THE CIVIL CODE

PRELIMINARY CHAPTER

GENERAL PROVISIONS

SECTION I

Laws and their Applications

1. Laws and Rights

Article 1

Provisions of laws govern all matters to which these provisions apply in letter or spirit.

In the absence of a provision of a law that is applicable, the Judge will decide according to custom and in the absence of custom in accordance with the principles of Moslem Law. In the absence of such principles, the Judge will apply the principles of natural justice and the rules of equity.

Article 2

A provision of a law can only be repealed by a subsequent law expressly providing for such repeal, or containing a provision inconsistent with a provision of the former law or regulating anew a matter previously regulated by a former law.

Article 3

Periods of limitation will be calculated according to the Gregorian calendar, unless expressly provided otherwise by a law.

Article 4

A person legitimately exercises his rights is not responsible for prejudice resulting thereby.

Article 5

The exercise of a right is considered unlawful in the following cases:

a) if the sole aim thereof is to harm another person;

b) if the benefit it is desired to realize is out of proportion to the harm caused thereby to another person;

c) if the benefit it is desired to realize is unlawful.

2. The Application of Laws

Conflicts of law as to time:

Article 6

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

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

Article 7

New legislative provisions as regards prescription apply from such time as they come into force in all cases in which the period of prescription has not been completed.

Former legislative provisions however, apply as regards the date of commencement of prescription, its suspension and its interruption in respect of the period prior to the application of the provisions of the new law.

Article 8

When the new law provides for a period of prescription shorter than the period provided for in the former law, the new period will apply from the date the new law came into force, even if the old period of prescription has already commenced to run.

If, however, the remaining period still to run under the former law is shorter than that fixed by the new law, the prescription shall be completed upon the expiry of such remaining period.

Article 9

Proof established in advance is governed by provisions of the law in force at the time when the proof was established or at the time when such proof should have been established.

Conflicts of law as to place:

Article 10

Egyptian law will rule to determine the nature of a legal relationship in order to ascertain the law applicable in the event of a conflict between various laws in any particular suit.

Article 11

The status and the legal capacity of persons are governed by the law of the country to which they belong by reason of their nationality. If, however, in a transaction of a pecuniary nature, concluded and having effect in Egypt, one of the parties is a foreigner without legal capacity and such lack of

capacity is due to a reason that is not apparent and which cannot be easily detected by the other party, this reason has no effect on his legal capacity.
The legal status of foreign juristic persons such as companies, associations, foundations, or others, is subject to the law of the State in whose territory such juristic persons have established their actual principal seat of management. If, however, a juristic person carries on its principal activities in Egypt, Egyptian law will be applied.

Article 12

The fundamental conditions relating to the validity of marriage are governed by the (national) law of each of the two spouses.

Article 13

The effects of marriage, including its effects upon the property of the spouses, are regulated by the law of the country to which the husband belongs at the time of conclusion of the marriage.

Repudiation of marriage is governed by the law of the country to which the husband belongs at the time of repudiation, whereas divorce and separation are governed by the law of the country to which the husband belongs at the time of the commencement of the legal proceedings.

Article 14

If, in the cases provided for in the two preceding articles one of the two spouses is an Egyptian at the time of the conclusion of the marriage, Egyptian law alone shall apply except as regards the legal capacity to marry.

Article 15

Obligations as regards payment of alimony to relatives are governed by the (national) law of the person liable for such payment.

Article 16

The (national) law of a person who should be protected shall apply in respect of all fundamental matters relating to natural and legal guardianship, receivership, and other forms of protection of persons without legal capacity and of absent persons.

Article 17

Inheritances, wills and other dispositions taking effect after death are governed by the (national) law of the de cujus, the testator or the person disposing of property at death.

The form of a will, however, is governed by the (national) law of testator at the time the will is made, or by the law of the country in which the will is made. The same principles apply to the form of other dispositions taking effect after death.

Article 18

Possession, ownership and other real rights are regulated, as regards immovables, by the law of the place in which the immovable is situate, and as regards movables, by the law of the place where the movable was situate at the time when the event occurred which resulted in the acquisition or loss of possession, ownership or other real rights.

Article 19

Contractual Obligations are governed by the law of the domicile when such domicile is common to the contracting parties, and in the absence of a common domicile by the law of the place where the contract was concluded. These provisions are applicable unless the parties agree, or the circumstances indicate that it is intended to apply another law.

Contracts relating to immovables, however, are governed by the law of the place in which the immovable is situate.

Article 20

Contracts between living persons are governed as regards their form by the law of the country in which the contracts are concluded. They may also be governed by the law regulating the basic provisions of a contract, by the law of the domicile of the parties or by their common national law.

Article 21

Non-contractual obligations are governed by the law of the State in whose territory the act that gave rise to the obligation took place.

When, however, the obligation arises from a tort, the provisions of the preceding paragraph shall not apply to an act which occurred abroad and which, although considered unlawful in accordance with the law of the country in which the act occurred, is considered lawful in Egypt.

Article 22

Principles of competence of courts and all questions of procedure are governed by the law of the country in which the action is brought, or in which the proceedings are taken.

Article 23

The provisions of the preceding articles only apply when no provisions to the contrary are included in a special law or in an International Convention in force in Egypt.

Article 24

The principles of private international law apply in the case of a conflict of laws for which no provision is made in the preceding articles.

Article 25

In the case of a person of unknown nationality or of a person of plural nationality the law to be applied will be decided by the Judge.

Egyptian law shall apply, however, if a person is deemed in Egypt to be of an Egyptian nationality and is at the same time deemed by one or more foreign states to be a national of that or those states.

Article 26

When, in accordance with the preceding provisions, it appears that the law to be applied is the law of a state in which several legal systems exist, the law applicable shall be determined by the internal law of that state.

Article 27

In the cases where a foreign law is applicable only the internal provisions of such foreign law shall apply to the exclusion of provisions relating to private international law.

Article 28

The provisions of a foreign law applicable by virtue of the preceding articles shall not be applied if these provisions are contrary to public policy or to morality in Egypt.

SECTION II

Persons

1. Individuals

Article 29

Legal personality commences from the time a child is born alive and ends at death.

The law, however, determines the rights of a child en ventre de sa mere.

Article 30

Birth and death are established by means of official registers specially kept for this purpose.

In the absence of such proof, or if the inaccuracy of the entries in these registers is established, proof may be established by any other means.

Article 31

Registers of and declarations connected with births and deaths are regulated by a special law.

Article 32

Missing person and absent persons are subject to provisions contained in special laws; in the absence of such special laws, Moslem law will be applied.

Article 33

Egyptian nationality is governed by a special law.

Article 34

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

Article 35

Direct lineal relationship is the relationship existing between ascendants and descendants.

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

Article 36

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

Article 37

The relatives of either of the two spouses are deemed to be relatives of the other spouse, in the same line and of the same degree.

Article 38

Every person must have a first name and a family name. The family name of a person is bestowed upon his children.

Article 39

Acquisition and change of family name will be governed by special legislation.

Article 40

A domicile is the place where a person habitually resides.

A person may have more than one domicile at the same time, as he may have none.

Article 41

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

Article 42

The domicile of a minor, a person under legal disability, a missing person or an absent person will be the domicile of his legal representative.

A minor who has attained eighteen years and a person in a similar legal position shall nevertheless have his special domicile in respect of acts he is capable of performing in accordance with the law.

Article 43

A special domicile may be elected for the performance of a specific legal act.

The election of domicile must be evidenced by writing.

A domicile elected for the performance of a legal act shall be deemed to be the domicile in so far as all matters relating to such act are concerned, including the procedure for enforcement by legal means unless the election of domicile is expressly limited to certain special acts, excluding others.

Article 44

All persons attaining majority in possession of their mental faculties and not under legal disability, have full legal capacity to exercise their civil rights.

The majority of a person is fixed at twenty one years completed in accordance with the Gregorian calendar.

Article 45

A person devoid of discretion, owing to youth, feeble mindedness or insanity is incapable of exercising his civil rights.

A person who has not attained the age of seven is considered devoid of discretion.

Article 46

A person who has reached the age of discretion but has not attained majority and a person who has attained his majority but is a prodigal or an imbecile, has a limited legal capacity according to the provisions of the law.

Article 47

Persons deprived of full or partial legal capacity are governed, as the case may be, by the rules of natural or legal guardianship or curatorship subject to the conditions and in accordance with the rules laid down by law.

Article 48

No person can renounce his legal capacity or modify the rules relating thereto.

Article 49

No person can renounce his personal liberty.

Article 50

A person whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby.

Article 51

A person whose right to the use of his name is unlawfully disputed by another, or a person whose name is unlawfully used by another shall have the right to demand cessation of the infringement and compensation for any damage sustained thereby.

2. Juristic persons

Article 52

Juristic persons are:

1. The state, the provinces (mudirias), towns and villages in accordance with the provisions fixed by law; administrations, departments and other public institutions to which the law has granted the status of juristic persons.

2. Religious groups and communities which the state has recognized as juristic persons.

3. Wakfs.

4. Commercial and civil corporations.

5. Associations and foundations created in accordance with the subsequent provisions hereof.

6. Any group of persons or properties recognized as a juristic persons by virtue of a provision of the law.

Article 53

A juristic person enjoys, within the limits established by law, all rights, with the exception of those rights which are inherent in the nature of an individual.

A juristic person has:

a) its own patrimonium;

b) legal capacity, within the limits fixed by its constitution or established by law;

c) the right to sue;

d) its own domicile. This domicile is the place where its seat of management is situate. A corporation whose seat of management is situate abroad but operates in Egypt, is deemed, in accordance with internal law, to have its seat of management at the place where its local seat of management is situate.

A juristic person has a representative to express its will.

Associations

Article 54

* Articles 54-80 have been repealed by Presidential Decree.

SECTION III

The Classification of Things and Property

Article 81

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

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

Article 82

Things which are fixed and which cannot be removed without damage are immovables. All other things are movables.

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

Article 83

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

All other proprietary rights are deemed to be movable property.

Article 84

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

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

Article 85

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

Article 86

Rights in respect of a non-material object are regulated by special laws.

Article 87

Immovable and movable property owned by the State or other public juristic persons and allocated either in fact or by virtue of a law or a decree for purposes of public utility, forms part of the public domain.

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

Article 88

Properties forming part of the public domain lose this status with the cessation of their allocation for public utility purposes.

This cessation takes place by virtue of a law, or a decree, or in fact, or if the object of public utility for which they were allocated comes to an end.

FIRST PART

OBLIGATIONS OR PERSONAL RIGHTS

BOOK I

OBLIGATIONS GENERALLY

CHAPTER I

Sources of Obligations

Section I

Contracts

1. Elements of Contracts

Consent:

Article 89

A contract is created, subject to any special formalities that may be required by law for its conclusion, from the moment that two persons have exchanged two concordant intentions.

Article 90

An intention may be declared verbally, in writing, by signs in general use, and also by such conduct as, in the circumstances of the case, leaves no doubt as to its true meaning.

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

Article 91

A declaration of intention becomes effective from the time that it comes to the knowledge of the person for whom it was intended, who, subject to proof to the contrary, shall be deemed to have knowledge of the declaration of intention from the time that it reaches him.

Article 92

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

Article 93

When a time limit is fixed for acceptance, the person who makes the offer is bound to maintain his offer until the expiration of the time limit.
The time limit may result from the circumstances or from the nature of the transaction.

Article 94

If at the time a contract is being framed, an offer is made without a time limit being fixed for acceptance, the offeror is released from his offer if it is not accepted forthwith. This also applies, if the offer is made by one person to another person by telephone or by any other similar means.

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

Article 95

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

Article 96

An acceptance that goes beyond the offer, or that is accompanied by a restriction or modification, is deemed to be a rejection comprising a new offer.

Article 97

In the absence of agreement or a provision of the law to the contrary, a contract between persons who are not present at the time is deemed to have been concluded at the place where and at the time when the offeror became aware of the acceptance.

The offeror is deemed to have had knowledge of the acceptance at the place and at the time the acceptance reached him.

Article 98

In the case in which an offeror could not, by reason of the nature of the transaction, in accordance with commercial usage, or on account of other circumstances, have anticipated a formal acceptance, the contract is deemed to have been concluded, if the offer is not refused within a reasonable time.

Failure to reply is equivalent to acceptance when the offer relates to dealings already existing between the parties, or when the offer is solely in the interests of the offeree.

Article 99

A contract of sale by public auction is only concluded when the final bid is accepted. A bid is nullified from the moment a higher bid is made, even if the higher bid is void.

Article 100

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

Article 101

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

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

Article 102

If a party, who has promised to enter into a contract, refuses to do so, and the other party takes legal proceedings against him to enforce the promise, and the conditions required for the conclusion of the contract, especially those as to the form, exist, the judgment will, upon becoming final, replace the contract.

Article 103

In the absence of a clause to the contrary in the contract, the payment of earnest money at the time the contract is concluded indicates that either party may withdraw from the contract.

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

Article 104

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

When, however, the representative is a mandatory who acted in accordance with the principal's precise instructions, the principal cannot plead the ignorance of his representative of circumstances which the principal knew or should have necessarily known.

Article 105

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

Article 106

When a contracting party did not disclose at the time of the conclusion of a contract that he is acting as a representative, the contract only operates in favor of or binds the principal, if the third party with whom the representative contracted should necessarily have known that the contracting party was the representative of the principal, or if it was of no importance to the third party whether he entered into the transaction with the principal or with the representative.

Article 107

If a representative and a third party with whom the representative concluded a contract were both unaware at the time the contract was concluded of the extinction of the representation, the effects of the contract concluded by the representative, whether they involve rights or obligations, revert to the principal or his successor in title.

Article 108

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

Article 109

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

Article 110

A minor lacking discretion has not the legal capacity to dispose of his property. All his acts in law are deemed to be void.

Article 111

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

Dispositions of property which may be, at the same time, profitable and detrimental, may be annulled, if this is in the interest of the minor.

Annulment cannot be claimed if the act is ratified by the minor upon attaining his majority or by his guardian or by the court, as the case may be, in accordance with the law.

Article 112

A minor possessing discretion, who has attained the age of eighteen years and has been authorized to take possession of his property in order to manage it, or has taken possession of his property by virtue of law, may validly perform acts of management within the limits of the law.

