up on the lives of several persons.

(2) It may also be stipulated to be revertible, on the death of the creditor, on to the life of another person.

Art. 2502. — *Case of nullity.*

(1) The contract setting up a life annuity shall be of no effect where none of the persons on whose lives the annuity is set up is alive on the day of the making of the contract.

(2) The revertibility clause shall be of no effect unless the person on whose life the annuity is stipulated to be revertible is alive on the day of the making of the contract creating the annuity.

Art. 2503. — *Transmissibility.*

Unless otherwise agreed, the annuity set up on the life of the debtor or of a third party shall pass to the heirs of the creditor.

Art. 2504. — *Usurious rate of arrears.*

(1) Where the life annuity is set up in exchange for payment of a capital sum, the arrears due by the debtor shall not exceed twenty per cent of this capital.

(2) They shall be at the rate of twelve per cent where a higher rate has not been fixed in writing or a rate exceeding twenty per cent has been fixed.

Art. 2505. — *Cancellation of contract.*

The person for whose benefit the life annuity has been set up may require the cancellation of the contract where the settler does not give him the sureties stipulated for its performance.

Art. 2506. — *Non-payment of arrears.*

(1) Mere failure in the payment of arrears of the annuity shall be no ground for the person in whose favour it has been set up to require the repayment of the capital or to re-enter into the goods alienated by him.

(2) He may only seize and cause to be sold the goods of his debtor and to have ordered or agreed to the setting aside, out of the proceeds of sale, of a sum sufficient to secure the payment of the arrears.

Art. 2507. — *Absence of power of redemption.*

(1) The debtor may not free himself of payment of the annuity by offering to repay the capital and by renouncing to claim the recovery of the arrears paid.

(2) He shall pay the annuity during the whole life of the person or of the persons on whose life or lives the annuity has been set up, whatever the length of the life of these persons and however onerous the payment of the annuity may become.

Art. 2508. — *Risks.*

(1) The life annuity shall accrue to the creditor in proportion to the number of days that the person on whose life it is set up has lived.

(2) Where it has been agreed that it will be paid in advance, the arrears shall accrue from the day when the payment was to be made.

Art. 2509. — *Assignment and attachment.*

(1) Unless otherwise agreed, the creditor may assign his rights.

(2) He who sets up an annuity gratuitously in favour of a third party may stipulate at the time when he sets up the annuity that it cannot be seized by the creditors of such third party.

Art. 2510. — *Proof of claim.*

The creditor of a life annuity may only demand the arrears by proving his existence or that of the person on whose life it has been set up.

Art. 2511. — *Annuity due by virtue of insurance.*

Nothing shall affect the rules governing the contract of insurance, where the life annuity is due by virtue of a contract of insurance.

# TITLE XVI

# CONTRACTS FOR THE PERFORMANCE OF SERVICES

## Chapter 1. Contract of employment in general

Art. 2512. — *Definition.*

A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him.

Art. 2513. — *Public servants and State employees.*

(1) The provisions of this Chapter shall not apply to the relations of public authorities with public servants.

(2) Unless otherwise provided in special laws, the provisions of this Chapter shall apply to contracts of employment concluded by industrial or commercial undertakings administered by the State or its administrative or technical departments.

**Art. 2514.** — *Special categories.*

Nothing shall affect the special provisions applicable to certain categories of employees having a particular legal status.

## Section 1. Formation of contract

**Art. 2515.** — *Formation of contract.*

The formation of a contract of employment shall not be subject to any special formalities.

**Art. 2516.** — *Collective agreements.* — 1. *Principle.*

Employers or associations of employers, on the one hand, and trade unions of employees, on the other hand, may lay down, in collective agreements, the conditions which shall be included in all individual contracts of employment subject to the authority of such collective agreements.

**Art. 2517.** — 2. *Conditions of validity and duration.*

(1) The collective agreements mentioned in Art. 2516 shall not be valid unless made in writing and confirmed by the competent public authorities.

(2) They may, notwithstanding any contrary stipulation, be determined at any time after the expiration of a year by giving six months notice.

**Art. 2518.** — 3. *Effect.*

(1) The terms of an individual contract of employment which are inconsistent with a collective agreement shall be of no effect unless they are more favourable to the employee.

(2) The void terms of an individual contract of employment shall be supplemented by the terms laid down in the collective agreement.

**Art. 2519.** — *Standard agreements.* — 1. *Principle.*

(1) The public authorities may draw up standard agreements for different kinds of contracts of employment.

(2) Standard agreements thus drawn up shall not be valid unless they are duly published.

**Art. 2520.** — 2. *Effect.*

(1) Individual contracts of employment shall be deemed to be made in accordance with the terms of the standard agreements.

(2) The parties may, in writing, depart from the terms of the standard agreements.

Art. 2521. — *Staff regulations of an undertaking.*

(1) Staff regulations drawn up by the employer for his undertaking shall not bind the employee unless they are reduced to writing and notified to him before the commencement of his employment.

(2) Any penalties inflicted by the employer on the employee, by virtue of these regulations, may be modified by the court where they are contrary to law or equity.

Art. 2522. — *Terms unfavourable to the employee.*

(1) Terms in a contract of employment which are less favourable to the employee than the provisions of this Title shall not be valid unless they are expressly authorised by law.

(2) They shall be made in writing or they shall be of no effect.

## Section 2. Work of employee

Art. 2523.— *Personal character of the obligation.*

The employee shall personally carry out the work to be undertaken, unless the contract or circumstances require otherwise.

Art. 2524. — *Obligation of care.*

(1) The employee shall carry out his work with care.

(2) He shall be liable for any damage he intentionally causes his employer, or for his negligence or imprudence.

(3) In order to assess the liability of the employee, regard shall be had to the nature of the work to be undertaken, the degree of training, the abilities and the qualities of the employee that the employer knew or should have known.

Art. 2525. — *Obedience at work.*

The employee shall obey the orders of the employer relating to the execution of the work where such orders are not contrary to the contract, the law or morals and obedience to them entails no danger.

Art. 2526. — *Work to be done.* — 1. *Principle.*

The employee shall perform the work for which he has been employed.

Art. 2527. — 2. *Change of work.*

(1) Unless otherwise agreed, the employer may at any time, where the interest of the undertaking so requires, assign a different work to the employee, provided that this entails for the employee no reduction in his wages nor a substantial change in his rank.

(2) Where the new work carries a wage higher than that for which the employee has been engaged, the employee shall be entitled to that wage.

Art. 2528. — 3. *Overtime.*

(1) The employer may require the employee to do more work than has been agreed in the contract.

(2) The employee shall undertake this extra work where he is able to do so and his refusal would be contrary to good faith.

(3) The employee shall be entitled to an additional remuneration for this extra work, which shall be fixed having regard to the agreed wage and to all circumstances of the case.

Art. 2529. — 4. *Piece work or contract work.*

(1) The employee who is paid at piece-rates or for the contract may require the employer who engages him to give him an adequate amount of work for the duration of the contract.

(2) Where there is no piece work or contract work available, the employer may employ the employee by the hour or the day.

Art. 2530. — *Tools and materials.* — 1. *Supply.*

(1) Unless the contrary is agreed or customary, the employer shall provide the employee with the tools and materials necessary for his work.

(2) Where the employee provides them himself in whole or in part without being compelled to do so, the employer shall compensate him for them.

Art. 2531. — 2. *Obligation of care.*

The employee shall preserve with care the things entrusted to him for the execution of his work.

Art. 2532. — *Inventions of the employee.*

(1) Inventions made by the employee shall belong to him notwithstanding that they have been made during the work done by him in the service of his employer.

(2) They shall however belong to the employer where the employee has been expressly engaged for making researches or inventions.

Art. 2533. — *Information concerning the undertaking.*

(1) The employee shall, even after the termination of the contract of employment, keep the secrets of the employer of which he has learnt in the course of his work.

(2) He may not make use, to the detriment of his employer, of information he has obtained in the course of his work.

## Section 3. Wages due to employee

Art. 2534. — *Right to wages.*

Any work shall be deemed to be done in consideration of wages, unless it is the custom that the work should be done without payment or the work falls within the professional duties of the person who carries it out.

Art. 2535. — *Amount of wages.*

(1) The employee shall be entitled to the wages which have been agreed or result from collective agreements or standard agreements binding the employer.

(2) Failing such stipulations, the amount of wages shall be fixed in accordance with the custom of the occupation or the custom of the place where the work is performed.

(3) In the absence of custom, it shall be fixed by the court in accordance with equity.

Art. 2536. — *Method of fixing wages.*

(1) Wages may be fixed for a given period of time, such as an hour, a day, a week, a fortnight, a month or a year.

(2) They may also consist of a lump sum or be calculated at piece-rates or on the contract for work done, according to the work that the employee delivers to the employer.

Art. 2537. — *Share in the profits.*

(1) Wages may consist, in whole or in part, of a share in the profits made by the employer, or a percentage of the turnover of the employer, or a percentage of the turnover of the undertaking, or a part of the gains realized by the undertaking, or other remuneration of the same kind.

(2) In this case, the employer shall provide the employee, after each assessment, with an account of what he owes him.

(3) The employee may demand that the account so provided be verified by a third party appointed by agreement between the parties or, failing such agreement, by the court.

Art. 2538. — *Tips.*

Wages may consist, in whole or in part, of the tips given by the customers to the employee or collected, on behalf of his employees, by the employer.

Art. 2539. — *Date of payment.*

(1) Wages shall be paid to the employees doing work of a physical nature at the end of each calendar fortnight or at the end of such shorter period as may be fixed in the contract.

(2) Wages shall be paid to office or shop employees at the end of each month or at the end of such shorter period as may be fixed in the contract.

(3) Wages shall in any case be paid where the contract of employment comes to an end.

Art. 2540. — *Termination of work.*

Without prejudice to the provisions of Art. 2541-2543, the employee shall not be entitled to wages for days on which he has not worked.

Art. 2541. — *Absence from work.*

(1) The employee shall be entitled to his wages, even where he has done no work, where this is due to the fact that the employer has not given him work or has prevented him from working.

(2) The employer may deduct from the wages the savings which the employee has made by not doing his work and the profits that the employee has gained in carrying out some other work.

(3) Where absence from work is not due to his fault, the employer may also deduct from the wages the profits which the employee could have made, acting in good faith, in carrying out some other work.

Art. 2542. — *Employee's sickness.* — 1. *Principle.*

(1) The employee shall be entitled to half his wages where, after having worked for at least three months, he is prevented from working by reason of sickness not intentionally contracted.

(2) The right to wages shall cease at the end of one month where the employee has worked for his employer during one year or more before ceasing his work, and at the end of a fortnight in other cases.

(3) The employer may deduct from what is due the sums which, under a scheme of compulsory national insurance, are paid to the employee on account of the cessation of his work.

Art. 2543. — 2. *Piece-rates and tips.*

(1) Where wages are paid for piece work or contract work, regard shall be had, in applying Art. 2542, to the average wages paid to employees who, in the undertaking, are doing the same work as the employee absent through sickness.

(2) Regard shall be had also to the average wages paid to the sick employee in the month preceding his cessation of work.

(3) Where all or part of the wages consist of tips, regard shall only be had to tips which are collected on behalf of his employees by the employer, or which are subject in some other way to rules which permit him to control them.

Art. 2544. — *Attachment or assignment of wages.*

(1) The wages of an employee may not be attached by his creditors except on the conditions laid down in the code of civil procedure.

(2) They may not be assigned by the employee to a third party, except on the same conditions.

Art. 2545. — *Advance on wages.*

(1) The employer shall grant advances to an employee in need according to the work which has already been done, where the employer can do so without detriment to himself.

(2) He may not grant an advance to the employee for work which has not yet been done unless the wages of the employee may be transferred by him.

Art. 2546. — *Set-off.*

(1) The employer may not set-off the employee's wages unless they may be transferred.

(2) They may, however, be set-off against compensation due from the employee by reason of damage that he has intentionally caused his employer.

Art. 2547. — *Deductions from wages.*

(1) Where it has been agreed that deductions may be made from the wages, such deductions shall, unless otherwise agreed, be deemed to be made for the sole purpose of compensating the employer for future damage which the employee may cause him.

(2) Such deductions shall not be allowed unless the wages may be transferred.

(3) They shall bear interest from the day on which they are made.

## Section 4. Safety precautions to be taken by the employer

Art. 2548. — ***Principle.***

(1) The employer shall take such measures as are required by the special circumstances of the work to safeguard the life, physical integrity, health and moral standing of the employee.

(2) He shall in particular arrange the premises and keep up the equipment in his undertaking with this object in view, in accordance with the general practice and technical requirements.

Art. 2549. — *Accidents arising from work.*

The employer shall be liable for accidents which the employee suffers arising from his work.

Art. 2550. — *Assimilated cases.*

The employer shall be liable for accidents which the employee suffers arising from activities which he performs in the interests of the undertaking, notwithstanding that these activities have not been ordered by the employer.

Art. 2551. — *Accidents at the time and place of work.*

(1) Where the employee performs his work on the premises or at the place assigned to him by the contract of employment, the employer shall be liable for the accidents which the employee suffers during the time and at the place where he works.

(2) Rest periods belonging to the work shall be regarded as part of the work-time.

(3) Premises placed by the employer at the disposal of the employee during these rest periods shall be regarded as part of the work place.

Art. 2552. — *Professional diseases.*

(1) The employer shall be liable for diseases which the employee contracts arising from his work.

(2) Administrative regulations for the different industries shall specify what diseases shall, notwithstanding any proof to the contrary, be deemed to have been contracted arising from work.

(3) The employee may at any time claim that he has contracted a disease arising from his work, which is not included in any list.

Art. 2553. — *Non-liability of employer.* — 1. *Fault of employee.*

(1) The employer shall be relieved of his liability under the preceding Articles where he proves that the accident or disease is due to the intentional act of the victim.

(2) He shall also be relieved of liability where he proves that the accident or disease has happened because the employee has contravened a regulation to which his attention had been especially drawn in writing.

Art. 2554. — 2. *Absence of relationship with work.*

The employer shall not be liable where he proves that the accident has no connection with the work of the employee nor with the contract of employment with which it is associated.

Art. 2555. — 3. *Other causes.*

The employer shall not be relieved of his liability for any other cause.

Art. 2556. — *Scope of liability.* — 1. *Medical and other expenses.*

(1) The employer shall meet all the medical, pharmaceutical, hospital, and other expenses which the accident or the disease necessitates for the employee and which the latter reasonably incurs.

(2) He shall on the same conditions, meet the funeral expenses, where the employee dies because of the accident or the disease.

Art. 2557. — 2. *Apportionment of wages.*

(1) The employer shall, during a period of a year, pay to the employee 75% of his wages from the moment when the employee has had to cease work, where the employee is prevented from working because of the accident or the disease.

(2) The amount due from the employer shall be increased by 5% for each year that the employee has given to the service of the employer, provided the wages of the employee are not exceeded.

(3) This amount may however not exceed five hundred Ethiopian Dollars per month.

Art. 2558. — 3. *Obligation of maintenance.*

(1) After the expiry of the period laid down in Article 2557 and where the employee is permanently deprived, by reason of the accident or the disease, of half or more than half of his capacity to work, the employer shall maintain the employee and his children who are under age.

(2) Such obligation shall not bind the employer unless the employee cannot obtain maintenance from members of his family.

(3) It shall be governed by the provisions of the Book of this Code relating to "Family Relationship" (Art. 807-825).

Art. 2559. — 4. *Serious offences or fraud of the employer.*

(1) Where the accident or disease of the employee is caused by an intentional act or the recklessness of the employer, the provisions of Art. 2557 and 2558 shall not apply.

(2) The employee, his family and his heirs may in such case claim compensation for the damage which they have suffered in accordance

with the provisions of the Chapter of this Code relating to "Extra-contractual Liability" (Art. 2027-2161).

(3) There shall be a serious offence where the employer makes a mistake or commits an act of imprudence or negligence such that it can only be explained by the stupidity, recklessness or indifference to the life or health of his employees.

## Section 5. Holidays due to the employee

Art. 2560. — *Usual hours and days.*

The employer shall grant the employee the usual hours and days of rest.

Art. 2561. — *Annual leave.*

Where the employer uses the whole or main time of the employee, he shall grant the employee a period of annual leave during which time he shall pay him his wages.

Art. 2562. — *Duration of leave.*

(1) The duration of the leave shall be ten consecutive days where the employee has been in the service of the employer for one to five years.

(2) It shall be fifteen consecutive days where the employee has been in the service of the employer for five to fifteen years.

(3) It shall be twenty consecutive days where the employee has been in the service of the employer for more than fifteen years.

Art. 2563. — *Termination of contract.*

Where the contract of employment comes to an end, the employee shall be entitled to his leave for a number of days proportionate to the time that he has worked during the year for the employer.

Art. 2564. — *Days to be deducted.*

(1) The employer shall deduct from the leave the days that have been taken during the year, at the request or on the initiative of the employee, in advance of his annual leave.

(2) He may not deduct the days that the employee has not worked for some other reason.

Art. 2565. — *When leave is to be taken.*

(1) The leave shall be granted at the time of the year which is most convenient.

(2) Regard shall be had to the nature of the work and the mutual interests of the employee and the employer shall as far as possible be reconciled.

(3) The employee shall receive notice at least a month in advance of the time when his leave shall be taken.

Art. 2566. — *Maternity leave.*

(1) An employee who expects a child shall be entitled to one month's leave during the period of her confinement.

(2) The employer shall pay half her salary, during this leave.

## Section 6. Termination of the contract

Art. 2567. — *Contracts of fixed duration.*

(1) A contract of employment made for a fixed period shall expire at the end of the agreed term.

(2) A contract concluded for the carrying out of a definite piece of work shall expire when the agreed work has been accomplished.

(3) Unless otherwise agreed, no notice shall be required to terminate the contract.

Art. 2568. — *Maximum duration of contract.*

(1) No person may commit his services for more than five years.

(2) A contract of employment made for the life of one of the parties or for a period exceeding five years shall bind the parties for five years only.

(3) Beyond this period, either party may terminate the contract by giving six months notice.

Art. 2569. — *Renewal of contract.*

A contract of employment made for a fixed period shall be deemed to be renewed for an indefinite time where, after the elapsing of the agreed term, the employee continues his work without the employer objecting thereto.

Art. 2570. — *Contract of indefinite duration.*

(1) Where the duration of a contract has not been fixed and does not result either from the nature of the work to be done or from any other circumstance, either party may at any time terminate the contract.

(2) The exercise of the right to terminate the contract shall be subject to prior notice being given by the employer or employee.

Art. 2571. — *Period of notice.*

(1) Prior notice shall be given at least seven days in advance and shall not be effective until the day on which the next payment of salary falls due.

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(2) Where the contract of employment has lasted for more than a year, prior notice shall be given at least two months in advance and become effective at the end of a month.

(3) The employer need not give prior notice to the employee where he pays him immediately his wages for the periods laid down in sub-art. (1) and (2).

Art. 2572. — *Reason for termination of a contract.*

The employer shall inform the employee in writing, where the latter so requires, of the reason for terminating a contract of employment of indefinite duration or not renewing a contract of employment for a fixed period.

Art. 2573. — *Compensation for dismissal.*

The employee shall be entitled to fair compensation where the employer terminates a contract or refuses to renew it without good cause justifying fully this decision.

Art. 2574. — *Amount of compensation.*

(1) In fixing the amount of compensation, the court shall take into consideration the nature and duration of the services of the employee, the seriousness of the faults with which he may have been charged, the financial position of the undertaking and any other circumstances it thinks fit.

(2) The compensation shall not exceed the wages paid during the last six months to the employee.

Art. 2575. — *Good cause.*

(1) There shall be good cause for the decision of the employer where, in the circumstances, it would not be reasonable to expect the contract to be extended or renewed, having regard to the nature of the work.

(2) There shall also be good cause where the employee does not show in carrying out his work, the technical knowledge, conscientiousness, reliability or speed which could reasonably be expected of him.

(3) There shall also be good cause where the situation filled by the employee is abolished in good faith.

Art. 2576. — *Where the employee terminates the contract.*

(1) Compensation for dismissal may be paid to the employee, even when the termination of the contract has not been the act of the employer, where the latter, by his manoeuvres, has compelled the employee apparently to put himself an end to it.

(2) This shall be the case in particular where the employer has dealt unjustly with the employee or substantially or repeatedly violated the provisions of the contract.

Art. 2577. — *Services of trust.*

(1) Where the contract of employment relates to confidential matters which require special qualifications, the employer need not reveal the reasons for which he has terminated or not renewed the contract.

(2) In such case, the termination of the contract shall not give rise to a claim for damages, unless it is proved that it has been purposely done with a view to injuring the other party or without due consideration of the loss which it will cause him.

Art. 2578. — *Cancellation of contract.* — 1. *Principle.*

The employer or the employee may, without prior notice, immediately cancel the contract of employment where there exists good cause for cancellation.

Art. 2579. — 2. *Non-performance of obligations.*

Non-performance, by one party, of his obligations under the contract shall not constitute good cause for its cancellation unless it is sufficiently serious in character, having regard to the circumstances and usages.

Art. 2580. — 3. *Involuntary termination of the work.*

Where an employee is prevented from working by reason of sickness or some other cause, this shall not constitute for the employer good cause for cancellation where it has not been due to the fault of the employee.

Art. 2581. — 4. *Strike.*

(1) The participation of the employee in a strike shall constitute for the employer good cause for cancellation where the strike has been instigated with the sole purpose of injuring the employer or has been declared unlawful by law or the public authorities.

(2) It shall in no other case constitute good cause for cancellation.

Art. 2582. — 5. *Bankruptcy or insolvency of employer.*

Where the employer is bankrupt or insolvent, the employee may not cancel the contract unless the security he has requested to guarantee his wages has not been given to him within a reasonable time.

Art. 2583. — *Obligation to compensate.* — 1. *Unfair cancellation.*

Where the contract is cancelled in an unfair manner by one of the parties, this party shall make good the loss suffered by the other party by reason of the unfair breaking of the contract.

Art. 2584. — 2. *Justified cancellation.*

Where the good cause for which the contract is cancelled by one party involves a violation of the contract or is related to such violation, the party who has failed in his duties shall make good the loss suffered by the other party by the termination of the contract.

Art. 2585. — *Death of employee.*

(1) A contract of employment shall terminate on the death of the employee.

(2) The heirs of the employee shall not incur, by reason of the contract, any personal obligation.

Art. 2586. — *Death of employer.*

(1) A contract of employment shall not terminate on the death of the employer, unless his person has been a material element in making it.

(2) Where a contract of employment terminates by the death of the employer, the employee shall be entitled to his wages after the death, as though he had received on that day prior notice of termination of a contract of service of indefinite duration.

Art. 2587. — *Transfer of undertaking.*

(1) Where the employer transfers his undertaking, the contracts of employment made by him shall continue between his employees and the purchaser of the undertaking.

(2) The employees shall keep the seniority rights that they have acquired before the transfer of the undertaking.

(3) The purchaser shall be jointly liable with the transferor to pay all sums which are due to an employee at the time of the transfer in connection with his work, including sums due by reason of the termination of the contract by the transferor, on condition that the purchaser has been informed at the time of the transfer that these sums were due, or that they are shown to be due to the employee in the books of the undertaking or his work-book.

Art. 2588. — *Providing certificate of work.*

(1) The employee may demand at the end of his contract that the employer shall give him a certificate showing only the nature of his work and the length of his service, as well as the name and address of the employer.

(2) The certificate shall not include a testimonial concerning the quality of the work done or the conduct of the employee, unless the employee expressly requires his employer to give this testimonial.

Art. 2589. — *Provisions for restraint of trade.* — 1. *Principle.*

(1) Where the work given to the employee enables him to meet the clients of the employer or enter into the secrets of his business, the parties may provide that the employee shall not, after the termination of the contract, enter into competitive business with his employer or engage in any way whatsoever in an undertaking which would compete with the employer.

(2) Such provision shall be of no effect unless it is express and made in writing.

Art. 2590. — 2. *Restriction.*

(1) Provisions under Art. 2589 shall not be valid unless they are necessary for the protection of the legitimate interests of the employer and do not impede, in an inequitable manner, the economic future of the employee.

(2) They shall not be valid, in particular, unless they are limited as to time, place and business forbidden to the employee.

Art. 2591. — 3. *Penalties.*

(1) Whosoever infringes a provision made under Art. 2589 shall be liable for the damage resulting from such infringement.

(2) Where the provision contains a penalty, the employee may, unless otherwise stipulated, discharge his obligation by paying the employer the amount of the penalty fixed.

(3) Provided it is expressly agreed in writing, the employer may, in addition to damages, obtain an injuction restraining the contravention, where such action is justified by the importance of the interests which are injured or threatened by the conduct of the employee.

Art. 2592. — 4. *Lapsing of provision.*

(1) A provision under Art. 2589 shall lapse where it is proved that the employer has no material interest in its maintenance.

(2) The employer may not avail himself of such provision where he has cancelled the contract of employment or refused to renew it, without the employee having given him good cause so to do.

(3) Nor may he avail himself thereof where he has himself given to the employee good cause for cancelling the contract.

Art. 2593. — *Receipt in final discharge.*

(1) A receipt in final discharge, signed by the employee, shall only relate to wages due from the employer.

(2) Other amounts that may be due to the employee from the employer shall not be regarded as settled unless they are the subject of special receipts acknowledging their payment or the employee has signed in respect of such amounts a document renouncing his right to them.

## Chapter 2. Contracts of particular kinds of work

### Section 1. Contracts of apprenticeship

Art. 2594. — *Training of apprentice by employer.*

(1) The employer bound by a contract of apprenticeship shall undertake to give all his attention to the professional training of the apprentice.

(2) The employee may only be employed on work connected with the particular occupation specified in the contract.

Art. 2595. — *Attendance at schools.*

(1) The employer shall ensure that the apprentice attend compulsory schools.

(2) He shall grant him the necessary time to attend the schools and professional courses and to sit for apprenticeship examinations.

Art. 2596. — *Prohibited work.*

Except where it is justified by the circumstances, the apprentice may not be employed on night work or on Sundays.

Art. 2597. — *Reference to provisions regarding contracts of employment.*

The provisions regarding contracts of employment shall apply to contracts of apprenticeship.

### Section 2. Contracts with a trial period

Art. 2598. — *Trial engagements.*

(1) The employee may be engaged on trial.

(2) Unless otherwise provided in writing, the employee engaged on trial shall be regarded as having been employed for an indefinite period.

Art. 2599. — *Presumption.*

In a contract of employment made with domestic servants, the first two weeks shall be regarded as a trial period, unless otherwise agreed.

Art. 2600. — *Termination of a trial contract.*

(1) During the trial period, either party may terminate the contract without being required to give notice or to pay compensation.

(2) Where the trial is fixed for a minimum time, the right to terminate the contract may however not be exercised before that minimum time has elapsed.

## Section 3. Contracts of domestic servants living in

Art. 2601. — *Health and moral well-being of servant.*

Where the employee lives with the employer's family, the latter shall in regard to living-quarters, food, times of work and rest, take all reasonable steps to safeguard the health and moral well-being of the employee.

Art. 2602. — *Obligation to look after the employee.* — 1. *Principle.*

(1) Where an employee who is living with the family of the employer and being fed by the latter falls sick, the employer shall, during the currency of the contract, provide any care which the illness of the employee requires, either by way of medical attendance at his house or by sending the servant to hospital.

(2) Such obligation shall be limited to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract.

(3) The employer may set off any expenses which he thus incurs against the wages that become due during the period of illness.

Art. 2603. — 2. *Saving clauses.*

(1) The employer shall be relieved of the obligations laid down in Art. 2602 where the illness has been intentionally contracted by the employee.

(2) The employer shall also be relieved where the employee goes into hospital under a scheme of compulsory health insurance.

(3) The employer may not relieve himself of the obligations laid down in Art. 2602 by terminating the contract on the ground of the illness of his employee.

Art. 2604. — *Payment of wages.*

(1) Unless the contract of employment provides for a shorter term, the wages of the employee living in with the employer shall be paid every three months, with the expiry of the term.

(2) The wages shall in any case be paid where the contract terminates.

## Section 4. Contract for agricultural work

Art. 2605. — *Principle.*

(1) Contracts for the performance of agricultural work shall be subject to the provisions of this Chapter, in particular, where appropriate, to those of Section 3 above.

(2) Nothing shall affect the provisions of the following Articles.

Art. 2606. — *Contract for undefined period of time.*

(1) A contract made for an undefined period of time may not be terminated by the employer except on giving three months notice.

(2) The period fixed in sub-art. (1) shall be increased by one month for each year spent by the employee in the service of the employer or which the employee spent, during his minority, in the undertaking of the employer.

(3) The termination of the contract shall only become effective on the first of Megabit following the day of termination.

Art. 2607. — *Employer bound to supply maintenance.*

(1) The employer shall supply maintenance to an employee having worked for ten years in a given undertaking.

(2) Without prejudice to the provisions of the following Articles, the obligation to supply maintenance shall be subject to the provisions of the Title of this Code relating to "Family Relationship" (Art. 807-825).

Art. 2608. — *Subsidiary nature of obligation.*

(1) The employee may not claim maintenance to the detriment of persons bound to the employer by consanguinity or affinity to whom the employer supplies maintenance.

(2) Where persons bound to the employee by consanguinity or affinity are compelled or able to supply him maintenance, the employee may not claim maintenance from the employer.

Art. 2609. — *Time limit.*

The employer shall not supply maintenance for more than two years after the contract came to an end.

## Chapter 3. Contract of work and labour

Art. 2610. — *Definition.*

A contract of work and labour is a contract whereby one party, the contractor, undertakes to produce a given result, under his own responsibility, in consideration of a remuneration that the other party, the client, undertakes to pay him.

Art. 2611. — *Building undertakings.*

(1) The provisions applicable to contracts of work and labour relating to an immovable are laid down in the Title of this Code regarding "Contracts relating to Immovables" (Art. 3019-3040).

(2) The provisions of this Chapter shall however apply where the total cost of the building to be done does not exceed five hundred Ethiopian dollars.

Art. 2612. — *Implied acceptance.*

(1) Where a person has publicly offered to execute a certain task or where the carrying out of this task is within his professional duties, a contract of work and labour shall be formed where such person, having received an offer, does not immediately refuse to carry out the task which has been ordered.

(2) The same shall apply where a person is appointed by the public authorities to carry out a certain task and does not immediately refuse to do so.

Art. 2613. — *Materials and tools.*

(1) The contractor shall provide at his own expense the materials and tools necessary for the carrying out of the task.

(2) It may however be stipulated that he shall only provide his services and that the materials or the tools shall be provided by the client.

Art. 2614. — *Materials provided by contractor.*

(1) The contractor shall be liable for the good quality of the materials provided by him.

(2) He shall give the same warranties as a seller.

(3) There shall be a contract of sale and not a contract of work and labour where the work which a party undertakes to do has a character of secondary importance in relation to the value of the things which such party provides.

Art. 2615. — *Materials provided by client.*

(1) Where the materials are provided by the client, the contractor shall use them with care.

(2) He shall render an account to the client of the use which he has made of them and restore to him what remains after the execution of the work.

(3) Where the materials provided to him by the client are defective, the contractor shall immediately give notice thereof to the client.

Art. 2616. — *Independence of contractor.*

(1) The contractor shall carry out his task as he wishes and shall comply with the rules of his profession.

(2) He shall not be bound to comply with the orders of the client, except in so far as he has agreed, at the time of the contract, to comply therewith.

Art. 2617. — *Personal execution of work.*

The contractor shall carry out the task in person unless, considering the nature of the work ordered, his personal capacities are not of importance to the client.

Art. 2618. — *Delay in execution of work.*

(1) Where the contractor delays the carrying out of his task so that it becomes evident that he cannot accomplish it in the time fixed in the contract, the client may fix him a reasonable time limit to begin the execution of the task.

(2) Where the contractor, after this time limit, has not begun the task or has interrupted it in bad faith, the client may cancel the contract without waiting for the expiry of the period laid down for the completion of the task.

(3) Where appropriate, the client may also claim, in such a case, damages from the contractor.

Art. 2619. — *Where no time limit has been fixed.*

(1) Where no time limit has been fixed in the contract, the contractor shall immediately begin the execution of his task and complete it within a reasonable time in accordance with custom.

(2) The provisions of Art. 2618 shall apply where the contractor does not immediately begin the carrying out of his task or where he interrupts it.

Art. 2620. — *Defective execution of the task.*

(1) Where it appears, during the currency of the contract, that the task is being carried out in a defective manner or contrary to the contract, the client may fix a reasonable time limit for the contractor to put right the fault.

(2) Where the contractor does not put the matter right within this time limit, in accordance with the rules of his profession and the contract, the client may cancel the contract without awaiting, in order to assert his rights, the term provided for the completion of the task.

(3) He may in addition claim damages from the contractor, where appropriate.

Art. 2621. — *Putting work at client's disposal.*

(1) Where the contractor has finished his task, he shall put the result at the disposal of the client at the place fixed in the contract or, in the absence of such a place, at the place where the contractor has his undertaking or residence.

(2) The client shall take over the work immediately in accordance with business practice.

Art. 2622. — *Warranty against defects.*

(1) The contractor shall guarantee to the client that the work conforms to the contract and is not defective.

(2) The provisions of the Chapter of this Code relating to "Sale" shall apply to the warranty given by the contractor to the client (Art. 2287-2300, 2332, 2344-2346).

Art. 2623. — *Time for payment.*

(1) The price shall be paid to the contractor where the work has been completed and has been accepted by the client.

(2) Where partial deliveries and payments have been agreed, the price attaching to each part of the work shall be paid at the time of the delivery and acceptance of that part.

Art. 2624. — *Price fixed in advance.*

(1) Where the price has been fixed in advance, the client shall pay that price.

(2) The contractor may not claim an increase on the ground that the work has required more effort or expense than had been foreseen.

(3) The client may not claim a reduction on the ground that the work has required less effort or expense than had been foreseen.

Art. 2625. — *Changes in the agreed work.*

(1) The price fixed in advance for the work shall remain the same notwithstanding that changes have been made by a new agreement between the parties in the conditions under which the execution of the work was originally to have been carried out.

(2) Such changes shall not give rise to an increase or decrease in price unless such has been agreed.

Art. 2626. — *Price not fixed in advance.*

(1) Where the price has not been fixed by the contract, it shall be fixed by the contractor in accordance with professional rates and usages.

(2) In the absence of professional rates and usages, it shall be fixed by reference to the value of the materials provided by the contractor, the work normally necessary to carry it out and the expenses of the contractor.

Art. 2627. — *Price fixed approximately.*

Where a price has been fixed approximately on the making of the contract, the actual price may not exceed by more than twenty per cent the approximation thus made.

Art. 2628. — *Right of retention.*

(1) The contractor shall have, as a guarantee of the obligations that the client owes him under the contract, a right of retention over such movable goods belonging to the client as he has made or repaired and as are in his possession.

(2) Where the things which the client has entrusted to him belong to a third party, the contractor may set up his right of retention against such third party, unless he knew or should have known that the things were entrusted to him without the knowledge or against the will of the third party.

Art. 2629. — *Risks.*

(1) Where the materials necessary to the execution of the work have perished by force majeure, their loss shall be borne by the party who has provided them.

(2) The provisions of the Chapter of this Code relating to "Sale" shall apply as regards the transfer of risks (Art. 2323-2328).

Art. 2630. — *Death of contractor.*

(1) Where the contractor dies or is prevented by force majeure from completing the work, the contract shall terminate where it had been made on the basis of the personal capacities of the contractor.

(2) The client shall accept such parts already executed of the work as he can use and shall pay the price for them.

(3) He may demand that the materials and plans prepared for carrying out the work be delivered to him against fair payment.

Art. 2631. — *Unilateral termination of the contract.*

(1) The client may at any time terminate the contract.

(2) The contractor shall in this case be entitled to the price that had been fixed.

(3) From this price, there shall however be deducted savings made by the contractor in consequence of the termination of the contract and any advantages that he may have gained by employing his work elsewhere or that he may have failed thus to gain by reason of his bad faith.

## Chapter 4. Hiring of intellectual work

Art. 2632. — *Provisions applicable.*

(1) A contract relating to the performance of services of an intellectual character shall be subject to the provisions of the following Articles.

(2) The provisions of the preceding Chapter shall also apply in so far as they are consistent with these provisions and the relationship involved (Art. 2610-2631).

(3) Nothing shall affect the provisions of special laws relating to the exercise of certains professions.

Art. 2633. — *Personal nature of obligation.*

(1) Whosoever hires out his work shall carry out his obligations personally.

(2) He may however employ assistants, under his control and on his own responsibility, where such collaboration is allowed by the contract or usual practice and is not incompatible with the object of the contract.

Art. 2634. — *Advances by client.*

(1) The client shall make an advance payment to the other contracting party for the expenses necessary to carry out the work.

(2) He shall also grant him, where it is the practice, instalments on his remuneration.

Art. 2635. — *Excessive payment.*

The remuneration agreed between the parties may be reduced by the court where it is so excessive as to be contrary to the etiquette of the profession of the person hiring out his work.

Art. 2636. — *Required care and responsibility.*

(1) Whosoever hires out his work shall undertake to carry it out in the best interest of his client, conscientiously and in conformity with the practice and rules of his profession.

(2) He shall not be liable to his client, unless he commits an error, having regard to the rules of his profession.

(3) The error may consist in an omission or an act detrimental to his client.

Art. 2637. — *Termination of contract.* — 1. *By the client.*

(1) The client may at any time terminate the contract.

(2) He shall in this case compensate the other party for his expenses and pay him a fair remuneration for the work that he has completed.

Art. 2638. — 2. *By the other party.*

(1) Whosoever hires out his work may terminate the contract at any time.

(2) He shall in such case return to the client any advances that he has received on account of his remuneration and expenses.

(3) The termination of the contract shall be effected, under pain of damages, in such a way that the client will suffer the least possible prejudice thereby.

## Chapter 5. Medical or hospital contracts

Art. 2639. — *Definition of medical contract.*

A medical contract is a contract whereby a physician undertakes to provide a person with medical care and to do his best to maintain him in good health or cure him, in consideration of payment of a fee.

Art. 2640. — *Medical profession.*

The rules relating to a medical contract shall apply to surgeons, dentists, psychiatrists, radiologists, midwives, nurses and other persons following similar professions concerned with the medical art.

Art. 2641. — *Definition of contract of hospitalization.*

A contract of hospitalization is a contract whereby a medical institution undertakes to provide a person with medical care from one or several physicians, in connection with a given illness.

Art. 2642. — *Formation of contract.*

(1) The contract may be made directly between the person in need of medical care and the physician or the medical institution.

(2) It may also be made with the physician or medical institution by a third party, on behalf of the person in need of treatment.

Art. 2643. — *Obligation of patient.*

Where a contract has been made on his behalf by a third party, the patient shall pay the fees of the physician or the medical institution where:

(a) the person who has made the contract on the patient's behalf is his father, mother or some other person bound by law or a contract to care for his health; or

(b) he was not capable at the time of the contract of expressing his wishes and it was at that moment essential to provide him with treatment.

Art. 2644. — *Obligation of person calling upon physician.*

Whosoever makes a contract with a physician or a medical institution on behalf of another shall be liable for the fees of the physician or medical institution where:

(a) he is bound by law or a contract to care for the health of the person to whom the treatment has been given; or

(b) it has been expressly agreed that he shall be personally liable to the physician or medical institution.

Art. 2645. — *Reimbursement.*

Where a person has paid a physician or medical institution, he shall have a right of reimbursement from the patient who has been cared for.

Art. 2646. — *Fees.*

(1) The fees of the physician and the medical institution shall be fixed by the contract.

(2) Where not fixed by the contract, they shall conform to usages.

(3) The court may revise the amount of fees fixed in the contract where they are so excessive as to be contrary to the etiquette of the medical profession.

Art. 2647. — *Liability of physician.*

(1) A physician shall not be liable to the person towards whom he is bound under the contract unless he commits a fault, having regard to the rules of his profession.

(2) The fault may consist in an omission or an act detrimental to the patient.

(3) The physician shall be liable in particular where he abandons without good cause the patient he has undertaken to care for and fails to arrange for his substitution in accordance with usages.

Art. 2648. — *Guarantee of cure.*

A physician shall not guarantee the success of his treatment unless he has expressly assumed this obligation in writing.

Art. 2649. — *Personal nature of obligation.*

(1) A physician who undertakes to treat a person shall carry out his obligations personally.

(2) He may however employ assistants under his control on his own responsibility.

(3) He shall in such case be liable, in accordance with the provisions of the Chapter of this Code relating to "Extra-contractual Liability" (Art. 2130-2133), for any damage caused to the patient by the fault of one of his assistants.

Art. 2650. — *Liability to third parties.*

(1) Only the husband or wife of a sick person or his ascendants or descendants may, in the case of a mortal accident due to the fault of the physician, claim from the physician compensation for the loss which they have suffered through the death of the sick person.

(2) Compensation shall not be due on account of moral loss suffered by these persons unless the death of the sick person has been due to the intentional act of the physician.

(3) No other persons may claim compensation in their own right by reason of the death of the sick person, notwithstanding that they are able to prove that the latter rendered them material assistance or that they were maintained by him.

Art. 2651. — *Liability of medical institution.* — 1. *Medical treatment.*

The medical institution shall be civilly liable for the damage caused to a sick person by the fault of the physician or auxiliary staff which it employs.

Art. 2652. — 2. *Board and lodging.*

Where the sick person, for purposes of his treatment, is lodged and fed by the medical institution, such institution shall, as regards its obligations and responsibility arising from that lodging and feeding, be subject to the provisions regarding innkeepers' contracts (Art. 2653-2671).

## Chapter 6. Contracts of innkeepers

Art. 2653. — *Definition.*

(1) An innkeepers' contract is a contract whereby a person who exercises the occupation of inkeeper undertakes to lodge a client during one or several nights.

(2) Where the lodging is provided for a month or more, there shall be a contract of letting and not an innkeepers' contract.

Art. 2654. — *Duration of contract.*

(1) Unless otherwise provided, hotel rooms shall be engaged from mid-day to mid-day.

(2) The innkeeper may demand that the room, if not re-engaged by the client, be vacated by him at mid-day.

Art. 2655. — *Renewal of contract.*

A room occupied by a client shall be deemed to have been engaged for an additional day where the client or the innkeeper has not expressed before mid-day his intention not to extend the contract.

Art. 2656. — *Equipment.*

The innkeeper shall provide the client, in addition to given rooms, with furniture and equipment necessary for lodging, such as light and heating, in accordance with the class of the hotel and usages.

Art. 2657. — *Care of luggage.*

The innkeeper shall receive the client and look after his luggage without having any right to additional payment, from the morning when the room is engaged until the evening of the day when it is to be vacated.

Art. 2658. — *Innkeepers' warranty.*

(1) The innkeeper shall warrant to the client that the rooms engaged by him and those parts of the hotel used in common are habitable, healthy and safe.

(2) Where he provides the client with food or drink, he shall also warrant that they are sound and harmless.

(3) He shall be relieved of his liability under this Article where damage is due to force majeure or the client's fault.

Art. 2659. — *Caterers and café proprietors.*

Caterers and café proprietors shall similarly warrant to their clients that the food and drink provided by them are sound and harmless.

Art. 2660. — *Reservation of rooms.*

(1) A client who has engaged a room for a specified day and who has received from the innkeeper notice that the room has been reserved for him shall pay the price of this room for a day, even where, on account of force majeure, he has not occupied it.

(2) He shall not be relieved of this obligation unless he has notified the innkeeper in due time that he has renounced to contract and the innkeeper, after receiving notice, was able to let to a third person the room that had been reserved.

(3) Unless otherwise provided, compensation shall be due for one day only, notwithstanding that the room had been reserved for several days and payment agreed by the week or month.

Art. 2661. — *Cancellation of contract.*

(1) Where the room has been engaged for several days, the contract shall be cancelled where the client does not occupy it on the day fixed by him.

(2) The innkeeper shall not be liable where, in this case, he lets the room to another person, unless he has received notice from the client, or anyone acting on his behalf, that the client wants the room to be kept.

(3) Where the innkeeper has received an advance, he shall put the room at the disposal of his client in so far as he is covered by this advance.

Art. 2662. — *Right of retention.*

(1) The innkeeper may retain the property brought into the hotel by the client until the total payment due to him on account of the client's stay at the hotel has been made.

(2) He shall have in relation to such property the rights and benefits of a pledgee.

Art. 2663. — *Principle of liability.*

(1) The innkeeper shall have the same liability as a paid bailee for the things that his clients have brought into the hotel.

(2) Evidence that the things had been brought into the hotel by a client may be adduced by any means.

Art. 2664. — *Limitation of liability.*

The innkeeper's liability shall be limited to a total sum of five hundred Ethiopian dollars.

Art. 2665. — *Unlimited liability.* — 1. *Fault or actual deposit.*

The liability of the innkeeper shall however be unlimited where:

(a) the loss is due to the fault of the innkeeper or a member of his family, or a member of his staff; or

(b) the loss occurs to the things which the client has especially deposited with the innkeeper.

Art. 2666. — 2. *Refusal of actual deposit.*

(1) The liability of the inkeeper shall also be unlimited where the loss occurs to the things that the innkeeper has refused, without good cause, to have deposited with him.

(2) There shall be good cause where the goods possess an excessive value or are unwieldy having regard to the standing of the hotel and the available accommodation.

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Art. 2667. — *Non-liability.*

(1) The liability of the innkeeper shall cease where he can prove that the removal, loss or deterioration was due to the fault of the client himself, or persons who have visited or accompany him or are employed by him.

(2) He shall also be released from liability where the loss or deterioration is due to the nature of or a defect in the thing or to force majeure.

Art. 2668. — *Obligation to give notice.*

The innkeeper shall be released from liability where the client does not notify him of the damage as soon as he knows of it.

Art. 2669. — *Provision of non-liability.*

Any provision excluding or limiting the liability of an innkeeper shall be of no effect.

Art. 2670. — *Scope of the law.*

(1) The provisions of this Chapter shall apply from the time when the things enter the hotel, unless the client, having sent them in advance, does not arrive.

(2) They shall also apply to things, such as carriages, motorcars, live animals, accommodated in premises adjacent to the hotel or put at the disposal of the clients by the hotel.

Art. 2671. — *Establishments similar to hotels.*

The provisions of this Chapter shall apply to the management of medical institutions, convalescent homes, public places of entertainment, bathing establishments, boarding houses, restaurants, sleeping-cars, public stables and other establishments of a similar nature.

## Chapter 7. Publishing contracts

Art. 2672. — *Definition.*

A publishing contract is a contract whereby a party, hereinafter called the author, assigns in whole or in part his incorporeal rights in a literary or artistic work to the other party, hereinafter called the publisher, who undertakes to reproduce or produce the work and to distribute it to the public.

Art. 2673. — *Obligation to disclose.*

Where all or part of the work has already been assigned to another publisher or has been otherwise published to the author's knowledge,

the latter shall inform the publisher thereof before the contract is entered into.

Art. 2674. — *Form of contract.*

The authorisation given by the author to reproduce or produce his work shall be explicit.

Art. 2675. — *Assignment of future works.* — 1. *Conditions.*

(1) The assignment by the author of a work which he has not yet executed shall be valid where it relates to a work or works, sufficiently well-defined, which, in the estimation of a reasonable person, the author can complete within a period not exceeding two years.

(2) Where the author has assigned his rights in future works beyond this limit, he may at any time, notwithstanding any provision to the contrary, terminate the contract and retain the payments made to him by the publisher.

Art. 2676. — 2. *Publisher's prior right.*

(1) An author who has terminated his contract shall be bound for a period not exceeding five years from the date of termination of the contract to assign his rights to the publisher in preference to any other person.

(2) He shall inform the publisher of such conditions as are proposed to him by third parties for the acquisition of these rights.

(3) The publisher shall, under pain of loss of right, declare within a reasonable period whether he intends to avail himself of his prior right.

Art. 2677. — *Effect.*

(1) The contract shall transfer to the publisher the author's copyright in his work, in so far as the performance of the contract requires such transfer, in accordance with the provisions of this Title.

(2) The parties may depart from these provisions where the law does not expressly forbid the provision substituted therefor.

(3) In cases of doubt, the provisions of the contract shall be interpreted in favour of the author.

Art. 2678. — *Restrictive interpretation.*

(1) The authorisation given to the publisher to deal with the work in a certain manner shall be interpreted restrictively.

(2) The publisher may not deal with the work otherwise than provided in the contract.

Art. 2679. — *Authorised methods of dealing with work.*

(1) However general the terms of the contract, the publisher shall acquire the right to deal with the work by such methods only as the parties had in view or ought to have had in view on the making of the contract.

(2) In this respect, regard shall be had to the estimation of a reasonable person.

Art. 2680. — *Modification and translation.*

An authorisation to reproduce or produce a work shall not imply an authorisation to adapt it, to modify it or to authorise its translation.

Art. 2681. — *Recording of broadcast works.*

An authorisation to broadcast a work shall not imply an authorisation to record, by means of a machine involving the fixation of sounds or image, the work broadcast.

Art. 2682. — *Separate and complete works.*

(1) The right to publish the works of an author separately shall not imply the right to publish them in the form of a complete edition.

(2) The right to publish the complete works of an author, or a certain class thereof, shall not confer upon the publisher the right to publish separately the various works they comprise.

Art. 2683. — *Author's warranty.*

The author shall warrant the publisher that he possesses and has the right to assign the literary or artistic copyright which he transfers to the publisher under the publishing contract.

Art. 2684. — *Rights transferred to the publisher.*

(1) So long as the editions which the publisher has the right to issue are not out of print, the author may not dispose of the work or any part thereof to the publisher's prejudice.

(2) Contributions to a collective work, or articles, may not be republished by the author before the expiration of three years from the date when the first publication was completed.

Art. 2685. — *Conflict between two publishers.*

(1) Where the author, having assigned his rights to a publisher, assigns the same rights to another publisher, the contract concluded with the latter shall be valid unless he knew of the first contract.

(2) The author shall make good the damage done to each publisher.

Art. 2686. — *Reproduction of the work.*

(1) The publisher shall reproduce the work in an appropriate form, without abridgements, additions or modifications.

(2) He shall ensure publicity for the work and take the usual steps to ensure its distribution.

(3) He shall fix the selling price.

Art. 2687. — *Author's corrections.*

(1) The author may at any time make corrections or improvements to his work, provided that they do not prejudice the publisher's interests or increase his liability.

(2) Where such corrections or improvements involve the publisher in expense, the author shall indemnify him for it.

Art. 2688. — *New edition.*

Before issuing a new edition or a new impression, the publisher shall give the author an opportunity of improving his work.

Art. 2689. — *Authorised editions and impressions.*

(1) Unless otherwise agreed, the publisher shall have the right to publish only one edition of the work.

(2) Where the contract fails to specify how many copies an edition shall comprise, the publisher shall determine the size of the impression.

Art. 2690. — *Edition out of print.*

(1) Where the contract authorises the publisher to publish several editions or all the editions of a work, the author may, when the last edition of the work becomes out of print, allow the publisher a period of one year within which to issue a new edition.

(2) The publisher shall forfeit his rights where he fails to do so within this period.

(3) Any provision to the contrary shall be of no effect.

Art. 2691. — *Effect in the case of successive editions.*

(1) Where the publisher is entitled to issue several editions, the conditions agreed upon for the first edition shall be deemed to apply to each subsequent edition.

(2) The provisions of sub-art. (1) shall apply in particular to the conditions relating to the author's remuneration.

Art. 2692. — *Author's remuneration.* — 1. *Principle.*

(1) A person assigning a work for publication shall be deemed to be entitled to a remuneration unless there are circumstances justifying the assumption that he agreed to forego any remuneration.

(2) In the absence of agreement between the parties, the remuneration due to the author shall be fixed by the court in accordance with equity.

Art. 2693. — 2. *Free copies.*

(1) The author shall be entitled to a certain number of free copies.

(2) In the absence of any provision in the contract, the number of these copies shall be fixed by the court in an equitable manner.

Art. 2694. — 3. *Payment.*

(1) The author's remuneration shall be due as soon as the work is ready for sale.

(2) Where the parties have agreed that the author's remuneration shall depend either wholly or partly on the expected sales, the publisher shall submit proofs of sale to the author at agreed intervals.

(3) Failing any provision to the contrary, the publisher's accounts shall be rendered to the author during the first month of each year.

Art. 2695. — *Loss of work.* — 1. *Before publication.*

(1) Where, after its delivery to the publisher, the work is accidentally lost or destroyed before publication, the publisher shall pay the author his remuneration.

(2) Where the author has a copy of the lost work, he shall place it at the publisher's disposal.

(3) In other cases, he shall do the work again, against reasonable compensation, where this can be easily done and the publisher so requests.

Art. 2696. — 2. *After publication.*

(1) Where the edition made ready by the publisher is accidentally lost or destroyed, wholly or partly, the publisher may replace the lost copies at his own expense.

(2) The publisher shall replace such copies where he can do so without unreasonable expense.

Art. 2697. — *Lapse of contract.*

(1) A publishing contract shall lapse where the author dies or becomes incapable before the work is completed or where, without his fault, he is prevented from completing it.

(2) The death or incapacity of the publisher shall not terminate the contract.

(3) Where the publisher is declared bankrupt, the author may entrust the work to another publisher, unless he is given security for the performance of those of the publisher's obligations which have not been performed at the time when the bankruptcy is declared.

# TITLE XVII. CONTRACTS FOR THE CUSTODY, USE OR POSSESSION OF CHATTELS

## Chapter 1. General Provisions

Art. 2698. — *Scope of this Title.*

(1) Where, under the terms of a contract, a person is in possession of a chattel the custody or possession of which has been transferred to him by his contracting party, his rights and obligations in his dealings with his contracting party shall be as provided in this Title.

(2) Where provided by law, the same provisions shall apply to the relations between the owner and holder of a chattel regardless of any contract.

Art. 2699. — *Immovables.*

(1) The provisions governing the hiring of immovables are laid down in the Title of this Code regarding "Contracts relating to immovables" (Art. 2896-3018).

(2) The provisions of this Title relating to free loans shall apply where the use or possession of an immovable is given to another free of charge (Art. 2701-2726 and 2767-2778).

Art. 2700. — *Owner.*

(1) For the purpose of this Title, the word "owner" means the person who has transferred the possession of the chattel.

(2) The provisions of this Title shall apply by analogy where the right which he has or claims to have on the chattel is one other than ownership.

(3) For the purpose of this Title, the holder shall be assimilated to the possessor.

Art. 2701. — *Obligation to deliver.*

The owner shall deliver the chattel with its accessories to the holder in fit state for the use for which it is intended by its nature or under the contract.

Art. 2702. — *Reference to the rules of sale.*

The place and time of delivery shall be governed by the provisions relating to sale.

Art. 2703. — *Defective chattel.* — 1. *Rescission of the contract.*

(1) Where, at the time of its transfer to the holder, the chattel is affected by a defect which appreciably diminishes its usefulness to the holder or makes it more difficult or costly to preserve it, the holder may apply for the rescission of the contract.

(2) The holder shall have the same right where the defect occurs or becomes apparent after delivery of the chattel.

(3) A particular usefulness to the holder shall not be taken into account unless the owner knew or should have known thereof on the making of the contract.

Art. 2704. — 2. *Damages.*

(1) The owner shall make good any damage which the holder has suffered owing to the defect of the chattel, where he knew or should have known of the defect on delivering the chattel to the holder and failed to inform the latter accordingly.

(2) The same shall apply where the defect arises during the performance of the contract through the default of the owner.

Art. 2705. — 3. *Contractual warranty.*

The holder may apply for the rescission of the contract and the making good of the damage caused to him by the chattel where the chattel does not possess or ceases to possess a quality the existence of which was guaranteed by the owner.

Art. 2706. — 4. *Holder knowing of defect.*

(1) The owner shall not warrant against a defect which he shows was known to the holder on the making of the contract.

(2) Any express warranty given by the owner in such case shall be of no effect.

Art. 2707. — *Dangerous defect.*

(1) Where the chattel is in such a state as seriously to endanger the life or health of the holder, of members of his household or of his employees, the holder may apply for the rescission of the contract notwithstanding that he knew of the defect of the chattel on the making of the contract.

(2) Any stipulation to the contrary shall of no effect.

Art. 2708. — 6. *Non-liability clause.*

A stipulation whereby the owner excludes or limits his liability for defects of the chattel shall be of no effect where he has fraudulently concealed

the defects or the defects are such as to make the chattel useless to the holder.

Art. 2709. — *Peaceful possession.*

The owner shall guarantee the holder the peaceful possession of the chattel during the currency of the contract.

Art. 2710. — *Modification to the chattel.*

The owner may not make any modification to the chattel that would render its possession less advantageous or more costly for the holder.

Art. 2711. — *Disturbance.*

(1) The owner shall not be bound to guarantee the holder against disturbance of his possession by third parties who do not claim a right on the chattel.

(2) The holder may take action against such third parties in his own name.

Art. 2712. — *Encumbrances and taxes.*

Encumbrances and taxes on the chattel shall be borne by the owner.

Art. 2713. — *Custody and preservation of the chattel.*

(1) The holder shall ensure the custody and preservation of the chattel.

(2) He may not change the way in which the chattel is used without the owner's consent.

Art. 2714. — *Duty to inform the owner.*

The holder shall without delay inform the owner of all matters requiring his attention, such as urgent repairs, discovery of defects, encroachments, disturbances or damage caused by third parties to the chattel.

Art. 2715. — *Cost of preservation and upkeep.*

(1) Where the preservation or upkeep of the chattel entails expenses which are not to be borne by the holder, the latter shall inform the owner accordingly.

(2) The holder shall be entitled to the reimbursement of expenses he incurs in urgent cases, provided he immediately informs the owner accordingly.

Art. 2716. — *Owner's verification.*

(1) The owner may at any time satisfy himself that the holder complies with his obligations under the contract.

(2) Such verification shall be exercised in a reasonable and non-vexatious manner without causing the holder undue trouble.

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Art. 2717. — *Claim by a third party to the chattel.*

(1) Where a third party claims the ownership of or a right on the chattel, the holder shall immediately inform the owner thereof under penalty of damages.

(2) Where the third party institutes legal proceedings, the holder may demand to be dismissed from the case and that the dispute be settled as between the third party and the owner.

(3) In such case, he may release himself from his liability to return the chattel by depositing it at the owner's expense under conditions fixed by the court.

Art. 2718. — *Obligation to restore.*

(1) The holder shall return the chattel in the state in which and at the place where he received it.

(2) The state in which the holder received the chattel shall be specified in an inventory drawn up by the parties.

(3) Failing such inventory, the chattel shall be deemed to have been in good condition when the holder received it.

Art. 2719. — *Dispossession of the holder.*

(1) Where the holder has been dispossessed of the chattel in consequence of an event for which he is not to blame, he shall be released from his obligation to return it.

(2) He shall inform the owner immediately, under penalty of damages, of the event in consequence of which he ceased to be in possession of the chattel.

(3) The owner shall be entitled to anything which the holder receives in exchange for the chattel as a result of the dispossession and shall be subrogated to the holder's rights.

Art. 2720. — *Loss or deterioration of the chattel.* — 1. *Gainful custody.*

(1) Where he receives compensation for taking charge of the chattel or he is authorised to make use of it or he in any way derives profit from it, the holder shall be liable where the chattel is lost or deteriorates after he has received it.

(2) He shall also be liable for any loss or deterioration caused by a person whom he has authorised to make use of the chattel, even temporarily.

Art. 2721. — 2. *Limit of liability.*

(1) The holder shall not be liable only where he shows that the loss or deterioration was due to force majeure.

(2) He shall not be liable where he shows that the loss or deterioration

was due to the decay, dilapidation or other defect of the chattel.

(3) He shall not be liable where deterioration is due to the normal and authorised use of the chattel.

Art. 2722. — 3. *Custody without consideration.*

(1) Where he derives no profit from the chattel and he has taken charge of it in the sole interest of the owner, the holder shall not be liable for the loss or deterioration of the chattel unless it is due to his own default or occurs after he has been summoned to return the chattel.

(2) The holder shall not be at fault unless he exercised less care in keeping and preserving the chattel than he exercises in the custody and preservation of his own property.

Art. 2723. — *Holder in default.*

Where the holder has been summoned to return the chattel, he shall not be liable where he shows that the chattel would have been lost or deteriorated in like manner, had he returned it to the owner on the due date.

Art. 2724. — *Improvements made to the chattel.* — 1. *Right to indemnity.*

(1) The holder shall not be entitled to any indemnity in respect of improvements he has made to the chattel.

(2) Where such improvements have been made with the owner's consent, the holder may however demand the reimbursement of the amount he has spent or of the surplus value of the chattel at the time of its return, whichever is the less.

Art. 2725. — 2. *Compensation and right of removal.*

(1) Even where the holder is not entitled to any indemnity, he may set off against any loss of value caused by deterioration for which he is liable but which is not due to his default, any increase he has brought about in the value of the chattel.

(2) The holder may remove the improvements he has made to the chattel, if this can be done without damaging it.

Art. 2726. — *Lien.*

(1) The holder may refuse to return the chattel to the owner until the latter has paid any indemnities due under this Chapter.

(2) He may not refuse to return the chattel pending payment of a claim to which he is entitled on another ground.