Article 113

The courts shall pronounce or raise interdictions on all persons suffering from insanity, mental derangement or imbecility, and prodigals, in accordance with the rules and the procedure prescribed by law.

Article 114

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

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

Article 115

An act entered into by a person placed under interdiction for imbecility or prodigality after the registration of the sentence of interdiction, will be governed by the provisions regulating acts performed by minors possessing discretion.

An act entered into before the registration of the sentence of interdiction shall only be void or voidable if unfair advantage has been taken of the condition of the person under interdiction or if there has been fraudulent collision.

Article 116

The constitution of a wakf, or the execution of a will by a person placed under interdiction for prodigality or for imbecility is valid, if the interdicted person has been duly authorized by the court.

Acts of management carried out by a person placed under interdiction for prodigality, who has been authorized to take possession of his property, are valid within the limits provided by the law.

Article 117

If a person is deaf and dumb, deaf and blind or blind and dumb, and cannot, by reason of his infirmity, express his will, the court may appoint a judicial adviser to assist him in connection with such acts as may be necessary in his interests.

An act for which the assistance of a judicial adviser has been ordered is voidable, if the act is performed by the person provided with a judicial adviser without the assistance of such adviser, after the registration of the decision providing for such assistance.

Article 118

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

Article 119

A person under legal incapacity, may demand the avoidance of the contract, subject, however, to his liability to payment of damages if he has employed fraudulent methods to conceal his legal incapacity.

Article 120

A party to a contract may demand the avoidance of the contract if he committed an essential mistake, if the other party committed the same mistake or had knowledge thereof, or could have easily detected the mistake.

Article 121

A mistake is an essential mistake when its gravity is of such a degree that, if it had not been committed, the party who was mistaken, would not have concluded the contract.

The mistake is deemed to be essential more particularly:

a) when it has a bearing on the quality of the thing, which the parties have considered essential or which must be deemed essential, taking into consideration the circumstances surrounding the contract and the good faith that should prevail in business relationships.

b) when it has a bearing on the identity or on one of the qualities of the person with whom the contract is entered into, if this identity or this quality was the principal factor in the conclusion of the contract.

Article 122

In the absence of a provision of the law to the contrary, a mistake in law entails the voidability of the contract, if the mistake fulfills the elements of a mistake of fact in accordance with the two preceding articles.

Article 123

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

Article 124

A party who has committed a mistake cannot take advantage of the mistake in a manner contrary to the principles of good faith.

Such a party, moreover, remains bound by the contract which he intended to conclude, if the other party shows that he is prepared to perform the contract.

Article 125

A contract may be declared void on the grounds of fraudulent misrepresentation, when the artifices practiced by one of the parties, or by his representative are of such gravity that, but for them, the other party would not have concluded the contract.

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

Article 126

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

Article 127

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

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

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

Article 128

When the duress is practiced by a person other than one of the contracting parties, the victim cannot demand the avoidance of the contract, unless it is established that the other contracting party had, or should necessarily have had, knowledge thereof.

Article 129

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

Proceedings instituted on such grounds shall be barred unless commenced within one year from the date of the contract.

In a contract entered into for valuable consideration, the other party may avoid annulment proceedings by making such an offer as the judge may consider adequate compensation to cover the lesion.

Article 130

The preceding article shall apply subject to special provisions of the law relating to lesion in certain contracts, and to the provisions of the law as regards rates of interest.

Object:

Article 131

Things that may happen in the future may be the object of an obligation.

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

Article 132

If the object of an obligation is something impossible in itself, the contract is void.

Article 133

When the object of an obligation is not certain as to its nature, it must at least be determinate as to its kind and quantity, as otherwise the contract is void.

The object of an obligation may, however, only be determinate as to kind, if the contract provides a method of ascertaining the quantity. If there is no agreement as to the degree of quality and the quality cannot be ascertained by usage or by any other circumstances, the debtor must supply an article of average quality.

Article 134

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

Article 135

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

Consideration:

Article 136

A contract is void when an obligation is assumed without consideration or for a consideration contrary to public policy or morality.

Article 137

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

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

Nullity:

Article 138

When the law recognizes the right of one of the contracting parties to procure the avoidance of the contract, the other party cannot avail himself of this right.

Article 139

The right to procure avoidance of the contract is extinguished by an express or implied ratification of the contract.

Ratification is retroactive to the date of the contract, without prejudice to the rights of third parties.

Article 140

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

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

Article 141

When a contract is void, its nullity may be invoked by every person having an interest in the contract and such nullity may also be ordered by the court on its own initiative. Nullity cannot disappear by ratification of the contract.

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

Article 142

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

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

Article 143

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

Article 144

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

2. The Effects of a Contract

Article 145

Subject to the rules relating to successions, the effects of a contract apply to the parties and to their universal successors in title, unless it follows from the contract, from the nature of the transaction or from a provision of the law, that the effects of the contract do not pass to the universal successors in title of a party.

Article 146

Obligations and personal rights created by contracts relating to property that has subsequently been transferred to particular successors in title are transferred to such particular successors in title together with the property, when such obligations and rights constitute essential elements of the property and the particular successors in title had knowledge at the time of the transfer of the property to them.

Article 147

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

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

Article 148

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

A contract binds the contracting party not only as regards its expressed conditions, but also as regards everything which, according to law, usage and equity, is deemed, in view of the nature of the obligation, to be a necessary sequel to the contract.

Article 149

When a contract of adhesion contains leonine conditions, the judge may modify these conditions or relieve the adhering party of the obligation to perform these conditions in accordance with the principles of equity. Any agreement to the contrary is void.

Article 150

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

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

Article 151

In cases of doubt the construction shall be in favor of the debtor.

The construction, however, of obscure clauses in a contract of adhesion must not be detrimental to the adhering party.

Article 152

A contract does not create obligations binding upon third parties, but may create rights in their favor.

Article 153

A person who binds himself to procure the performance of an obligation by a third party, does not in so doing bind the third party. If the third party refuses to perform the obligation, the person who bound himself to obtain such performance, will be liable to indemnify the other contracting party by himself performing the obligation, the performance of which he undertook to procure.

In the event of the third party consenting to perform the obligation, his consent is effective only from the time that it is given, unless it is indicated expressly or by implication that the consent is retroactive as from the date of agreement between the contracting parties.

Article 154

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

As a result of such a stipulation and in the absence of an agreement to the contrary, the third party beneficiary acquires a direct right against the person who undertook to perform the obligation, and may call upon him to do so. The person who gave the undertaking may set up against the beneficiary the defenses arising out of the contract.

The stipulation may also demand the performance of the obligation in favor of the beneficiary, unless it appears from the contract that performance may only be demanded by the beneficiary.

Article 155

The stipulator himself, but not his creditors or heirs, may revoke the stipulation for a third party, provided that the revocation is made before the beneficiary advises the debtor or the stipulator of his

wish to have the benefit of the stipulation, and that the revocation is not contrary to the spirit of the contract.

In the absence of any express or implied agreement to the contrary, the revocation does not liberate the debtor vis-a-vis the stipulator. The stipulator may substitute a new beneficiary in the place of the former beneficiary, or may retain for himself the benefit of the stipulation.

Article 156

A stipulation in favor of a third party may be made in favor of future persons or institutions, and also in favor of persons or institutions who are not identified at the date of the contract, provided that these persons or institutions can be identified at the date when the effects of the contract come into operation in accordance with the stipulation.

3. Dissolution of contract

Article 157

In bilateral contracts (contrats synallagmatiques) if one of the parties does not perform his obligation, the other party may, after serving a formal summons on the debtor, demand the performance of the contract or its rescission, with damages, if due, in either case.

The judge may grant additional time to the debtor, if it is necessary as a result of the circumstances. The judge may also reject an application for rescission when the part of the contract which the debtor has failed to perform is of little importance in comparison with the obligation in its entirety.

Article 158

The parties may agree that in case of non-performance of the obligations flowing from the contract, the contract will be deemed to have been rescinded *ipso facto* without a court order. Such an agreement does not release the parties from the obligation of serving a formal summons, unless the parties expressly agree that such a summons will be dispensed with.

Article 159

When an obligation arising out of a bilateral contract is extinguished by reason of impossibility of performance, correlative obligations are also extinguished and the contract is rescinded *ipso facto*.

Article 160

When a contract is rescinded, the parties are reinstated in their former position. If reinstatement is impossible, the court may award damages.

Article 161

When, in the case of bilateral contract, correlative obligations are due for performance, either of the contracting parties may abstain from the performance of his obligation, if the other party does not perform his obligation.

SECTION II

Unilateral Undertakings

Article 162

A person who makes a promise to the public of a reward in exchange for a specified service is bound to pay the reward to the person who performs the service, even if he acted without thought of the promise of reward, or without knowledge thereof.

When the person who made the promise does not fix a period of time for the performance of the service, he may withdraw his promise by means of a notice to the public, but such withdrawal will not affect the rights of a person who has already performed the service. The right of action for the reward will be forfeited, if such action is not lodged within six months from the date of publication of the notice of withdrawal.

SECTION III

Unlawful Acts

1. Liability Arising from Personal Acts

Article 163

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

Article 164

Every person in possession of discretion is responsible for his unlawful acts.
When an injury is caused by a person not in possession of discretion, the judge may, if no one is responsible for him, or if the victim of the injury cannot obtain reparation from the person responsible, condemn the person causing the injury to pay equitable damages, taking into account the position of the parties.

Article 165

In the absence of a provision of the law or an agreement to the contrary, a person is not liable to make reparation, if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or of a third party.

Article 166

A person who causes an injury to another in the legitimate defense of his person or property, or of the person or property of a third party, is not responsible, provided that he does not exceed the measures necessary for his defense, as otherwise he will be liable to damages assessed in accordance with the principles of equity.

Article 167

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

Article 168

A person who causes injury to another person, in order to avoid greater injury that threatens him or a third party, is only responsible for such damages as the judge deems equitable.

Article 169

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

Article 170

The judge shall decide, in accordance with the provisions of Articles 221 and 22 and in the light of circumstances, the extent of the damages for the loss suffered by the victim. If the judge is not in a position at the time of the judgment to fix definitely the extent of the injury, he may allow the victim a delay within which he may claim reassessment of the damages.

Article 171

The judge shall decide the method of payment of damages in accordance with the circumstances. The damages may be paid by installments, or in the form of a regular periodical payment, in either of which cases the debtor may be ordered to provide security.
Damages will consist of a money payment. Upon the demand of the victim, however, the judge may, in accordance with the circumstances, order that the damage be made good by restoration of the original position, or by the performance of a prestation that has a connection with the unlawful act.

Article 172

An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and identity of the person who was responsible. An action for damages is prescribed in any case after fifteen years from the date on which the unlawful act was committed.
When a claim arises out of a penal offence and the penal action is not prescribed after the delays set out in the preceding paragraph, the action for damages is only prescribed when the penal action itself is prescribed.

2- Liability arising from the acts of another

Article 173

A person who is, by law or agreement, entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The responsibility exists even when the person causing the injury, is a person who is deprived of discretion.

A minor is deemed to require supervision until he has attained fifteen years or if, having attained that age, he is under the care of a person in charge of his upbringing. The supervision of a minor is the responsibility of his schoolmaster or of the person under whose supervision he works during the time he is under the care of such master or of such person under whom he works. The supervision of a wife who is a minor is the responsibility of her husband or of the person who is responsible for the supervision of the husband.
A person who is entrusted with the supervision of another person may escape liability by proving that he performed his duty of supervision or that the injury could not have prevented, even if he had exercised all necessary care.

Article 174

A master is liable for the damage caused by an unlawful act of his servant, when the act was performed by the servant in the course, or as a result, of his employment.
The relationship between master and servant exists even when the master has not been free to choose his servant, provided he has actual powers of supervision and control over his servant.

Article 175

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

3- Liability Arising from Things

Article 176

A person in charge of an animal, even if he is not its owner, is liable for any harm done by the animal, even if the animal strays or escapes, unless such person shows that the accident was due to a cause beyond his control.

Article 177

A person in charge of a building, even if he is not its owner, is liable for damage caused by the collapse of the building, even if such collapse is partial, unless he shows that the accident did not occur as a result of negligent maintenance or the age of, or the defect in the building.
A person who is in danger of damage from a building is entitled to call on the owner to take the necessary precautions to prevent the danger, and if the owner fails to take such precautions, to obtain an order from the Court authorizing him to take necessary precautions himself at the cost of the owner.

Article 178

Whoever is in charge of a thing whose supervision requires special care, or of a machine, is liable for damage caused by it, unless he shows that the damage was due to a cause beyond his control, subject always to any special provision of the law in this respect.

Section IV

Enrichment without Just Cause

Article 179

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

Article 180

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

1- Payment not Due

Article 181

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

Article 182

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

Article 183

Restitution may also be made of a payment effected in the performance of an obligation which had not at the time fallen due, if the payor was not aware that payment was not then due.
A creditor may, however, limit restitution to the profit he has gained as a result of the premature payment to the extent of the loss suffered by the debtor. When the obligation which has not fallen due is for a sum of money, the creditor must restitute to the debtor interest thereon at the legal or at an agreed rate for the time to run until the due date of payment.

Article 184

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

Article 185

When a person has received in good faith, that which is not due to him, he is bound only to restitute that which he has received.
If he has received in bad faith, he is bound to restitute in addition to the interest and profit that he has gained or that he has failed to gain by neglect on the thing unduly received, from the date of payment, or from the date he became of bad faith.
In any case, a person who has received that which is not due to him, is bound to restitute the interest and profit thereon from the date of a claim in the Courts.

Article 186

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

Article 187

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

2- Voluntary Agency

Article 188

There is a voluntary agency when one person of his own accord knowingly assumes the management of an urgent business of another person and on that person's behalf without being bound to do so.

Article 189

Voluntary agency also exists even when a voluntary agent manages the affairs of another person whilst at the same time looking after his own business, because of a connection between the two businesses of such a kind that one of them cannot be managed separately from the other.