(3) Where he denies that he owes the holder an indemnity, the owner may demand that the chattel be returned to him on his providing adequate security for the discharge of any liability he may have incurred.

## Chapter 2. Letting and Hiring

### Section 1. General Provisions

Art. 2727. — *Definition.*

A contract of letting or hiring is a contract whereby one party, the lessor, undertakes to transfer to the other party, the lessee, the possession of an object for a fixed term in return for a consideration called the rent or hire.

Art. 2728. — *Letting and hiring and sale.*

(1) The object hired shall remain the property of the lessor to whom it shall be returned on the termination of the contract.

(2) Where it is stipulated that, after a certain number of payments of the rent or hire, the lessee shall become the owner of the object, the contract shall constitute a contract of sale, notwithstanding that the parties have termed it a contract of hire.

Art. 2729. — *Letting and hiring and free loans.*

Where no rent or hire has been stipulated, the provisions relating to free loans shall apply.

Art. 2730. — *Wrongful use.*

(1) The lessor may apply for the rescission of the contract where the lessee does not make use of the property in accordance with the contract or usages and such use entails risk of irreparable damage to the object hired.

(2) Where the object has already suffered damage or rescission prejudices him in any way, the lessor shall in addition be entitled to damages.

Art. 2731. — *Upkeep of object.*

(1) The lessee shall maintain the object.

(2) The cost of upkeep shall be borne by the lessee.

Art. 2732. — *Payment of rent or hire.*

(1) The lessee shall pay the rent or hire on the agreed or customary dates.

(2) In the absence of any stipulation or custom to the contrary, the rent shall be paid as it falls due, at the end of each quarter.

Art. 2733. — *Arrears of payment.*

(1) Where the lessee is in arrears with a payment of the rent or hire, the lessor may grant him ten days' grace, notifying him at the same time that in default of payment, the contract will be rescinded upon the expiration of that period.

(2) The period of grace shall run from the day on which the lessee receives the lessor's notification.

Art. 2734. — *Sub-letting.*

Unless otherwise agreed, the lessee may not sub-let the object hired or assign the contract without the consent of the lessor.

Art. 2735. — *Termination of contract.*

(1) A contract of hire concluded for a fixed term shall terminate on the date agreed upon by the parties.

(2) Unless otherwise provided, the contract shall not be terminated by the death or incapacity of one or both of the parties.

(3) Where the lessee becomes bankrupt, the lessor may rescind the contract unless he is provided, within a reasonable time, with security for the rent or hire in arrears and the rent or hire falling due in the future.

Art. 2736. — *Indeterminate contracts.*

(1) Where the duration of the contract of hire has not been fixed, either party may terminate the contract at any time.

(2) In such case, the other party shall be entitled to a reasonable period within which to discharge his obligation to return the object hired or to take delivery of it.

Art. 2737. — *Delay in return.*

(1) Where the lessee fails to return the object when summoned to do so, he shall pay the rent or hire until it is returned.

(2) He shall in addition compensate the lessor for any damage caused to him by the delay.

Art. 2738. — *Extension of the contract.*

(1) Where, on the expiration of a contract of hire entered into for a fixed term, the lessee remains in possession of the object hired and the lessor does not claim its return, the contract of hire shall be deemed to have been extended by the parties for an indeterminate period on the same terms as the original contract.

(2) In such case, third parties who have guaranteed the performance of the original contract shall be released from their liabilities.

## Section 2. Hiring of cattle

### Paragraph 1. — Cattle included in lease of agricultural undertaking

Art. 2739. — *Scope of this Paragraph.*

Unless otherwise agreed by the parties, the provisions of the following

Articles shall apply where an agricultural undertaking leased to a farmer includes cattle.

Art. 2740. — *Sale of cattle.* — 1. *Rights of farmer.*

(1) The farmer may sell the cattle included in the undertaking.

(2) He shall however keep on the land cattle equivalent in species, number and quality to that which he received.

(3) The lessor may not compel the farmer to sell cattle, notwithstanding that the cattle have increased in number.

Art. 2741. — 2. *Rights of lessor.*

(1) The lessor may not sell the cattle included in the undertaking.

(2) He may compel the farmer to prepare every year an inventory of the cattle to be found within the undertaking.

(3) He may terminate the contract where it appears that the cattle are reduced in number by more than one quarter for reasons attributable to the farmer.

Art. 2742. — *Products of animals.* — 1. *Principle.*

(1) Without prejudice to the provisions of the following Articles, the farmer may freely dispose of the products of the animals, of their hides, skins and increase.

(2) He shall account for his management to the lessor, where the rent consists of a share of these products or is fixed having regard thereto.

Art. 2743. — 2. *Wool.*

(1) Only the farmer may sell the wool of sheeps and ewes where he manages the undertaking or the flock consists of less than fifty heads.

(2) Only the lessor may sell such wool where he manages the undertaking or the flock consists of more than fifty heads.

Art. 2744. — 3. *Manure.*

Manure from animals shall be used exclusively for the exploitation of the land.

Art. 2745. — 4. *Increase from breeding.*

Animals which perish or are slaughtered shall be replaced in proportion to the increase from breeding.

Art. 2746. — *Duty to return cattle.*

(1) The farmer shall, at the end of the contract, return cattle equivalent in species, number and quality to that which he received.

(2) The provisions of sub-art. (1) shall apply notwithstanding that the cattle were valued in the contract.

Art. 2747. — *Deficit.* — 1. *Loss borne by the lessor.*

(1) Where there is a deficit, the loss shall be borne by the lessor where the rent consists of a given share in the profits or of certain products of the animals.

(2) The farmer shall not be liable for such deficit unless the loss of the animals is due to his fault or that of a person for whom he is liable.

Art. 2748. — 2. *Loss borne by the farmer.*

The farmer shall be liable to repay the value of animals not returned by him where the rent is fixed independently of the profits of the animals.

Art. 2749. — 3. *Extent of liability.*

(1) The value of animals not returned shall be fixed having regard to the valuation made by the parties.

(2) Failing such valuation, the farmer shall repay their value as on the day of the termination of the contract.

Paragraph 2. — Cattle principal object of the contract

Art. 2750. — *Scope of this Paragraph.*

(1) The provisions of the following Articles shall apply where the main object of the contract consists in cattle or other animals the breeding of which is of an agricultural or commercial interest.

(2) Nothing shall affect contrary usages.

Art. 2751. — *Model contracts.*

(1) Model contracts may be drawn up by the Ministry of Agriculture to serve as a basis for individual contracts regarding certain kinds of animals or contracts to be executed in certain regions of the Empire.

(2) Individual contracts relating to the animals or regions specified in model contracts shall be deemed to be made on the conditions laid down in such model contracts.

(3) The parties may by express provisions depart from the terms of model contracts.

Art. 2752. — *Duration of contract.*

(1) Unless otherwise expressly agreed, the contract shall be deemed to be made for four years.

(2) The period of four years shall be reckoned from the day of the making of the contract.

Art. 2753. — *Notice to landowner.*

(1) Where cattle is given to another person's farmer, notice shall be given to the owner whose land is exploited by such farmer.

(2) Where notice is not given, the owner may, notwithstanding any custom to the contrary, seize or retain the animals with a view to obtaining payment of his claims against the farmer.

(3) It may not be alleged that he knew or should have known that the animals did not belong to his farmer.

Art. 2754. — *Inventory of animals.*

(1) The ownership of animals shall not be transferred to the tenant as a result of an inventory of the animals having been made in the contract.

(2) Such inventory has as its sole purpose to permit of establishing whether there is a profit or loss at the end of the contract.

Art. 2755. — *Upkeep of animals.*

(1) The tenant shall preserve and maintain the animals with the care required by custom.

(2) He shall bear the costs arising therefrom.

Art. 2756. — *Increase from breeding.*

Increase from breeding shall be jointly owned by the lessor and tenant.

Art. 2757. — *Products of animals.*

Only the tenant shall be entitled to the dairy products, manure and work of the animals.

Art. 2758. — *Wool.*

(1) The wool of sheep and ewes shall be divided equally between the lessor and tenant.

(2) The tenant shall inform the lessor of the day when the shearing will take place.

Art. 2759. — *Sale of animals.*

(1) The tenant may not, without the consent of the lessor, dispose of any animal of the flock or of the increase from breeding.

(2) The lessor may not dispose thereof without the consent of the tenant.

Art. 2760. — *Loss of animals.*

(1) The tenant shall not be liable for the loss of animals unless it is due to his fault.

(2) The lessor shall prove that the tenant is at fault.

(3) The tenant shall account for the hides of animals which have died.

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Art. 2761. — *Accounts.*

(1) The lessor may demand that the tenant submit every year an inventory of the animals together with his annual accounts.

(2) He may terminate the lease where it appears that the animals have reduced in number by more than one quarter for reasons attributable to the tenant.

Art. 2762. — *Termination of contract.*

(1) The contract shall terminate on the expiry of the period agreed by the parties or prescribed by law.

(2) A party who intends to terminate the contract shall give the other party at least six months notice in advance.

Art. 2763. — *Death of parties.*

(1) The contract shall not be terminated by the death of either party.

(2) The heirs of the deceased tenant may however terminate the contract by giving notice to the lessor within six months from the death of the tenant.

(3) In such case, the contract shall terminate on the first of Megabit which follows but not less than three months after the lessor has received notice from the heirs of the tenant.

Art. 2764. — *Settlement of accounts.*

(1) Where the contract comes to an end or is rescinded, a new inventory of the animals shall be made.

(2) The lessor may take animals of each species to the extent shown in the first inventory made.

(3) What remains shall be divided equally between the lessor and the tenant.

Art. 2765. — *Insufficient number of animals.*

(1) Where the animals are reduced below the number shown in the first inventory, the lessor shall take what remains and the parties shall bear the loss equally.

(2) The tenant shall not be liable for the loss unless it is due to his fault or that of a person for whom he is liable.

Art. 2766. — *Usages or stipulations null and void.*

(1) Any usage or stipulation to the effect that the tenant shall be liable where all the animals are lost as a result of a fortuitous event and without his fault shall be of no effect.

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(2) Any usage or stipulation to the effect that the share of the tenant in the loss shall be greater than his share in the profits shall be of no effect.

(3) Any usage or stipulation to the effect that the lessor may, at the end of the contract, take more animals than he supplied shall be of no effect.

## Chapter 3. Loan for Use, or Free Loan

Art. 2767. — *Definition.*

A loan for use, or free loan, is a contract whereby one party, the lender, undertakes to transfer a chattel to the other party, the borrower, for gratuitous use.

Art. 2768. — *Gratuitousness of the contract.*

(1) The free loan is essentially gratuitous.

(2) Where it is stipulated that the lender shall receive a remuneration, the rules of contracts of letting and hiring shall apply.

Art. 2769. — *Ownership of chattel.*

(1) The lender shall retain the ownership of the chattel loaned.

(2) The borrower shall return the chattel to the lender on the termination of the contract.

Art. 2770. — *Upkeep of chattel.*

(1) The borrower shall maintain the chattel.

(2) The cost of upkeep shall be borne by the borrower.

Art. 2771. — *Use of chattel.*

(1) The borrower may use the chattel loaned only for the purpose defined in the contract or, failing such stipulation, for a purpose in keeping with its nature.

(2) He may not allow a third party to make use of the chattel without the lender's consent.

Art. 2772. — *Return of chattel.*

(1) The borrower shall return the chattel at the agreed time.

(2) Where no time has been agreed and the use for which the chattel has been lent itself implies no such time, the borrower shall return the chattel immediately at the lender's request.

Art. 2773. — *Premature return.* — 1. *Borrower's right.*

The borrower may return the chattel before the agreed time unless such return causes damage to the lender.

Art. 2774. — 2. *Lender's right.*

The lender may claim the return of the chattel before the time at which it should normally have been returned where the borrower makes an uncovenanted use thereof, deteriorates it or allows a third party to make use of it or where the lender himself is in urgent and unforeseen need of it.

Art. 2775. — *Death of borrower.*

Where the borrower dies, the lender may require his heirs to return the chattel to him immediately, notwithstanding that he had agreed to lend it to the borrower for a fixed term.

Art. 2776. — *Wrongful use.*

(1) The borrower shall be liable for the loss or deterioration of the chattel, even due to force majeure, where he puts the object to an unauthorised use or improperly allows a third party to make use of it.

(2) In such case, he shall not be released from his liability unless he can prove that the chattel would have been lost or deteriorated, had he not violated his obligation.

Art. 2777. — *Avoidable loss.*

The borrower shall be liable for the loss of the chattel through force majeure where he could have averted the loss by using a chattel of his own or, being unable to save both his own chattel and that lent to him, chose to save his own.

Art. 2778. — *Contractual valuation.*

Where the chattel was valued on the making of the contract, the borrower shall be liable for its loss in all cases.

## Chapter 4. Bailment

### Section 1. Bailment in General

Art. 2779. — *Definition.*

A contract of bailment is a contract whereby one person, the bailee, undertakes to receive a chattel from another, the bailor, and to keep it on the latter's behalf.

Art. 2780. — *Bailment, conditional sale and hire of services.*

(1) Where the bailee has the option of retaining the chattel on the expiration of the contract, on paying its price, the rules of conditional sale shall apply and not those of bailment.

(2) Where the bailee undertook to repair the chattel or to transform it the rules of hire of services shall apply and not those of bailment.

Art. 2781. — *Ownership of chattel.*

(1) The bailor shall retain the ownership of the bailed chattel.

(2) The bailee shall return the chattel to him on the termination of the contract.

Art. 2782. — *Bailment of consumable chattels.*

(1) Where the chattel entrusted to the bailee is a sum of money or a certain quantity of consumable goods and the bailee has been authorised to make use of them, the rules relating to loans of money and other fungibles shall apply.

(2) Where the chattel entrusted to the bailee is a sum of money which has been handed over to the bailee unsealed and unclosed, the bailee shall be deemed to be authorised to make use of it.

Art. 2783. — *Use of bailed chattel.*

(1) Where the bailment consists of other chattels, the bailee may not make use of them without the bailor's authorisation.

(2) Where he violates this rule, the rules governing the letting and hiring shall apply to his detriment.

(3) The bailor may in particular demand payment of a rent the amount of which shall be fixed equitably.

Art. 2784. — *Gratuitous or paid bailment.*

(1) Bailment shall be gratuitous where it is not apparent that the parties intended to provide for a remuneration to the bailee.

(2) In this regard, the professional standing of the bailee and all other relevant circumstances shall be taken into account.

Art. 2785. — *Modification of circumstances of bailment.*

(1) Where urgent circumstances so require, the bailee may keep the chattel under conditions other than those agreed upon and may in particular entrust the chattel to a third party or alienate it, where it is in imminent danger of loss or deterioration.

(2) He shall inform the bailor as soon as possible of these events.

Art. 2786. — *End of bailment.* — 1. *Bailor's right.*

(1) The bailee shall return the chattel to the bailor as soon as the latter claims it, unless a fixed term has been provided in favour of the bailee.

(2) The bailor shall indemnify the bailee for expenses he has incurred in consideration of the agreed term.

Art. 2787. — 2. *Bailee's right.*

(1) The bailee may at any time require the bailor to take the chattel back, unless a fixed term has been provided in favour of the bailor.

(2) Where no such term has been agreed, the court may grant the bailor a reasonable period within which to take the chattel back.

Art. 2788. — *Several bailors.*

(1) Where the chattel has been entrusted to the bailee by several bailors who are unable to agree upon the conditions on which the chattel is to be returned, the court shall fix such conditions.

(2) The provisions of sub-art. (1) shall apply where the bailor dies leaving several heirs and the chattel is indivisible.

Art. 2789. — *Bailment in the interest of third party.*

Where the bailment was made in the interest of a third party and such third party has informed the bailor and bailee of his agreement, the latter shall not return the chattel to the bailor without the third party's consent.

Art. 2790. — *Return of chattel.*

(1) Where it has been agreed that the bailee shall keep the chattel in a certain place, it shall be returned in that place.

(2) The expense and risk of the return of the chattel shall in all cases be borne by the bailor.

Art. 2791. — *Return of profits.*

The bailee shall return the profits he has collected from the chattel.

Art. 2792. — *Restitution to whom made.*

(1) The bailee shall return the chattel to the bailor or to the person designated by him.

(2) He may require the bailor to prove that he is the owner of the chattel.

Art. 2793. — *Bailor's duties.*

(1) The bailor shall pay the bailee the agreed remuneration.

(2) He shall indemnify him for all expenses incurred for the preservation of the chattel.

(3) He shall compensate him for all damage the bailment may have caused him, unless such damage is due to the bailee's default or that of a person for whom the bailee is liable.

Art. 2794. — *Lien.*

The bailee may retain the chattel until all monies due to him in consequence of the bailment have been paid in full.

Art. 2795. — *Bailee's heir.*

(1) Where he has alienated the chattel in good faith and in ignorance of the bailment, the bailee's heir shall only repay the price he has received.

(2) Where the price has not yet been paid, the bailor shall be subrogated to the heir's claim against the buyer.

## Section 2. Bailment on Trust

Art. 2796. — *Definition.*

There shall be bailment on trust where a chattel, the legal position of which is in dispute or uncertain, is entrusted to a third party, the trustee, who keeps it and returns it to its lawful owner when the doubt has been resolved.

Art. 2797. — *Appointment and dismissal of trustee.*

(1) The trustee shall be appointed by agreement between the parties to the dispute.

(2) Failing such agreement, he shall be appointed by the court.

(3) The trustee may not be dismissed before he has completed his function, except where the parties so agree or for good cause.

Art. 2798. — *Return of the chattel.*

The trustee may not return the chattel except with the agreement of all the interested parties or upon an order of the court.

Art. 2799. — *Reference to rules regarding bailment.*

The rules of bailment shall apply in addition to those of this Section.

## Section 3. Bailment in Distress

Art. 2800. — *Definition.*

There shall be bailment in distress where a person is compelled by urgent necessity to entrust to another the custody of chattels belonging to himself, in order to preserve them from imminent danger.

Art. 2801. — *Special rules for bailment in distress.*

(1) The person to whom the chattels are offered may not refuse to accept them without good cause.

(2) He may demand a remuneration where the bailment lasts for more than one week.

(3) The court may reduce the amount of the remuneration required by him at the time of bailment.

**Art. 2802.** — *Forms and proof.*

(1) Bailment in distress shall not be subject to any special form.

(2) It may be proved by any means.

**Art. 2803.** — *Application of rules of bailment.*

The rules regarding a contract of bailment shall apply in addition to those of this Section.

### Section 4. Chattels Found, or Deposited with a Person without his knowledge

**Art. 2804.** — *Finder's rights and obligations.*

(1) Whosoever has found a chattel and taken possession of it shall, by virtue of the law, be in the same position as a bailee.

(2) Nothing shall affect the provisions of the Title of this Code relating to "Individual Ownership" (Art. 1154-1158).

**Art. 2805.** — *Deposit without the knowledge or against the will of another.*

(1) The rules of bailment shall not apply where chattels have been deposited with a person without his knowledge or against his will.

(2) The person with whom chattels are thus deposited shall incur no liability as a consequence of the deposit.

## Chapter 5. Warehousing

**Art. 2806.** — *Definition.*

A contract of warehousing is a contract whereby one party, the warehouseman, being duly licensed for the purpose by the public authorities, undertakes to receive and store goods on behalf either of the bailor or of the purchaser of the goods or of a person who received them in pledge.

**Art. 2807.** — *Loss or deterioration of goods.*

(1) The warehouseman shall be liable for the preservation of the goods he has received.

(2) He shall not be liable where he shows that the loss or deterioration of the goods is due to force majeure, or to the nature or defects of the goods or their packing.

**Art. 2808.** — *Duty to inform bailor.*

The warehouseman shall inform the bailor where the goods undergo changes which seem to call for further measures,

Art. 2809. — *Return of goods.*

(1) The warehouseman shall store the goods until the expiration of the agreed period.

(2) He may not avail himself of circumstances as a result of which a bailee would be authorised to return the goods before the due date because of unforeseen events.

Art. 2810. — *Mixing goods.*

(1) The warehouseman may not mix fungible goods with other goods of the same kind and quality without express authority.

(2) The bailor may claim out of goods thus mixed such quantity as corresponds to his share thereof.

(3) The warehousman may return this share without the co-operation of the other bailors.

Art. 2811. — *Sale of goods.*

(1) After giving the bailor due notice, the warehouseman may sell the goods where they are not removed by the bailor on the date stipulated in the contract.

(2) Where no definite term has been fixed for the storage, he may sell the goods after one year from the date of deposit.

(3) He may in any case sell the goods whenever they are in danger of decay.

Art. 2812. — *Disposal of proceeds.*

After deduction of the expenses entailed by the sale and other sums due to the bailee, the proceeds of the sale shall be held at the disposal of the persons entitled to them.

Art. 2813. — *Receipt and voucher.*

(1) Where the bailor so requires, the warehouseman shall give him a receipt for the goods warehoused.

(2) The receipt shall be accompanied by a voucher containing the same information as the receipt.

(3) The receipt and voucher shall be taken from the same counterfoil register. The counterfoil shall be retained by the warehouseman.

Art. 2814. — *Particulars in receipt and voucher.*

The receipt and voucher shall state:

(a) the name and surname, or trade name, and address of the bailor; and

(b) the place of storage; and

(c) the kind and quantity of the goods stored and any other information necessary to identify them: and

(d) whether customs duties have been paid on the goods and whether they are insured.

Art. 2815. — *Beneficiaries of documents of title.*

(1) The receipt and voucher may be made out in the name of the bailor or in that of a third party designated by him.

(2) They may be transferred, either together or separately, by endorsement.

Art. 2816. — *Rights of holder of both titles.*

(1) A person in possession both of the receipt and of the voucher may demand that the goods stored be handed over to him.

(2) He may also require that the goods be divided up into a number of lots at his expense and that the warehouseman give him a receipt and voucher for each separate lot in exchange for the original titles.

Art. 2817. — *Rights of holder of voucher.*

A person in possession of the voucher alone shall have a right of pledge on the goods detained by the warehouseman

Art. 2818. — *Transfer of voucher.*

(1) Where the voucher alone has been endorsed for the first time, the amount of the debt and interest thereon, and the date on which payment falls due, shall be stated on it.

(2) The endorsement and the above information shall be entered on the receipt and countersigned by the beneficiary of the endorsement.

Art. 2819. — *Absence of required information.*

(1) Where the endorsement on the voucher fails to state the amount of the debt guaranteed, the goods stored shall be secured to their full value to guarantee the debt.

(2) Where he has paid a sum that was not due, the person in whose name the receipt is made out, or the holder of the receipt, may recover from the first endorsee and from any person holding the voucher in bad faith.

Art. 2820. — *Rights of holder of receipt.*

(1) A person in possession of the receipt only may inspect the goods stored and take the customary samples.

(2) He may not remove the goods stored unless he deposits with the warehouseman or trustee the sum due at maturity to the pledgee.

Art. 2821. — *Sale by pledgee.*

(1) Where he is not paid on maturity and he has drawn up a protest in accordance with the provisions of Art. 781-784 of the Commercial Code, the holder of the voucher may cause the goods to be sold eight days after payment becomes due.

(2) An endorser who has of his own free will paid the holder of the voucher shall be subrogated to the holder's rights.

(3) He may cause the goods to be sold eight days after the debt has become due.

Art. 2822. — *Sale of goods stored.*

Where the goods stored have to be sold, either by the warehouseman or by the creditor holding the voucher, the relevant provisions of the chapter on pledges shall apply to the sale.

Art. 2823. — *Redress against endorsers.*

(1) The person holding the voucher may not bring an action against the endorser before he has caused the goods to be sold.

(2) The time-limits for actions for recovery against successive endorsers shall be as prescribed by Art. 817 (3) of the Commercial Code.

(3) They shall run from the date on wich the goods were sold.

Art. 2824. — *Non-compliance with required formalities.*

(1) The holder of the voucher shall lose his right to recover from the endorsers where he fails to draw up his protest upon maturity or fails to institute, within fifteen days from the date of the protest, proceedings to have the goods sold.

(2) He shall however retain his right to recover from the endorsers of the receipt and from the debtor.

(3) Such right of recovery shall be barred after three years.

## Chapter 6. Contracts of Pledge

### Section 1. Contracts of Pledge in General

#### Paragraph 1. — Conditions for the validity of the contract

Art. 2825. — *Definition.*

A contract of pledge is a contract whereby a debtor undertakes to deliver a thing, called the pledge, to his creditor as security for the performance of an obligation.

Art. 2826. — *Person furnishing the pledge.*

A contract of pledge may be made between the creditor and a third party to secure the debt of another person.

Art. 2827. — *Debt guaranteed.*

A contract of pledge may be made in order to guarantee a future or conditional debt.

Art. 2828. — *Form of contract.*

(1) The maximum amount of the debt guaranteed shall in all cases be specified in the contract of pledge or the contract shall be void.

(2) Where the amount exceeds five hundred Ethiopian dollars, the contract of pledge shall not be valid except where it is evidenced by writing and as from the day when such deed acquires undisputed date.

Art. 2829. — *Pledge.*

(1) The pledge may consist of a chattel, a totality of effects, a claim or another right relating to movable property.

(2) It must be capable of being sold separately by public auction.

Art. 2830. — *Creditor's possession.*

(1) The creditor shall be deemed to be in possession of the pledge where the document of title without which the pledge cannot be disposed of has been delivered to him.

(2) The provisions of sub-art. (1) shall apply in particular where a voucher for goods warehoused, or the bill of lading or way-bill in the case of goods in transport, has been endorsed in his favour.

Art. 2831. — *Possession by an agreed third party.*

(1) The parties may agree that the pledge be delivered to a third party acceptable to them both.

(2) The rights and duties of such third party shall be as prescribed by the provisions relating to the bailment of goods or warehousing.

Art. 2832. — *Debtor's possession.*

(1) The furnishing of a pledge without dispossession of the debtor may be made in such cases only as are expressly provided by law.

(2) In all other cases, the contract shall be of no effect where it stipulates that the pledge shall remain with the debtor.

Art. 2833. — *Regulation of contract of pledge.*

(1) The rules governing contracts of pledge are to be found, in addition to this Chapter, in the special laws relating to particular cases and forms of pledging or to the institutions authorised to lend against security.

(2) The special rules governing the committal of goods in warehouses are given above in the Chapter on warehousing.

Paragraph 2. — Rights and Duties of Pledger

Art. 2834. — *Ownership of pledge.*

(1) The pledger shall retain his rights on the pledge, save for the restrictions arising out of the contract of pledge.

(2) He may dispose freely of his rights and may in particular alienate the pledge or re-pledge it subsequently.

Art. 2835. — *Cost of maintaining and preserving the pledge.*

The pledger shall reimburse the pledgee for expenses incurred in maintaining and preserving the pledge.

Art. 2836. — *Abuse by creditor.*

Where the creditor fails to observe the provisions of the law in respect of the pledge, the pledger may demand that it be delivered to a trustee.

Art. 2837. — *Premature payment of the debt.*

(1) The pledger may at any time demand the return of the pledge by paying the debt secured by it.

(2) Any stipulation to the contrary shall be of no effect.

Art. 2838. — *Pledge furnished by a third party.*

(1) Where the pledge has been furnished by a third party, no contract between the creditor and the debtor made subsequently to the furnishing of the pledge may impair the third party's position.

(2) The pledger may set up against the creditor all the defences the debtor himself could have raised, without it being possible to set up against him the fact that the debtor had waived them.

Paragraph 3. — Rights and Duties of Pledgee

Art. 2839. — *General principle.*

(1) The pledgee shall have on his debtor's property the rights of a creditor.

(2) He shall in addition have on the pledge the particular rights deriving from this Chapter.

Art. 2840. — *Use of the pledge.*

The pledgee may not make use of the pledge without the pledger's consent, except where such use is necessary for its preservation.

Art. 2841. — *Fruits.*

(1) Where the pledge produces fruits, the creditor, or the custodian of the pledge, shall collect them.

(2) The fruits shall become the property of the pledgee.

(3) The value of the fruits produced by the pledge shall be applied successively to the expenses incurred for the custody and preservation of the pledge, to interest and to the capital of the debt secured.

Art. 2842. — *Action for possession.*

(1) The pledgee may bring actions for possession in respect of the pledge.

(2) The custodian of the pledge shall inform the pledgee and the pledger without delay of circumstances requiring the institution of such actions.

Art. 2843. — *Third party's claim to the pledge.*

The pledgee may exercise the rights deriving from the contract of pledge notwithstanding that the pledge has been delivered to him by a person who was not authorised to dispose of it.

Art. 2844. — *Exception.*

(1) The owner of the pledge may take it back where he shows that the pledgee knew or should have known, on the making of the contract, that the other party was not authorised to pledge the thing.

(2) He may also take the pledge back by discharging the debt secured by it.

Art. 2845. — *Return of pledge.*

(1) The creditor shall return the pledge to the pledger or to the person designated by him, where the contract of pledge is extinguished by payment of the debt or for any other reason.

(2) Until the pledge is returned, he shall be liable for the loss of or damage to the pledge in accordance with the provisions of Art. 2720.

Art. 2846. — *Lien.*

The pledgee may retain the pledge until monies due to him under the provisions of this Chapter have been paid in full.

Art. 2847. — *Loss or deterioration of the pledge.*

Where the pledge has been entrusted to his keeping, the pledgee shall be liable for its loss or deterioration as provided in Art. 2720 and 2721 of this Code.

Art. 2848. — *Subrogation to property rights.*

Where the pledge is lost or damaged for any reason whatsoever, the pledgee's right shall apply to the compensation due for its replacement from the person liable for the loss or deterioration, from the insurer or from the person who has expropriated it.

Paragraph 4. — Extinction of Contract of Pledge

Art. 2849. — *Accessory character of the contract.*

The contract of pledge shall be extinguished and the pledge shall be returned where the debt it guaranteed is discharged.

Art. 2850. — *Indivisibility of pledge.*

The creditor may not be compelled to return the pledge or part thereof until he has been paid in full, notwithstanding that the debt or pledge is divisible.

Paragraph 5. — Sale of Pledge

Art. 2851. — *Commissoria lex.*

(1) Any agreement, even subsequent to the furnishing of the pledge, authorising the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by law shall be of no effect.

(2) It may however be agreed, after the debt has become due, that the debtor shall make over the pledge to the creditor in settlement of the debt.

Art. 2852. — *Effect on third parties.*

(1) The contract of pledge shall not affect third parties unless the pledge is in the possession of the pledgee, or the person designated for the purpose by the parties, at the time when the pledgee invokes the contract.

(2) The contract of pledge shall be of no effect where at that time the pledge is still in the debtor's possession or it has returned to his possession with the pledgee's consent or it is in the possession of a third party from whom the creditor cannot demand its return.

Art. 2853. — *Default.*

(1) Before causing the pledge to be sold, the pledgee shall call upon the pledger to discharge his obligation and give him due notice that, upon default, he will cause the pledge to be sold.

(2) Similar notice shall be given to the third party who has furnished the pledge.

Art. 2854. — *Sale of pledge.*

(1) Where, within eight days from the notice provided in Art. 2853, no objection has been raised or the objection is dismissed, the pledgee may cause the pledge to be sold by public auction.

(2) Where the pledge is quoted on the market or has a current price, the pledgee may cause it to be sold by private contract through the intermediary of a person authorised to make such sales.

Art. 2855. — *Limitation by the court.*

The court may, on the application of the pledger, limit the creditor's right to the sale of one of the pledges which is sufficient to pay off the pledgee.

Art. 2856. — *Assignment of pledge to the pledgee.*

The pledgee may apply to the court to order that the pledge be given to him in payment, to the extent of the amount due to him, according to an expert valuation or the current price of the pledge, where it is quoted on the market.

Art. 2857. — *Priority right.*

(1) The pledgee may be paid out of the proceeds of the sale of the pledge before all other creditors.

(2) In addition to the debt specified in the contract of pledge, the pledge shall secure the contractual interest and legal interest on the debt and the expenses incurred for the custody, preservation or sale of the pledge.

Art. 2858. — *Limitation of creditor's rights.*

(1) The pledgee may not enforce his priority right arising out of the contract of pledge beyond the maximum amount specified therein.

(2) The pledgee may not enforce his priority right to obtain security for another debt, even if incurred subsequently to the contract of pledge, owed to him by the debtor or pledger.

Art. 2859. — *Disposal of proceeds.*

(1) The proceeds shall be attributed to the creditor to the amount of the debt due to him and shall be deemed to have been paid by the pledger.

(2) The balance of the proceeds shall be handed over to the pledger.

Art. 2860. — *Several pledgees.*

(1) Where the pledge is encumbered with several rights of pledge, the creditors shall be paid according to their rank.

(2) The rank shall be determined by the dates on which the various pledges were entered into.

Art. 2861. — *Purchaser's rights.*

The purchaser of the pledge shall acquire the ownership thereof free of any encumbrance.

Art. 2862. — *Creditor's liability.*

A creditor who sells a thing belonging to a third party which has been duly pledged shall not be liable unless he knew or should have known, on the making of the contract, that it belonged to the third party.

## Section 2. Pledging of Claims or other Intangibles

Art. 2863. — *Relation of pledger and debtor.*

The provisions governing the relations of a guarantor and principal debtor shall apply to the relations between a third party who has furnished a pledge and the principal debtor.

Art. 2864. — *Claims not established by title.*

(1) The pledging of claims which are not established by a title shall, regardless of the amount of the sum guaranteed, be executed in the form of a document specifying the claim pledged and the maximum amount of the debt guaranteed.

(2) The pledging shall be notified, under pain of being declared void, to the debtor of the claim which has been pledged, or shall be accepted by him in a document of undisputed date.

Art. 2865. — *Rights not established by title.*

(1) The pledging of rights which are not rights of claims and which are not established by a title shall be executed in the forms prescribed for the transfer of the said rights.

(2) A document of undisputed date, and adequately specifying the right pledged and the debt guaranteed, shall be required in all cases, under pain of nullity.

(3) Nothing shall affect such special provisions as may govern the pledging of some of such rights.

Art. 2866. — *Acknowledgement of debt.*

(1) Where the claim or right pledged is established by an acknowledgement of debt or by another non-negotiable instrument, such instrument shall be delivered to the pledgee or the third party named in the contract of pledge.

(2) The pledging of claims and rights established by negotiable instruments shall be carried out in accordance with the provisions of Art. 950-958 of the Commercial Code.

Art. 2867. — *Claims producing periodical income.* — 1. *Extent of pledge.*

(1) A pledge founded on a claim yielding interest or other periodical income, such as a dividend, shall, unless otherwise provided, apply only to current benefits to the exclusion of those previously due.

(2) Where such accessory benefits are represented by separate titles, they shall not be included in the pledge unless themselves committed in the form required by law.

Art. 2868. — 2. *Rights and duties of pledgee.*

(1) The pledgee shall collect the interest on the claim pledged with him and all other periodical payments due from the debtor under his claim.

(2) He shall apply the proceeds successively to the expenses due to himself, to interest and to the capital of the debt guaranteed.

(3) The pledger may not object to such payment.

Art. 2869. — *Preservatory measures.*

The pledgee shall take such steps as are necessary to prevent the extinction of the claim or right pledged with him.

Art. 2870. — *Pledged shares.*

Pledged shares shall be represented at the annual general meeting of the company by the shareholder himself and not by the pledgee.

Art. 2871. — *Rights of debtor of claim pledged.*

(1) The debtor of the claim which has been pledged may set up against the pledgee the defences he is entitled to raise against his own creditor.

(2) Where he has accepted the pledging without reservation, he may however not oppose the setting-off of a counter-claim which arose against his own creditor before his acceptance.

Art. 2872. — *Collection of debt pledged.*

(1) The pledgee shall collect the debt pledged with him when it falls due.

(2) However, where the pledger objects to such payment, the debtor may obtain his discharge only by depositing the sum or the goods due from him.

(3) Sums of money or other fungible things received in payment shall be deposited in the place agreed upon by the parties or, in the absence of such agreement, in a place fixed by the court.

Art. 2873. — *Sale of claim or right pledged.*

Where the debt secured has become due, the pledgee may cause the debt or right pledged with him, or the goods received from the debtor in payment, to be sold as provided in Section 1 of this Chapter.

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Art. 2874. — *Reference to preceding Section.*

Anything relating to the pledging of claims or intangibles that is not governed by this Section shall be governed by the provision of Section 1 of this Chapter.

# TITLE XVIII
# CONTRACTS RELATING TO IMMOVABLES
## Chapter 1. Sale of Immovables

Art. 2875. — *Principle.*

Without prejudice to the provisions of the following Articles, the provisions of the Title of this Code regarding "Contracts relating to the assignment of rights" shall apply to the sale of immovables.

Art. 2876. — *Work and labour relating to immovables and sale.*

A contract whereby one of the parties undertakes to deliver to the other party a house, a flat or another building which does not yet exist, is a contract of work and labour relating to immovables and not a contract of sale.

Art. 2877. — *Form of contract.*

A contract of sale of an immovable shall be of no effect unless it is made in writing.

Art. 2878. — *Registration in registers of immovable property.*

The sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situate.

Art. 2879. — *Cooperation of seller.*

(1) The seller shall furnish to the buyer all the documents necessary to enable the buyer to cause the transfer of the immovable to be registered in the registers of immovable property.

(2) Such obligation shall be deemed to be an essential stipulation of the contract of sale.

Art. 2880. — *Seller to declare certain rights.*

(1) The seller shall declare to the buyer the rights which third parties have on the immovable sold where such rights may be set up against the buyer independently of a registration in the registers of immovable property.

(2) The contract may compel the seller to declare to the buyer the rights which third parties have on the immovable notwithstanding that such rights are entered in the registers of immovable property.

Art. 2881. — *Registered rights and burdens.* — 1. *Principle.*

The buyer shall be deemed to know all the rights and burdens affecting the immovable which have been registered in the registers of immovable property in the place where the immovable is situate.

Art. 2882. — 2. *Express warranty by seller.*

(1) In respect of the rights mentioned in Art. 2881, the buyer may not avail himself of the provisions concerning the warranty against eviction, unless the seller has warranted that such rights did not exist.

(2) Such warranty may only result from an express provision in the contract of sale.

Art. 2883. — 3. *Mortgage and antichresis.*

The buyer may avail himself of the provisions concerning the warranty against eviction where the immovable is attached and sold at the request of a creditor who has a mortgage or an antichresis.

Art. 2884. — *Sale of immovable belonging to others.*

(1) The provisions concerning the warranty against eviction shall apply where the sale relates to an immovable which, in whole or in part, did not belong to the seller.

(2) The buyer may avail himself of the provisions relating to the warranty against eviction without waiting until he has been evicted.

(3) He may not avail himself of such provisions where, at the time when the court is to make its decision, such eviction is no longer to be feared.

Art. 2885. — *Right of recovery.*

Unless otherwise expressly agreed, the seller shall not be liable in damages to the buyer where the latter is evicted by a person who avails himself of a legal right of recovery on the immovable sold.

Art. 2886. — *Liability of seller.*

In case of total or partial eviction of the buyer, the seller shall refund to the latter, in addition to the price and the expenses of the contract, all the expenses incurred by him in altering the immovable.

Art. 2887. — *Lesion.*

A sale of an immovable may not be rescinded by the buyer or the seller on the ground of lesion.

Art. 2888. — *Warranty of area.* — 1. *Principle.*

The seller shall guarantee the area of the immovable sold where such area has been indicated in the contract.

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Art. 2889. — 2. *Rights of buyer.*

(1) Where the true area is smaller than that which has been indicated, the buyer may require that the price be reduced accordingly.

(2) He may require the rescission of the contract where the true area is smaller by at least one-tenth than that which has been indicated or where it renders the immovable unsuitable for the use which the buyer intended to make of it and such use was known to the seller.

Art. 2890. — 3. *Conditions and time.*

The action of the buyer based on the warranty of area shall be subject to the same conditions and be instituted within the same time as an action based on the warranty against defects.

Art. 2891. — 4. *Rights of seller.*

(1) The seller may not require an increase of price where the true area is larger than that indicated in the contract.

(2) The provisions of sub-art. (1) shall not apply where the error of the seller is due to fraud on the part of the buyer.

Art. 2892. — *Compulsory execution of contract.*

(1) The buyer of an immovable shall be deemed to have a particular interest in the specific performance of the contract.

(2) He may accordingly demand such execution.

(3) The buyer shall lose the right to demand the specific performance of the contract where he fails to demand it within one year after he has ascertained the delay of the seller.

Art. 2893. — *Sale with right of redemption.*

(1) The seller may, in the contract of sale, reserve to himself the right to purchase the immovable from the buyer during a certain period.

(2) The provisions of the Title of this Code relating to "Joint ownership, usufruct and other rights in rem" concerning the promise of sale shall apply to such stipulation (Art. 1410-1425).

Art. 2894. — *Reference.*

Those provisions in the Title of this Code regarding "Contracts relating to the assignment of rights" which apply to contracts of barter, assignment of rights other than property and hire-purchase shall apply to contracts relating to immovables.

Art. 2895. — *Registration in the case of hire-purchase.*

In the case of a hire-purchase, the hire-purchaser may register in the

registers of immovable property in the place where the immovable is situate the right of contractual pre-emption resulting from the contract.

## Chapter 2. Lease

### Section 1. Lease of immovables in general

Art. 2896. — *Definition.*

(1) The lease of an immovable is a contract whereby one of the parties, the lessor, undertakes to ensure to the other party, the lessee, the use and enjoyment of an immovable, for a specified time and for a consideration fixed in kind or otherwise.

(2) Nothing shall affect the provisions of the Commercial Code or of particular laws concerning the lease of immovables in which a business or other industry is carried out.

Art. 2897. — *Lease and sale.*

Where it is agreed that the lessee shall become the owner of the immovable after the payment of a certain number of terms of rent, the contract shall constitute a sale, notwithstanding that the parties have termed it as a contract of lease.

Art. 2898. — *Proof of contract.*

(1) So long as the lease has not had a beginning of execution, the proof that an immovable has been let may be made only by a written instrument, by an admission made or oath taken in court.

(2) No other means of evidence shall be admitted to prove the existence of such contract.

(3) Where a contract of lease has had a beginning of execution, it may be proved by witnesses or presumptions.

Art. 2899. — *Entry in registers of immovable property.*

(1) Leases made for a period exceeding five years shall not affect third parties until they are entered in the registers of immovable property at the place where the immovable is situate (Art. 1571).

(2) Leases made for a period exceeding five years which have not been entered in the registers of immovable property shall, where their date is certain, affect third parties during five years from the day when such third parties have registered their rights on the immovable.

(3) In other cases, such leases shall be deemed to have been made for an undefined period of time.

Art. 2900. — *Delivery of immovable.*

(1) The lessor shall deliver to the lessee the immovable given on lease and its accessories, in a state to serve for the use for which it is intended in terms of the contract or according to its nature.

(2) The place and time of delivery shall be regulated in accordance with the provisions relating to sale.

Art. 2901. — *State of tenement and inventory.* — 1. *Principle.*

(1) On the request of either of the parties and as soon as such request is made, there shall be drawn up a statement showing the condition of the tenement as well as an inventory with a valuation of the movable property, accessory to the immovable given on lease, the use and enjoyment of which have been given to the lessee.

(2) Any stipulation to the contrary shall be of no effect.

Art. 2902. — 2. *Expenses.*

(1) The inventory and the statement showing the condition of the tenement shall be made at common expense.

(2) Where the lessee has advanced the expenses, he may deduct the amount due by the lessor from the rent due by him to the latter.

Art. 2903. — 3. *Sanctions.*

(1) Where one of the parties does not take part in the drawing up of the statement and inventory together with the other party, such other party may draw them up or cause them to be drawn up at his expense and communicate them to the other contracting party.

(2) Where the latter fails to make known his objections and his reservations within a reasonable period, the statement and inventory shall be deemed to have been approved by him.

(3) The objections and reservations shall not be taken into consideration unless the contracting party causes a statement showing the condition of the tenement and an inventory to be drawn up at his expense within six months from his having received the communication under sub-art. (1).

Art. 2904. — *Defect of thing.* — 1. *Rescission of contract.*

(1) Where, at the time of delivery, the thing has defects of such nature that its normal use is appreciably diminished, the lessee may demand the rescission of the contract.

(2) The lessee shall have the same right where the defect occurs or is discovered after the immovable has been delivered to him.

(3) A special use to the lessee shall not be taken into consideration unless the lessor knew or should have known thereof on the making of the contract.

**Art. 2905.** — 2. *Damages.*

(1) Where the lessor knew or should have known of the defect of the thing at the time of delivery and failed to inform the lessee thereof, he shall be liable for the damage thereby caused to the lessee.

(2) The lessor shall also be liable for the damage caused to the lessee during the currency of the contract through the fault of the former.

**Art. 2906.** — 3. *Relation with rescission.*

(1) The damages provided in Art. 2905 are independent of the rescission of the contract.

(2) They may be awarded notwithstanding that the contract is not rescinded.

(3) They may be awarded where rescission is ordered, in particular with a view to compensating the damage resulting from rescission.

**Art. 2907.** — 4. *Apparent defect.*

The lessee may not exercise his rights under the preceding Articles where the defect on which his claim is based is apparent or where he knew or should have known of the defect on the making of the contract.

**Art. 2908.** — 5. *Dangerous defect.*

(1) Where the thing is in such a state as to constitute a serious danger to the life or health of the lessee or of those who reside with him or of his employees, the lessee may require the rescission of the contract even in a case of an apparent defect or of a defect of which the lessee knew at the time of the contract.

(2) Any stipulation to the contrary shall be of no effect.

**Art. 2909.** — 6. *Agreement of exemption from liability.*

Any stipulation whereby the lessor excludes or limits the liability which he incurs as a consequence of the defects of the thing shall be of no effect where the lessor has in bad faith failed to mention the defects or the defects are such as to render the thing completely useless for the lessee.

**Art. 2910.** — 7. *Contractual warranty.*

(1) The lessee may require the rescission of the contract and compensation for the loss sustained by him where the thing given on lease does not have or ceases to have a quality the existence of which has been expressly warranted by the lessor.

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(2) The limitations made to such right by the preceding Articles may not be invoked by the lessor.

Art. 2911. — *Peaceful enjoyment of immovable.*

The lessor shall warrant to the lessee the peaceful enjoyment of the immovable during the currency of the lease.

Art. 2912. — *Alteration of immovable.*

The lessor may not, during the currency of the lease, make any alterations in the immovable without the consent of the lessee.

Art. 2913. — *Claims of third parties on the immovable.*

(1) Where a third party claims the ownership of the immovable let or claims to have any right thereon, the lessee shall immediately inform the lessor of such claim.

(2) Where the third party institutes proceedings, the lessee may demand that the proceedings against him be discontinued and that the suit be proceeded with between the third party and the lessor.

(3) Where his enjoyment has been interrupted in consequence of such proceedings, the lessee shall be entitled to a proportional reduction of the rent, where he informed the lessor of the molestation or hindrance.

Art. 2914. — *Mere molestations of fact.*

(1) The lessor shall not warrant the lessee against molestations to his possession by third parties who do not claim to have any right on the immovable.

(2) The lessee may take action in his own name against such third parties.

Art. 2915. — *Burdens and taxes.*

The lessor shall pay the burdens and taxes charging the immovable.

Art. 2916. — *Repairs.* — 1. *Duties of lessor.*

The lessor shall maintain the immovable in good condition and make therein during the currency of the lease such repairs as are necessary and are not repairs incumbent upon the lessee.

Art. 2917. — 2. *Duty to give notice to lessor.*

Where the thing let requires, for its preservation or maintenance, expenses which are not incumbent upon the lessee, the latter shall inform the lessor of such requirement.

Art. 2918. — 3. *Duty to suffer repairs.*

Where, during the currency of the lease, the thing let requires repairs which cannot be delayed until the expiration of the lease, the lessee shall suffer them, whatever the inconvenience which they cause him and notwithstanding that he may be deprived of a part of the immovable let during their execution.

Art. 2919. — 4. *Limitation of duty of lessor.*

The lessor may not be compelled to carry out the repairs which are at his charge, where their cost is higher than the rent which he is to receive from the immovable in the course of three years of lease.

Art. 2920. — 5. *Sanction of duties of lessor.*

(1) Where repairs which are necessary to ensure the enjoyment and which are at the charge of the lessor are not executed without delay by the latter, the lessee may have them executed at his expense and retain their cost, with legal interest thereon, from the rent payable by him.

(2) The lessee may, where he prefers to do so, according to circumstances, claim damages from the lessor and, where appropriate, the termination of the lease.

Art. 2921. — *Enjoyment of immovable by lessee.*

(1) The lessee shall use the immovable let with all necessary care and according to the purpose which has been given to it in the lease.

(2) In particular, he may not make in the immovable or in the mode of its exploitation any important alteration the effects of which extend beyond the period of the lease.

Art. 2922. — *Control by lessor.*

(1) The lessor may at any time satisfy himself that the lessee fulfills his obligations.

(2) Such control shall be exercised reasonably, without causing an excessive inconvenience to the lessee and without assuming a vexatious character.

Art. 2923. — *Payment of rent.*

(1) The lessee shall pay the rent at the times fixed by the contract.

(2) In default of a stipulation in the contract, he shall pay it at the times fixed by the law.

Art. 2924. — *Right of retention of lessor.* — 1. *Principle.*

The lessor shall have a right of retention on the movables which furnish the immovable let and which serve either for its fitting up or for its

use, as a security for the rent in respect of the year which has elapsed and of the current period of six months.

Art. 2925. — 2. *Movables affected.*

(1) The right of retention shall not affect those things which the lessor has known or should have known not to be the property of the lessee.

(2) Where the lessor comes to know only during the currency of the lease that some movables brought by the lessee are not the property of the latter, his right of retention on such movables shall lapse unless he gives notice for the termination of the contract for the next following term of the lease.

Art. 2926. — 3. *Effect.*

(1) By virtue of his right of retention, the lessor may, with the authorisation of the court, compel the lessee to leave in the immovable let as many movables as are necessary to guarantee the rent.

(2) The things taken away secretly or with violence shall continue to be subject to the settlement of the preferential claims of the lessor, where the latter attaches them within ten days after they have been removed.

Art. 2927. — *Duration of contract.*

(1) The lease of an immovable may be made for a determinate or an indeterminate period.

(2) It may not be made for more than sixty years.

(3) A lease of an immovable made for a period of more than sixty years shall be deemed to have been made for sixty years.

Art. 2928. — *Death of lessor or lessee.*

(1) A contract of lease shall not terminate upon the death of the lessor or lessee or upon either of them becoming incapable.

(2) Nothing shall affect the special provisions relating to the lease of lands and those of the Commercial Code relating to the bankruptcy of the lessee.

Art. 2929. — *Loss of immovable let.*

(1) Where, during the currency of the lease, the immovable let is totally destroyed by fortuitous event, the lease shall terminate as of right.

(2) Where the immovable is only partly destroyed, the lessee may, according to circumstances, require a reduction of the rent or the termination of the lease.

(3) No compensation shall be payable in either case.

**Art. 2930.** — *Lessor failing to fulfil his obligations.*

(1) The lessee may require the termination of the lease, where the lessor fails to fulfil his obligations in such a manner that the use or enjoyment of the immovable is thereby notably diminished.

(2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfilment of obligations on the part of the lessor causes to him.

**Art. 2931.** — *Lessee failing to fulfil his obligations.*

(1) The lessor may require the termination of the lease, where the lessee fails to fulfil his obligations so that the rights of the lessor are endangered.

(2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfilment of obligations on the part of the lessee causes to him.

**Art. 2932.** — *Lease set up against purchaser of immovable.* — 1. *Principle.*

(1) Unless otherwise expressly agreed between the lessor and the lessee, a contract of lease may be set up against a third party who acquires the ownership or usufruct of the immovable given on lease after the delivery of the immovable to the lessee.

(2) Nothing shall affect the case where the immovable has been expropriated by the public authorities.

**Art. 2933.** — 2. *Lease not registered in registers of immovable property.*

(1) The person who acquires the immovable may regard the lease as having been made for an indeterminate period, where it has not been registered in the registers of immovable property in the place where the immovable is situate.

(2) Where the date of the lease is certain, the lessee may set it up against the purchaser during five years from the purchaser having registered his contract in the registers of immovable property.

**Art. 2934.** — *Stipulation relating to such case.* — 1. *Effect.*

(1) Where the lessor and the lessee have agreed that the person who acquires the immovable may terminate the lease, the person acquiring the immovable shall, within three months from the lessee having required him to do so, inform the latter whether or not he intends to terminate the lease.

(2) The person who acquires the immovable shall lose such right where he fails to exercise it within such period.

Art. 2935. — 2. *Sale with reservation of right of redemption.*

The person who acquires an immovable subject to a right of redemption may not make use of the right to expel the lessee until such time as he becomes the absolute owner by the expiry of the period fixed for the redemption.

Art. 2936. — *Duty to restore thing.* — 1. *Principle.*

(1) The lessee shall, at the end of the lease, restore to the lessor the immovable given on lease.

(2) He shall also restore in kind to the lessor all the things which he has received with the immovable and which still exist in kind.

Art. 2937. — 2. *Conformity with statement or inventory.*

Where a statement showing the condition of the tenement or an inventory has been made by the lessor and the lessee, the latter shall restore the thing as he has received it, according to such statement or inventory.

Art. 2938. — 3. *Absence of statement or inventory.*

(1) Where a statement showing the condition of the tenement has not been drawn up conjointly by the parties, the lessee shall be deemed to have received the immovable in good condition.

(2) Where an inventory has not been drawn up conjointly by the parties, the immovable shall be deemed not to have comprised any accessories.

(3) Evidence shall be admitted to rebut such presumption.

Art. 2939. — 4. *Power of the court.*

Where a statement showing the condition of the tenement or an inventory has been drawn up unilaterally by one of the parties and has not been approved by the other, the court shall give to such statement or inventory the credit which, in the circumstances, it thinks it deserves.

Art. 2940. — *Loss or deterioration of thing.*

(1) The lessee shall be liable where the thing is lost or deteriorates after he has received it.

(2) He shall be liable in particular where the loss or deterioration is caused by a person of his household or by a person he has admitted to the immovable.

Art. 2941. — *Limit of liability.*

(1) The lessee shall not be liable where he proves that the loss or deterioration is due to the fault of the lessor or to a fortuitous event.

(2) He shall not be liable where he proves that the loss or deterioration is due to old age or to some other defect of the thing given on lease.

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(3) He shall not be liable where the deterioration is due to normal and lawful use of the thing given on lease.

Art. 2942. — *Lessee in default.*

Where the lessee has been called upon to restore the thing, he shall be liable unless he proves that the thing would have been lost or deteriorated, had he restored it to the lessor at the time required.

Art. 2943. — *Amount of damages.*

(1) Where the things which are not restored have been valued conjointly by the parties, the lessee shall be bound by the amount of such valuation.

(2) The lessor may obtain additional damages where he proves that the lessee has alienated such things at a price higher than the amount of the valuation.

(3) The provisions of sub-art. (2) shall not apply where the alienation of the thing by the lessee amounted to an act of management according to the common intention of the lessor and lessee at the time of the conclusion of the contract of lease.

Art. 2944. — *Case of rescission attributable to the lessee.*

The lessee, where rescission is caused by his fault, shall pay the rent during the time required to re-let the immovable without prejudice to the damages which may have been caused by the abuse.

## Section 2. Special rules regarding the lease of houses

Art. 2945. — *Scope of this Section.*

(1) The provisions of this Section shall apply where the contract of lease relates to a house, furnished or unfurnished, a flat, a room or some other building or part of a building.

(2) Nothing shall affect the provisions governing contracts relating to hotels in the Title of this Code relating to "Contracts for the performance of services" (Art. 2653-2671).

Art. 2946. — *Model contracts.*

(1) Model contracts for the lease of houses or flats situate within the territory of a particular commune may be drawn up by the municipal authorities.

(2) Individual contracts relating to such houses or flats shall be deemed to have been made on the terms laid down in such model contracts.

(3) They may depart from such terms by express stipulations.

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Art. 2947. — *Lease of part of immovable.* — 1. *Duties of lessor.*

(1) Where part only of an immovable is given on lease to a lessee, the lessor shall, on giving on lease the other part of the immovable, take into consideration the interests of the lessee according to custom and the nature of the immovable.

(2) The lessor shall comply with the provisions of sub-art. (1) as regards both the selection of the other lessees and the provisions to be included in the contracts made with them.

Art. 2948. — 2. *Duties of lessee.*

(1) The lessee shall have the consideration which is due to the other persons who dwell in the house a part of which has been given to him on lease.

(2) The lessor may require the termination of the lease where the lessee or other persons living with him or whom he admits to the immovable, behave in such a manner that they disturb the other lessees in the enjoyment of the immovable.

(3) Nothing shall affect the right of such other lessees or of the lessor to claim damages in compensation of the damage caused to them.

Art. 2949. — *Duty to furnish immovable given on lease.*

(1) The lessee shall furnish the immovable given on lease in conformity with its nature and according to the custom of the place.

(2) The provisions of sub-art. (1) shall not apply where the lessee has taken on lease furnished premises or paid a term of rent in advance or given a security or other guarantee for such payment.

Art. 2950. — *Amount of rent.*

(1) The amount of the rent shall be fixed freely by agreement between the parties.

(2) In case of doubt, it shall be fixed in conformity with the tariffs established by the municipal authorities or, failing such tariffs, in conformity with the custom of the place.

Art. 2951. — *When the rent falls due.*

(1) Unless otherwise agreed, the rent shall be paid at the end of each quarter where the lease has been made for one or more years.

(2) It shall be paid at the end of each month, where the lease is of a shorter duration or made for an indeterminate period.

(3) The rent shall in all cases be paid on the expiry of the lease.

Art. 2952. — *Delay of lessee.*

(1) Where the lessee is late in paying a term of rent which has fallen due, the lessor may give him a period of thirty days where the lease is for a year or more, and a period of fifteen days where the lease is for a shorter period, informing him that, in default of payment, the contract shall be terminated at the end of that period.

(2) The period shall run from the day when the lessee has received the notice of the lessor.

(3) Any stipulation reducing such periods or giving to the lessor the right to terminate the lease forthwith on account of a failure in the payment of rent shall be of no effect.

Art. 2953. — *Repairs incumbent upon lessee.* — 1. *Duties of lessee.*

The lessee shall carry out at his expense the repairs which are incumbent upon him.

Art. 2954. — 2. *Which repairs are incumbent upon lessee.*

(1) The repairs which in the contract of lease are placed at the charge of the lessee shall be deemed to be repairs incumbent upon him.

(2) Unless otherwise agreed, repairs necessary to the doors, windows, floorboards, tiling, taps and water-drains shall be deemed to be repairs incumbent upon the lessee.

(3) The works of cleaning and maintenance which become necessary by the enjoyment of the thing shall also be deemed to be repairs incumbent upon the lessee.

Art. 2955. — *Old age or force majeure.*

(1) No repairs which are deemed to be incumbent upon the lessee shall be at the charge of the lessee where they are occasioned only by old age or force majeure.

(2) The contract of lease may derogate such rule by an express stipulation.

Art. 2956. — *Deprivation of enjoyment due to repairs.*

(1) Where the repairs which the lessor carries out on the immovable during the lease take more than fifteen days, the rent shall be reduced in proportion to the time and to the portion of the thing let of which the lessee is deprived.

(2) Where the repairs are of such a nature as to render uninhabitable what is necessary for the accommodation of the lessee and his family, the lessee may require the termination of the lease.

Art. 2957. — *Sub-lease.* — 1. *Principle.*

(1) The lessee may sub-let all or part of the immovable let to him.

(2) Prior to sub-letting, he shall give notice of his intention to the lessor and ask him whether he has any objection to such sub-lease.

Art. 2958. — 2. *Objection by lessor.*

(1) The lessor may object to such sub-lease where it is contrary to contractual undertakings made by him in favour of other lessees of the same immovable or is of such nature as to cause to him damage for any other reason.

(2) The lessee may in such case terminate the contract.

(3) Nothing shall affect the right of the lessor to claim damages where the reason of his opposition was known or should have been known by the lessee on the making of the contract.

Art. 2959. — 3. *Provision restricting right to sub-let.*

(1) A contract of lease may prohibit the sub-lease of the immovable or make such sub-lease conditional on the acceptance of the sub-lessee by the lessor.

(2) Where, under the contract of lease, the sub-lease of an immovable is made conditional on the acceptance of the sub-lessee by the lessor, the lessee may demand the termination of the lease where the lessor arbitrarily refuses his consent to the sub-lease.

Art. 2960. — 4. *Duties of lessee.*

(1) A lessee who has sub-let all or part of the immovable shall remain bound, in his relations with the lessor, by all the obligations which, by virtue of the contract of lease, have to be performed by him.

(2) The provisions of sub-art. (1) shall apply notwithstanding that the lessor has given his consent to the sub-lease.

(3) The lessee shall not be released from such obligations unless such release has been expressly stipulated between the lessor and himself.

Art. 2961. — 5. *Duties of sub-lessee.*

(1) The sub-lessee shall comply with the provisions of the principal lease concerning the enjoyment of the immovable given on lease.

(2) The lessor may take action directly against the sub-lessee to enforce compliance with such provisions.

(3) Where the sub-lessee did not know of such provisions or was dispensed by the lessee from observing them, he shall have recourse against the lessee.