Article 190

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

Article 191

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

Article 192

A voluntary agent must us in the management of the work he has undertaken all the care that one would expect from a reasonable person and shall be responsible for his mistakes. The judge may, however, reduce the amount of damages due as a result of such mistakes, if circumstances justify such a reduction.
When a voluntary agent delegates to a third party the whole or part of the work of which he has assumed the management, he shall be responsible for the acts of his delegate, without prejudice to the right of the person for whom he acts to his direct remedy against the delegate.
When there are several voluntary agents doing the same work, they are all jointly and severally responsible.

Article 193

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

Article 194

In the event of the death of a voluntary agent, his heirs are bound by the same obligations as those of a mandatary in accordance with the provisions of paragraph 2 of Article 717.
IN the event of the death of the person for whom he acts, the voluntary agent is bound by the same obligations to the heirs as he was to the person of whom they were the successors in title.

Article 195

A voluntary agent is deemed to the representative of the person for whom he has acted, if he was devoted to the management of the work the care of a reasonable person, even if the object in view has not been achieved. The person for whom the voluntary agency has acted will be bound to carry out the obligation entered into on his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances together with interest thereon from the date of expenditure, and to indemnify him in respect of any loss he has suffered as a result of his management. The voluntary agent is not entitled to any remuneration for his works, unless the work comes within the scope of his professional business.

Article 196

If a voluntary agent is not legally capable of entering into contracts, he will only be responsible for his management to the extent of his profit therefrom, provided that his liability does not result from an unlawful act.
The person for whom the voluntary agent acts remains, however, fully responsible, even if he himself is legally incapable of entering into contract.

Article 197

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

Section V

The Law

Article 198

Obligations which arise directly and solely in consequence of the law are governed by the provisions of the law giving rise to such obligations.

CHAPTER II

The Effects of Obligations

Article 199

An obligation is enforceable against the debtor.
The performance of a natural obligation, however, cannot be enforced.

Article 200

The judge shall decide, in the absence of any provision of the law, whether a natural obligation exists. There cannot ever be a natural obligation that is contrary to public policy.

Article 201

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

Article 202

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

Section I

Specific Performance

Article 203

A debtor shall be compelled, upon being summoned to do so in accordance with Articles 219 and 220, specifically to perform his obligation, if such performance is possible.

When, however, specific performance is too onerous for the debtor, he may limit performance to payment of a sum of money as indemnity, provided that this method of performance does not seriously prejudice the creditor.

Article 204

Subject to the rules with regard to transcription, an obligation to transfer ownership or any other real right transfers *ipso facto* that right, if the object of obligation is specifically identified and is owned by the debtor.

Article 205

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

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

Article 206

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

Article 207

When a debtor is under an obligation to transfer a real right or to do something which comprises an obligation to deliver a thing, he will be responsible, should he fail to deliver the thing after having been formally summoned to do so, for the loss thereof, even if the risk of loss prior to the issue of the summons, was the liability of the creditor.

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

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

Article 208

When the contract or the nature of the obligation demands that the obligation to do something shall be performed by the debtor personally, the creditor may refuse the performance of the obligation by any person other than the debtor.

Article 209

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

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

Article 210

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

Article 211

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

The debtor always remains liable for fraud or gross negligence.

Article 212

When a debtor infringes an obligation to refrain from doing something the creditor may demand the suppression of that which he has done in contravention of his obligation. The creditor may apply to the court for an order authorizing him to proceed himself with such suppression at the cost of the debtor.

Article 213

When the specific performance of an obligation is impossible or not practicable, unless performed by the debtor himself, the creditor may obtain a judgment ordering the debtor to perform the obligation, and to pay a penalty if he abstains from performing his obligation.

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

Article 214

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

Section II

Compensation in Lieu of Performance

Article 215

When specific performance by the debtor is impossible, he will be condemned to pay damages for non-performance of his obligation, unless he establishes that the impossibility of performance arose from a cause beyond his control. The same principle will apply, if the debtor is late in the performance of his obligation.

Article 216

The judge may reduce the amount of damages or may even refuse to allow damages if the creditor, by his own fault, has contributed to the cause of, or increased, the loss.

Article 217

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

The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation, with the exception of liability arising from his fraud or gross negligence. The debtor may, nevertheless, stipulate that he shall not be liable for fraud or gross negligence committed by persons whom he employs for the performance of his obligation.

Any clause discharging a person from responsibility for unlawful acts, is void.

Article 218

Damages, subject to an agreement to the contrary, are not due unless the debtor has been formally summoned.

Article 219

A debtor is formally summoned by a summons served through the court or by an equivalent act. The summons may be by post in the manner provided for in the Code de Procedure or may result from an agreement stipulating that the debtor shall be considered to be in default by the mere fact of the expiration of the time period without any other formality being required.

Article 220

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

a) if the performance of the obligation becomes impossible or without interest by an act of the debtor;

b) if the object of the obligation is the payment of damages in respect of an unlawful act;

c) if the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him;

d) if the debtor declares in writing that he does not intend to perform his obligation.

Article 221

The judge will fix the amount of damages, if it has not been fixed in the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, provided that they are the normal result of the failure to perform the obligation or of delay in such performance.

These losses shall be considered to be a normal result, if the creditor is not able to avoid them by making a reasonable effort.

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

Article 222

Damages also include compensation for moral prejudice. The right to compensation for moral prejudice cannot, however, be transmitted to a third party, unless it has been fixed by agreement or unless it has been the subject of legal proceedings.

The judge may award compensation for moral prejudice only to spouses and to relatives up to the second degree, by reason of grief caused to them by the death of the victim.

Article 223

The parties may fix in advance the amount of damages either in the contract or in a subsequent agreement, subject to provisions of Articles 215 to 220.

Article 224

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

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

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

Article 225

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

Article 226

When the object of an obligation is the payment of a sum of money of which the amount is known at the time when the claim is made, the debtor shall be bound, in case of delay in payment, to pay to the creditor, as damages for the delay, interest at the rate of four percent in civil matters and five percent in commercial matters. Such interest shall run from the date of the claim in court, unless the contract or commercial usage fixes another date. This Article shall apply, unless otherwise provided in law.

Article 227

The parties may agree upon another rate of interest either in the event of delay in effecting payment or in any other case in which interest has been stipulated, provided that it does not exceed seven percent. If the parties agree to a rate exceeding seven percent, the rate will be reduced to seven percent and any surplus that has been paid shall be refunded.

Any commission or other consideration of whatsoever nature stipulated by the creditor which, together with the agreed interest, exceeds the maximum limits of interest set out above, will be considered as disguised interest and will be subject to reduction, if it is not established that this commission or this consideration is in respect of a service actually rendered by the creditor or of a lawful consideration.

Article 228

Moratory interest, whether fixed by law or by agreement, is due without the creditor being obliged to prove loss as a result of delay.

Article 229

If a creditor, whilst claiming his rights, has in bad faith prolonged the duration of the litigation, the judge may reduce the legal or contractual interest or may refuse to allow interest for the whole of the period during which the litigation has been unjustifiably prolonged.

Article 230

In a distribution of the price of expropriated property, creditors admitted to the distribution will only be entitled, as from the date of sale by auction, to moratory interest on amounts allocated to them in the

distribution, if the purchaser is bound to pay interest on the price, or if the Caisse du Tribunal is bound to pay interest as a result of the deposit of the price at the Caisse, and only to the extent of interest due by the purchaser or by the Caisse, which interest will be distributed amongst all the creditors pro rata.

Article 231

A creditor may demand damages in addition to interest if he establishes that a loss, in excess of the interest, was due to bad faith on the part of the debtor.

Article 232

Subject to any commercial rules or practice to the contrary, interest does not run on outstanding interest and in no case shall the total interest that the creditor may collect exceed the amount of the capital.

Article 233

The legal rate of commercial interest on current accounts varies according to the local market rate applicable, and capitalization is effected on current accounts according to commercial usage.

Section III

Means of Realizing and Securing the Rights of Creditors

Article 234

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

1. Means of Realizing the Rights of Creditors

Article 235

Every creditor, even if his claim has not fallen due, may exercise in the name of his debtor all his debtor's rights of action save only those that are purely personal or cannot be attached.

The exercise by a creditor of the rights of his debtor is not admissible, unless the creditor proves that the debtor himself has not exercised such rights and that the debtor's failure to do so is such as to result in or increase his insolvency. The creditor need not necessarily formally summon the debtor to exercise his rights but he must always join the debtor in the proceedings.

Article 236

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

Article 237

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

Article 238

If the act by the debtor is for valuable consideration it can only be held invalid as against the creditor, if made by the debtor with the intent to defraud and if the other party to the contract was aware of the fraud. It suffices for the act to be considered fraudulent, if the debtor knew, at the time that it was effected, that he was insolvent: the other party is deemed to have had knowledge of the fraud of the debtor, if he was aware of the debtor's state of insolvency.

If, however, the act entered into by the debtor was gratuitous, it is not valid as against the creditor, even if the transferee acted in good faith and it is established that the debtor did not commit fraud.

If a transferee disposes of property transmitted to him by a debtor for valuable consideration, a creditor can only claim avoidance of the act by the debtor if it was made for valuable consideration and if the second as well as the first transferee both knew of the debtor's fraud, and when the act by the debtor was gratuitous and the second transferee knew of the insolvency of the debtor at the time the debtor entered into the act in favor of the first transferee.

Article 239

A creditor who alleges the insolvency of his debtor has only to establish the amount of his debts. It is for the debtor to prove that his assets are equal to or exceed his liabilities.

Article 240

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

Article 241

When a person acquires a right from an insolvent debtor but has not paid the price, he may escape the consequence of an action by a creditor, provided that the price corresponds to the normal price and he deposits this price in the Caisse du Tribunal.

Article 242

Fraud which consists solely of giving a creditor an unjustified preference over another creditor only entails the loss of that advantage by the creditor who was given the unjustified preference.

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

Article 243

An action to set aside an act of alienation is prescribed after three years from the date on which the creditor has knowledge of the grounds for such an action.

It is prescribed in any case after fifteen years from the date on which the contested alienation was effected.

Article 244

If a simulated contract has been drawn up, creditors of the contracting parties and particular successors in title, may, if they are in good faith, avail themselves of the hidden contract and establish, by any means, the simulation of the contract by which they were prejudiced.

In the case of a conflict of interest between interested parties, some of whom rely upon the ostensible contract and others on the hidden contract, the former shall have preference.

Article 245

When the contracting parties hide a genuine contract behind an ostensible contract, the genuine contract will bind the contracting parties and their universal successors in title.

2. One of the Means of Security: the Right of Retention

Article 246

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

This right belongs especially to the possessor or holder of a thing, if he has incurred expenditure of a necessary or useful kind on the thing. The possessor or holder may, in such a case, refuse to return the thing until he has been repaid the amount due to him, unless the obligation of restitution results from an unlawful act.

Article 247

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

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

If the thing retained is of a perishable nature or susceptible of deterioration, the person who retains the thing may obtain from the court authority for its sale in accordance with the provisions of Article 1119. The right of retention will then be transferred to the price thereof.

Article 248

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

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

3. Insolvency

Article 249

A debtor may be declared insolvent, if his assets are insufficient to pay his due debts.

Article 250

Insolvency is declared by judgment delivered by the Court of First Instance of the district in which the domicile of the debtor is situated, upon the petition of the debtor himself or of one of his creditors. The case will be heard as one of urgency.

Article 251

The court shall, in every case, before declaring the debtor insolvent, take into consideration all the circumstances surrounding the debtor, whether such circumstances are of a general or of a special nature. The court will thus take into account the debtor's future resources, his personal ability and his responsibility for the causes that have given rise to his insolvency, the legitimate interests of his creditors and any other circumstances likely to influence his financial situation.

Article 252

The delay for entering opposition to judgments rendered in cases of insolvency is eight days and for lodging appeal fifteen days from the date of the notification of judgment.

Article 253

The registrar (greffier) of the court shall, on the day on which the suit for the declaration of insolvency is filed for registration, register the writ introducing the action, in a special register of the names of persons who are insolvent. The greffier shall also record in the margin of such registration the judgment delivered in the case and any judgment conforming or setting aside such judgment; this registration and these entries must be made on the date the judgment is delivered.

The greffier shall in addition send to the greffier of the court in Cairo a copy of such registrations and marginal entries for the purpose of their being recorded in a general register; the regulations as to this general register shall be laid down by an “Arrêté” of the Minister of Justice.

Article 254

The debtor shall, if he changes his domicile, notify the greffier of the court of the district in which he formerly resided of the change. The greffier shall, as soon as he has knowledge of such change of domicile, either by notification by the debtor or in any other way, send at the cost of the debtor a copy of the judgment declaring the insolvency, and of the marginal entries, to the court in the district in which the new domicile of the debtor is situated, for the purpose of registration in the registers of such court.

Article 255

A judgment declaring insolvency renders all debts not yet due by the debtor payable immediately. The agreed or legal interest in respect of the period still to run will be deducted from the debts.

The judge may, however, on the petition of the debtor, and in the presence of the interested creditors, maintain or prolong the time fixed for payment of debts not yet due, he may also allow the debtor a delay in respect of debts that have fallen due, if he considers that the circumstances justify such measure and that such measure and that such a measure is in the best way to protect the joint interests of the debtor and the creditors.

Article 256

A declaration of insolvency is no bar to individual proceedings by creditors against the debtor.

Any charge registered on the real property of the debtor after registration of the declaration of insolvency shall nevertheless be invalid as against creditors who had rights prior to the registration of petition instituting the insolvency proceedings.

Article 257

The registration of the writ for the declaration of insolvency will render void as against the creditors any act entered into by the debtor after the date of such registration involving the diminution of his assets or the increase of his liabilities, just as the registration renders void as against his creditors any payment of debt made by the debtor after the date of registration of the writ.

Article 258

A debtor may dispose of his property, even without the consent of his creditors, provided that he does so at its normal price and that this price is deposited by the purchaser at the Caisse du Tribunal for division in accordance with the procedure for distribution.

If the price is less than the normal price, the alienation will be void as against creditors, unless the purchaser deposits, in addition to the purchase price, a sum representing the difference between the purchase price and the normal price.

Article 259

If creditors attach the revenues of a debtor, the President of the Court competent to render the declaration of insolvency may, upon application by the debtor, make him an alimentary allowance to be taken out of the revenues attached. An order issued on such application will be subject to

opposition within three days from the date on which it is rendered, in the case of opposition by the debtor, and from the date of its notification to the creditors in the case of an opposition by the creditors.