Art. 2962. — 6. *Direct action of lessor.*

(1) The sub-lessee shall be liable only up to the amount of rent payable in respect of what has been sub-let to him.

(2) The lessor may require the sub-lessee to pay such rent directly to him.

(3) The sub-lessee may not set up against the lessor the payment made by him in advance, with the exception of the payments made in respect of the current term of the principal lease.

Art. 2963. — 7. *Right of retention.*

The right of retention of the lessor may be exercised by the lessor and by the lessee on the movables brought in the immovable by the sub-lessee.

Art. 2964. — 8. *Termination of principal lease.*

(1) The termination of the principal lease shall bring the contract of sub-lease to an end.

(2) Where the lessor has expressly consented to the sub-lease, the sub-lessee may substitute himself for the lessee for the execution of the principal lease.

Art. 2965. — *Termination of contract of lease for a determinate period.*

A contract of lease made for a determinate period shall terminate as of right on the expiration of the period agreed upon without the necessity of giving notice.

Art. 2966. — *Termination of lease for an indeterminate period.*

(1) Where the contract of lease has not been made for a determinate period, notice may be given by the lessor to the lessee or by the lessee to the lessor.

(2) In such case, the contract shall terminate on the day when, under the contact or the law, the second term of rent becomes or would have become exigible, had notice of termination not been given.

Art. 2967. — *Person acquiring the immovable.*

(1) Where a person who acquires the immovable wishes to terminate the lease, in the case where such right has been reserved to him, he shall observe the period laid down in Art. 2966.

(2) Any stipulation to the contrary shall be of no effect.

Art. 2968. — *Renewal of contract.*

(1) Where, at the expiration of the lease, the lessee continues in the enjoyment of the thing with the knowledge and without the opposition of the lessor, the contract of lease shall be renewed for an indeterminate period.

(2) The rights and duties of the parties for the further duration of the lease shall be governed by the provisions of the previous contract.

(3) The security given for the original lease shall however be released.

Art. 2969. — *Retaking of immovable by lessor.*

(1) Unless otherwise agreed, the lessor may not terminate the lease, notwithstanding that he declares that he himself wants to occupy the house let.

(2) Where it has been agreed in the contract of lease that the lessor may occupy the house, he shall give to the lessee notice to quit and shall observe the period laid down in Art. 2966.

Art. 2970. — *Fire on immovable.* — 1. *Principle.*

The lessee shall be liable for fire to the lessor unless he proves that the fire was due to force majeure or a defect of construction or started in a neighbouring house.

Art. 2971. — 2. *Several lessees.*

(1) Where there are several lessees, they shall all be liable, in case of fire, in proportion to the rental value of the part of the immovable which they occupy.

(2) Where it is proved that the fire has started in the dwelling of one of them, he alone shall be liable for it.

(3) Where some lessees prove that the fire could not have started in their dwellings, such lessees shall not be liable for it.

Art. 2972. — 3. *Immovable partly inhabited by lessor.*

(1) The provisions of Art. 2971 shall also apply where the lessor dwells in a part of the immovable which has caught fire.

(2) In such case, the lessor shall be treated as though he himself were the lessee on that part of the immovable.

Art. 2973. — *Improvements made in immovable.* — 1. *Right to indemnity.*

(1) The lessee shall not be entitled to compensation for improvements which he has made in the immovable without the consent of the lessor.

(2) Where the improvements have been made with the consent of the lessor, the lessee may claim the reimbursement of the lesser sum between the amount of expenses made by him and the increase in the value of the immovable, as at the time of the restoration.

Art. 2974. — 2. *Set-off and right of removal.*

(1) Even where the lessee is not entitled to compensation, he may set off the increase in value procured by him to the immovable against the

decrease in value that such immovable has sustained as a consequence of deteriorations for which he is liable but which have been caused without any fault on his part.

(2) The lessee may also remove the improvements which he has made in the immovable where this can be done without damage to the immovable.

## Section 3. Special rules regarding the lease of lands

Art. 2975. — *Scope of this Section.*

(1) The provisions of this Section shall apply where the contract of lease relates to a piece of land which the lessee undertakes to exploit.

(2) The parties may in their contract derogate such rules unless such derogation is expressly prohibited by law.

Art. 2976. — *Model contracts.*

(1) Model contracts may be drawn up by the Ministry of Agriculture, concerning lands intended for certain kinds of cultivation or lands situate in certain areas of Ethiopia.

(2) Individual contracts regarding the lands to which such model contracts relate shall be deemed to have been made on the terms laid down in such model contracts.

(3) They may derogate them by express stipulations.

Art. 2977. — *Direction of exploitation.* — 1. *To whom it pertains.*

(1) The direction of the exploitation shall be ensured in accordance with the agreement of the parties.

(2) Unless otherwise agreed or provided by custom, it shall pertain to the lessor where the rent consists, exclusively or principally, of a determinate part of the products or of determinate products of the land given on lease.

(3) Unless otherwise agreed or provided by custom, it shall pertain to the lessee where the rent consists, exclusively or principally, of a sum of money which is to be paid in cash to the lessor.

Art. 2978. — 2. *Rights of other party.*

(1) The other party shall be consulted where the decisions which are contemplated are of such a nature that their effects shall continue after the end of the lease.

(2) Such party may and shall take a decision instead of the other contracting party where the latter has not informed him of his decision in good time and such decision may not be delayed without serious inconvenience.

Art. 2979. — *Obligation of exploiting.*

(1) A farmer-tenant shall exploit the land and keep it in a good state of productivity.

(2) The lessor may require the rescission of the lease where the farmer-tenant does not fulfil such obligation.

Art. 2980. — *Nature and manner of cultivation.*

The contracting party who has the direction of the exploitation shall decide on the nature and manner of the cultivation to be undertaken.

Art. 2981. — *Time of works.*

(1) The farmer-tenant shall in any case decide on the time when he will do the works of cultivation or other works.

(2) The lessor may only make to him recommendations in this regard.

Art. 2982. — *Expenses of exploitation.*

(1) The ordinary expenses arising from the exploitation shall be borne by the farmer-tenant.

(2) Where the rent consists of a part of the products or determinate products of the land, the lessor shall advance to the farmer-tenant such expenses, without interest, where the latter is unable to meet such expenses.

(3) The advance so made shall be reimbursed to the lessor out of the products of the next crop.

Art. 2983. — *Repairs and maintenance.*

(1) The farmer-tenant shall make on premises to be used as dwellings, barns, stables and other buildings given to him on lease such repairs as are incumbent upon the lessee under Section 2 of this Chapter.

(2) He shall maintain according to local custom the roads, wells, fences, ditches, canals and dikes included in the tenement given on lease.

Art. 2984. — *Old age or force majeure.*

(1) The repairs referred to in Art. 2983 shall be made by the farmer-tenant notwithstanding that they are caused by old age or force majeure.

(2) The farmer-tenant shall replace the implements or tools of small value which have perished by old age or force majeure.

Art. 2985. — *Extraordinary expenses.*

The farmer-tenant shall not be bound to make extraordinary expenses for the purpose of reconstructing the tenement following an exceptional disaster.

Art. 2986. — *Exchange of parcels of lands.*

(1) The party who has the direction of the exploitation may, in order to facilitate such exploitation, exchange parcels of land with other owners or farmer-tenants.

(2) Where such exchanges are made by the farmer-tenant, they shall affect only the enjoyment of such parcels.

(3) They shall as of right cease to have effect at the end of the lease, unless they have been decided upon by the lessor or the lessor has given his consent thereto.

Art. 2987. — *Management of tenement.*

The farmer-tenant may destroy the slopes, trenches or fences which are an obstacle to the rational exploitation of the tenement given on lease.

Art. 2988. — *Kinds of rent.*

(1) The rent may consist of a fixed sum of money, or of a fixed quantity of agricultural products, or of a sum of money which varies according to the current price of certain agricultural products.

(2) The rent may also consist of a fixed share of the agricultural products or of various agricultural products of the land given on lease.

Art. 2989. — *Amount of rent.*

The amount of the rent shall be fixed by agreement between the parties.

Art. 2990. — *Legal presumptions.*

(1) Unless otherwise provided by custom, the rent shall consist of one half of the agricultural products of the land given on lease.

(2) Unless otherwise provided by custom, the products shall be shared in kind between the lessor and the farmer-tenant.

(3) Before any partition, the farmer-tenant may retain the seeds necessary for the next crop.

Art. 2991. — *Legal maximum.*

(1) The share of the products due to the lessor may in no case exceed three fourths.

(2) Where a greater share has been stipulated, such stipulation shall be of no effect and the products shall be divided equally between the lessor and the farmer-tenant.

Art. 2992. — *Products necessary for subsistence.* — 1. *Principle.*

(1) The farmer-tenant may in any case keep such part of the products as is necessary for his subsistence and that of the persons living with him.

(2) The provisions of sub-art. (1) shall not apply where the products are equally necessary for the subsistence of the lessor and of those who live with him.

(3) In such case, the products shall be divided equally between the lessor and the farmer-tenant.

Art. 2993. — 2. *Reservation of rights of lessor.*

Where, by applying the provisions of Art. 2992, the lessor has not received the whole part which is due to him, he shall exercise his rights on the next crop.

Art. 2994. — *Crops.*

(1) Where the rent consists of a portion of the crops or is fixed having regard to such crops, the farmer-tenant shall, as far as possible, inform the lessor, before gathering the crops.

(2) He shall ensure the custody and preservation of such crops until such part thereof as is under the contract to be given to the lessor has been delivered to him.

Art. 2995. — *Rent when to be paid.* — 1. *Principle.*

(1) The rent shall be paid at the end of each year of lease where it consists of an amount of money or of a predetermined quantity of agricultural products.

(2) The year of the lease shall begin on the day when the lessor has delivered the immovable to the farmer-tenant.

Art. 2996. — 2. *Default of farmer-tenant.*

(1) Where the farmer-tenant is late in the payment of a term fallen due, the lessor may give him a period of sixty days, informing him that, in default of payment, the contract shall terminate at the end of that period.

(2) Such period shall run from the day when the farmer-tenant has received the notice of the lessor.

(3) Any stipulation or custom reducing such period or giving to the lessor the right to terminate the lease immediately by reason of failure in the payment of rent shall be of no effect.

Art. 2997. — 3. *Rent consisting of products.*

(1) Where the rent consists of a determinate share of the products, or of determinate products of the tenement given on lease, the part due to the lessor shall be delivered to him upon his requiring so, after the products have been separated from the ground.

(2) Nothing shall affect any custom to the contrary.

Art. 2998. — *Revision of rent.* — 1. *Principle.*

(1) Where the rent consists of a sum of money or of a quantity of agricultural products determined beforehand, the farmer-tenant may require a remission of part of his debt or time for the payment of such debt where, in consequence of an invasion of locust, an exceptional drought or other extraordinary accidents or disasters of the same nature, the yield of a given year has diminished by at least one half in comparison with the normal yield.

(2) Any stipulation or custom to the contrary shall be of no effect.

Art. 2999. — 2. *Exceptions.*

(1) The farmer-tenant may not obtain any remission where the loss of the crops takes place after they have been separated from the ground.

(2) The farmer-tenant may not require a remission where the cause of the damage existed and was known on the making of the contract.

(3) He may not require a remission where the damage suffered by him is covered by an insurance or otherwise.

Art. 3000. — 3. *Amount of remission.*

(1) For the purpose of fixing the amount of the remission which the farmer-tenant may require, regard shall be had to the usual yield and the importance of the loss which has been sustained.

(2) Regard shall also be had to the profits which the farmer-tenant made on the crops of the preceding years or which he can expect to make during the years of the lease which are still to run.

(3) The court shall not alter the terms of the contract unless equity so requires and to the extent necessary to enable the farmer-tenant and his family to live and to continue the exploitation.

Art. 3001. — *Sub-lease.* — 1. *Principle.*

(1) Unless otherwise provided by custom, the farmer-tenant may not sub-let without the consent of the lessor.

(2) He may require the rescission of the lease where the lessor arbitrarily refuses to consent to the sub-lease.

Art. 3002. — 2. *Exception.*

(1) The farmer-tenant may sub-let buildings which appertain to the thing given on lease, where no change prejudicial to the lessor arises therefrom.

(2) The provisions of Section 2 of this Chapter concerning sub-leases shall apply in such case as well as where the lessor agrees to the sub-lease.

Art. 3003. — *Termination of contract.* — 1. *Principle.*

(1) A contract of lease shall terminate at the expiration of the period fixed, provided that notice has been given by one party to the other at least six months before that date.

(2) Nothing shall affect any custom to the contrary.

Art. 3004. — 2. *Renewal of lease.*

(1) Unless otherwise provided by custom, the contract of lease shall be renewed for four years where notice as provided in Art. 3003 has not been given or where, notwithstanding such notice, the farmer-tenant remains in the enjoyment of the thing with the knowledge and without opposition of the lessor.

(2) The rights and obligations of the parties under the renewed contract shall be settled in accordance with the terms of the previous contract.

(3) The security given for the original lease shall however be released.

Art. 3005. — 3. *Contracts of long duration.*

(1) Where the contract of lease has been made for a lifetime or for a period exceeding ten years, the farmer-tenant may unilaterally alter such provision as to time where ten years have elapsed from the land having been delivered to him.

(2) In such case, the contract of lease shall terminate on the first day of Megabit, four years after the lessor has received notice of the intention of the farmer-tenant to terminate the contract.

(3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3006. — 4. *Lease for an indeterminate period.*

(1) A lease made without an indication of its duration shall be deemed to have been made for four years to be reckoned from the day when the farmer-tenant entered in possession of the tenement.

(2) Nothing shall affect any custom to the contrary.

Art. 3007. — 5. *Transfer of immovable.*

(1) Where a person acquiring the immovable intends to terminate the lease, such right having been reserved in his favour, he shall give notice to the farmer-tenant within three months from the acquisition made by him.

(2) The lease shall terminate on the first day of Megabit which follows but not less than three months from the day when such notice has been given.

(3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3008. — 6. *Right of farmer-tenant.*

(1) The farmer-tenant to whom notice has been given may advance the day on which the contract terminates by giving notice of his intention to the lessor or to the person who has acquired the immovable.

(2) In such case, the contract shall terminate on the day fixed by the farmer-tenant a month, at the earliest, after the lessor or the person who has acquired the immovable has received notice of the intention of the farmer-tenant.

Art. 3009. — *Death of farmer-tenant or lessor.*

(1) In case of death of the farmer-tenant, his heirs may terminate the contract of lease by giving notice to the lessor within six months from the death.

(2) In case of death of the lessor, the farmer-tenant may terminate the contract of lease by giving notice to the heirs of the lessor within six months from the death of the latter, where the direction of the exploitation has been reserved to the lessor by the contract of lease.

(3) In the cases mentioned in sub-art. (1) and (2), the contract shall terminate on the first day of Megabit which follows but not less than three months after the lessor or his heirs have received the notice from the farmer-tenant or from the heirs of the farmer-tenant.

Art. 3010. — *Illness of farmer-tenant.* — 1. *Right of farmer-tenant.*

(1) The farmer-tenant may terminate the lease before the time fixed by the contract or by law where an illness affecting him or a member of his family prevents him from continuing the exploitation in a normal manner.

(2) The farmer-tenant shall not be liable to pay compensation where he avails himself of such right.

(3) The contract shall terminate six months after the lessor has received the notice from the farmer-tenant.

Art. 3011. — 2. *Right of lessor.*

(1) Where the rent consists of a determinate share of the products, or of determinate products of the tenement, the lessor may terminate the lease before the time fixed by the contract or by law, where an illness affecting the farmer-tenant or a member of the family of the farmer-tenant prevents him from continuing the exploitation in a normal manner.

(2) Where the lessor avails himself of such right, he shall pay to the farmer-tenant compensation equal to a moiety of the average rent of one year.

(3) The contract shall terminate six months after the farmer-tenant has received the notice of the lessor.

Art. 3012. — *Fire.*

The provisions of Section 2 of this Chapter regarding the destruction or deterioration by fire of the thing let shall apply to the dwelling places and other buildings which form part of the immovable let to the farmer-tenant.

Art. 3013. — *Settlement at the end of the contract.* — 1. *Stable-litter, forage and manure.*

(1) The outgoing farmer-tenant shall leave the stable-litter, forage and manure of the last year, in the quantity required for the normal exploitation of the tenement.

(2) Where, on entering in possession of the tenement, he received a smaller quantity, he shall be entitled to compensation in respect of the difference.

(3) Unless otherwise provided by custom, he shall pay compensation in respect of the difference where he received more.

Art. 3014. — 2. *Seeds.*

Unless otherwise provided by custom, the outgoing farmer-tenant shall not be bound to leave seeds for the next crop.

Art. 3015. — 3. *Expenses of cultivation.*

(1) The farmer-tenant shall not be entitled to the fruits which, at the termination of the contract, are still undetached.

(2) The court may, where equity so requires, grant him compensation for the expenses of cultivation incurred by him.

(3) Such compensation may not exceed the value of the fruits from which the lessor derives a benefit.

Art. 3016. — *Improvements made in tenement.* — 1. *Principle.*

(1) Whatever the reason for the termination of the lease, the lessee who, by his work or at his expense, has made improvements in the tenement let shall be entitled to compensation at the end of the lease.

(2) The farmer-tenant shall also be entitled to compensation where he has erected constructions on the tenement given on lease.

(3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3017. — 2. *Amount of compensation.*

(1) The compensation due shall be equal to the increase in the rental value of the tenement for nine years resulting from the improvements or constructions.

(2) The court may grant the lessor a period of time for the payment of such compensation.

Art. 3018. — 3. *Right of removal.*

The farmer-tenant may, where he so prefers, remove the improvements or destroy the constructions which he has made, where this can be done without damaging the immovable.

## Chapter 3. Contract of work and labour relating to immovables

Art. 3019. — *Applicable provisions.*

(1) The provisions of this Chapter shall apply to contracts of work and labour relating to work to be done in connection with the building, repair or installation of immovables.

(2) The provisions relating to contracts of work and labour laid down in the Title of this Code relating to "Contracts for the performance of services" shall also apply where they are not inconsistent with those of this Chapter (Art. 2610-2631).

Art. 3020. — *Making and proof of contract.*

(1) The contract shall be complete where the parties have agreed on the work to be done and on the price.

(2) There shall be evidence of the contract where the contractor has undertaken work to the knowledge of the client or received an advance from the client.

Art. 3021. — *Work to be done.* — 1. *Sufficient description.*

(1) The work to be done may be described by means of a plan, scheme or other document.

(2) The contractor shall in such case comply with the indications given in such documents.

Art. 3022. — 2. *General description.*

(1) Where the work to be done has been described in a general manner, the contract shall be construed in a restrictive manner as regards the importance of such work.

(2) Prior to undertaking a work, the contractor shall, whenever this appears reasonable, satisfy himself that the client agrees to the work to be undertaken.

Art. 3023. — *Provisions as to price.*

(1) The price to be paid by the client may be fixed by way of a lump sum.

(2) An estimate price may be fixed.

(3) Where no lump sum or estimate price is fixed, the price shall be deemed to be fixed having regard to the value of the materials and importance of the work necessary to perform the contract.

Art. 3024. — *Price fixed approximately.*

(1) Where the price has been fixed approximately, the contractor shall carry out the contract as though the price had been fixed by way of a lump sum.

(2) He shall fix the price definitively having regard to the expenses made and difficulties encountered in the performance of the contract but the price so fixed may not exceed by more than twenty per cent the price agreed as approximate price.

(3) Unless otherwise agreed, the client may not demand accounts for the price so fixed nor may he appeal against such price.

Art. 3025. — *Price fixed having regard to expenses and labour.* — 1. *Duty to account.*

(1) Where the price is fixed having regard to the value of the materials and the work necessary for the performance of the contract, the contractor shall, notwithstanding any agreement to the contrary, inform the client of the work already done and expenses already incurred.

(2) Unless otherwise agreed, such information shall be given at the end of each month.

Art. 3026. — 2. *Remuneration of contractor.*

(1) The contractor shall be entitled to the remuneration fixed by agreement between the parties.

(2) In the absence of a specific provision, he may only enter in the accounts given by him to the client wages corresponding to his work.

Art. 3027. — 3. *Rights of client.*

(1) The client may at any time require that the amounts appearing in the accounts of the contractor be checked by experts.

(2) Where the parties have not agreed on the remuneration of the contractor, the client may require that such remuneration be fixed by arbitrators.

Art. 3028. — *Examination of work.*

The client may at any time cause to be examined by experts the progress achieved in the work, the quality of the materials used and of the work completed.

Art. 3029. — *Delivery and payment.*

(1) Payment of the price shall raise the presumption that the work has been examined and accepted by the client.

(2) The provisions of sub-art. (1) shall not apply where the sums paid are to be regarded as instalments on the price.

Art. 3030. — *Partial delivery and payment.*

(1) Where it has been agreed that the work would be carried out by stages, such work shall be examined and delivered on completion of each of such stages.

(2) The contractor may require that part of the price corresponding to the work completed be paid to him on completion of each of such stages.

Art. 3031. — *Alterations required by client.* — 1. *Rights of client.*

The client may demand that alterations be made in the work as originally planned where such alterations can technically be made and are not such as to impair the solidity of the work.

Art. 3032. — 2. *Effect.*

(1) The client may require a reduction in the price as originally agreed where the alterations required by him reduce the expenses of the contractor.

(2) The contractor may require an increase in the price and his remuneration as originally agreed, where the alterations required by the client increase his expenses, work or liability.

(3) Where the parties do not agree, such reduction or increase shall be settled by arbitrators appointed by the parties or, failing such, by the court.

Art. 3033. — 3. *Contractor refusing alterations.*

(1) The contractor may refuse the alterations required by the client where such alterations affect plans, schemes or other documents on which the parties had agreed.

(2) The contractor may also refuse the alterations where they are of such a nature or importance that they constitute a work absolutely different to the agreed work.

(3) The work shall be deemed to be absolutely different to the agreed work where it implies an alteration exceeding by twenty per cent the value at which the original work was or could have been estimated.

Art. 3034. — *Alterations required by contractor.*

(1) Where it appears necessary for technical reasons to make alterations in the work as originally agreed, the contractor shall, except in urgent cases, give notice thereof to the client.

(2) The contractor shall give such notice notwithstanding that the proposed alterations do not result in the client having to pay an increased price.

Art. 3035. — *Termination of contract.*

The client may at any time terminate the contract, notwithstanding that the contractor has committed no fault.

Art. 3036. — *Rights of contractor.* — 1. *Price fixed by way of a lump sum.*

(1) Where the client terminates the contract, the contractor shall be entitled to the lump sum or approximate price agreed.

(2) The amounts saved by the contractor in consequence of the termination of the contract shall be deducted.

(3) Where the price had been fixed approximately, the contractor may increase by not more than twenty per cent the sums due by the client under sub-art. (1) and (2).

Art. 3037. — 2. *Price fixed otherwise.*

(1) Where the price had been fixed having regard to the value of the materials and the work necessary for the performance of the contract, the contractor shall be entitled to the value of the materials used and work carried out before he was informed of the termination of the contract.

(2) The client shall be bound by the contracts made in good faith by the contractor prior to the termination of the contract or shall make good the damage caused to the contractor by the rescission of such contracts.

(3) The contractor shall be entitled to the whole remuneration agreed with the client.

Art. 3038. — *Rescission of contract.*

(1) Where the contract is rescinded by reason of a fault committed by the contractor or his refusing to accept alterations required by the client, the contractor shall be entitled to such part of the price and remuneration as corresponds to the work already carried out.

(2) Nothing shall affect the client's right to claim damages for the prejudice caused to him by the contractor failing to perform his obligations.

Art. 3039. — *Warranty due by contractor.*

(1) The contractor shall guarantee during ten years from its delivery the proper execution and the solidity of the work done by him.

(2) He shall be liable during this period for such loss or deterioration of the work as is due to a defect in its execution or to the nature of the soil on which the work has been done.

(3) Any provision shortening the period laid down in sub-art. (1) or excluding the warranty due by the contractor shall be of no effect.

Art. 3040. — *Claim by sub-contractors or workmen.*

Independent contractors or workmen employed under a contract of work and labour relating to an immovable may claim against the person on whose behalf the work was done with a view to obtaining payment of their claims to the extent of the amount due by the client to the principal contractor on the day the claim is made.

## Chapter 4. Mortgage and antichresis

### Section 1. Creation of mortgage

Art. 3041. — *Mortgage how created.*

A mortgage may result from the law or a judgment or be created by a contract or other private agreement.

Art. 3042. — *Legal mortgage of seller of immovable.*

Whosoever sells an immovable shall have a legal mortgage on such immovable as a security for the payment of the agreed price and for the performance of any other obligation laid down in the contract of sale.

Art. 3043. — *Legal mortgage of co-partitioner.*

(1) A co-partitioner shall have a legal mortgage on the immovables allotted to his co-partitioners in accordance with the act of partition.

(2) Such mortgage shall secure the payment of any compensation in cash that may be due to him or such other compensation as may be due by the co-partitioners where he is dispossessed of any property allotted to him.

Art. 3044. — *Judicial mortgage.*

(1) A court or arbitration tribunal may secure the execution of its judgments, orders or awards by granting one party a mortgage on one or more immovables the property of the other party.

(2) The judgment or award shall specify the amount of the claim secured by mortgage and the immovable or immovables to which such mortgage applies.

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Art. 3045. — *Instrument creating mortgage.*

(1) The contract or other agreement creating a mortgage shall be of no effect unless it is made in writing.

(2) It shall be of no effect unless it specifies in Ethiopian currency the amount of the claim secured by mortgage.

Art. 3046. — *Claim secured by mortgage.*

(1) A mortgage may be created to secure any claim whatsoever, whether existing, future, conditional or contingent.

(2) It may be created to secure a claim embodied in a title to order or to bearer.

Art. 3047. — *Property liable to mortgage.*

(1) A mortgage may charge an immovable only.

(2) Nothing shall affect the provisions of this Code or special laws whereby certain kinds of movables may be mortgaged.

Art. 3048. — *Immovable mortgaged.*

(1) The act creating the mortgage shall clearly specify the immovable mortgaged.

(2) Such act shall specify in particular the commune in which the immovable is situate, the nature of the immovable and, where appropriate, the number of the immovable in the cadastral survey plan.

(3) Where the immovable is situate in an area where there is no cadastral survey plan, not less than two of its boundaries shall be specified.

Art. 3049. — *Conditions for creating a mortgage.*

(1) A mortgage may be created by the debtor or by some other person in favour of the debtor.

(2) A person may not secure his debt by mortgage unless he is entitled to dispose of the immovable for consideration.

(3) A person may secure the debt of another by mortgage where he is entitled to dispose of the immovable gratuitously.

Art. 3050. — *Sanction.*

(1) A mortgage shall be of no effect where it is created by a person who is not entitled to dispose of the immovable as provided in Art. 3049.

(2) It shall not become valid where the mortgagor subsequently acquires the right to dispose of the immovable.

(3) A mortgage shall be of no effect where it relates to future immovables.

Art. 3051. — *Ownership evidenced by title deed.*

(1) A mortgage shall be valid where it is created by a person who is the owner of the immovable under a title deed issued to him by the competent authorities.

(2) It shall be valid notwithstanding that the title deed was issued on the basis of an act which is invalidated, unless the person who avails himself of the mortgage is shown to be in bad faith.

(3) In such cases, the owner who discharged the mortgage shall be compensated by an insurance fund created, in accordance with administrative regulations, by means of the fees charged on delivery of title deeds.

Art. 3052. — *Registration necessary.*

A mortgage, however created, shall not produce any effects except from the day when it is entered in the registers of immovable property at the place where the immovable mortgaged is situate.

Art. 3053. — *Manner of making registration.*

(1) The keeper of the registers of immovable property required to make an entry relating to a mortgage shall make such entry in the manner provided by the Title of this Code relating to "Registers of immovable property" (Art. 1587-1601).

(2) The provisions of the same Title shall apply as regards the correction and alteration of entries (Art.1621-1627).

Art. 3054. — *Costs of registration.*

(1) The costs of registration shall be borne by the debtor.

(2) Whosoever has caused a mortgage to be registered for useful purposes and has advanced the costs of registration shall be refunded by the debtor.

Art. 3055. — *Reduction of claim.*

(1) Where the debtor has discharged one fourth of the debt, he may apply for the entry to be corrected accordingly.

(2) The creditor shall give his consent to the correction.

(3) The fact that part of the debt has been discharged shall not enable the debtor to require that part of the immovable mortgaged be released.

Art. 3056. — *Increase of claim.*

(1) The amount of the claim as specified in the original entry may not be increased by way of a correction made to such entry.

(2) A new entry shall be required to secure such part of the claim as is not covered by the original entry.

Art. 3057. — *Time for making entry.*

(1) An entry relating to a mortgage shall be of no effect where it is made after a third party who is not liable for the payment of the debt has acquired the immovable and registered his rights in the registers of immovable property.

(2) An entry relating to an immovable shall be of no effect where it is made after an action for the attachment of the immovable has been brought and entered in the registers of immovable property or after the mortgagor has been declared bankrupt.

Art. 3058. — *Effect of registration.*

(1) The registration of a mortgage shall be effective for ten years from the day when the entry was made.

(2) The effect of such registration shall continue where, prior to the expiry of the period of ten years, a new entry is made with a view to renewing the first registration.

(3) In such case, the first registration shall be effective for ten years from the day when the new entry was made.

## Section 2. Effect of mortgage

Art. 3059. — *Principle.*

(1) Where the immovable mortgaged is attached by the creditors of the mortgagor, the mortgagee may demand to be paid, out of the proceeds of the sale of the immovable, in priority to any other creditor.

(2) Where the immovable has been sold by the mortgagor, the mortgagee may attach it in the hands of the purchaser whose rights have been registered subsequently to the registration of the mortgage.

(3) The mortgagee shall in addition have all the rights of an ordinary creditor.

Art. 3060. — *Prohibited provisions.*

(1) Any provision whereby the creditor may, after the debt has become due, appropriate or sell the immovable without due regard for the conditions prescribed by law shall be of no effect, notwithstanding that such provision was made after the creation of the mortgage.

(2) Provisions may however be made to the effect that the mortgagor shall, after the debt has become due, transfer the ownership of the immovable to the mortgagee.

Art. 3061. — *Legal proceedings.* — 1. *Jurisdiction.*

Any action relating to the registration of a mortgage or the sale of the mortgaged immovable shall fall within the exclusive jurisdiction of the court of the place where such immovable is situate.

Art. 3062. — 2. *Address for service.*

(1) The mortgagor and the mortgagee shall, on the request of any interested party, specify an address for service at the place where the sittings of the court having jurisdiction are held.

(2) Where they fail to specify such address within one month from having been required to do so, the court shall specify the place where service shall validly be made.