Article 260

A debtor shall be liable to the penalties for misappropriation in the following two cases:

a) if, when proceedings for payment of a debt have been taken against him, he willfully renders himself insolvent in fraud of the rights of his creditors and a judgment is delivered condemning him to pay the debt and declaring him to be in a state of insolvency.

b) if, after the judgment declaring his insolvency, the debtor has, in fraud of the rights of his creditors, kept back from his creditors part of his property to avoid execution thereon or has falsely represented debts, which debts are fictitious or exaggerated.

Article 261

A state of insolvency ceases by virtue of a judgment of the Court of First Instance in the district in which the domicile of the debtor is situated, delivered upon application of any interested party in the two following cases:

a) if it is established that the liabilities of the debtor are no longer in excess of his assets;

b) if the debtor effects payment of the debts that were due by him as apart from those that became due as a result of the declaration of insolvency. In such a case, debts that became due as a result of the insolvency become, in accordance with Article 263, once again payable on the dates upon which they were due before the declaration of insolvency.

It is the duty of the greffier of the court to record the judgment that puts an end to the state of insolvency in the margin of the registration provided for in Article 253. This entry shall be made on the day that the judgment is delivered and the greffier shall send a copy of this judgment to the registrar of the Cairo Court for the purpose of making a similar entry.

Article 262

A state of insolvency automatically ceases upon the expiration of five years from the date on which the registration of the judgment declaring the insolvency was issued.

Article 263

A debtor may, after the cessation of the insolvency, claim that debts that became due as a result of the insolvency, and which have not been paid, shall once again become payable on the dates on which they were due for payment before the insolvency upon condition that he has paid all debts that have fallen due except those falling due as a result of the insolvency.

Article 264

The cessation of a state of insolvency by judgment or by virtue of the law does not prevent creditors from attacking acts of their debtor or exercising the rights of the debtor in accordance with Articles 235 to 243.

Chapter III

Kinds of Conditions Modifying the Effects of Obligations

Section I

Conditional Obligations and Time Clauses

1. Conditional Obligations

Article 265

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

Article 266

An obligation is void when the condition upon which it depends is impossible, contrary to morality or to public order, and the condition is suspensive. If the condition is resolutory the condition itself is deemed to be inexistent.

An obligation depending upon a resolutory condition contrary to morality or public order is, however, void if the condition was the determining factor for undertaking the obligation.

Article 267

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

Article 268

When an obligation depends on a suspensive condition, it does not become executory until the condition is realized. Before realization of the condition, such obligation is not subject to compulsory or to voluntary performance. A creditor may, however, take protective measures to safeguard his rights.

Article 269

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

Acts of management carried out by a creditor shall retain their validity notwithstanding the realization of the condition.

Article 270

The fulfillment of a condition is effective retroactively to the day on which the obligation was contracted unless it appears from the will of the parties or by reason of the nature of the contract that

the existence of the obligation or its extinction should take effect from the moment of the fulfillment of the condition.

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

2. Time Clauses

Article 271

An obligation is for a term if its performance or extinction depends on a future certain event.

An event is considered to be certain if it must happen of necessity even if the time at which it should happen is unknown.

Article 272

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

Article 273

A debtor will forfeit the benefit of the term:

a) if he is declared bankrupt or insolvent in accordance with the provisions of law;

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

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

Article 274

An obligation with a suspensive term only becomes due on the date of the expiration of the term. The creditor may, however, even before the end of the term, take measures to protect his rights and may, in particular, ask for security if he fears that the debtor may become bankrupt or insolvent, and has reasonable grounds for his fears.

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

Section II

Plurality of Objects of an Obligation

1. Alternative Obligations

Article 275

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

Article 276

If the option belongs to the debtor and he fails to elect, or if there are a number of debtors who do not agree amongst themselves, the creditor may apply to the judge to fix a term for the debtor to elect or for the several debtors to agree amongst themselves, failing which the judge will himself fix the object of the obligation.

If the option belongs to the creditor and he fails to elect, or if there are a number of creditors who do not agree amongst themselves, the judge, if required by the debtor, will fix a term at the expiration of which the option will pass to the debtor.

Article 277

If the option belongs to the debtor and not one of the several prestations included in the object of the obligation can be performed, he shall be bound to pay the value of the last of the prestations that became impossible to perform if he is responsible for the impossibility of performance even as regards one only of the prestations.

2. Facultative Obligations

Article 278

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

The object of the obligation is the prestation promised and not that prestation the performance of which frees the debtor. It is this object which determines the nature of the obligation.

Section III

Plurality of Parties to an Obligation

1. Joint and Several Obligations

Article 279

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

Article 280

When there is solidarity between creditors, the debtor may pay the debt to anyone of them unless one of them objects to such payment.

Solidarity does not prevent the debt being divided between the heirs of one of the joint and several creditors unless the debt itself is indivisible.

Article 281

Joint and several creditors may take proceedings jointly or severally against the debtor for the performance of the obligation. In so doing, the conditions modifying the effect of the obligation as between each creditor and the debtor should be taken into account.

A debtor cannot, if he is sued for payment by one of his joint and several creditors, set up as a defence against that creditor, defenses that are personal as regards the other creditors, but he may set up defenses which are personal to the creditor suing him and those which are common to all the creditors.

Article 282

If a debtor is released of his debt to one of his joint and several creditors for a reason other than performance, he shall be released as regards the other creditors only up to the amount of the share of the creditor to whom he is no longer liable.

No one of the joint and several creditors may act in such a way as to prejudice the rights of the other creditors.

Article 283

That which a joint and several creditor receives on account of the debt reverts to all the creditors and will be divided between them proportionally.

The division shall be made in equal parts if there is no agreement or provision of the law to the contrary.

Article 284

When there is solidarity between the debtors, payment effected by one of them liberates all the others.

Article 285

A creditor may take action against all his joint and several debtors jointly or severally. In so doing, the conditions modifying the effect of the obligations as between the creditor and each of the co-debtors should be taken into account.

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

Article 286

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

Article 287

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

Article 288

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

Article 289

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

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

Article 290

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

Article 291

In all cases of the release of one of the joint and several debtors either from the debt or from the joint and several liability, the other co-debtors may in accordance with Article 298 claim from the co-debtor who has been released his contribution in the share of those co-debtors who are insolvent.

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

Article 292

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

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

Article 293

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

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

Article 294

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

Article 295

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

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

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

Article 296

A judgment given against one of the joint and several debtors will have no effect against the other co-debtors.

If the judgment is given in favor of one of them, it will benefit the others, unless the judgment is based on a ground relating only to the co-debtor in favor of whom the judgment is rendered.

Article 297

If one of the joint and several debtor pays the debt in full, he will only have a claim against each of the other co-debtors for each of such co-debtors' own share respectively, even if he exercises the right to action of the creditor by way of subrogation.

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

Article 298

If one of the joint and several debtors becomes insolvent, his share shall be borne by the co-debtor who has effected payment and by all the other solvent co-debtors pro rata.

Article 299

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

2. Indivisibility

Article 300

An obligation cannot be divided:

a) when it has for its object something which by its nature is not susceptible of division;

b) if it is the intention of the parties or it follows from the purpose pursued by the parties that the performance of the obligation should not be divided.

Article 301

When there are several debtors in respect of an indivisible obligation, each debtor is liable for the debt in full.

A debtor who has effected payment will have a remedy against each of the other co-debtors for his part, unless the contrary follows from the circumstances.

Article 302

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

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

Chapter IV

Transmission of an Obligation

Section I

The Assignment of a Right

Article 303

A creditor may assign his right to a third party, provided that his claim is not impossible of assignment by reason of a provision of the law, of an agreement between the parties or on account of its nature. The assignment is valid without the consent of the debtor.

Article 304

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

Article 305

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

Article 306

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

Article 307

The assignment of a right comprises its warranties such as securities, privileges and mortgages, as well as interest and installments that have fallen due.

Article 308

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

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

Article 309

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

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

Article 310

When an assignee exercises his right of recourse in warranty against the assignor, in accordance with the two preceding articles, the assignor is only liable to restitute that which he has received together with interest and expenses notwithstanding any agreement to the contrary.

Article 311

An assignor is responsible for his personal acts, even if the assignment is not for valuable consideration or even if it has been stipulated to be without warranty.

Article 312

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

Article 313

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

Article 314

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

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

Section II

Assignment of Debt

Article 315

An assignment of debt is effected by an agreement between the debtor and a third party who undertakes to assume the debt in the place of the debtor.

Article 316

An assignment of debt is not effective as against the creditor unless ratified by the creditor.

When the person assuming the debt or the original debtor notifies the assignment to the creditor, and gives him a reasonable period of time to ratify the assignment, the assignment will be deemed to have been refused if the creditor does not give his consent before the expiration of such period.

Article 317

Until the creditor has signified his ratification or refusal of the assignment, the person assuming the debt will, in the absence of an agreement to the contrary, be responsible to the original debtor, to effect payment on due date to the creditor. This rule applies even when the creditor has refused the assignment.

The original debtor cannot, however, call upon the person assuming the debt to make payment to the creditor so long as he has not himself discharged his obligation to the person assuming the debt in accordance with the contract of assignment.

Article 318

The debt assigned is transmitted with all its warranties. The surety, whether real or personal, does not remain bound to the creditor unless he has agreed to the assignment.

Article 319

In the absence of an agreement to the contrary, the original debtor warrants the solvency of the person assuming the debt at the moment the creditor ratifies the assignment.

Article 320

A person assuming the debt may raise against the creditor the defenses which the original debtor was entitled to raise. He may also raise the defenses arising out of the contract of assignment.

Article 321

An assignment of debt may also take place between the creditor and the person assuming the debt by an agreement that provides that such person replaces the original debtor in his obligation.

In such a case, the provisions of Articles 318 and 320 will be applicable.

Article 322

The sale of a mortgaged immovable property does not imply the transfer of the mortgage debt to the purchaser unless the agreement provides for such a transfer.

If the vendor and purchaser agree to assign the debt and if the deed of sale is transcribed, the creditor should, after notification to him by legal process of the assignment, ratify or refuse the assignment, within a period not exceeding six months. If he maintains silence up to the end of this period, such silence is equivalent to ratification.

Chapter V

The Extinction of Obligations

Section I

Payment

1. The Two Parties to Payment

Article 323

Payment may be made by the debtor, by his representative or by any other interested party, subject to the provisions of Article 208.

Payment may also, subject to the provisions of Article 208, be made by a third party who is not interested in such payment, even without the knowledge or against the wish of the debtor, but the creditor may refuse payment tendered by a third party if it is opposed by the debtor and the debtor has informed the creditor of his opposition.

Article 324

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

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

Article 325

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

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

Article 326

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

a) when such third party was liable for the debt jointly with the debtor or was under an obligation to pay the debt on his behalf;

b) when such third party, being himself a creditor, even an unsecured creditor, had paid another creditor ranking before him by reason of a real security;

c) when, having acquired an immovable, he has paid the price to creditors having a real security upon the immovable in question;

d) when the law expressly gives him the right of subrogation.

Article 327

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

Article 328

A debtor may also, when he has borrowed a sum with which he has paid the debt, subrogate the lender into the rights of the creditor who received the payment, even without the consent of the creditor, provided that in the contract of loan, it is stated that the sum in question was borrowed for the purpose of effecting the payment, and that in the receipt in discharge, it is stated that the payment was made with the money lent by the new creditor.

Article 329

A third party subrogated in law or by agreement in the rights of the creditor, is substituted for the creditor as regards the debt to the amount of the sums that he has himself paid with all the attributes of the debt and all accessories, securities, and defences attached to the debt.

Article 330

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

When a further third party is subrogated in the rights of the creditor, as regards that which remains due to this creditor, this further third party so subrogated, together with the third party subrogated before him, will have a right to claim what is due to each of them pro rata.

Article 331

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

Article 332

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

Article 333

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

Article 334

When a creditor refuses, without good reason, to accept payment that is regularly offered to him, or to do such things without which payment cannot be made, or declares that he will not accept payment, he

will be deemed to have been duly summoned to accept payment from the time that such refusal is recorded by a summons notified to him by legal process.

Article 335

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

Article 336

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

Article 337

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

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

Article 338

Deposit or any other equivalent measure is also permissible if the debtor does not know the person or the domicile of the creditor, or if the creditor, being totally or partially incapable, has not a representative to accept payment on his behalf, or the debt is the object of a dispute between several persons, or if there are other serious reasons which justify this measure.

Article 339

The actual tender of the thing due is equivalent to payment, in so far as the debtor is concerned, when it is followed by a deposit made in the manner prescribed in the Code of Procedure, or by any other equivalent measure, provided that it is accepted by the creditor or recognized as valid by a final judgment.

Article 340

A debtor who has made a tender of the debt followed by a deposit, or by an equivalent measure, may retract his tender as long as it has not been accepted by the creditor, or as long as it has not been recognized as valid by a final judgment, in which case the co-debtor and sureties will not be freed.

If a debtor retracts his tender after its acceptance by the creditor or after it has been declared valid by a judgment, and his withdrawal is accepted by the creditor, the creditor shall no longer have the right, to avail himself of the securities guaranteeing his right, and the co-debtors and the sureties shall in such case be released.

2. Means of Payment

Article 341

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

Article 342

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

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

Article 343

When a debtor is under an obligation to pay expenses and interest in addition to the principal of the debt, and makes a payment which does not cover the principal and these accessories, the payment shall, unless otherwise agreed, be imputed, in the first instance, to expenses, then to interest and lastly to principal.

Article 344

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

Article 345

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

Article 346

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

The judge may in exceptional cases and in the absence of a provision of the law to the contrary, grant to the debtor, when his position so requires, one or more reasonable delays for the performance of his obligation, provided that no serious prejudice is thereby caused to the creditor.

Article 347

In the absence of an agreement or of a provision of the law to the contrary, when the subject matter of the obligation is a definite and ascertained thing, it should be delivered at the place it was situated at the time the obligation was created.

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

Article 348

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

Article 349

A person who pays part of a debt has the right to demand a receipt for the amount he has paid and a note showing the payment on the document of title of the debt. He has also the right, at the time the debt is paid in full, to demand the restitution or cancellation of the document of title. If this document has been lost, the debtor may demand a written declaration from the creditor that the document of title has been lost.

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

Section II

Methods of Extinction of the Obligation Equivalent to Performance

1. Giving in Payment

Article 350

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

Article 351

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

2. Novation and Delegation

Article 352

There is novation of an obligation:

i) by a change of the debt, when the two parties agree to substitute a new obligation for the original obligation, which new obligation differs from the original obligation as regards its object or as regards its source;

ii) by a change of the debtor, when a creditor and a third party agree that such third party shall take the place of the original debtor and that the original debtor shall be released of the debt without

his consent being necessary, or when the debtor has procured the consent of the creditor to substitute the debtor by a third party who consents to be the new debtor;

iii) by a change of the creditor, when the creditor, the debtor and a third party agree that this third party shall be the new creditor.

Article 353

Novation can be effected only if the two obligations, the original and the new obligation, are free from any grounds of nullity.

If the original obligation results from a voidable contract, the novation is only valid if the new obligation has been assumed both with a view to confirming the contract and to replacing the original obligation.

Article 354

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

In particular, novation does not result, in the absence of an agreement to the contrary, from the subscription of a promissory note in respect of a pre-existing debt, from changes that relate only to the date, place or mode of performance of the prestation, or from modifications made to the obligation only as regards securities or as to the rate of interest.

Article 355

The mere entry of the debt in current account does not effect novation.

There is, however, novation when the balance of a current account has been fixed and agreed; if, however, the debt was guaranteed by means of a special security, that security is maintained unless otherwise agreed.

Article 356

Novation has the effect of extinguishing the original obligation with its accessories and of substituting for it a new obligation.

Securities which guaranteed the performance of the original obligation, are not transferred to the new obligation, unless the law provides otherwise, or unless it appears from the agreement or the circumstances of the case that such is the intention of the parties.

Article 357

If the debtor has given real securities in guarantee of the original obligation, the following conditions will be observed in the agreement providing for the transfer of these securities to the new obligation:

a) when the novation results from a change of the debt, the creditor and the debtor may agree that the securities shall be transferred to the new obligation, to the extent that such a transfer does not cause prejudice to third parties;

b) when the novation results from a change of the debtor, the creditor and the new debtor may agree, without the consent of the original debtor, that the real securities shall be maintained;

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

The agreement providing for the transfer of the real securities cannot be set up against third parties, unless it is made at the same time as the novation, and the provisions as to registration of real rights are complied with.

Article 358

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

Article 359

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

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

Article 360

When, in a case of delegation, the contracting parties agree to substitute a new obligation for the original obligation, such a delegation constitutes a novation by the change of the debtor. It results in the liberation of the original debtor from the obligation to his creditor, provided that the new obligation assumed by the new debtor is valid and that such new debtor is not insolvent at the time of the delegation.

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

Article 361

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

3. Compensation (set off)

Article 362

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

Postponement of payment by reason of a delay granted by the Judge or by the creditor does not prevent compensation.

Article 363

A debtor may avail himself of compensation even when the places of payment of the two debts are different, but he must, in such a case, make good any loss caused to the creditor by reason of the fact that the creditor was not able, as a result of the compensation, to obtain or to perform the prestation at the place fixed for this purpose.

Article 364

Compensation takes place, whatever may be the sources of debts, except in the following cases:

a) where one of the two debts consists of a thing of which the owner has been unjustly deprived, and is the object of a claim for restitution;

b) where one of the two debts consists of a thing that has been deposited or lent for use and is the object of a claim for restitution;

c) where one of the two debts is a right which is not liable to attachment.

Article 365

Compensation only takes place when set up by the interested party. Compensation cannot be renounced before the right thereto has come into existence.

Compensation extinguishes the two debts to the extent of the amount of the smaller debt, from the moment they become subject to compensation. Imputation of the amount discharged in compensation takes place in the same way as in ordinary payment.

Article 366

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

Article 367

Compensation cannot take place to the detriment of rights acquired by third parties.

If, after the seizure by a third party of the property held by the debtor for his creditor, such debtor becomes the creditor of his creditor, he cannot set up compensation to the prejudice of the attaching creditor.

Article 368

When a creditor has assigned his debt to a third party, the debtor who has consented to the assignment without reserve, cannot set up compensation against the assignee, which he had the right to set up before he consented to the assignment; he can only enforce his claim against the assignor.

But a debtor who has not accepted an assignment which has been notified to him, may, notwithstanding the assignment, set up compensation.

Article 369

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

4. Merger

Article 370

When the qualities of creditor and debtor in the same debt are united in the same person, the debt is extinguished to the extent of the merger.
When the cause which gave rise to the merger disappears and its disappearance is retroactive, the debt revives with its accessories as regards all interested parties, and the merger is deemed never to have existed.

Section III

The Extinction of Obligations without Payment

1. Release of the Obligation

Article 371

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

Article 372

The release of an obligation is subject to the basic rules that govern gifts.

No special for is required for release even if it is the release of an obligation whose existence was conditional upon a special form required by law or by the agreement entered into by the parties.

2. Impossibility of Performance

Article 373

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

3. Extinctive Prescription

Article 374

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

Article 375

The term of prescription for sums payable periodically at recurring intervals such as the rent of buildings and of agricultural land, the rent of hekr, interest, periodical payments, salaries, wages and pensions, is five years, even if the debt is admitted by the debtor.

Article 376

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

Article 377

The term of prescription for taxes and dues owing to the State is three years. The term of prescription for taxes and annual dues commences to run from the end of the year for which they were due: that for fees for legal documents from the date of termination of the hearing of the case in respect of which such documents were prepared, or, if no hearing takes place, from the drawing up of such documents.
The term of prescription of the right to claim repayment of taxes and dues unduly paid is also three years. This prescription runs from the date of payment.
The preceding provisions apply subject to provisions contained in special laws.

Article 378

The term of prescription is one year for the following rights of action:
a- rights of action of merchants and manufacturers in respect of things supplied to persons who do not trade in these articles, as well as the rights of action of hotel and restaurant proprietors for the cost of accommodation and food and for expenses incurred by them on behalf of their clients.
b- the rights of action of workmen, servants, wage earners, in respect of their pay, daily or otherwise, and for the cost of supplies provided by them.
When a person claims this prescription of one year, he must take oath that he has actually paid the debt. The Judge will of his own accord pass the oath. If the debtor is dead, such oath will be passed to the heirs of the debtor, or, if they are minor, to their guardians, so that they may declare either that they do not know of the existence of the debt or that they know that the debts has been paid.

Article 379

The term of prescription in respect of rights referred to in Articles 376 and 378 runs from the time that the prestations were made by the creditors, even when the creditors continue to make further prestations.
Once anyone of these rights has been established by a written document, it is only prescribed after fifteen years.

Article 380

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

Article 381

Prescription runs, subject to a special provision of the law to the contrary, only from the day on which the debt becomes due.
Prescription in particular only runs in the case of a debt that is subject to a suspensive condition, from the day on which the condition is realized. And in the case of an action on a warranty against eviction, only from the day eviction takes place; in the case of a debt payable in the future, only from the date of the expiration of the term.
When the date upon which the obligation becomes due depends upon the will of the creditor, prescription runs from the date on which he is in a position to express his will.

Article 382

Prescription does not run whenever there is a bar, even a moral one, which prevents the creditor from claiming his right. It does not run between a principal and his representative.
Prescription of which the period is more than five years, does not run as regards persons who are legally incapable, absent or convicted criminals, if they are not legally represented.

Article 383

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

Article 384

Prescription is interrupted by an express or tacit admission of the right of the creditor by the debtor.
A debtor who leaves a pledge in the hand of his creditor as a security for his debt is deemed to have tacitly acknowledged the debt.

Article 385

When prescription is interrupted, a new prescription commences to run from the time that the effect of the act that gave rise to the interruption has ceased. The term of the new prescription will be of the same duration as that of the former one.
When the debt has been confirmed by a final judgment or when, in the case of a debt prescribed after one year, the prescription has been interrupted by the admission of the debtor, the term of the new prescription will be fifteen years unless the debt confirmed by the judgment involves periodical recurring obligations which will not become due until after the judgment.

Article 386

Prescription extinguishes the obligation, but leaves a natural obligation upon the debtor.
When a right is extinguished by prescription, interest and other accessories to the debt are also extinguished even if the term of the particular prescription applying to these accessories has not expired.

Article 387

The Judge at his own initiative cannot invoke prescription. Prescription must be invoked by the debtor, or by his creditors, or by any interested party, even if the debtor has failed to do so.
Prescription may be invoked at any stage of the proceedings, even before the court of appeal.

Article 388

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

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

Chapter VI

Proof of Obligations

Articles 389-417 repealed

BOOK II

SPECIFIC CONTRACTS

Chapter I

Contracts as Regards Ownership

Section I

Sale

1.Sale in General

Elements of Sale

Article 418

Sale is a contract whereby the vendor binds himself to transfer to the purchaser the ownership of a thing or any other propriety right in consideration of a price in money.

Article 419

The purchaser must have a sufficient acquaintance with the thing sold. This acquaintance will be deemed sufficient if the contract contains the description of the thing sold and its essential qualities, so that it may be identified.

The statement in a deed of sale that the purchaser is acquainted with the thing, deprives him of the right to claim annulment of the sale on the ground of want of acquaintance with the thing, unless he proves fraud on the part of the vendor.

Article 420

When the sale is made according to sample, the thing sold should conform to the sample.

If the sample deteriorates or perishes while in custody of one of the contracting parties, even if it was not his fault, it is incumbent upon that party, whether he is vendor or buyer, to establish that the thing is or is not in conformity with the sample.

Article 421

In a sale upon trial, the purchaser has the option either to accept or to refuse the thing sold, but the vendor is bound to allow the purchaser to make the trial. If the purchaser refuses the thing sold, he must give notice of his refusal within the time agreed or, in the absence of agreement, within a reasonable time to be fixed by the vendor. When this time has elapsed the silence of the purchaser who had the opportunity to try the thing sold, is equivalent to acceptance.

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

Article 422

In a sale made subject to tasting, the purchaser may accept the thing sold if he sees fit, but he must declare his acceptance within the time fixed by the agreement or by custom. The sale will be considered complete only from the date of such declaration.

Article 423

The method of establishing the price may be confined to the indication of the basis on which the price will be ultimately fixed.

When it is agreed that the price will be the market price, the market price will, in case of doubt, be that at the place where and at the time when the thing sold should be delivered to the purchaser; if there is no market at the place of delivery, reference should be made to the market price at the place at which the prices are customarily deemed applicable.

Article 424

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

Article 425

When an immovable belonging to a person who is legally incapable, has been sold with a lesion of more than one fifth of its value, the vendor will have a right of action with a view to making up the price to four fifths of the normal price.

In order to ascertain whether the lesion was of more than one fifth, the value of the immovable at the time of the sale should be ascertained.

Article 426

The right to bring an action for a supplement of price on the ground of lesion is prescribed within three years from the time the legal incapacity ceases, or from the date of the death of the owner of the immovable sold.

Such proceedings do not operate to the prejudice of third parties in good faith who have acquired a real right on the immovable sold.

Article 427

This action for supplement of price on the grounds of lesion does not lie in respect of sales by public auction conducted in accordance with the provisions of the law.

Obligations of the Vendor

Article 428

The vendor is bound to perform everything necessary to transfer the right to the thing sold to the purchaser, and to abstain from all acts that might render this transfer impossible or difficult.

Article 429

When goods are sold in bulk, ownership is transferred to the purchaser in the same way as ownership of a definite and ascertained thing. There is sale of goods in bulk even when the amount of the price depends on the extent, weight or measure of the goods sold being ascertained.

Article 430

In a credit sale the vendor may stipulate that the transfer of ownership to the purchaser is subject to integral payment of the price, even if the thing sold has been delivered.

If the price is payable by installments, the contracting parties may agree that the vendor may retain a part of the price by way of damages should the sale be cancelled for non-payment of all the installments. The judge may, however, according to circumstances, reduce the amount of damages agreed, by applying the provisions of paragraph 2 of Article 224.

When all the installments have been paid, the transfer of the ownership of the thing sold shall be deemed to have taken place as from the date of sale.

The provisions of the three preceding paragraphs are applicable even if the contracting parties have described the contract of sale as a contract of lease.

Article 431

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

Article 432

Delivery includes delivery of the accessories of the thing sold and of everything which, according to the nature of things, local custom and the intention of the parties, was appropriated permanently for the use of the thing.

Article 433

When the quantity of the thing sold is fixed in the contract, the vendor, subject to any agreement to the contrary, is liable for any deficiency in such quantity in accordance with custom. The purchaser has not, however, the right to demand cancellation of the contract by reason of such deficiency, unless he establishes that the deficiency is so great that if he had known of it he would not have entered into the contract.

If, on the contrary, the quantity exceeds that indicated in the contract, and if the price has been fixed by unit, the purchaser must, when the object of the purchase cannot be divided, make up the price, unless the excess is very great, in which case he may demand cancellation of the contract, all subject to an agreement to the contrary.

Article 434

In a case of deficiency or excess in the thing sold, the right of the purchaser to apply for a reduction of the price or for cancellation of the contract, and the right of the vendor to claim that the price be made up, are both prescribed within one year from the date of the actual delivery of the thing sold.

Article 435

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

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

Article 436

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

Article 437

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

Article 438

If the value of the thing sold is diminished by deterioration before delivery, the purchaser shall have the option either of applying for the cancellation of the sale, if the diminution is so great that the sale would not have taken place if the diminution had happened before the contract was concluded, or of upholding the sale at a reduced price.

Article 439

The vendor warrants the purchaser against disturbance in his enjoyment of the thing sold both totally and partially, whether such disturbance is caused by his act or that of a third party having a right over the thing sold at the time of the sale enforceable against the purchaser.

The vendor is bound by his warranty, even if the right of the third party has been established after the sale, provided that it was derived from the vendor himself.

Article 440

When an action for revendication in respect of the thing sold is brought against the purchaser, the vendor, upon receipt of notice of the action, shall, according to the circumstances and in conformity with the provisions of the Code of Procedure, join as a co-defendant with the purchaser, or take his place as defendant in the action.