Art. 3063. — 3. *Curator.*

The court may, on the application of any interested party, appoint a curator to a creditor whose name or domicile is unknown, where the personal appearance of such creditor is required by law and urgent decisions are to be made.

Paragraph 1. — Preferential rights of mortgagee

A — *Property to which such rights extend*

Art. 3064. — *Intrinsic elements and accessories.* — 1. *Principle.*

(1) The mortgage shall charge the mortgaged immovable together with its intrinsic elements and accessories.

(2) Any object expressly specified as an accessory in the act creating the mortgage shall be deemed to be an accessory.

(3) Evidence may be adduced to rebut the presumption laid down in sub-art. (2).

Art. 3065. — 2. *Rights of third parties.*

(1) The mortgagee may not enforce his rights on such intrinsic elements or accessories of the mortgaged immovable as have been separated therefrom and transferred to a third party.

(2) In such case, he may only exercise the rights vested in him by Art. 3073, 3074 and 3107 of this Code.

Art. 3066. — *Improvements and buildings.* — 1. *Principle.*

The mortgage shall apply to any improvement made on the mortgaged immovable and to the buildings, plantations and crops made on such immovable.

Art. 3067. — 2. *Prior rights of contractors and suppliers.*

(1) The contractors who built the buildings or made the improvements mentioned in Art. 3066 and the suppliers who supplied the materials, plants, seeds or fertilizers used in the improvements, buildings, plantations or crops shall have priority over mortgagees on such part of the proceeds of the sale of the mortgaged immovable as is necessary to cover the costs of the improvements, buildings, plantations or crops made by them.

(2) In cases of dispute, the court shall settle the amount to be paid in priority.

(3) Where appropriate, the court shall settle how such amount shall be distributed among contractors and suppliers.

Art. 3068. — *Rent.*

(1) Where the mortgaged immovable is leased, the mortgage shall apply to the rent having run from the day when the immovable was attached.

(2) The lessees and farmer-tenants may not validly pay the rent to the owner of the mortgaged immovable after they have been notified of the attachment of the immovable.

Art. 3069. — *Indemnities charged by mortgage.* — 1. *Principle.*

(1) The mortgage shall apply to any insurance compensation or compensation for damages which may be due in cases of loss or deterioration of the immovable.

(2) The mortgage shall also apply to the compensation due to the owner whose immovable is expropriated.

Art. 3070. — 2. *Consent of creditors to payment.*

(1) Insurance or expropriation compensation and compensation for damages may not be paid to the mortgagor unless all the mortgagees who have a registered claim on the immovable agree to such payment.

(2) The mortgagor to whom such compensation is due shall inform all registered creditors of the amount of and reason for compensation and of the name and address of the person liable to pay it.

(3) The creditors shall be deemed to agree to the compensation being paid to the debtor where they fail to declare their objection to the payment within thirty days from having received information as provided in sub-art. (2).

Art. 3071. — 3. *Rights of mortgagor.*

(1) The mortgagor may demand that any compensation not exceeding one thousand Ethiopian dollars be paid to him.

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(2) He may demand that any compensation be paid to him where he undertakes to use it to rebuild or repair the immovable and offers to furnish sureties or securities sufficient to guarantee that he will comply with his undertaking.

(3) He may in any case require that compensation be paid into the hands of a trustee appointed by the court.

Art. 3072. — *Mortgage of bare ownership.*

A mortgage charging the bare ownership of an immovable shall, upon the extinction of the usufruct, extend to the full ownership of such immovable.

Art. 3073. — *Reduction in value of immovable.* — 1. *Due to mortgagor.*

(1) Where the mortgagor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may demand new securities.

(2) Where the mortgagor fails to furnish such securities within the period of time reasonably fixed to him by the mortgagee, the mortgagee may demand that an adequate part of the debt be discharged.

Art. 3074. — 2. *Due to third party acquiring the immovable.*

The mortgagee may exercise against the mortgagor the rights mentioned in Art. 3073 where the value of the immovable mortgaged is reduced or endangered by a third party who has acquired such immovable from the mortgagor.

Art. 3075. — 3. *Other cases.*

The mortgagor may not demand new securities nor that part of the debt be discharged where the actual or possible reduction in the value of the immovable mortgaged is due to causes other than those specified in Art. 3073 and 3074.

B — *Priority of mortgages*

Art. 3076. — *Capital of claim.*

The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of the registered amount of claim.

Art. 3077. — *Interest.*

(1) The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of interest on the claim at the rate fixed in the registration of the mortgage.

(2) The mortgage shall secure the preferential payment of interest to an amount not exceeding two years interest.

(3) It may not be specified in the registration of the mortgage that the mortgage shall secure the payment of interest for a longer period of time.

Art. 3078. — *Necessary expenses and insurance premiums.*

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the necessary expenses made by him for the preservation of the mortgaged immovable and of the insurance premiums due by the owner and which have been paid by the mortgagee.

Art. 3079. — *Costs of attachment proceedings.*

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the normal costs arising from proceedings instituted by him for the attachment of the immovable.

Art. 3080. — *Legal interest.*

(1) Interest at the rate provided by law shall run on the sums specified in Art. 3076-3079 from the day when the immovable was attached.

(2) The mortgage shall secure the payment of such interest until the immovable is sold by auction following attachment.

C — *Plurality of mortgagees*

Art. 3081. — *Principle.*

(1) Where several creditors have a registered claim on the same immovable, they shall rank according to the date on which they have registered their claim.

(2) No regard shall be had to the date on which the claims became certain or exigible.

Art. 3082. — *Creditors registered on the same day.*

Creditors whose claims have been registered on the same day shall rank equally and be paid in proportion to the amount of their claims.

Art. 3083. — *Subrogation.*

(1) Any mortgagee may pay a creditor having priority with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.

(2) The creditor who has paid shall be subrogated to the rights of the creditor whom he has paid.

**Paragraph 2. — Right to follow immovable**

**A — *General provisions***

**Art. 3084. — *Right to transfer ownership of mortgaged immovable.***

(1) He whose immovable is mortgaged shall retain the right to transfer the ownership thereof.

(2) Any provision to the contrary shall be of no effect.

**Art. 3085. — *Right of mortgagee.***

The mortgagee who has registered his mortgage prior to the registration of the deed evidencing the transfer may attach the immovable in the hands of the person who acquired it.

**Art. 3086. — *Effect on original debtor.***

(1) The transfer of the immovable mortgaged shall bring no change in the obligations of the original debtor.

(2) The original debtor shall however be released where the person who acquired the immovable has undertaken to pay the debt, unless the mortgagee informed the original debtor in writing that he would continue to hold him liable.

(3) Such information shall, under pain of loss of right, be given within one year from the mortgagee having been informed of the agreement made between the original debtor and the person who acquired the immovable.

**Art. 3087. — *Indivisibility of mortgage.***

(1) A mortgage is indivisible.

(2) Where part of the immovable mortgaged is alienated or such immovable is divided, each part shall secure the full payment of the debt.

**Art. 3088. — *Creation of rights in rem on immovable mortgaged.***

(1) He whose immovable is mortgaged shall retain the right to charge it with an usufruct, servitudes, mortgages or other rights in rem.

(2) Any provision to the contrary shall be of no effect.

**Art. 3089. — *Rights of creditor.***

(1) Registered rights in rem on an immovable mortgaged shall not affect the mortgagee where such rights have been registered after the mortgagee has registered his mortgage.

(2) The mortgagee may cause the immovable to be sold as though such rights had not been created.

(3) Where the immovable is attached, the beneficiary of the right in rem may demand that the value of such right be paid to him in priority to creditors whose mortgage has been registered subsequently to his own right being registered.

B — *Position of person acquiring the immovable*

Art. 3090. — *Attachment of immovable.* — 1. *Assimilation to suretyship.*

He who acquires an immovable mortgaged may, in his relations with the mortgagee, avail himself of the rights vested in the guarantor by the provisions of the Title of this Code relating to "Contracts in general".

Art. 3091. — 2. *Improvements or buildings.*

(1) He who has acquired an immovable mortgaged and has increased its value by making thereon improvements, buildings, plantations or crops, may require to be paid, out of the proceeds of the sale, an amount corresponding to the increase in the value of the immovable since the day when the transfer of ownership was registered.

(2) Servitudes and other rights in rem which the person who acquired the immovable had on such immovable prior to acquiring it shall give rise to compensation, where they cannot revive.

Art. 3092. — 3. *Loss or deterioration of immovable.*

(1) He who acquires an immovable mortgaged shall not be liable to the mortgagee for the loss or deterioration of the immovable.

(2) He shall however be liable where such loss or deterioration is due to his fault or negligence and occurs after he has been informed that proceedings have been instituted for the attachment of the immovable.

Art. 3093. — 4. *Fruits.*

(1) He who acquires an immovable mortgaged shall not account for the fruits he has collected prior to attachment.

(2) He shall cease to be the owner of such fruits on the day when the immovable is attached in his hands.

Art. 3094. — 5. *Action for warranty.*

(1) Where the immovable is attached in the hands of the person who acquired it, such person may bring an action for warranty against the person from whom he acquired the immovable.

(2) He may bring such action notwithstanding that he acquired the immovable gratuitously.

(3) An action for warranty may not be brought where it is expressly prohibited in writing by the deed evidencing the transfer of ownership.

Art. 3095. — 6. *Subrogation.*

(1) Where the immovable is attached in the hands of the person who acquired it, such person shall be subrogated to the rights of the mortgagee.

(2) He may not avail himself of such subrogation to the detriment of third parties who have acquired for consideration, from the debtor or guarantor, an immovable intended to secure the debt.

Art. 3096. — 7. *Appointment of curator.*

(1) He who acquired the immovable may, where he is not personally liable for the payment of the debt under the mortgage, demand that proceedings for attachment instituted against him be discontinued.

(2) In such case, he may appoint or cause to be appointed by the court a curator against whom the proceedings shall be continued.

(3) The curator shall reside or specify an address for service at the place where the sittings of the court of competent jurisdiction are held.

Art. 3097. — *Voluntary discharge of debt.*

(1) He who acquires an immovable mortgaged may pay a creditor having a registered claim on such immovable with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.

(2) In such case, he shall be subrogated to the rights of such creditor and merger may not be raised against him.

Art. 3098. — *Redemption of mortgage.* — 1. *When possible.*

He who acquires an immovable mortgaged may redeem the mortgage where he is not personally liable for the payment of the debt under the mortgage.

Art. 3099. — 2. *Offer to redeem.*

He who intends to redeem the mortgage shall serve on the registered creditors and on the person from whom he acquired the immovable a document specifying:

(a) the nature and date of the title by virtue of which he acquired the immovable and the date on which he registered his rights; and

(b) any particulars necessary for identifying the immovable, such as the place where such immovable is situate and its number in the cadastral survey plan; and

(c) the price he paid for the immovable or its estimate value, where he acquired it gratuitously; and

(d) an offer to pay such price or value; and

(e) a list of the mortgages registered on the immovable together with the name of the registered creditors, the amount of the claims and the date of registration of the mortgages; and

(f) his address for service at the place where the sittings of the court of competent jurisdiction are held.

Art. 3100. — 3. *Offer may not be withdrawn.*

(1) He who offered to redeem the mortgage shall be bound by his offer for a period of sixty days.

(2) He may not withdraw his offer during this period unless all the persons to whom such offer was made agree to the withdrawal.

Art. 3101. — 4. *Offer accepted.*

(1) The creditors shall be deemed to accept the offer where they do not reject it within sixty days from the day when it was made.

(2) The amount offered shall in such case be distributed among the creditors according to their rank.

Art. 3102. — 5. *Offer rejected.*

(1) Where a creditor refuses the offer, the immovable shall be sold by public auction.

(2) The creditors who have refused the offer shall advance the costs of such sale by auction.

Art. 3103. — 6. *Costs of sale by auction.*

(1) The costs of the sale shall be borne by the purchaser, where the immovable is sold at a price exceeding by ten per cent the price offered under Art. 3099.

(2) In other cases, such costs shall be borne by the creditors who rejected the offer of redemption.

Art. 3104. — 7. *Time for making offer.*

No offer to redeem the mortgage may be made after proceedings for attachment have been instituted and an entry to this effect has been made in the registers of immovable property.

C — *Special provisions applicable to guarantor*

Art. 3105. — *Presumption.*

He who has mortgaged his immovable to secure the debt of another person shall be presumed not to have bound himself on his other property.

Art. 3106. — *Position of guarantor.*

Without prejudice to the provisions of Art. 3107 and 3108, the guarantor shall be assimilated to the person who acquires an immovable mortgaged.

Art. 3107. — *Loss or deterioration of immovable.*

(1) Where the guarantor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may require him to produce new securities.

(2) The mortgagee shall have the same right where the value of the immovable is intentionally or negligently reduced or endangered by a third party who acquired the immovable from the guarantor.

Art. 3108. — *Other differences.*

(1) Where the immovable is attached in his hands, the guarantor may not bring an action against the person from whom he acquired the immovable.

(2) He may not require that proceedings for attachment instituted against him be discontinued.

(3) He may not offer to redeem the mortgage.

## Section 3. Extinction of mortgage

Art. 3109. — *Principle.*

(1) A mortgage shall be extinguished where the registration of the mortgage is cancelled in the registers of immovable property.

(2) The registration shall be cancelled in accordance with the provisions of the Title of this Code relating to "Registers of Immovable Property" (Art. 1630-1636).

Art. 3110. — *Grounds for cancellation.*

Any interested party may require the registration to be cancelled where:

(a) the claim secured by the mortgage is extinguished; or

(b) the mortgagee has renounced his mortgage; or

(c) the immovable mortgaged has been sold by auction and the proceeds of the sale have been distributed among the creditors; or

(d) the amount accepted by the creditors in cases of an offer of redemption has been distributed among the creditors.

Art. 3111. — *Mortgage of usufruct.*

(1) Any interested party may require the cancellation of the registration of the mortgage of an usufruct, where such usufruct is extinguished.

(2) The usufructuary may not renounce the usufruct to the detriment of the mortgagee.

Art. 3112. — *Renunciation of mortgage.*

(1) Where the creditor renounces his mortgage, such renunciation shall be of no effect unless it is made expressly and in writing.

(2) Unless otherwise agreed, such renunciation shall not imply that the mortgagee renounces his claim.

Art. 3113. — *Creditor making subrogation impossible.*

Where the mortgage applies to an immovable which is not the property of the debtor, the cancellation of the registration may be sought where the creditor makes it impossible for the owner of such immovable to be subrogated to the rights of the creditor.

Art. 3114. — *Conditions for cancelling registration.*

(1) No registration shall be cancelled unless the court so orders.

(2) The court shall order cancellation where the creditor agrees in writing to the cancellation.

(3) The creditor shall be liable where he refuses without good cause to agree to the cancellation.

Art. 3115. — *Effect of cancellation.*

(1) Where the registration is cancelled, such cancellation shall benefit the creditors having registered their claims after the entry which is cancelled.

(2) The owner may not create a new mortgage to replace the mortgage the registration of which has been cancelled.

Art. 3116. — *Cancellation made without good cause.*

(1) Where a registration has been cancelled, such registration shall in no case revive, notwithstanding that the cancellation was made without good cause.

(2) The mortgage which has been cancelled without good cause shall be registered again and shall be effective from the day of the new registration.

(3) Nothing shall affect the liability of the person who caused the registration to be cancelled without good cause.

## Section 4. Antichresis

Art. 3117. — *Definition.*

A contract of antichresis is a contract whereby the debtor undertakes to deliver an immovable to his creditor as a security for the performance of his obligations.

Art. 3118. — *Creation of antichresis.* — 1. *Principle.*

Without prejudice to the provisions of Art. 3119, the provisions of this Title relating to the creation of mortgages shall apply to contracts of antichresis.

Art. 3119. — 2. *Special rules.*

(1) Antichresis may be created by contract only.

(2) It may not be created to guarantee a claim embodied in an instrument to order or to bearer.

(3) It may not be created by the bare owner of an immovable.

Art. 3120. — *Relations between parties.*

Without prejudice to the provisions of the following Articles, the provisions of this Code regarding the relations between the lessor and lessee or farmer-tenant shall apply to the relations between the parties under a contract of antichresis.

Art. 3121. — *Delivery of immovable.*

(1) The person having created the antichresis shall deliver the immovable and its accessories to the creditor or such other person as has been specified in the contract.

(2) The antichresis shall have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis.

Art. 3122. — *Warranty against defects.*

(1) The immovable shall be delivered in its condition as on the day of the making of the contract.

(2) The person having created the antichresis shall give no warranty against the defects of such immovable.

(3) He shall only be liable, where he knew of them at the time of the contract and failed to mention them, for such defects of the immovable as seriously endanger the life or health of the possessor of the immovable, of persons living with him or of his employees.

Art. 3123. — *Repairs.*

The person having created the antichresis may not be compelled to make repairs on the immovable.

Art. 3124. — *Interest on claim.*

(1) The creditor under the contract of antichresis shall pay no rent to the person having created the antichresis.

(2) The use the creditor makes of the immovable and the fruits and profits he derives therefrom shall replace interest on the claim.

(3) Any provision whereby the creditor is entitled to interest in addition to such use, fruits and profits shall be of no effect.

Art. 3125. — *No duty to furnish premises.*

The creditor shall be under no obligation to furnish the premises.

Art. 3126. — *Contract relating to land.*

Unless otherwise agreed, where land is given as a security under a contract of antichresis, the creditor shall have the direction of the works.

Art. 3127. — *Assignment of right.*

The creditor may not lease the immovable nor assign his right to a third party without the consent of the person having created the antichresis.

Art. 3128. — *Unilateral termination of antichresis.*

(1) The creditor may at any time renounce his right of antichresis.

(2) Unless otherwise agreed, the creditor may at any time terminate the antichresis by performing the obligation secured by the antichresis.

Art. 3129. — *Relations between creditor and third parties.*

The provisions of this Title relating to the registration and effect of mortgages shall apply to contracts of antichresis.

Art. 3130. — *Extinction of antichresis.*

The provisions of this Title relating to the extinction and stricking out of mortgages shall apply to contracts of antichresis.

## TITLE XIX

## ADMINISTRATIVE CONTRACTS

### Chapter 1. General provisions

Art. 3131. — *Rules applicable to contracts of administrative authorities.*

(1) Contracts concluded by the State or other administrative authorities shall be governed by the provisions of this Code which relate to contracts in general or special contracts.

(2) The provisions of this Title shall supplement or replace such provisions where the contract is in the nature of an administrative contract.

Art. 3132. — *Administrative contracts.*

A contract shall be deemed to be an administrative contract where:

(a) it is expressly qualified as such by the law or by the parties; or

(b) it is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service; or

(c) it contains one or more provisions which could only have been inspired by urgent considerations of general interest extraneous to relations between private individuals.

Art. 3133. — *Application to certain business organisations.*

Business organisations which appeal to public savings or place their shares with the public may be compelled by the competent authorities to comply, in the conclusion of their contracts, with the procedures and formalities prescribed by law for administrative authorities.

## Section 1. Formation of contracts

### Paragraph 1. — Consent

Art. 3134. — *Form of acceptance.*

(1) Unless otherwise provided by administrative laws or regulations. the conclusion of a contract by the administrative authorities implies an express manifestation of will on their part.

(2) Where an authority competent to approve a contract keeps silent, such silence shall not, in the absence of a formal provision, be deemed to amount to approval.

(3) The provisions of sub-art. (1) and (2) shall apply to the prorogation of, or modifications to, a contract.

Art. 3135. — *General conditions applicable to administrative contracts.* — 1. *Drawing up.*

Model specifications, general clauses and conditions and common directives may be drawn up by each interested administrative authority and may be declared to be applicable by Legal Notice published in the Negarit Gazeta.

Art. 3136. — 2. *Definition.*

(1) Model specifications shall constitute standard specifications, formulated in advance and in a general way by the administrative authority, for the concession of public services.

(2) General clauses and conditions shall fix the provisions applicable to all or some of the contracts concluded by a specified administrative authority.

(3) Common directives shall fix the technical provisions applicable to all contracts relating to a given kind of works or supplies.

Art. 3137. — *Effect of specifications, clauses, conditions and directives.* — 1. *Conclusion of contract.*

The provisions of general clauses and conditions concerning the manner in which a contract is to be concluded by the administrative authority may

be invoked by the candidates to the contract and in particular by the tenderers in the case of allocation of contracts by tender.

Art. 3138. — 2. *Contents of contract.*

(1) The provisions of model specifications, general clauses and conditions or common directives, concerning the interpretation, contents and execution of a contract shall not apply to a specified contract unless such contract expressly makes reference thereto.

(2) Specifications specially relating to a concession or to a given contract may derogate such provisions.

Art. 3139. — *Modification to specifications, etc.*

(1) Where the rights and obligations of the parties are determined by reference to specifications, general clauses and conditions or common directives, such specifications, clauses, conditions and directives shall be considered such as they existed at the time when the contract was concluded.

(2) The rights and obligations of the contracting parties shall not be affected by modifications subsequently made to such specifications, clauses, conditions and directives.

Art. 3140. — *Opening of credits in favour of administrative authority.*

(1) The opening of credit accounts authorised by the budgetary authorities in favour of an administrative body shall not in itself give private individuals the right to use the credits which have been opened.

(2) The authorisation given to an administrative authority to incur an expense shall not amount to an authorisation to contract, where this is necessary for concluding a contract.

Art. 3141. — *Contractual freedom of administrative authorities.*

(1) The authorisation given to an administrative authority to conclude a contract shall not compel such authority to conclude such contract.

(2) It shall only give the right of doing so to such authority.

Art. 3142. — *Lack of credit.*

A contract concluded by an administrative authority shall be valid notwithstanding that such authority has not received the necessary credits for the performance of the contract.

Art. 3143. — *Absence of authorisation.*

(1) A contract concluded by an administrative authority shall be of no effect where the authority which has concluded it has not received the necessary authorisation prescribed by administrative laws or regulations.

(2) Those provisions in the Title of this Code relating to "Contracts in general" which apply to nullity on the ground of the object of the contract being unlawful shall apply to such nullity.

Art. 3144. — *Approval of contract.*

(1) Where the conclusion of the contract is subjected to the necessity of a further approval, the contract shall not be complete until such approval is given.

(2) The administrative authority which has concluded the contract shall perform all the acts necessary to obtain such approval.

(3) It may do nothing which might hinder or imperil such approval.

Art. 3145. — *Late approval.*

The party contracting with an administrative authority may release himself from the contract by giving notice to such authority, where the contract concluded is not approved within six months or such other period as has been fixed by the parties.

Art. 3146. — *Liability in case of non-conclusion of contract.*

(1) Where the administrative authorities do not conclude a contract, they shall indemnify the person who has incurred expenses in view of the conclusion of such contract, where such expenses have been incurred through the fault of the administrative authority, by reason of the attitude taken by the latter in the course of the precontractual negotiations.

(2) The administrative authorities shall, even in the absence of fault, indemnify the person who, as a consequence of negotiations with such authorities, has made studies, drawn up plans, initiated works or incurred expenses, where such expenses or disbursements have been made with the consent of the administrative authorities and the latter have derived a benefit therefrom.

Paragraph 2. — Procedure for the allocation of contracts by tender

Art. 3147. — *Use of such procedure.*

(1) Administrative contracts may be concluded by the procedure of allocation by tender.

(2) They shall be concluded by such procedure, under pain of nullity, whenever the law imposes such obligation.

Art. 3148. — *Notice of allocation by tender.* — 1. *Principle.*

The allocation which is to take place shall be notified to the public in the manner prescribed by administrative regulations or, in default of such regulations, in the manner which appears the most appropriate.

Art. 3149. — 2. *Contents.*

The notice of allocation shall show:

(a) the place where the specifications may be consulted; and

(b) the authorities who are to proceed to the allocation; and

(c) the time prescribed for sending in the tenders; and

(d) the place, day and hour fixed for the allocation; and

(e) the amount of security or the other guarantees required from the tenderers.

Art. 3150. — 3. *Time.*

The notice of allocation shall be published, except in cases of urgency, not less than one month before the expiration of the time prescribed for sending in the tenders.

Art. 3151. — 4. *Effect.*

As from the publication of the notice, no modification may be made to the specifications unless a new publication is made.

Art. 3152. — *Specifications.*

(1) The specifications of the allocation shall contain an indication of the conditions required from tenderers.

(2) The administrative authorities may impose in such specifications all the conditions relating to technical and professional qualifications which they consider desirable.

(3) They shall specify, where appropriate, the qualifications which are required for admission to tender and the eliminating tests to which the projects or samples submitted will be subjected.

Art. 3153. — *Documents to be submitted.*

The contractors or suppliers who intend to present themselves as tenderers shall deposit in the place indicated and within the time specified by the specifications a declaration of their intention to tender and their tender.

Art. 3154. — *Declaration of intention to tender.*

(1) The declaration of intention to tender shall indicate the name, first names, qualification and address of the candidate.

(2) References and, if this is required by the specifications, a regular act of suretyship shall be annexed thereto.

Art. 3155. — *Tender.* — 1. *Contents and forms.*

(1) The tender shall contain an offer of the price and the undertakings of the candidate.

(2) It shall be deposited in a sealed envelope according to the conditions fixed in the specifications.

Art. 3156. — *Duty to maintain it.*

(1) The tenderer may not withdraw or modify his tender until the allocation has been declared.

(2) However, he may expressly limit in his tender the period for which he binds himself.

Art. 3157. — *Office of allocations.*

The constitution of the office of allocations shall be fixed by administrative regulations and such internal regulations as are particular to the various administrative authorities.

Art. 3158. — *Publicity of allocations.*

The proceedings of allocation shall be held in public.

Art. 3159. — *Admission of candidates.* — 1. *Duties of office.*

(1) The office of allocations shall firstly take cognizance of the declarations of intention to tender.

(2) It shall verify whether these have been regularly deposited and whether the tenderers fulfil the conditions required for admission to the allocation.

Art. 3160. — 2. *Discretionary power.*

(1) The office shall admit to the allocation such tenders only as are made by contractors or suppliers who present all the desirable financial and professional guarantees.

(2) Unless otherwise provided in the specifications, it shall not be bound to hear the candidates whom it turns down.

(3) It shall not be bound to give reasons for its decision.

Art. 3161. — 3. *Irrevocable character of decision taken.*

From the moment that the envelopes containing the tenders have been unsealed, the decision to admit to the allocation a contractor or supplier may no longer be altered.

Art. 3162. — *Reading of tenders.*

(1) The envelopes containing the tenders shall be opened in public.

(2) The tenders shall be read out.

Art. 3163. — *Minute of allocation.*

The results of the allocation shall be reduced to a minute which shall state all the circumstances of the allocation.

Art. 3164. — *Designation of provisional tenderer.* — 1. *Principle.*

(1) The office of allocations shall declare the tenderer who has made the tender which is most advantageous for the administrative authorities to be provisionally the successsful tenderer.

(2) For this purpose, the office shall take into account the price offered and all the modalities of the tender in conformity with the specifications.

Art. 3165. — 2. *Exception.*

(1) The office need not designate any provisional successful tenderer where the regulations of the allocation prescribe that the administrative authorities do not intend to negotiate beyond a certain price.

(2) Such price shall not be brought to the knowledge of the tenderers.

Art. 3166. — 3. *Where several tenders are equal.*

(1) Where several tenderers have made equivalent tenders between which it is not possible for the office of allocations to choose, regulations of allocations may provide that the assignment of the contract shall be decided by ballot between such tenderers.

(2) In default of such provision, a new allocation shall take place.

Art. 3167. — 4. *Effects.*

(1) The designation of a provisional successful tenderer by the office shall not conclude the contract.

(2) It shall have as its effect the designation of the only tenderer with whom the contract may be concluded.

(3) It shall release the other tenderers from the obligations arising out of their tender.

Art. 3168. — *Approval by administrative authorities.*

(1) The administrative authorities who have caused the allocation to be made may in their discretion approve or refuse to approve the result thereof.

(2) The contract shall be complete where such approval is given.

Art. 3169. — *Additional clauses.*

(1) Contracts made by the allocation may be subjected to additional clauses agreed on by the parties.

(2) They may also, on their expiry, be maintained in effect or renewed by mutual agreement.

Paragraph 3. — Cause

Art. 3170. — *Absence of cause.*

A contract shall be null on the ground of lack of cause where, at the time when it is made, the contract makes it impossible to attain the result desired by the administrative authorities and known to the other contracting party.

Art. 3171. — *Unlawful cause.*

(1) A contract shall be null on the ground of unlawful cause where it is made by the administrative authorities with an unlawful object in view.

(2) The provisions of sub-art. (1) shall apply in particular where the contract is made by the administrative authorities with a view to procuring advantages of a pecuniary nature to the other contracting party and not for a reason of general interest.

## Section 2. Effect of Contracts

Paragraph 1. — Normal performance of contracts

Art. 3172. — *Contents of contract.*

(1) The contracting parties shall perform their obligations in the manner provided in the contract.

(2) They shall perform them in a correct manner, deemed to be satisfactory according to the rules of art prevailing at the time and in the kind of activity concerned.

(3) They shall perform them diligently.

Art. 3173. — *Manner of performing obligations.*

(1) Unless otherwise agreed, the party having contracted with the administrative authorities may choose the suppliers for the purpose of buying materials and things necessary for the performance of his obligations.

(2) Unless otherwise agreed, he may choose the workmen or employees to perform such obligations under his responsibility.

Art. 3174. — *Time.* — 1. *Principle.*

(1) Each contracting party shall perform his obligations within the time fixed by the contract.

(2) Failing a specific provision in the contract, each contracting party shall perform his obligations within a reasonable time.

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Art. 3175. — 2. *Prerogatives of administrative authorities.*

The administrative authorities may not impose unilaterally on the other contracting party a time which has not been agreed upon for the performance of his obligations unless they may under the contract fix such time by means of requisition orders.

Art. 3176. — *Payment of price.*

The price due by the administrative authorities shall be paid in accordance with the rules of finance laws and of public accountancy.

Art. 3177. — *Exceptio non adimpleti contractus.*

(1) The non-performance by the administrative authorities of their obligations shall not entitle the other party to fail to perform his obligations unless it makes impossible the performance of such obligations.

(2) In other cases, the other party may not avail himself of the failure by administrative authorities to perform their contractual obligations in order to suspend the performance of the contract.

Art. 3178. — *Set-off.*

Set-off may not be invoked by a person contracting with the administrative authorities except in the case of debts other than fiscal debts.

Paragraph 2. — Revision of contracts

A — *Prerogatives of administrative authorities*

Art. 3179. — *Principle.*

The administrative authorities may, notwithstanding that the contract makes no provision to this effect, unilaterally impose on the person contracting with them certain modifications of the contract, where a change of circumstances justifies such modifications in the general interest.