If notice is given in due time, the vendor who has not joined in the action, is liable under his warranty, unless he proves that the judgment given in the action is the result of fraud or of gross negligence on the part of the purchaser.

If the purchaser does not notify the vendor of the action brought against him in due time and is dispossessed by a judgment that has become final, he shall be deprived of his right of recourse under the warranty, if the vendor establishes that, had he joined in the action, he would have succeeded in obtaining the dismissal of the action for revendication.

Article 441

The right of a purchaser to warranty exists even if he has acknowledged, in good faith, the third party's claim or has entered into a compromise with him without awaiting a decision of the court, if he has, in due time, given notice of the action to the vendor and has, without result, called upon him to take his place in the action, subject always, to proof by the vendor that the third party's claim is unfounded.

Article 442

When the purchaser has avoided total or partial dispossession of the thing sold by paying a sum of money or by performing some other prestation, the vendor may free himself from the consequences of warranty by refunding to the purchaser the sum paid, or the value of the prestation performed, together with legal interest and all expenses.

Article 443

In case of total dispossession, the purchaser may claim from the vendor:

i) the value of the thing sold at the time of dispossession, together with legal interest from that time;

ii) the value of the profits derived from the thing sold that the purchaser has been obliged to restore to the person entitled to the thing;

iii) all sums usefully spent which he cannot claim from the person entitled to the thing, together with expenditure of a superfluous character if the vendor acted in bad faith;

iv) all costs incurred in the action upon the warranty and the action of revendication, with the exception of those costs that the purchaser could have avoided by notifying the vendor of the action of revendication, in accordance with Article 440; and

v) generally, compensation for the losses sustained and profits missed as a result of dispossession of the thing sold.

Unless in all these cases the purchaser's action against the vendor is based on a demand for dissolution or for annulment of the sale.

Article 444

In case of partial dispossession, or if the thing sold is encumbered with a charge, the purchaser, if the loss is of such a nature that, had he been cognizant thereof, he would not have entered into the contract, may claim from the vendor the sums provided for in the preceding article, provided that he returns to the vendor the things sold and the profits derived therefrom.

When the purchaser prefers to retain the thing sold or when the loss sustained by him does not attain the degree of gravity defined in the preceding paragraph, he has only the right to apply for compensation in respect of the loss he has sustained as a result of the dispossession.

Article 445

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

The vendor is presumed to have stipulated that he does not warrant a purchaser against a servitude if it was apparent or disclosed by him to the purchaser.

A clause that the sale is without warranty or restricting the warranty against dispossession is null and void if the vendor intentionally conceals the rights of a third party.

Article 446

Notwithstanding a clause excluding warranty, a vendor remains liable for any dispossession resulting from his acts. Any agreement to the contrary is null and void.

He is also bound, in case of dispossession as a result of the act of a third party, to refund to the purchaser the value of the thing sold at the time of dispossession, unless he can prove that the purchaser knew at the time of the sale of the grounds of dispossession, or that he purchased the thing at his own risk and peril.

Article 447

The vendor is liable under his warranty, when, at the time of delivery, the thing sold does not possess the qualities the existence of which he guaranteed to the purchaser, or when the thing sold has defects diminishing its value or usefulness for the purpose for which it was intended, as shown by the contract or resulting from the nature or the destined use of the thing. The vendor is answerable for these defects, even if he was ignorant of their existence.

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

Article 448

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

Article 449

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

In the case, however, of defects that cannot be discovered by means of normal inspection, the purchaser shall, upon the discovery of the defect, at once give notice thereof to the vendor, failing which he will be deemed to have accepted the thing sold with its defects.

Article 450

When the purchaser has given notice to the vendor of the defect in the thing in due time, he will be entitled to bring an action on the warranty in accordance with Article 444.

Article 451

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

Article 452

An action on a warranty is prescribed in one year from the time of delivery of the thing sold, even if the purchaser discovers the defect after the expiration of this delay, unless the vendor agrees to be bound by the warranty for a longer period.

The vendor, however, cannot avail himself of the prescription of one year if it is proved that he has fraudulently concealed the defect from the purchaser.

Article 453

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

Article 454

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

Article 455

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

Obligation of the Purchaser

Article 456

Subject to a clause or custom to the contrary, the price is payable at the place where the delivery of the thing sold is made.

If the price is not payable at the time of delivery of the thing sold, payment must be made at the domicile of the purchaser on due date.

Article 457

Subject to a clause or custom to the contrary, the price is payable at the time of delivery of the thing sold is made.

When the purchaser is disturbed in his enjoyment by a third party invoking a right existing prior to the sale or derived from the vendor, or if he is in danger of being dispossessed of the thing sold, he may, subject to an agreement to the contrary, retain the price until the disturbance in his enjoyment or the danger of dispossession has ceased. The vendor may, however, in such a case, demand payment of the price upon his supplying security.

The provisions of the preceding paragraph will also apply if the purchaser has discovered a defect in the thing sold.

Article 458

Subject to an agreement or custom to the contrary, the vendor is not entitled to legal interest on the price, unless he has placed the purchaser in default by a formal summons, or unless the thing sold is productive of fruits or other profits and he has delivered the thing sold to the purchaser.

Subject to an agreement or usage to the contrary, the purchaser acquires the revenues and increases in value of, and is liable for all charges in connection with the thing sold from the time the sale is concluded.

Article 459

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

The vendor may also retain the thing sold, even if the agreed date of payment has not fallen due, if the purchaser loses the benefit of the term in accordance with the provisions of Article 273.

Article 460

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

Article 461

In the case of a sale of commodities or other movable effects, when a term is agreed for payment of the price and for taking delivery, the sale will, subject to an agreement to the contrary, and at the option of the vendor, be ipso facto dissolved without any summons being necessary if the price is not paid upon due date.

Article 462

In the absence of an agreement or usage to the contrary, the costs of the deed of sale, stamp duties, transcription fees and all other expenses are borne by the purchaser.

Article 463

In the absence of agreement or usage indicating the place and time of delivery, the purchaser is bound to take delivery of the thing sold at the place where it was at the time of the sale and to remove it without delay, subject to the time necessary for such removal.

Article 464

Subject to usage or to an agreement to the contrary, the costs of taking delivery of the thing sold are borne by the purchaser.

2.Different Forms of Sale

Sale with a Right of Redemption

Article 465

When a vendor reserves to himself at the time of the sale the right to take back the thing sold, within a fixed time, the sale will be void.

Sale of a Thing Belonging to Another

Article 466

When a person sells a definite and ascertained thing of which he is not the owner, the purchaser may demand the annulment of the sale. This rule also applies when the thing sold is an immovable, whether the deed has been transcribed or not.

Such a sale cannot, in any case, have any effect as against the owner of the thing sold, even if the purchaser has ratified the contract.

Article 467

If the owner ratifies the sale, the contract will become binding on him and valid as regards the purchaser.

The sale will also become valid as regards the purchaser if the ownership of the thing sold devolves upon the vendor subsequently to the conclusion of the contract.

Article 468

When the annulment of the sale has been pronounced in court in favor of a purchaser who was unaware that the thing sold did not belong to the vendor, he shall be entitled to claim damages even if the vendor acted in good faith.

Sale of Litigious Rights

Article 469

When the owner of a litigious right has assigned it to a third party for valuable consideration, the debtor, against whom the right has been assigned, may extinguish the right assigned by paying to the assignee the actual price paid by him, together with expenses and interest accrued on the price from the date of payment of the price.

The right is deemed to be litigious if there is an action in court or serious controversy in respect thereof.

Article 470

The provisions of the preceding Article do not apply in the following cases:

a) when the litigious right forms part of a group of properties sold in bulk for a single price;

b) when the litigious right is indivisible amongst several heirs or co-owners and one sells his share to another;

c) when a debtor has assigned to his creditor the litigious right in payment of his debt;

d) when the litigious right is a right burdening an immovable and such right is sold to a third party in possession of the immovable.

Article 471

No member of the magistracy or of the Parquet, no lawyer, Greffier, or bailiff of a court may, under pain of nullity of the sale, purchase, either in his own name, or in the name of intermediary, in whole or in part, any litigious rights coming within the jurisdiction of the court in the district of which he exercises his functions.

Article 472

No lawyer may, under pain of nullity, either in his name or in the name of an intermediary, enter into an agreement with his client with regard to a litigious right, when he has undertaken to defend this right.

Sale of an Inheritance

Article 473

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

Article 474

In the sale of an inheritance, the transfer of rights comprised therein will have no effect as regards third parties, unless the necessary formalities for the transfer of each of these rights have been fulfilled. If the law provides for specific formalities for the transfer of these rights between the parties, such formalities should also be fulfilled.

Article 475

The vendor, if he has encashed debts or sold any of the property forming part of the inheritance, must reimburse the purchaser up to the amount he has received, unless he has inserted in the contract of sale an express clause of non-reimbursement.

Article 476

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

Sale Made During a Person's Last Illness

Article 477

A sale made by a person during his last illness, to an heir or to a person who is not an heir, at a price inferior to the value of the thing sold at the time of his death, is valid against the heirs if the difference between the value of the thing sold and the price paid does not exceed one third of the value of the inheritance, including the thing sold.

If this difference exceeds one third of the value of the inheritance, the sale is only valid against the heirs with regard to the excess over one third of the value, if the heirs ratify the sale or if the purchaser pays to the estate the amount necessary to make up the two thirds.

The provisions of Article 916 apply to a sale made a during a person's last illness.

Article 478

The provisions of the preceding articles do not apply to the prejudice of a third party in good faith who has acquired for valuable consideration a real right over the property sold.

Sale by a Representative to Himself

Article 479

Subject to the provisions of any other laws, no person who represents another person by virtue of an agreement, a provision in the law or an order of a competent authority may purchase, either in his own

name or in the name of an intermediary, even at a public auction, property entrusted to him for sale in his representative capacity, unless he had been authorized to do so by an order of the court.

Article 480

No brokers or experts may purchase in their name or in the name of an intermediary, goods which they have been entrusted to sell or to appraise.

Article 481

A sale in the cases referred to in the two preceding articles becomes valid if it is confirmed by the person on behalf of whom the sale was carried out.

Section II

Exchange

Article 482

Exchange is a contract by which the contracting parties mutually bind themselves to transfer to the other by way of exchange the ownership of a thing other than money.

Article 483

If the things exchanged have different values in the estimation of the contracting parties, the difference may be compensated by the payment of an equivalent sum of money.

Article 484

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

Article 485

The provisions governing sale apply to exchange as far as the nature of exchange allows. Each one of the exchanging parties is deemed to be the vendor of the thing given by him in exchange and the purchaser of the thing received in exchange.

Section III

Gifts

1.Elements of a Gift

Article 486

A gift is a contract by which the donor disposes, without consideration, of property belonging to him.

A donor may, without being divested of the intention of making a gift, impose upon the donee the performance of a specific obligation.

Article 487

A gift is not complete until it is accepted by the donee or by his representative.

If the donor is the natural or legal guardian of the donee, he may accept the gift on his behalf and take delivery thereof.

Article 488

The gift must be made by an authentic document under pain of nullity, unless it is made in the form of some other contract.

A gift of movables, however, may be completed by delivery to the donee, without an official instrument being necessary.

Article 489

The donor, or his heirs, who voluntarily give effect to a gift which is null by reason of a defect in form, cannot demand the restitution of what they have delivered.

Article 490

A promise to make is not binding unless it is made by an authentic document.

Article 491

If the gift is of a definite and specific thing which does not belong to the donor, it is governed by the provisions of Articles 466 and 467.

Article 492

A gift of future property is void.

2.The Effects of a Gift

Article 493

When the donee has not taken possession of the thing given, the donor is under an obligation to deliver it to him. The provisions as to the delivery of a thing sold shall, in such a case, apply.

Article 494

Unless otherwise agreed, a donor is under no obligation of warranty against dispossession unless he has intentionally hidden the cause of dispossession or unless the gift has been made for valuable consideration. In the first case, the judge will award the donee equitable compensation for the prejudice that he has suffered. In the second case, the donor is only bound up to the value of the consideration paid by the donee.

In a case of dispossession, the donee is subrogated into the rights and actions of the donor.

Article 495

A donor does not warrant that the thing given is free of defects.

If, however, the donor has intentionally hidden a defect or if he has warranted that the thing donated is free of defects, he will be liable to compensate the donee for loss caused by this defect. He will also be bound to pay compensation if the gift is made for valuable consideration, provided that the amount of compensation does not exceed the value of the consideration given by the donee.

Article 496

A donor is only liable for his intentional acts or for his gross negligence.

Article 497

A donee is bound to perform the consideration imposed upon him, whether such consideration is in favor of the donor, a third party or in the public interest.

Article 498

If it appears that the value of the gift is less than that of the consideration imposed, the donee shall only be liable to perform the consideration to the extent of the value of the thing donated.

Article 499

If the donor stipulates that the donee shall, in consideration of the gift, discharge his debts, the donee shall only be liable, unless otherwise agreed, to discharge debts existing at the time of the gift.

If the thing donated is burdened with a real right securing a debt due by the donor or by a third party, the donee shall be liable, unless otherwise agreed, to pay this debt.

3.Revocation of Gifts

Article 500

A donor may revoke a gift if the donee consents to his so doing.

If the donee does not consent to the revocation, the donor may apply to the court for authority to revoke the gift whenever he has reasonable grounds in support and when there is no obstacle to the revocation.

Article 501

There are, in particular, reasonable grounds for the revocation of a gift:

a) if the donee has failed in his duties towards the donor or one of his relatives, and such failure constitutes serious ingratitude on his part;

b) if the donor has become unable to maintain himself in accordance with his social position or to meet an obligation to pay alimony which he is legally bound to pay to another person;

c) in the event of a child being born to the donor after the donation, and still being alive at the time of revocation, or if the donor had a child which he believed dead at the time of the donation, which child is discovered to be still alive.