Art. 3180. — *Termination of contract.*

The administrative authorities may terminate the contract, notwithstanding that the other party has committed no fault, where the contract has become useless to the public service or unsuitable for its requirements.

Art. 3181. — *Compensation.*

(1) The party who has contracted with the administrative authorities shall be entitled to compensation equal to the loss sustained by him by reason of the modification or termination of the contract.

(2) In fixing such compensation, regard shall be had to all the benefits which the party could legitimately expect to derive from the contract.

(3) The court may, however, limit the amount of compensation in so far as it refers to loss of profit, where it appears that the modification or termination of the contract is due to extraneous causes and not to a fault of the administrative authorities which have concluded the contract.

Art. 3182. — *Termination at the request of other party.*

(1) The party who has contracted with the administrative authorities may require the termination of the contract where an intervention by the administrative authorities has as its effect to upset the general economy of the contract.

(2) The court shall determine whether, having regard to the nature of the contract, the importance of the modifications made thereto by the administrative authorities exceeds or not what could be expected on the making of the contract.

(3) Unless otherwise expressly agreed, the party may not of his own motion declare the termination of the contract.

B — *Unforeseen circumstances*

Art. 3183. — *Principle.*

(1) Where circumstances which could not be foreseen on the making of the contract upset the balance of the contract, the party contracting with the administrative authorities shall perform his obligations where such performance remains materially possible.

(2) Such person may, however, require that the administrative authorities with which he has contracted assist him in overcoming the supervening difficulties by sharing in the loss arising from such circumstances.

Art. 3184. — *Upsetting of contract.*

The balance of the contract shall be deemed to be upset where new circumstances impose on the party contracting with the administrative authorities additional obligations which certainly surpass the extreme limits which could be expected by the parties on the making of the contract.

Art. 3185. — *Unforeseeable events.*

(1) An event shall be deemed to be unforeseeable where it could not reasonably be envisaged by the parties on the making of the contract.

(2) An event shall not be deemed to be unforeseeable where it is due to the act of the person who avails himself thereof.

(3) The fact that an event was not foreseen may be invoked by reason of unforeseeable consequences or an unforeseeable extension of events which had already happened on the making of the contract.

Art. 3186. — *Provisions for the variation or revision of prices.*

The existence in the contract of a provision relating to the variation or revision of prices shall not prevent compensation being due where:

(a) such provision has not been enforced; or

(b) it appears that the enforcement of such provision is not sufficient to remedy the effects of the economic upsetting of the contract, as in the case where there are fluctuations affecting elements other than those which have been chosen as an index in the variation clause.

Art. 3187. — *Loss necessary.*

No compensation may be claimed where circumstances have only reduced or taken away the benefits, without bringing about a loss for the party.

Art. 3188. — *Amount of compensation.*

(1) The compensation granted shall leave at the charge of the party a part of the loss arising from the circumstances.

(2) To this effect, regard shall be had to the efforts made by the party to overcome his difficulties, the general position of the enterprise and all other equitable elements.

Art. 3189. — *Cessation of events being considered as unforeseen.*

(1) The state of being unforeseen shall cease where the balance of the contract is re-established.

(2) Where the unbalancing of the contract appears to be definitive, each contracting party may require the court to ascertain the situation thus created.

(3) Failing amicable agreement on the revision of the contract, the court shall declare the cancellation of the contract.

C — *Acts of Government*

Art. 3190. — *General measures.* — 1. *Affecting substance of contract.*

(1) Laws, regulations, orders and other measures of general application, made by the public authorities, which directly modify the provisions of the contract or prevent the enforcement of some provisions of the contract or prematurely put an end to the performance of the contract shall enable the party having contracted with the administrative authorities to claim compensation.

(2) Such compensation may not be refused unless the measure of general application has specified that no compensation shall be paid.

Art. 3191. — 2. *Making the performance of the contract more onerous.*

(1) Measures of general application taken by the public authorities shall not create any right to compensation where, without affecting the

substance of the contract, they only modify the conditions of its performance and render such performance more difficult or more onerous.

(2) Compensation shall however be due where the measure made or the contract itself provides that there shall be a right to compensation.

Art. 3192. — *Particular measures.* — 1. *Taken by contracting authorities.*

(1) Particular measures taken by the contracting public authority shall create a right to compensation in favour of the person contracting with such authority, where they affect the substance of the contract or render the performance of the contract more difficult or more onerous.

(2) No compensation shall however be due where the measure taken is merely the ascertainment or the inevitable consequence of economic facts extraneous to the parties.

Art. 3193. — 2. *Taken by another authority.*

(1) No compensation shall be due where the act which is the cause of the damage emanates from an authority other than that which has concluded the contract.

(2) In such case, nothing shall affect the rules relating to unforeseen circumstances or to the responsibility of public authorities.

Paragraph 3. — Non-performance of contracts

Art. 3194. — *Compulsory performance of contracts.*

(1) The court may not order the administrative authorities to perform their obligation.

(2) It may, however, make an order for the payment of damages unless the administrative authorities prefer to perform their obligations.

(3) Unless otherwise provided by law, it may also cancel such measures as have been taken by the administrative authorities in violation of their contractual undertakings.

Art. 3195. — *Requisitioning powers.*

(1) The right of requisition may not be used by the administrative authorities for the purpose of ensuring the performance of a contract concluded by them.

(2) The personnel of the public services may, however, be requisitioned to put an end to a strike.

Art. 3196. — *Interest for delay.*

Interest for delay shall be due to as of right by administrative authorities without their having to be placed in default, where:

(a) within fifteen days after the time laid down in the contract, such authorities have not taken the steps necessary to effect the ascertainments giving a right to a payment to the other party; or

(b) within three months from the ascertainment, such authorities have not taken steps to make the orders for payments due by them.

Art. 3197. — *Clause of non-responsibility.*

Notwithstanding any stipulation to the contrary, the party contracting with the administrative authorities may claim from the latter interest for delay or compensation in the case of a delay in effecting payment due to him, where:

(a) the delay exceeds six months; or

(b) it is due to the contracting administrative authority's intention to cause harm or to its gross negligence or grave fault.

Art. 3198. — *Lapse of notice placing party in default.*

(1) Where, after having placed the other party in default, the administrative authorities have begun negotiations with him with a view to resuming the contract on other hases, the notice placing in default shall lapse and need be renewed.

(2) The fact that the administrative authorities have allowed a long period to elapse after the notice without applying any sanction or have continued to have commercial relations with the other party shall not necessarily imply a tacit waiving of the right to apply sanctions and shall not make a new notice necessary.

Art. 3199. — *Delay of suppliers.*

(1) The contractant may not raise force majeure on the ground of the delay or default of his own suppliers.

(2) He may not raise that the delay or default of his suppliers constitutes a case of force majeure releasing him from his liability for the non-performance of the contract.

Art. 3200. — *Preferential rights.*

(1) The administrative authorities may not themselves decide that the other party is liable to a penalty by reason of the non-performance of the contract.

(2) Nor may they fix the amount of compensation due by the other party by reason of the non-performance or delay in the performance of his obligations.

(3) The court may order the administrative authorities to pay compensation for the damage caused to the other party in consequence of sanctions which such authorities have applied contrary to the law.

Paragraph 4. — Assignment of contracts and sub-contracts

Art. 3201. — *Definitions.*

(1) An assignment is an act whereby the party having contracted with the administrative authorities substitutes a third party for himself for the total performance of the contract.

(2) A sub-contract is a contract whereby the party having contracted with the administrative authorities substitutes a third party for himself for the performance by the latter of a part only or of an item of the contract.

Art. 3202. — *Administrative authorisation necessary.*

(1) Assignments and sub-contracts concluded by the party having contracted with the administrative authorities shall be previously authorised by such authorities.

(2) Unless otherwise provided in the contract, the authority competent to authorise the assignment or sub-contract is the authority competent to conclude the contract.

Art. 3203. — *Obligations and rights of administrative authorities.*

(1) The administrative authorities shall within a reasonable time answer a request for the making of an assignment or the grant of a sub-contract.

(2) Where the assignment or sub-contract has been concluded by a grantee of a public service, the administrative authorities may refuse their authorisation only on grounds of technical or financial incapacity of the new grantee who is proposed.

(3) In other cases, the administrative authorities shall have a discretionary power to approve or refuse to approve the assignment or sub-contract.

Art. 3204. — *Sanctions.*

(1) An unauthorised assignment or sub-contract shall not affect the administrative authorities.

(2) It shall constitute a contractual fault justifying the cancellation of the contract through the fault of the party having contracted with the administrative authorities.

Art. 3205. — *Effect of authorisation.* — 1. *Assignment.*

(1) The approval given by the administrative authorities to the assignment of a contract shall have the effect of substituting the assignee for the original contractant.

(2) Unless otherwise agreed, the original contractant shall cease to be liable for the performance of the contract.

(3) His securities may be retained by the administrative authorities only to the extent that there are litigations between them and him.

Art. 3206. — *Sub-contract.*

(1) The approval given by the administrative authorities to the sub-contract shall not affect the contractual bond between the administrative authorities and their contracting party.

(2) The original party shall remain liable for the works done and supplies made by the sub-contractor as though they had been done or made by himself.

(3) The approval of the sub-contractor by the administrative authorities shall however imply the exoneration of the contractant from the penalties for delay, where such delay is attributable to the sub-contractor.

## Chapter 2. Concession of public service

Art. 3207. — *Definition.*

(1) Any activity which a public community has decided to perform for the reason that it has deemed it to be necessary in the general interest and considered that private initiative was inadequate for carrying it out shall constitute a public service.

(2) The concession of a public service is the contract whereby a person, the grantee, binds himself in favour of an administrative authority to run a public service getting a remuneration therefor by means of fees received on the use thereof.

Art. 3208. — *Right of control of administrative authorities.* — 1. *Principle.*

(1) The administrative authority responsible for the good running of the public service may at any time supervise the performance of the contract.

(2) The grantee shall render an account of his management to such authority and give it the necessary facilities for exercising its control.

Art. 3209. — 2. *Regulations.*

(1) The control of the grantee shall be organised in accordance with the provisions of regulations and with the contractual provisions made by the parties.

(2) The provisions of the following Articles shall apply in addition, notwithstanding any stipulation to the contrary.

Art. 3210. — 3. *Limits of control.*

(1) The control of the concession may not be such as to alter the nature of such concession and to transform it in fact in a direct exploitation by the administrative authorities.

(2) The administrative authorities may not subject a whole section of the activity of the grantee to a system of preliminary approvals.

(3) Unless otherwise provided, the grantee may freely determine the manner in which he will perform the contract.

Art. 3211. — 4. *Interpretation of contracts.*

(1) The provisions of the contract may not be interpreted as being an obstacle to the application of new regulations concerning the control of the management and the regulation of public order.

(2) The administrative authority, however, may not give the force of regulations to measures intended to control and to ensure the performance of his contractual obligations by the grantee.

Art. 3212. — *Contractual modification of prices or tariffs.* — 1. *Principle.*

Provisions may be made in the contract to the effect that the prices or tariffs mentioned in the contract shall be modified, should a specified economic change take place.

Art. 3213. — 2. *Variation clauses.*

(1) The concession may provide that the change shall take place automatically in accordance with and in proportion to variations occurring in the prices of certain materials, commodities or services.

(2) Where the bases for the fixing of the new prices or tariffs automatically follow the application of a variation formula, in case of contestation the court shall fix the new tariffs and prices resulting from the application of the variation clause.

Art. 3214. — 3. *Revision clauses.*

(1) The contract may confine itself to stipulating that the prices and the tariffs shall be revised where economic circumstances change considerably, without establishing precisely the bases of such revision.

(2) In such case, where the conditions mentioned in the contract have taken place, the parties shall negotiate the adoption of an additional clause to the contract.

(3) In default of agreement between them, the court may fix a tariff which ensures an equitable remuneration to the grantee.

Art. 3215. — 4. *Clauses when to be enforced.*

(1) Unless otherwise provided, the grantee may invoke the variation clauses and those relating to the revision of prices and tariffs as from the date of the tender.

(2) He may not invoke such clauses on account of variations which take place after the expiry of the normal time laid down for the performance of his obligations under the contract unless an extension of such time has been expressly granted to him by the administrative authorities.

Art. 3216. — *Unilateral modifications of contract.* — 1. *Principle.*

(1) The administrative authorities having granted the concession may, during the currency thereof, impose on the grantee all the obligations which they think fit for the proper operation or improvement of the service granted.

(2) They may impose on the grantee modifications of the organisation of the service provided in the act of concession or in the specifications.

(3) Any stipulation to the contrary shall be of no effect.

Art. 3217. — 2. *Clauses which may be modified.*

(1) Only the clauses concerning the service and its operation may be modified.

(2) The administrative authorities may in particular increase or reduce the extent of the service to be operated by the grantee or impose upon him an extension of the service.

Art. 3218. — 3. *Limits of modifications.*

(1) The administrative authorities may not impose such modifications in the organisation of the service as would actually modify the nature or object of the contract.

(2) In particular, they may not substitute a management under state control for the concession.

(3) Nor may they order the grantee to manage a service different to that which has been granted, or to manage a really new service or a service which obviously surpasses the potentialities of the grantee.

Art. 3219. — 4. *Clauses which may not be modified.*

(1) The administrative authorities may not unilaterally modify the financial benefits which the concession ensures to the grantee.

(2) In particular, they may not cause prejudice to any privilege of exclusivity accorded to the grantee.

(3) They may, however, unilaterally impose on the grantee a modification of the tariffs, provided that they compensate the grantee for the loss which such modifications may cause to him.

Art. 3220. — 5. *Compensation due to grantee.*

(1) Where the administrative authorities exercise their right of unilateral modification, the grantee shall be entitled to compensation for the loss sustained by him through such modification.

(2) The compensation due to him shall be equal to the increase of the charge imposed upon him by the administrative authorities.

Art. 3221. — *Relations with users.* — 1. *Fixing of tariffs.*

Where the concession authorises the grantee to collect fees from the users within the limits of a maximum tariff fixed by the act of concession, the grantee may freely fix the fees within the limits of such maximum.

Art. 3222. — 2. *Modification of tariffs.*

Where the conditions or tariffs fixed by the authorities are modified, the new conditions or tariffs shall apply immediately, but without retroactive effect, to the contracts which are still in force between the grantee and the users.

Art. 3223. — 3. *Concession binding.*

The grantee may not, by a particular agreement concluded with a user, depart from the general rules of the service fixed by the act of concession or by the specifications.

Art. 3224. — 4. *Equality of users.*

(1) Neither the administrative authorities nor the grantee may adopt measures discriminating between the users and destroy the equality of treatment of the latter.

(2) The tariffs of service may not contain differentiations between categories of users unless such differentiations are in relation to different conditions of users in relation to the public service.

(3) Industrial and commercial public services shall observe such principle notwithstanding that the law prescribes that they are run according to the rules of private law.

Art. 3225. — 5. *Relations between users and grantee.*

(1) Mistakes or irregularities committed in giving effect to the conditions or to the tariffs shall be made good.

(2) An action of a user to claim the restitution of a sum collected unduly by the grantee shall be instituted within one year from the day of the payment unduly made.

(3) An action of the grantee to claim a supplement of the price shall be instituted within one year from the day when the incorrect payment has been made.

Art. 3226. — 6. *Users not represented by administrative authorities*

The administrative authorities may not claim compensation from the grantee by reason of the loss caused by him to the users of the service by the non-observance on his part of the provisions of the concession.

Art. 3227. — *Duration of concession.*

(1) The duration of the concession shall be fixed by the contract.

(2) It may not exceed sixty years.

(3) Unless otherwise expressly provided, the concession shall be deemed to have been made for a period of seven years.

Art. 3228. — *Extension of concession.*

(1) Unless otherwise expressly provided, the concession shall be extended by a tacit renewal where the intention to terminate it has not been signified by one of the parties to the other two years before the date when, according to the contract, it is to come to an end.

(2) In such case, the concession shall be extended for a period of seven years or for such shorter period as the parties may have originally fixed.

Art. 3229. — *Winding up of concession.* — 1. *Principle.*

(1) The termination of the concession of a public service shall entail its winding up and the settlement of accounts between the grantee and the authorities.

(2) The winding up shall be made in accordance with the stipulations of the specifications.

(3) Failing such stipulations, it shall be made in accordance with the provisions of the following Articles.

Art. 3230. — 2. *Obligations of grantee.*

(1) The grantee shall give the authorities all the information necessary to facilitate the taking back and exploitation of the concession.

(2) He shall deliver to the authorities in a good condition all the works and materials of the concession which are to be returned gratuitously to the authorities or which such authorities are entitled to take back against compensation.

Art. 3231. — 3. *Things to be returned.*

(1) The authorities shall take back without paying compensation the immovable property included in the concession.

(2) They shall take back without paying compensation the movable property the return of which to the authorities without compensation has been expressly provided in the specifications.

Art. 3232. — 4. *Things which may be taken back.*

(1) The authorities may take back against compensation any other thing used in the exploitation of the concession.

(2) The authorities shall not be bound to take back the things used in the exploitation of the concession unless such obligation has been imposed upon them by the specifications.

Art. 3233. — 5. *Amount of compensation.*

(1) In case of contestation, the amount of compensation provided in Art. 3232 shall be fixed by arbitrators appointed by the parties or, failing such, by the court.

(2) Where the grantee or the authorities establish the price which the property has cost, the compensation shall be fixed on the basis of such price from which a deduction shall, where appropriate, be made in respect of depreciation due to deterioration or to wear and tear.

(3) Where the price which the property has cost cannot be established, the compensation shall be fixed having regard to the value of the things at the time when they are taken back.

Art. 3234. — 6. *Contracts.*

(1) The grantee shall inform the authorities of all the contracts which are in course and which concern the concession.

(2) The authorities shall take the place of the grantee in all such contracts unless, within one month from having been informed of the existence of a contract, they inform the grantee and the party who has contracted with the latter of their intention to repudiate it.

(3) Unless otherwise expressly provided in the contract, the grantee shall not be liable to a contracting party for such repudiation.

Art. 3235. — 7. *Securities.*

After the accounts have been settled between the authorities and the grantee, the securities given by the latter shall be returned to him and the sureties which he has given be released.

Art. 3236. — *Redemption of concession.* — 1. *Principle.*

(1) The redemption of the concession is the decision whereby the administrative authorities put an end to the concession before the expiration of its time notwithstanding that the grantee has committed no fault.

(2) The administrative authorities may at any time redeem the concession for the purpose of abolishing or reorganising the public service.

(3) They may not redeem it in order to replace the grantee by another grantee.

Art. 3237. — 2. *Effect.*

(1) A concession which is redeemed shall be wound up in accordance with the provisions of the preceding Articles.

(2) The grantee shall be compensated for all the loss caused to him by the redemption and in particular for the loss which is caused to him by the making over to the authorities of property which he has not yet had the time to amortise.

(3) An equitable compensation may be granted to him having regard to the profit which he could reasonably have expected and of which he has been deprived by the redemption.

Art. 3238. — *Loss of right of grantee.* — 1. *When ordered.*

(1) The loss of right of the grantee may be ordered where he has committed a fault of a special gravity.

(2) The loss of right may only be ordered by the court, unless an express stipulation to the contrary in the act of concession has given such right to the administrative authorities.

Art. 3239. — 2. *Effect.*

(1) The loss of right shall entail a definitive cancellation of the contract.

(2) The grantee who has lost his right shall bear the onerous consequences of the transactions having the object of ensuring the continuation of the public service.

Art. 3240. — 3. *Rights of grantee having lost his right.*

(1) The concession shall be allocated by tender at the risk of the grantee who has lost his right.

(2) The grantee who has lost his right shall receive from the new grantee the price fixed by the allocation, which sum shall take the place of all his rights on the concession.

Art. 3241. — *Sequestration.* — 1. *Conditions.*

(1) A sequestration may be ordered in the case of total or partial interruption of the service due to the default, incompetence or incapacity of the grantee.

(2) In the absence of any fault of the grantee, it may also be ordered from the time when it appears that the grantee is unable to operate the service.

Art. 3242. — 2. *Effect.*

(1) The sequestration shall temporarily deprive the grantee of the exercise of the rights which he held under the concession.

(2) Where the sequestration is ordered as a sanction of a default due to the fault of the grantee, the service shall be managed, at the expense and risk of the grantee, by the authorities or by a manager appointed by them.

(3) In other cases, the expenses of the sequestration shall be borne by the authorities.

Art. 3243. — *Power of the court.*

(1) The court may cancel the sanctions of coercion or dissolution, such as measures of sequestration, state control, loss of right or termination, taken by the administrative authorities against the grantee of the public service.

(2) It may order the authorities to pay compensation for the damage caused to the grantee in consequence of sanctions applied by such authorities contrary to the law.

## Chapter 3. Contract of public works

Art. 3244. — *Definition.*

(1) A contract of public works is a contract whereby a person, the contractor, binds himself in favour of an administrative authority to construct, maintain or repair a public work in consideration of a price.

(2) Where the contract only relates to the supply of materials for the purpose of carrying out a public work and the supplier himself takes no part in the carrying out of the work, the contract shall not be one of public works but one of supplies.

Art. 3245. — *Industrial contracts.*

(1) The provisions of this Chapter relating to contracts of public works shall apply to industrial contracts concluded by the administrative authorities.

(2) An industrial contract is a contract concerning supplies which, both by the complexity of their manufacture and by their specialised character, are indicated for the needs of the administrative authorities.

### Section 1. Formation of contract

Art. 3246. — *Competition.* — 1. *Principle.*

The administrative authorities may put up for competition the working out of a project of a work among skilled persons or among specialised undertakings.

Art. 3247. — 2. *Fixing of conditions.*

(1) The administrative authorities shall fix freely the time within which the competitors shall send in their projects, the conditions of form and of substance to which such projects shall conform and all other conditions of the competition.

(2) The administrative authorities shall also determine, as they think fit, by whom and in which manner the competitions shall be judged and ranked.

(3) They shall choose freely the persons whom they admit to take part in the competition, without having to give a reason for their choice.

Art. 3248. — 3. *Administrative authorities bound thereby.*

The administrative authorities shall be strictly bound to respect the rules of the competition made by them.

Art. 3249. — 4. *Conclusion of contract.*

After the competition, they shall be free to allot the contract to whom they think fit, unless they have expressly undertaken to choose the competitor who is ranked first.

## Section 2. Normal performance of contract

### Paragraph 1. — Direction of work

Art. 3250. — *Right of administrative authorities.*

(1) The administrative authorities may supervise the performance of the works.

(2) They may also prescribe to the contractor the manner of performance of this work.

(3) The provisions of the following Articles shall regulate the right of supervision and of direction of the administrative authorities, without prejudice to any stipulation to the contrary in the contract.

Art. 3251. — *Right of supervision.*

(1) The representatives of the administrative authorities may at any time enter the yards and require of the contractor the information necessary for their control.

(2) The contractor shall observe the regulations made by the administrative authorities in order to ensure good order and security in the yards.

(3) Any stipulation to the contrary shall be of no effect.

Art. 3252. — *Direction of works.*

(1) The administrative authorities shall regulate, by means of requisition orders, the development of the works and prescribe to the contractor the manner of performance of such works.

(2) The contractor shall comply with the plans and models given to him by the administrative authorities in the execution of the specification.

Art. 3253. — *Rhythm of works.*

(1) Unless otherwise provided in the contract, the administrative authorities may fix at one and the same time the general period and the periods for the performance of each part of the work or only the special periods for each part.

(2) Where the contract fixes only the general period within which the whole of the works are to be performed, the administrative authorities shall specify the time at which the works shall begin.

(3) They shall regulate the order of sequence and the rhythm of the works within the general period laid down in the contract.

Art. 3254. — *Starting point of periods.*

(1) Periods shall run from the date of notification of the contract.

(2) Where the beginning of the performance of the obligations of the contractor is made dependent on a decision of the administrative authorities or on a material action on the part of the latter, the periods shall run from the completion of such acts.

Art. 3255. — *Personnel of the undertaking and materials.*

(1) The administrative authorities shall decide on the extent of the means to be employed both as regards personnel and material.

(2) They shall supervise the personnel and may require that employees be changed or dismissed.

(3) They shall control the quality of the materials used and may refuse them.

Art. 3256. — *Defective work.*

In the course of the performance of the contract, the administrative authorities may require the demolition and the reconstruction of any defective work at the expense of the contractor.

Art. 3257. — *Written or verbal orders.*

(1) The contractor shall carry out such requisition orders only as are given to him in writing.

(2) Orders given verbally shall not bind him unless they are given within the limits of the execution of the specification without causing any change thereto or the contract has expressly imposed upon the contractor the obligation to conform thereto.

Art. 3258. — *Appeal of contractor.*

The contractor may not appeal against a requisition order unless he has refused to sign it or he has signed it with a reservation.

Art. 3259. — *Right of contractor to compensation.*

(1) The normal exercise of the powers of control of the administrative authorities, within the limits prescribed in the contract, shall not give right to any compensation.

(2) The contractor shall be entitled to compensation where the administrative authorities have through their fault caused him damage either by making abusive requirements or by postponing the performance of the contract, in violation of the contract.

(3) The administrative authorities shall pay compensation to the contractor for the expenses and for the damage caused to him, notwithstanding that no fault or abuse has been committed, where the normal conditions of the performance of the contract have been aggravated.

Art. 3260. — *Liability of contractor.*

(1) The control of the administrative authorities shall not relieve the contractor of his liability.

(2) The liability of the contractor shall cease where he has merely carried out requisition orders with which he is bound to comply.

(3) Such liability shall remain within the measure of initiative which he could retain under the supervision of the administrative authorities.

Paragraph 2. — Payment of price

Art. 3261. — *Remuneration of contractor.* — 1. *Contract with a fixed price.*

The remuneration due to the contractor may be fixed by way of a lump sum.

Art. 3262. — 2. *Contract with series of prices.*

The contract may be restricted to fixing the different prices respectively applicable to each kind of work included in the contract, without determining precisely at the time of its conclusion the extent of the work to be performed.

Art. 3263. — 3. *Contract according to specification or by units of measures.*

The contract may determine at one and the same time the quantities of the works to be performed and the series of prices applicable to each kind of works.

Art. 3264. — 4. *Contract by controlled expenses.*

The contract may provide that the contractor shall merely be reimbursed of his main expenses duly controlled, and that he shall partake of the total increases so as to cover his other expenses and ensure for himself a suitable margin of profit.

Art. 3265. — 5. *Contract by order.*

(1) Where circumstances so require, the contract may be restricted to establishing a provisional price corresponding to essential services or to technical phases in the performance of the contract.

(2) In such case, an additional clause shall be made in order to fix the final price or the exact conditions for determining such price, before the expiration of the first third part of the time for the performance of the contract.

(3) In default of agreement between the contracting parties, the price shall be fixed by the administrative authorities within three months, without prejudice to the right of the contractor to appeal to the court.

Art. 3266. — 6. *Supplementary services.*

(1) The contractor may be compelled by virtue of requisition orders of the administrative authorities to perform services not originally mentioned in the contract.

(2) The additional clause fixing the price of supplementary services shall be made within six months.

(3) In default of agreement between the contracting parties, the price shall be fixed by the administrative authorities within three months without prejudice to the right of the contractor to appeal to the court.

Art. 3267. — *Price how paid.*

The administrative authorities may not introduce in any specification or in any contract a clause of deferred payment other than a payment by bills of exchange or by annual instalments.

Art. 3268. — *Time of payment.*

(1) Where the ascertainment of the services performed constitutes a preliminary condition for the determination of the price, such ascertainment shall be made within the periods specified in the contract.

(2) The default of an ascertainment fifteen days after the expiration of the period shall automatically create a right to interest for delay, where it is attributable to the administrative authorities.

Art. 3269. — *Right to receive instalments.*

The contractor may demand the payment of instalment where:

(a) he has deposited in the yard, factory or workshop materials or supplies belonging to him in full ownership and intended to be used in the performance of the contract; or

(b) he has paid wages in respect of labour employed by him exclusively in the performance of the contract.

Art. 3270. — *Payment of instalments.*

(1) At the end of each month there shall be drawn up, at the request of the contractor and in order to serve as a basis for the payment of instalments, a provisional calculation of the works performed and expenses made by the contractor.

(2) Unless otherwise provided in the contract, instalments shall be paid every three months.

(3) The amount of the instalments shall be equal to the value of the materials or supplies or to that of the wages mentioned in Art. 3269.

Art. 3271. — *Sums advanced by administrative authorities.*

(1) The contractor may receive sums in advance from the administrative authorities in respect of the contract only after having named a guarantor or given other securities guaranteeing the reimbursement of at least half the sums advanced.

(2) The sums advanced shall be reimbursed at the rate fixed by the contract, by deducting them from the sums subsequently due to the contractor by way of instalments or in settlement.

Art. 3272. — *Final calculations.*

(1) Final calculations constitute a means of settlement of accounts which determine the amount due by the administrative authorities and thenceforth bind the parties in an irrevocable manner.

(2) In order to produce their juridical effects, they need be accepted by the contractor.

(3) Final calculations may, in accordance with the provisions of the contract, be made before the completion of the works, when determinate periods have passed or a specified part of the works has been performed.

Art. 3273. — *Revision of approved accounts.*

(1) The accounts approved by the parties may not be revised, except in case of material errors, omissions or items entered falsely or twice.

(2) The omissions or material errors mentioned in sub-art. (1) are only those the correction of which does not require any measurement or discussion of the price or of the clauses of the contract.

Paragraph 3. — Acceptance of works

Art. 3274. — *Provisional acceptance.* — 1. *Nature.*

(1) A provisional acceptance is a joint ascertainment of the works made immediately after the completion of the works.

(2) A provisional acceptance shall result from the effective taking of possession, where this has been made under reservation.

Art. 3275. — 2. *Effect.*

(1) A provisional acceptance shall not exonerate the contractor from any defect which may appear after it is made.

(2) It shall amount to a tacit acceptance of the modifications which the contractor may have made in the project.

(3) It shall mark the beginning of the period of warranty at the expiration of which the final acceptance shall be made.

Art. 3276. — 3. *Risks of loss or deterioration.*

(1) Destructions or damage resulting from force majeure shall be borne by the contractor so long as the works have not been provisionally accepted by the administrative authorities.

(2) The general clauses and conditions may derogate such rule.

(3) In such case, they shall fix the amount of the right to compensation of the contractor as well as the conditions regarding the form and time of his claim.

Art. 3277. — *Period of warranty.* — 1. *Nature.*

(1) The period of warranty is a period during which the administrative authorities have the possibility of controlling the proper performance of the works before their final acceptance.

(2) Its duration shall be fixed by the contract.

Art. 3278. — 2. *Effect.*

(1) During the period of warranty, the contractor shall maintain the works.

(2) He shall be liable for defects and shall repair them when he receives from the administrative authorities a requisition order to this effect.