Article 502

An application for the revocation of a gift shall be rejected if one of the following obstacles exists:

a) if there is an inherent increase of the thing given, involving an increase in value thereof; but if this obstacle disappears, the right of revocation is renewed;

b) if one of the parties to the gift dies;

c) if the donee has definitely alienated the thing given; if, however, such alienation is only partial, the donor may revoke the gift as to the part remaining;

d) if the gift is made by one spouse to another, even if the donor wishes to revoke the gift after the dissolution of the marriage;

e) if the gift is made for the benefit of a relative with whom marriage is prohibited;

f) if the thing given has perished while in possession of the donee, whether by the act of the donee, by a cause beyond his control not attributable to him, or by use; if, however, the loss is partial, the revocation may be for the part remaining;

g) if the donee has supplied valuable consideration for the gift;

h) if the gift constitutes alms or an act of charity.

Article 503

A gift revoked by mutual consent or by a judgment is deemed to be null and void.

The donee is only liable for the restitution of the fruits as from the date of agreement of revocation or from the date of commencement of legal proceedings. He has the right to claim repayment of all necessary expenses that he has incurred and also of sums usefully spent by him but only up to the amount of any increase in value of the thing donated.

Article 504

If, without consent of the donee or without a decision of the court, the donor takes back the thing given, he is responsible to the donee for the loss of the thing donated whether such loss occurs from his act, from a cause beyond his control which is not attributable to him or as a result of the use of the thing.

If the revocation of the gift is pronounced by a judgment and the thing donated perishes while in the possession of the donee, after he has been formally summoned to hand back the thing, the donee is responsible for loss even if it resulted from a cause beyond his control.

Section IV

Partnership

Article 505

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

Article 506

A partnership is deemed, by the fact of its constitution, to be a juristic person; such juristic personality is however acquired, as regards third parties, only upon completion of the formalities of publication required by law.

Third parties may, however, if the partnership has not completed the prescribed formalities of publication, avail themselves of the juristic personality of the partnership.

Elements of the Contract of Partnership

Article 507

A partnership deed must be in writing under pain of nullity. All modifications to the partnership deed are also void if they are not executed in the same form as the deed.

Such nullity cannot, however, be pleaded by the partners against third parties and has no effect on the relationship of the partners between themselves until a demand for such nullity has been made in court by one of the partners.

Article 508

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

Article 509

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

Article 510

A partner who has undertaken to contribute a sum of money and who does not pay this sum into the partnership is liable, without recourse to legal proceedings or to any formal demand, to payment of interest from the date that his contribution fell due, apart from payment, in addition, of compensation for any loss, if such compensation is due.

Article 511

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

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

Article 512

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

In the absence of an agreement to the contrary, he is not bound, however, to contribute to the partnership patents which he has obtained.

Article 513

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

Article 514

If the share of each of the partners in the profits and the losses of the partnership is not fixed in the deed of partnership, their respective shares shall be proportional to their respective contributions in the capital of the partnership.

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

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

Article 515

If it is agreed that one of the partners shall not participate in the profits or losses of the partnership, the partnership deed is void.

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

2- The Management of Partnership

Article 516

A partner entrusted with the management of the partnership by a special clause in the partnership deed is entitled, notwithstanding objections by the other partners, to perform acts of management and acts of disposition coming within the objects of the partnership, provided that these administrative acts and acts of disposition are not tainted with fraud. Such partner cannot without legitimate reason, be discharged from his post as managing partner so long as the partnership exists.

If the appointment of a managing partner is made subsequent to the partnership deed, such an appointment may be revoked in the same manner as an ordinary mandate.

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

Article 517

When several partners are entrusted with the management of the partnership without their respective attributions being defined and it is not provided that anyone of them cannot act alone, each partner may separately perform any act of management, subject to the rights which each of the other managing partners has to object to such an act before it has been completed, and to the right of majority of the managing partners to override such an obligation; in the case of equal voting by the managing partners, the right to override the objection belongs to the majority of all the partners.

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

Article 518

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

Article 519

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

Article 520

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

3- The effects of partnership.

Article 521

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

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

Article 522

A partner who takes or retains a sum of money belonging to the partnership will, without any legal summons or formal demand, be liable for interest on the sum from the day he took it or retained it., and will also be liable for payment of damages should loss arise thereby.

A partner who advances money to the partnership from his private funds or incurs in good faith without imprudence trifling expenses for the benefit and on behalf of the partnership, is entitled to interest thereon from the partnership from the date of payment thereof.

Article 523

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

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

Article 524

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

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

Article 525

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

4- Ways in which a partnership comes to an end

Article 526

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

If, notwithstanding the expiration of the term or the achievement of the object for which the partnership was formed, the partners continue to carry on work of the same nature as that for which the partnership was formed, the partnerships deed is extended from year to year on the same conditions.

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

Article 527

A partnership comes to an end upon the total loss of its capital or upon its partial loss to such an extent as to render the continuation of the partnership useless.

If one of the partners has undertaken to contribute by way of a definite and specific thing which perishes before it is brought into the partnership, the partnership is dissolved as regards all partners.

Article 528

A partnership is terminated by death, interdiction, insolvency or bankruptcy of one of the partners.
It may be agreed, however, that the event of the death of one partner, the partnership will continue with his heirs, even if they are minors.

It may also be agreed, however, that, in case of death, interdiction, insolvency, bankruptcy or retirement of one of the partners in accordance with the provisions of the following article, the partnership will continue with the other partners.

In such a case, such partner, or his heirs will only be entitled to his share in the assets of the partnership. This share will be estimated accordance with its value at the date of the event, which resulted in the partner ceasing to be a partner, and must be paid in money. Such partner will share in subsequent rights only to the extent that such rights arise from operations prior to the event which resulted in his ceasing to be a partner.

Article 529

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

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

Article 530

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

Any agreement to the contrary is void.

Article 531

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

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

5- Liquidation and partition of the partnership property

Article 532

The liquidation and partition of the partnership property is carried out in the manner laid down by the partnership deed. When the partnership deed is silent, the following provisions will be applied.

Article 533

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

Article 534

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

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

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

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

Article 535

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

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

Article 536

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

Each partner shall take a sum equal to the value of his contribution to the capital of the partnership, as recorded in the partnership deed, or, if not recorded in the partnership deed, at its value at the time the contribution was brought to the partnership, unless he has only contributed his services, the usufruct or the mere use of the thing that he has brought to the partnership.

The balance, if any, will be distributed between the partners proportionally to each partner's share in the profits.

If the partnership assets are not sufficient to cover the repayment of the partners' contributions, the loss is shared between the partner's proportionally to each partner's share in the losses.

Article 537

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

Section V

Loans and Annuities

1- Loans for Consumption

Article 538

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

Article 539

The lender must deliver to the borrower the thing which is the object of the contract and cannot claim the return of its equivalent until the end of the loan.

If the thing perishes before its delivery to the borrower, the loss falls on the lender.

Article 540

In the event of dispossession, the provisions relating to sale will apply if the loan is made for valuable consideration; otherwise the provisions relating to loan for use will apply.

Article 541

When the loan is made without valuable consideration, and hidden defects appear in the thing, the borrower, if he prefers to retain the thing, will only be liable to refund the value of the defective thing.

When the loan is made for valuable consideration, or when it is made without valuable consideration but the lender has deliberately hidden the defects, the borrower may demand either that the defect be made good or that the defective thing be replaced by a thing without defects.

Article 542

The borrower is under liability to pay the agreed interest as it falls due; in the absence of an agreement as regards interest, the loan is deemed to be without consideration.

Article 543

A loan comes to an end upon the expiration of the term agreed upon.

Article 544

If interest is agreed, the debtor may, after six months from the date of the loan, give notice of his intention to terminate the contract and to restitute the thing taken on loan, provided that the restitution takes place within a term not exceeding six months of the date of notice. In such a case the debtor shall be liable to pay the interest due for the six months following the notice. He will not, in any case, be bound to pay interest or to perform a prestation of any kind by reason of the fact that payment is made before due date. The right of the borrower to effect restitution cannot be forfeited or limited by agreement.

2- Annuities.

Article 545

An undertaking may be given to supply in perpetuity a person and after him his successors with a periodical prestation consisting of a sum of money or a fixed quantity of other fungibles. This obligation may be assumed by contract for or without valuable consideration, or by will.

When the prestation is made by contract for valuable consideration, it is subject as regards the rate of interest, to the rules governing loans on interest.

Article 546

An annuity is essentially redeemable at any time at the will of the debtor. Any agreement to the contrary is void.

It may be agreed however, that the redemption shall not take place during the lifetime of the annuitant or before a certain length of time which shall never exceed fifteen years.

The right of redemption cannot in any case be exercised until notice thereof has been given and then after one year from the date of the notice.

Article 547

The debtor may be forced to redeem in the following events:

a) if, in spite of a formal summons, he does not pay the annuity for two consecutive years;

b) if he fails to supply the creditor with the securities that he has promised or if such securities disappear and he does not provide other securities in their place;

c) if he becomes bankrupt or insolvent.

Article 548

If the annuity is purchased by payment of a sum of money, the redemption is made by the repayment of the amount in full or such lesser amount as may be agreed upon.

In other cases, redemption is exercised by the payment of a sum of money, on which the interest calculated at the legal rate corresponds to the amount of the annuity.

Section VI

Compromise

1- The elements of compromise

Article 549

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

Article 550

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

Article 551

A compromise cannot be made on any question touching the status of individuals or public policy, but a compromise may be made with regard to proprietary interests arising out of the status of individuals or out of a penal offence.

Article 552

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

2- The effects of compromise

Article 553

Compromise terminates the disputes in respect of which the compromise is made.

It extinguishes the right and claims which either of the parties have finally renounced.

Article 554

Compromise has a declaratory effect as regards the rights in respect of which the compromise is made. This declaratory effect is limited to specifically litigious rights.

Article 555

The wording of the renunciation contained in the compromise must be strictly interpreted. The renunciation, no matter how worded, applies to those rights only which form the precise object of the dispute settled by the compromise.

3- Nullity of compromise

Article 556

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

Article 557

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

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

Chapter II

Contracts relating to the use of a thing

Section I

Leases

1- Leases Generally

Elements of a lease

Article 558

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

Article 559

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

Article 560

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

Article 561

Rent may consist either of money or any other prestation.

Article 562

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

Article 563

If the lease is concluded without any agreement as to term, of for an undetermined period, or if the term cannot be established, it is deemed to have been made for the term fixed for payment of the rent. It expires at the end of the term in question, at the request of one of the parties, subject to notice being given by him to the other party as follows:

a) in the case of agricultural and uncultivated land, if rent is payable six monthly or if the term for payment is more than six months, notice must be given three months before the end of the term; if the term is less than six months notice must be given before the last half term, subject always to the right of the lessee to the crops in accordance with custom;

b) in the case of houses, shops, offices, business premises, industrial establishments, warehouses and other similar premises, if the rent is payable every four months or at longer intervals, notice must be given two months before the end of the term; if the term is less notice must be given before the last half term;

c) in the case of apartments, furnished rooms and all kinds of premises not mentioned above, if the rent is payable every two months, or at longer intervals, the notice must be given one month before the end of the term; if the term is less than two months the notice must be given before the last half term.

Effects of a Lease

Article 564

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

Article 565

If the leased property is delivered to the lessee in such a condition that it is unfit for the use for which it is leased, or if its usefulness is appreciably diminished, the lessee may demand either the resiliation of the lease or the reduction of the rent equivalent to the loss of use; in both cases he is entitled to claim compensation, if compensation is due.

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

Article 566

The rules laid down as regards the obligation of delivery of the thing sold, especially as to time and place of delivery, as to extent, weight or measure, and as to determining its accessories, are applicable to the obligation of delivery of the leased property.

Article 567

The lessor is bound to maintain the leased property in the state in which it was at the time of delivery. He must make, during the continuance of the lease, all repairs which may become necessary, except lease's repairs.

The lessor is bound to do such plastering and white washing of the roofs as may be necessary, and to clear wells, cesspools and drains.

The lessor is responsible for charges and taxes due on the leased property. The lessor is also responsible for the cost of water, if it is supplied for a lump sum, but the lessee is responsible if it is supplied by meter. The costs of electricity, gas and other requirements for personal use are payable by the lessee.

The above rules only apply in the absence of agreement to the contrary.

Article 568

If a lessor having been summoned, delays performance of the obligations mentioned in the preceding article, the lessee may, without prejudice to his right to claim resiliation of the lease or reduction of rent, obtain authority of the court to perform them himself and deduct the cost from the rent.

In the case of immediate repairs or minor repairs for which the lessor is responsible, whether resulting from a defect existing at the time the premises were taken over by the lessee or happening subsequently, the lessee may, without the authority of the court, carry them out and deduct the cost thereof from the rent, if the lessor, having been summoned to do so, does not carry them out in a reasonable time.

Article 569

If, during the course of the lease, the leased property is totally destroyed, the lease is ipso facto determined.

If, as a result of a cause not imputable to the lessee, the leased property is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which it was leased, or if such a use is

appreciably diminished, the lessee may, if the lessor does not restore the leased property to its original condition within a reasonable time, i.e. a delay which does not affect the business or activity of the lessee, claim, according to the circumstances, either a reduction of the rent or the resiliation of the lease, without prejudice to his right to perform himself the obligations of the lessor in accordance with the provisions of the preceding article.

In the two preceding cases, the lessee cannot claim compensation if the loss or deterioration arises from a cause not imputable to the lessor.

Article 570

The lessee must not prevent the lessor from making immediate repairs required for the preservation of the leased property, but if such repairs cause a complete or partial loss of enjoyment, the lessee may claim, according to the circumstances, resiliation of the lease or a reduction of rent.

If, however, the lessee continues to occupy the premises until the repairs are completed, he will forfeit his rights to claim resiliation of the lease.

Article 571

The lessor shall abstain from doing anything which may disturb the lessee in his enjoyment of the leased property, and shall not make any alterations to the property or to its accessories that diminish such enjoyment.

The lessor not only warrants the lessee against his own acts and against those of his servants, but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor.

Article 572

If a third party claims to have rights incompatible with those derived by the lessee from the agreement of lease , the lessee shall forthwith give notice to the lessor of such claim and shall be entitled to demand that he be dismissed from the case. In which event proceedings will be taken solely against the lessor.

If, as a result of such a claim, the lessee is effectively deprived of the enjoyment to which he is entitled in accordance with the agreement of lease, he may, in accordance with the circumstances, claim resiliation of the lease or a reduction of rent together with payment of damages if damages are due.