Art. 3279. — *Final acceptance.* — 1. *Nature.*

(1) The final acceptance is the act whereby the administrative authorities definitively appropriate the works after having ascertained that the contractor has performed his obligations in their entirety.

(2) It shall be made jointly and a record shall be drawn up.

Art. 3280. — 2. *Default of administrative authorities.*

(1) In the case of default on the part of the administrative authorities, the contractor may require the court to ascertain that the works are in a condition to be accepted.

(2) In such case, the final acceptance shall be deemed to have taken place on the expiration of the period of warranty or, failing such period, on the day fixed by the court.

Art. 3281. — 3. *Effect.*

(1) The final acceptance shall release the contractor from his obligation to maintain the works.

(2) The contractor shall be entitled to the payment of the balance of the price and to the reimbursement of the amount retained as guarantee and of the security.

Art. 3282. — *Warranty in respect of defects of construction.*

(1) Unless otherwise provided, the contractor shall be liable to the administrative authorities for the defects of construction of the works during ten years from the day on which they have entered into possession of the works.

(2) The warranty shall not be due, however, in respect of the defects which were apparent at the time of the final acceptance of the works.

(3) The warranty shall apply to such defects only as prevent the works from being used for the purpose mentioned in the contract or as render such use more onerous or less profitable.

## Section 3. Rescission of contract

Art. 3283. — *Unilateral modification of contract.* — 1. *Right of administrative authorities.*

(1) During the currency of the contract of public works, the administrative authorities may, notwithstanding any stipulation to the contrary, impose unilaterally upon the contractor changes in the original conditions of the contract as indicated in the specifications.

(2) Such changes may affect only the provisions which concern the arrangement of the public works.

(3) They may not affect the financial conditions of the contract.

Art. 3284. — 2. *New works.*

(1) The administrative authorities may, against payment of an additional remuneration, require the contractor to perform works which were not mentioned in the contract.

(2) They may not, however, require him to perform a work which by its object would be totally different to the work mentioned in the contract or which would have no relation to such work.

(3) Nor may they require him to perform a work under conditions entirely different to those which have been mentioned in the contract.

Art. 3285. — *Rights of contractor.*

(1) Unless otherwise provided in the contract, the contractor may cancel the contract where the increase or reduction of the works as a whole required by the administrative authorities involves a variation of more than one-sixth of the cost mentioned in the contract.

(2) In the case of reduction of the works as a whole, he shall be entitled to a compensation equal to the loss suffered by him and profit of which he is deprived by reason of the variation of the contract.

(3) The court may limit the amount of compensation for deprivation of profit where it appears that the variation is due to extraneous circumstances and not to the default of the authorities having made the contract.

Art. 3286. — *Unforeseen difficulties.* — 1. *Principle.*

(1) Where, in the performance of his contract, the contractor encounters material difficulties of an absolutely abnormal nature, unforeseeable at the time of the conclusion of the contract, he may require that the contract be revised.

(2) The administrative authorities with whom he has contracted shall in such case assume at their charge a part of the exceptional expenses due to such unforeseen difficulties, unless they prefer to cancel the contract.

(3) The provisions of this Title relating to cases of unforescen events shall apply in such case (Art. 3183-3189).

Art. 3287. — 2. *Duty to consult administrative authorities.*

(1) Where the difficulty compels the contractor to perform a supplementary work not mentioned in the contract, the contractor may initiate such work only after having obtained a requisition order from the administrative authorities enjoining him to perform such work.

(2) However, where the work is absolutely necessary for the performance of the contract and it is of an urgent nature, the contractor may and shall initiate it even in the absence of a requisition order.

(3) In such case, he shall be entitled to compensation in accordance with the provisions of this Code relating to the voluntary management of another person's affairs (Art. 2257-2265).

## Section 4. Non-performance of contract

Art. 3288. — *Placing under State control.* — 1. *Conditions.*

(1) A declaration to the effect that a contract of public works shall come under State control may be made where the contractor fails to perform his obligations.

(2) Notwithstanding any provision to the contrary, the administrative authorities may declare the placing under State control not less than ten days after having summoned the contractor to perform his obligations.

(3) The placing under State control may affect only a part of the works, where the undertaking permits a partial control.

Art. 3289. — 2. *Effect.*

(1) In the case of the placing under State control, the contractor shall be temporarily deprived of his contract.

(2) The control shall be carried out at the expense and risk of the contractor.

Art. 3290. — 3. *Cessation.*

The contractor may be relieved of State control where he shows that he has the necessary means to resume the works and to carry them out to completion.

Art. 3291. — *Re-allocation.*

(1) Where the contract has expressly foreseen the possibility, the contract of public works which has been cancelled may be re-allocated by auction by the administrative authorities or entrusted by them by agreement to a new contractor.

(2) In such case, the contractor who has been dispossessed shall bear the consequences which the transaction and the new contract cause to the administrative authorities.

Art. 3292. — *Power of the court.*

(1) The court may not cancel the sanctions of coercion or of dissolution applied by the administrative authorities against the other party to a contract of public works.

(2) In such contracts, it may only investigate whether the sanctions have been applied under conditions of such nature as to create a right of compensation in favour of the other party.

### Section 5. Assignment of or giving of the contract in security

Art. 3293. — *Giving of contract in security.*

Public contracts may be given in security by the contractor or by the sub-contractors approved by the administrative authorities.

Art. 3294. — *Assignment of contract.*

In the case of a regular assignment of the contract, the assignee shall be the only person entitled to receive the price.

Art. 3295. — *Rights of sub-contractor.*

(1) The sub-contractor who has been expressly approved by the administrative authorities may receive directly from the administrative authorities the payment for the works performed by him where the holder of the contract has agreed thereto and the contract has specifically indicated the nature and value of the works to be performed by the sub-contractor.

(2) The records ascertaining the works performed by the sub-contractor shall be accepted by the holder of the contract.

(3) The direct payment to the sub-contractor may not be made where the holder of the contract has given the contract in security.

Art. 3296. — *Prohibition of sums paid in advance.*

The sub-contractor may in no case receive advances.

## Chapter 4. Contract of supplies

Art. 3297. — *Performance of contract.*

(1) The supplier shall have the initiative and choice as regards the manner of performing the contract.

(2) He may apply to whom he thinks fit for the purchase of the materials and articles required for the performance of his obligations.

Art. 3298. — *Risks.*

(1) The supplier shall bear the risks of the loss of the thing which supervenes through force majeure until the acceptance of the thing by the administrative authorities.

(2) The administrative authorities shall be bound by the liability of a depositary during the time between the date of the deposit of the supplies in their warehouse and that on which a final decision is taken as to the acceptance or rejection thereof.

Art. 3299. — *Acceptance of merchandise.*

The acceptance of merchandise shall take place in the manner and at the time specified in the contract.

Art. 3300. — *Postponement of acceptance.*

(1) The administrative authorities may postpone the acceptance where the supplies are defective.

(2) In such case, they shall inform the supplier of the time within which he shall remedy the defects of the supplies.

Art. 3301. — *Rejection of merchandise.*

The administrative authorities shall reject the supplies which are not in conformity with the contract where such defect takes away the utility which such supplies have for the administrative authorities and the supplier is unable or refuses to remedy such defect within the required time.

Art. 3302. — *Expenses of verification of merchandise.*

(1) The expenses of the verification of the merchandise shall be borne by the supplier as regards the operations effected in his establishment and by the administrative authorities as regards other operations.

(2) The supplier may be present at the verifications.

(3) He shall be informed of the time chosen for such operations and be admitted to put forward his remarks.

Art. 3303. — *Liability of supplier.*

(1) The exercise of supervision on the part of the administrative authorities shall not affect the liability of the supplier.

(2) It shall not restrict the right of the administrative authorities to reject the supplies which are recognised to be defective at the time of acceptance or to cause to be repaired during the period of warranty the parts which are recognised to be defective.

Art. 3304. — *Performance by reason of default.*

(1) In the case of a contract of supplies, the performance by reason of default may be ordered where the supplier fails to carry out an urgent delivery or a contract has been cancelled.

(2) The administrative authorities shall take the place of the defaulting supplier in purchasing the supplies from another supplier or in manufacturing them themselves.

(3) Nothing shall affect the right of the administrative authorities to claim damages from the defaulting supplier.

Art. 3305. — *Power of the court.*

(1) The court may not cancel the sanctions of coercion or of dissolution applied by the administrative authorities against the other party to a contract of supplies.

(2) In such contracts, it may only investigate whether the sanctions have been applied under conditions of such nature as to create a right to compensation in favour of the supplier.

(3) Nothing shall affect the provision of Art. 3306.

Art. 3306. — *Preliminary claim to the administrative authorities.*

(1) The supplier shall firstly make his claim to the administrative authority in the cases and within the measure in which the contract imposes upon him such preliminary procedure.

(2) A recourse to the judicial authorities which is not preceded by the obligatory claim to the administrative authorities shall not be admissible.

(3) Where the contract prescribed a period for the claim to the administrative authorities and the supplier has failed to make such claim in due time, such claim shall be barred and the recourse to the judicial authorities shall not be admissible.

# TITLE XX

# COMPROMISE AND ARBITRAL SUBMISSION

## Chapter 1. Compromise

### Section 1. Compromise in General

Art. 3307. — *Definition.*

A compromise is a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future.

Art. 3308. — *Conditions as to form.*

(1) A compromise may be made to create, to modify or to extinguish legal obligations.

(2) The forms required by law for the creation, modification or extinction of these obligations without consideration shall be complied with.

Art. 3309. — *Interpretation.* — 1. *Principle.*

The terms of the compromise entailing renunciation shall be interpreted restrictively.

Art. 3310. — 2. *Application.*

(1) Renunciation by one party of all his rights, actions and claims shall entail the extinction of such rights, actions and claims only in respect of which the compromise has been reached.

(2) Where a person who has made a compromise on a right which he possessed in his own right acquires subsequently a similar right through another person, he shall in no way be bound in respect of the newly-acquired right by the previous compromise.

Art. 3311. — *Relative effect.*

A compromise made by one interested party shall not be binding on the other interested parties and may not be set up by them.

Art. 3312. — *Mistake of right.*

(1) As between the parties, the compromise shall have the force of *res judicata* without appeal.

(2) It may not be contested on the ground of a mistake made by one or both of the parties concerning the rights on which they have compromised.

Art. 3313. — *Fundamental mistake.* — 1. *Void or false documents.*

(1) A compromise may be invalidated on the ground of mistake where the instrument for the performance of which it is made is void.

(2) It may also be invalidated where the agreement of one or both of the parties was due to the existence of a document which is shown to be false.

(3) The compromise shall be valid in either case where, at the time of the contract, the parties had in view the possibility that the instrument might be void or the document false.

Art. 3314. — 2. *Unknown judgment.*

(1) A compromise may be invalidated where the dispute which it was intended to terminate has been settled by a judgment having the force of *res judicata* of which one or both of the parties were unaware.

(2) Where an appeal lies from the judgment of which one or both of the parties are unaware, the compromise shall remain valid.

Art. 3315. — 3. *Compromise effecting general settlement.*

(1) Where the parties have reached a general settlement on all the matters they may have had in common, the compromise may not be invalidated on the ground that documents unknown to one or both of the parties at the time of the contract, have subsequently been discovered.

(2) The compromise may however be invalidated in such a case where the documents in question were wilfully withheld by one of the parties at the time of the contract.

Art. 3316. — *Illicit object.*

A compromise relating a contract the object of which is contrary to the law or to public morality shall be of no effect.

Art. 3317. — *Warranties due by parties.*

(1) The compromise shall have a declaratory effect as regards the rights which one of the parties renounces therein.

(2) The conditions and forms required by law for the transfer of the right renounced shall be complied with.

(3) The parties to the compromise shall not give each other any warranties concerning these rights, save that of their personal act and such other warranty as may have been expressly stipulated.

## Section 2. Conciliation

Art. 3318. — *Appointment of conciliator.*

(1) The parties may entrust a third party with the mission of bringing them together and, if possible, negotiating a settlement between them.

(2) The conciliator may be appointed, at the request of the parties, by an institution or by a third party.

(3) The person appointed conciliator shall be free to accept or to refuse his appointment.

Art. 3319. — *Duties of parties.*

(1) The parties shall provide the conciliator with all the information necessary for the performance of his duties.

(2) They shall refrain from any act that would make the conciliator's task more difficult or impossible.

Art. 3320. — *Duties of conciliator.*

(1) Before expressing his findings, the conciliator shall give the parties an opportunity of fully stating their views.

(2) He shall draw up the terms of a compromise or, if none can be reached, a memorandum of non-conciliation.

(3) He shall communicate these documents to the parties.

Art. 3321. — *Time-limit.*

(1) The conciliator shall carry out his duties within the period of time laid down in the contract or, in the absence of any such limit, within six months from the date of his appointment.

(2) During this period, the parties may perform such acts as are necessary to preserve their rights.

(3) They may not bring their dispute before the court prior to the expiration of this period unless the conciliator has drawn up a memorandum of non-conciliation.

Art. 3322. — *Powers of conciliator.*

(1) The conciliator's powers shall be interpreted restrictively.

(2) The parties shall not be bound by the terms of the compromise drawn up by the conciliator unless they have expressly undertaken in writing to confirm them.

Art. 3323. — *Conciliator's expenses and remuneration.*

(1) The conciliator shall be refunded any reasonable expenses he has incurred in the discharge of his duties.

(2) He shall not be entitled to remuneration unless otherwise expressly agreed.

Art. 3324. — *Application of rules regarding compromise.*

The provisions of Section 1 of this Chapter shall in addition apply to a compromise reached through conciliation.

## Chapter 2. Arbitral submission

Art. 3325. — *Definition.*

(1) The arbitral submission is the contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law.

(2) The arbitrator may be instructed only to establish a point of fact without deciding on the legal consequences flowing therefrom.

Art. 3326. — *Capacity and form.* — 1. *Principle.*

(1) The capacity to dispose of a right without consideration shall be required for the submission to arbitration of a dispute concerning such right.

(2) The arbitral submission shall be drawn up in the form required by law for disposing without consideration of the right to which it relates.

Art. 3327. — 2. *Exception.*

(1) The provisions of Art. 3326 shall not apply where this Code expressly provides for arbitration.

(2) The arbitral submission may in such case be made by the tutor in the name of a minor or interdicted person.

(3) It shall be subject to no special form.

Art. 3328. — *Object of contract and arbitration clause.*

(1) The dispute referred to arbitration may be an existing dispute.

(2) The parties to a contract may also submit to arbitration disputes which may arise out of the contract in the future.

(3) An arbitral submission relating to future disputes shall not be valid unless it concerns disputes which flow from a contract or other specific legal obligation.

Art. 3329. — *Interpretation.*

The provisions of the arbitral submission relating to the jurisdiction of the arbitrators shall be interpreted restrictively.

Art. 3330. — *Scope of jurisdiction.*

(1) The arbitral submission may authorise the arbitrator to decide difficulties arising out of the interpretation of the submission itself.

(2) It may in particular authorise the arbitrator to decide disputes relating to his own jurisdiction.

(3) The arbitrator may in no case be required to decide whether the arbitral submission is or is not valid.

Art. 3331. — *Appointment of arbitrator.* — 1. *By the parties.*

(1) The arbitrator may be appointed either in the arbitral submission or subsequently.

(2) The submission may provide that there shall be one arbitrator or several arbitrators.

(3) Where the submission fails to specify the number of arbitrators or the manner in which they shall be appointed, each party shall appoint one arbitrator.

Art. 3332. — 2. *By the arbitrators or by the court.*

(1) Unless otherwise provided, where there is an even number of arbitrators they shall, before assuming their functions, appoint another arbitrator who shall as of right preside the arbitration tribunal.

(2) Where their number is odd, the arbitrators shall appoint the president of the arbitration tribunal from among themselves.

(3) Failing agreement between the arbitrators, the appointments provided in sub-art. (1) and (2) shall be made by the court at the request of one of the parties.

Art. 3333. — 3. *Procedure for appointment.*

(1) Where necessary, the party availing himself of the arbitral submission shall specify the dispute he wishes to raise and appoint an arbitrator.

(2) Notice thereof shall be given to the other party and, where appropriate, to the person entrusted with the appointment of an arbitrator under the arbitral submission.

Art. 3334. — 4. *Time-limit.*

(1) Where the other party or the person required to appoint an arbitrator fails to do so within thirty days, the court shall appoint such arbitrator.

(2) The time-limit shall run from the day when the notice provided in Art. 3333 (2) reached its destination.

(3) Modifications to these rules may be provided in the arbitral submission.

Art. 3335. — 5. *Equality of parties.*

The arbitral submission shall not be valid where it places one of the parties in a privileged position as regards the appointment of the arbitrator.

Art. 3336. — *Default of arbitrator.* — 1. *Replacement.*

(1) Where an arbitrator refuses his appointment, dies, becomes incapable or resigns, he shall be replaced by the procedure prescribed for his appointment, in accordance with the provisions of the preceding Articles.

(2) Where an arbitrator is disqualified or removed, the new arbitrator shall be appointed by the court.

(3) The provisions of this Article may be modified by agreement between the parties.

Art. 3337. — 2. *Lapse of submission.*

(1) Where the arbitrator has been named in the arbitral submission and the parties do not agree on who is to replace him, the arbitral submission shall lapse.

(2) However, it shall remain valid in respect of a future dispute where, at the time when it arises, the impediment of the arbitrator has ceased.

(3) The provisions of this Article may be modified by agreement between the parties.

Art. 3338. — *Death of party.*

The death of one of the parties shall not terminate the functions of the arbitrator he has appointed, unless otherwise provided by the parties.

Art. 3339. — *Functions of arbitrator.*

(1) Any person may be appointed as an arbitrator.

(2) No regard shall be had to the nationality of the arbitrator.

(3) The person appointed as an arbitrator shall be free to accept or to refuse his appointment.

Art. 3340. — *Disqualification of arbitrator.* — 1. *Grounds.*

(1) An arbitrator may be disqualified where he is not of age or where he has been convicted by a court, is of unsound mind, ill or absent or is for any other reason unable to discharge his functions properly or within a reasonable time.

(2) The arbitrator appointed by agreement between the parties or by a third party may be disqualified where there are any circumstances capable of casting doubt upon his impartiality or independence.

(3) The president of the arbitration tribunal may be disqualified for the same reason.

Art. 3341. — 2. *Demurrer.*

Unless otherwise provided, a party may seek the disqualification of the arbitrator appointed by himself only for a reason arising subsequently to such appointment, or for one of which he can show that he had knowledge only after the appointment.

Art. 3342. — 3. *Procedure.*

(1) An application for disqualification shall be made to the arbitration tribunal by a party before the giving of the award and as soon as such party knew of the grounds for disqualification.

(2) The parties may stipulate that the application for disqualification be made to another authority.

(3) Where the application for disqualification is dismissed, this decision may be appealed against in court within ten days.

Art. 3343. — *Removal of arbitrator.*

Where an arbitrator, having accepted his appointment, unduly delays the discharge of his duties, the authority agreed upon by the parties or, in the absence of such agreement, the court, may remove the arbitrator on the application of either party.

Art. 3344. — *Penalty for non-performance.*

(1) Where a party to an arbitral submission brings before the court a dispute covered by the submission, refuses to perform the acts required for setting the arbitration in motion or claims that he is not

bound by the arbitral submission, the other party may in his discretion demand the performance of the arbitral submission or consider it to have lapsed in respect of the dispute in question.

(2) The fact that a party to an arbitral submission applies to the court to preserve his rights from extinction shall not entail the lapsing of the submission.

Art. 3345. — *Reference to Civil Procedure Code.*

(1) The procedure to be followed by the arbitration tribunal shall be as prescribed by the Code of civil procedure.

(2) The same shall apply to matters arising out of the execution of the award or to appeals against such award.

Art. 3346. — *Arbitral code.*

As used in this Chapter, the terms "arbitral submission" or "stipulation of the parties" include the provisions of the arbitral code to which the parties may have referred.

# TITLE XXI

# PROVISIONS DEALING WITH LAW REPEALED BY THIS CODE

## Chapter 1. General provisions

Art. 3347. — *Repeals.*

(1) Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.

(2) In particular the following laws are hereby repealed:

(a) The law on prescription of 29th February, 1948; and

(b) The law on loans of 1923.

Art. 3348. — *Rights acquired under repealed legislation.*

(1) Unless otherwise expressly provided, legal situations created prior to the coming into force of this Code shall remain valid notwithstanding that this Code modifies the conditions on which such situations may be created.

(2) Unless otherwise expressly provided, this Code shall not affect the consequences having arisen out of such legal situations prior to the coming into force of this Code.

Art. 3349. — *Legal situations not finally created.*

(1) Unless otherwise expressly provided, where the conditions for the creation of a legal situation may or need be present at various times,

the provisions of this Code shall only apply to such conditions as are not yet finally fulfilled on the coming into force of this Code.

(2) Such conditions shall be governed by such further requirements for the creation of a legal situation as are laid down in this Code.

Art. 3350. — *Law modifying a period of time.*

(1) Where periods of time have expired prior to the coming into force of this Code, nothing in this Code shall revive them.

(2) Where periods of time have been extended by this Code, the provisions of this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

(3) Where periods of time have been shortened by this Code, the periods provided by the law repealed by this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

Art. 3351. — *Effect of existing legal situations.*

(1) Unless otherwise expressly provided, the provisions of this Code which specify the effects of extra-contractual legal situations shall forthwith apply to legal situations created prior to the coming into force of this Code.

(2) Contracts existing on the coming into force of this Code shall be governed by the provisions of the law under which they have been made, unless the contract is voidable on the ground of mistake, fraud, duress or as being unconscionable in such cases and within such time as are provided in this Code.

## Chapter 2. Special provisions

Art. 3352. — *Restrictions to capacity.*

Agreements relating to capacity made prior to the coming into force of this Code shall be subject to the provisions of Art. 195.

Art. 3353. — *Protection of incapable persons.*

Guardians, tutors, co-tutors and assistant tutors appointed prior to the coming into force of this Code shall be deemed to have been appointed under this Code notwithstanding that they are not eligible for appointment under this Code. They shall carry out the duties prescribed by this Code.

Art. 3354. — *Successions.* — 1. *Successions opened prior to coming into force of this Code.*

Successions opened prior to the coming into force of this Code shall continue in accordance with the provisions of the law repealed by this Code.

Art. 3355. — 2. *Wills made prior to coming into force of this Code.*

Wills made prior to the coming into force of this Code shall be valid where:

(a) they were valid under legislation repealed by this Code; or

(b) they comply with the requirements of this Code.

Art. 3356. — *Publishing contracts.*

The author may not terminate a publishing contract made prior to the coming into force of this Code earlier than two years after the coming into force of this Code.

Art. 3357. — *Reckoning time of service.*

In applying the relevant provisions of this Code, the time spent by the employee in the service of the employer or undertaking prior to the coming into force of this Code shall be taken into consideration where the rights of the employee depend on the time spent by him in the service of the employer or undertaking.

# TITLE XXII
# TRANSITORY PROVISIONS
## Chapter 1. Rules relating to persons and successions

Art. 3358. — *Assumption of family name.* — 1. *Persons born prior to the coming into force of this Code.*

(1) No person born prior to the coming into force of this Code shall be required to assume a family name.

(2) Where a person born prior to the coming into force of this Code wishes to assume a family name, he shall assume as a family name his patronymic:

Provided that, where there are two or more generations alive on the coming into force of this Code, he who wishes to assume a family name shall assume as a family name the patronymic of the senior male ascendant alive.

(3) A person who has been disowned or whose father is not known may assume as a family name the patronymic of his mother.

Art. 3359. — 2. *Persons born after the coming into force of this Code.*

(1) Any child born after the coming into force of this Code shall be given a family name.

(2) Where the child has no family name in pursuance of the provisions of the preceding Article, he shall assume as a family name his patronymic.

(3) A child who has been disowned or whose father is not known shall assume as a family name the family name, if any, of his mother or the patronymic of his mother.

Art. 3360. — 3. *Effect.*

Any name assumed under the provisions of the two preceding Articles shall be the family name of all direct lineal descendants.

Art. 3361. — *Registers of civil status.*

(1) Art. 48-55, 57-70, 72-77, 79-131 and 133-145 shall not come into force until a day to be notified by Order published in the Negarit Gazeta.

(2) Until the coming into force of the Articles specified in sub-art. (1), proof of birth, marriage and death shall be made by producing acts of notoriety drawn up in accordance with the provisions of Art. 146-153 of this Code by the persons specified in Art. 146 (1) or by such other persons appointed for the purpose by the Minister of Interior.

(3) Notwithstanding the provisions of sub-art. (1), the provisions of Art. 121-145 of this Code shall forthwith apply mutatis mutandis to acts of notoriety.

Art. 3362. — *Offices of associations.*

Until offices of associations have been organised under this Code, all powers and duties imposed thereon shall be exercised by the Minister of Interior.

## Chapter 2. Rules relating to property and mortgage

Art. 3363. — *Registers of immovable property.*

(1) Title X of this Code relating to registers of immovable property shall not come into force until a date to be fixed by Order published in the Negarit Gazeta.

(2) Until such date has been fixed, the provisions of the following Articles in this Chapter shall apply in lieu of the provisions of Title X.

Art. 3364. — *Transfer or extinction of ownership.*

The customary rules relating to the formalities to be complied with so that the transfer or extinction of the ownership of immovable property may be set up against third parties shall apply.

Art. 3365. — *Easements and restrictions to ownership.*

The customary rules relating to the formalities to be complied with so that easements, promises of sale, rights of pre-emption or provisions preventing attachment or assignment may be set up against third parties shall apply.

Art. 3366. — *Duties of seller.*

(1) The seller of an immovable shall inform the purchaser of all restrictions to the ownership of such immovable which, under this Code, may not be set up against a third party unless they have been registered in the registers of immovable property.

(2) The seller shall not be bound to inform the purchaser of the existence of such apparent easements as may apply to the immovable sold.

(3) Whosoever has with regard to an immovable dealings which under this Code require to be registered in the registers of immovable property shall carry out the duties imposed on the seller by this Article.

Art. 3367. — *Mortgages.*

The customary rules to be complied with so that mortgages may be set up against third parties shall apply.

## CORRIGENDA

Page 15, Art. 78 (2), line 2: Read "drawn up".

Page 36, Art. 207 (3), line 2: Read "appointed".

Page 42, Art. 242, line 1: Read "eldest".

Page 55, Art. 322, heading: Read "ad hoc".

Page 56, Art. 327 (1), line 2: Read "except".

Page 69, Art. 406 (1), line 1: Read "to defending".

Page 101, Art. 603: Read "(1) Marriages..... etc.
(2) The witnesses may or may not be related to the future spouses".

Page 108, Art. 643: Delete sub-art. (3).

Page 128, Art. 765: Read "(1) Where the child is born within 210 days from the conclusion of the marriage or the beginning of the irregular union, the husband or the man who lived with the mother may by contract assign the paternity of the child to a third party who declares that he is the father of the child.
(2) Where the child is born more than 210 days.... ..... etc."

Page 132, Art. 794, line 1: Read "it is proved".

Art. 795: Read "(2) The mother of the child shall be heard."
Existing sub-art. (2) is to be read as sub-art. (3).

Page 135, Art. 812: Delete sub-art. (2).

Page 136, Art. 816 (3), line 1: Read "They may".

Page 143, Art. 865: Read "(1) A testamentary provision which fails..... etc.
(2) A provision in a will shall be of no effect where it cannot be enforced".

Art. 866: Delete sub-art. (2).

Page 146, Art. 883: Read "(1) The witnesses shall be of age and not interdicted".
Existing sub-art. (1) and (2) are to be read as sub-art. (2) and (3).

Page 147, Art. 889: Read "(1) A public or holograph will ..... etc.
(2) The provision which contains such erasures, cancellation or words written over others shall alone be invalid where it can be isolated from the rest of the will, having regard to the testator's intention and all the circumstances".
Existing sub-art. (2) is to be read as sub-art. (3).

## CORRIGENDA

Art. 890 (2): Read "shall not be".

Page 148, Art. 892: Read "(1) An oral will ..... etc.

(2) The witnesses shall be of age and not interdicted".

Page 149, Art. 904: Read "(1) Notwithstanding any provision ..... etc.

(2) The same shall apply where, after the date of the will, a descendant is born to the testator and such descendant, having been called to the succession by representation, accepts the succession".

Page 155, Art. 935: Delete and replace as follows:

"Unless otherwise provided in the will, the substituted legatee shall be called where the holder in tail cannot or does not want to accept what has been bequeathed to him".

Page 156, Art. 941: Delete sub-art. (2).

Page 157, Art. 945: Delete sub-art. (2).

Page 162, Art. 973: Add sub-art. (3) to be read as follows:

"An application for nullity shall only be entertained where it is made within three months from the declaration".

Page 174, Art. 1044: Add sub-art. (3) to be read as follows:

"Where the succession does not contain any thing of the same genus as the thing bequeathed, the legatee may in his discretion require the liquidator to give him any such thing of average quality or to pay him the value of the thing bequeathed".

Page 199, Art. 1195: Read "(1) The issue by ..... etc.

(2) The manner in which title deeds are issued and time when such title deeds are to be renewed shall be prescribed by regulations.

(3) The fees to be charged on delivery to cover the expenses of the administrative authorities and to meet the liability of such authorities arising from delivery shall be prescribed by regulations".

Page 211, Art. 1274 (1), line 3: Read "agreement"

Art. 1277, heading; Read "agreement"

## CORRIGENDA

Page 232, Art. 1414: Delete and replace as follows:

"(1) Agreements under this Section shall not be enforced where they relate to property which is expropriated.

(2) The beneficiary may not claim damages on the ground that the agreement could not be enforced as a result of expropriation".

Page 234, Art. 1429: Add sub-art. (3) to be read as follows:

"Any such provision shall only be valid on the conditions laid down in the following Articles".

Page 235, Art. 1432: Read "(1) A prohibitive ..... etc.

(2) Where the provision relates to an immovable which is not registered, such provision shall not affect third parties unless it is entered in the registry of the court of the place where the immovable is situate".

Page 246, Art. 1495: Add sub-art. (3) to be read as follows:

"The creditors of the members of the community shall have no right on the property of the community".

Page 248, Art. 1511: Read "(1) Decisions ..... etc.

(2) The charter of an official association may depart from the provisions of sub-art. (1) and provide that decisions shall be taken by a majority holding.

(3) The charter may lay down special conditions of quorum and majority for the taking of special decisions".

Page 266, Art. 1615: Add sub-art. (3) to be read as follows:

"The prescribed fee shall be charged in respect of deposit and preservation".

Page 304: For "Chapter 5" read "Chapter 4".

Page 354, Art. 2161: Delete sub-art. (3).

Page 439, Art. 2632 (3), line 2: Read "certain professions".