Article 573

When there are several lessees of the same property, the lessee who without fraud, first entered into possession will have preference. If a lessee of an immovable property has, in good faith, effected transcription of his lease, before another lessee has entered into possession or before the renewal of his lease, such lessee will have preference.

In the absence of reasons giving preference to one lessee, the only recourse of a lessee in respect of any right not enjoyed by him is a claim for damages.

Article 574

If, as a result of an act lawfully done by a Government Authority, the enjoyment of a leased property leased is appreciably diminished, the lessee may, in accordance with the circumstances, and unless otherwise agreed between the parties, claim resiliation of the lease or a reduction of the rent. If the grounds for the act of such Government Authority are the result of an act imputable to the lessor, the lessee may claim payment of damages.

Article 575

A lessor does not warrant the lessee against trespass by a third party who does not claim a right over the leased property; this shall not, however, affect the right of the lessee to take action in his name against such third party for damages and to take all other possessory actions.

If, however, the trespass is not in any way imputable to the lessee and is sufficiently serious to deprive him of his enjoyment of the leased property, the lessee may, in accordance with the circumstances, claim resiliation of the lease or reduction of rent.

Article 576

Subject to any agreement of the contrary, the lessor warrants the lessee against all defects which prevent or appreciably diminish the enjoyment of the property, but not against those defects that are customarily tolerated, and is responsible for the lack of qualities which he specifically warranted to exist or which are essential to the intended use of the property.

The lessor, however, does not warrant the lessee against defects of which the lessee was informed or of which he was aware at the time of the conclusion of contract.

Article 577

If the leased property is found to have a defect against which the lessee has been warranted by the lessor, the lessee may, in accordance with the circumstances, claim resiliation of the lease or reduction of the rent. The lessee may also call upon the lessor to make good the defect or do so himself at the cost of the lessor, if the cost thereof is not an excessive burden on the lessor.

If the defect causes any damage to the lessee, the lessor shall be liable to pay compensation, unless the lessor can establish that he was not aware of the defect.

Article 578

Any agreement excluding or limiting the warranty against disturbance or defects is void if the lessor has fraudulently hidden the cause of such warranty.

Article 579

The lessee must use the leased property in the manner agreed. In the absence of any agreement, he must use the property in accordance with the purpose for which it is destined.

Article 580

The lessee may not, without the permission of the lessor, make any alteration to the leased property unless no damage is thereby occasioned to the lessor.

If the lessee makes alterations to the leased property in excess of the limits prescribed in the preceding paragraph, he may be compelled to reinstate the property in its original condition and to pay compensation if compensation is due.

Article 581

The lessee may install in the leased property, unless the lessor can show that the installations endanger the safety of the building, water, electric light, gas, telephone, wireless and other like installations, provided that the manner in which such installations are made is not contrary to general practice.

If the intervention of the lessor is necessary for the completion of any of these installations, the lessee may call upon the lessor to intervene, on condition that he undertakes to pay the expenses incurred by the lessor in this connection.

Article 582

In the absence of an agreement to the contrary, the lessee is bound to carry out lessee's repairs in accordance with general usage.

Article 583

The lessee shall use and preserve the leased property with the care of a reasonable person.

The lessee is responsible for any deterioration of or loss to the leased property during his enjoyment thereof which are not the result of normal use.

Article 584

The lessee is responsible for damage to the leased property by fire, unless he can establish that the cause thereof was not imputable to him.

When the building is occupied by several lessees, all such lessees, including the landlord if he lives on the premises, are responsible for the fire, each in proportion to the part he occupies, unless it is proved that the fire started in the part occupied by one of them, in which case that one alone will be responsible.

Article 585

The lessee must forthwith notify the lessor of all matters that require his intervention, such as urgent repairs, the discovery of defects, encroachments and disturbances or damage by third parties to the leased property.

Article 586

The lessee must pay the rent at the agreed times and, in the absence of agreement, at times established by the custom of the place where the property is situated.

In the absence of agreement or local custom to the contrary, the rent will be paid at the domicile of the lessee.

Article 587

The payment of a term's rent establishes in favor of the payee a presumption, subject to proof to the contrary, that former terms have been paid.

Article 588

Unless the rent is paid in advance or unless the lessee provides for other guarantees, the lessee of a house, warehouse, shop or similar establishment or of agricultural land, is bound in the absence of an agreement to the contrary, to stock the leased property with furniture, goods, crops, cattle, or implements of sufficient value to secure the rent for two years or for the period of the lessee if less than two years.

Article 589

The lessor has, as warranty for all amounts due to him under the agreement of lease; a lien on all the attachable movables stocking the leased property, while they are subject to the lessor's right of privilege, even when they do not belong to the lessee. The lessor has the right to object to their removal and if, they are removed notwithstanding his objections or without his knowledge, to claim their recovery from their possessor even in good faith, subject always to the rights of such possessor thereon.

The lessor cannot exercise his rights of retention or of recovery when the movables have been removed to meet the professional requirements of the lessee in accordance with customary requirements of daily life, or if the movables remaining on the leased property or already recovered as sufficiently fully to cover the rent.

Article 590

The lessee is bound upon the expiration of the lease, to restitute the leased property. If he retains it unlawfully, he must pay compensation to the lessor on the basis of the rental value of the property and of the loss suffered by the lessor.

Article 591

The lessee is bound to restitute the leased property in the condition in which it was at the time he took delivery thereof, subject to loss or deterioration due to a cause not imputable to him.

If no proces verbal or inventory setting out particulars of the property was drawn at the time of delivery, the lessee is presumed, subject to proof to the contrary, to have received the property in good condition.

Article 592

If the lessee has erected buildings, planted trees or made other improvements which have increased the value of the property, the lessor is, subject to an agreement to the contrary, bound at the end of the lease to repay him the expenses incurred by him or the increase in value of the property.

If such improvements were made without the knowledge of the lessor or notwithstanding his objections, the lessor may claim their removal and may in addition call on the lessee to pay compensation, if compensation is due, for any damage to property resulting from such removal.

If the lessor prefers to keep improvements and pay one of the two amounts indicated above, the Court may give him time for settlement.

Assignment of lease and sub-lease

Article 593

The lessee may, in the absence of an agreement to the contrary, assign his lease or sublet the whole or part of the leased property.

Article 594

A prohibition of sub-letting implies a prohibition of assignment and vice versa.

When, in the case of a lease of an immovable property in which an industrial or commercial establishment has been created, circumstances have compelled the lessee to sell such industrial or commercial establishment, the court may, notwithstanding the condition prohibiting sub letting, decide to maintain the lease in force if the purchaser furnishes adequate security and the lessor suffers no real prejudice thereby.

Article 595

When a lease is assigned, the principal lessee remains the guarantor for the performance of the assignee's obligations.

Article 596

A sub-lessee is answerable directly to the lessor for the amounts that he, the sub-lessee, owes to the lessee as from the time a summons is served on him by the lessor.

A sub-lease cannot set up against the lessor payments made by him in advance to the principal lessee, unless they were made before the summons, in accordance with custom or a formal agreement concluded at the time of the sub-lease.

Article 597

A lessee ceases to be answerable to the lessor, either as guarantor of the assignee in the case of the assignment of the contract of lease, or as regards his obligations arising from the principal contract of lease in the case of a sub-lease:

i) if the lessor has formally agreed to the assignment of lease or to the sub-lease;

ii) if the lessor has received, without reserving his rights as against the lessee, the rent directly from such assignee or sub-lessee.

The end of a contract of lease

Article 598

A lease ends at the expiration of the agreed term without it being necessary to give notice of evacuation.

Article 599

If, after the lease has expired, the lessee continues to enjoy the leased property to the knowledge of and without objection on the part of the lessor, the lessee is deemed to be renewed upon the same conditions but for an indefinite duration. The lease so renewed is governed by the provisions of Article 563.

The tacit renewal is deemed to be a new lease and not a mere prolongation of the original lease. Nevertheless, subject to the rules of publication applicable to real property, the real securities supplied by the lessee in guarantee of the old lease are transferred to the new lease. The suretyship, whether personal or real, is not transferred to the new lease unless the surety consents thereto.

Article 600

When notice of evacuation has been given by one party to the other and the lessee, notwithstanding the notice, continues to enjoy the property after the expiration of the lease, the lease will not, subject to proof to the contrary, be deemed to have been renewed.

Article 601

A contract of lease is not terminated either by the death of the lessor or of the lessee.
In the event of the death of the lessee, however, his heirs may claim the termination of the lease if they establish that, as a result of the death of the person whose estate they inherited, the burden of the lease has become too heavy for their resources or that the lease exceeds their needs.
In such an event, the periods of notice of termination laid down in Article 563 shall be observed and the claim for termination of the lease made within six months at the most from the date of death of the lessee.

Article 602

If the lease has been granted to the lessee solely on account of his calling of or other considerations relating to his person, his heirs or the lessor may, on his death, claim termination of the lease.

Article 603

The insolvency of the lessee does not render immediately payable rents that have not become due.
The lessor, however, may claim resiliation of the lease, unless he is provided within a reasonable time with securities guaranteeing the payment of rent not due. The lessee may also, if he is not given authority to assign the lease or to sub-let the property, claim resiliation of the lease on payment of equitable compensation.

Article 604

In the case of voluntary or forced transfer of the ownership of the leased property to a third party, the new owner is only bound by the lease if he has been given an established date prior to the act entailing the transfer of ownership.
The new owner may, however, avail himself of the contract of lease, even if he is not bound by such contract.

Article 605

A person acquiring a leased property, who is not bound by the lease can only evict the lessee by giving him notice as provided for in Article 563.
In the absence of a provision to the contrary, the lessor must, if notice of eviction is given before the end of the lease, compensate the lessee. The lessee cannot be evicted before he receives compensation either from the lessor or from the new owner paying on behalf of the lessor, or until he has obtained an adequate security for the payment of such compensation.

Article 606

The lessee cannot set up rent paid in advance against a new owner, if the new owner proves that at the time of payment the lessee knew or should necessarily have known of the transfer of ownership. Failing proof thereof, the new owner has only a remedy against the lessor.

Article 607

When it has been agreed that the lessor may terminate the contract if he becomes personally in need of the property, he shall, if he exercises his right, be bound, unless otherwise agreed, to give the lessee notice of termination in accordance with the delays provided for in Article 563.

Article 608

When a lease is made for a fixed period, either of the contracting parties may, if serious and unforeseen circumstances arise of a such nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiration, provided he gives notice in accordance with the delays provided for in Article 563 and pays equitable compensation to the other party.
If it is the lessor who demands termination of the lease, the lessee will not be compelled to hand back the leased property before he has been compensated or obtained adequate guarantee.

Article 609

An official or an employee whose duties oblige him to change his place of residence may claim termination of the lease of his dwelling house, when his lease is made for a fixed period, provided that he gives notice of such termination in accordance with the delays provided for in Article 563. Any agreement to the contrary is void.

2- Certain kinds of leases.

Leases of agricultural land.

Article 610

If the leased property is agricultural land, the lessor is not bound to hand over to the lessee cattle and agricultural implements existing on the land unless they are included in the lease.

Article 611

When cattle and agricultural implements belonging to the lessor are handed over to the lessee, the lessee is under the obligation to take proper care of them and to maintain them in the manner required for their customary use.

Article 612

When a lease of agricultural land provides that the lease is made for one or several years, it is deemed to be for one or several completed annual rotation of crops.

Article 613

A lease of agricultural land must work in the land in accordance with the requirements of normal agricultural use. He must, more particularly, maintain the land in a good state of production.
He must not, without the consent of the lessor, make any substantial change in the established method of cultivating the land, the effects of which might extend beyond the period of the lease.

Article 614

Subject to an agreement or custom to the contrary, the lessee is bound to carry out repairs necessary for the normal enjoyment of the leased land. He is in particular responsible for the clearing and maintenance of canals, trenches, channels and drains. He is also responsible for the normal maintenance of roads, dikes, bridges, fencing, wells, dwelling houses and farm buildings.
The erection of buildings and major repairs to existing buildings and dependencies on the land are, subject to any agreement or custom to the contrary, the responsibility of the lessor. The same rule applies as regards repairs to wells, canals, water channels and reservoirs.

Article 615

If the lease has, as a result of force majeure, been prevented from preparing or sowing the land, or if the whole or the greater part of the seed has been destroyed thereby, he is, subject to any agreement to the contrary and as the case may be, relieved from payment of the whole or part of the rent.

Article 616

If, after having sown, a lessee loses all his crop by force majeure before harvest time, he can demand remission of the rent.
If the crop is only partially destroyed, but a considerable decrease in yields results therefrom, the lessee may demand a reduction of the rent.
The lessee cannot demand a remission or reduction of the rent if he is compensated against his loss either by the profits he has derived during the whole period of the lease, by an amount received under an insurance policy or by any other means.

Article 617

If, at the end of the lease, the harvest has not ripened for reasons not imputable to the lessee, he may, upon payment of a proportional rent, remain on the leased land until the harvest ripens.

Article 618

An outgoing lessee shall do nothing of a nature to diminish or retard the enjoyment of the land by an incoming lessee. He is bound, in particular, just before vacating the land, to allow the incoming lessee to prepare the land and to sow, if he does not sustain any injury thereby.

Amodiation.

Article 619

Agricultural land and land planted with trees may be granted in amodiation to a lessee in consideration of the lessor taking a fixed share in the crop.

Article 620

In the absence of agreement or custom to the contrary, the conditions governing leases apply to amodiation, subject to the following provisions.

Article 621

The amodiation is, when no term is fixed, deemed to have been granted for one yearly rotation of crops.

Article 622

The lease in case of amodiation includes agricultural implements and cattle belonging to the lessor which are on the land at the time of the agreement.

Article 623

The lessee must give to the cultivator and to the preservation of the crop the same care that he gives to his own affairs.
The lessee is responsible for the deterioration of the land during his enjoyment, unless he proves that he looked after the preservation and maintenance of the land with the care of a reasonable person.
The lessee is not bound to replace cattle that die or agricultural implements worn out through no fault of his own.

Article 624

The produce is divided between the two parties in the proportion agreed upon or established by custom; in default of agreement or custom the produce is divided equally.
Loss by reason of force majeure of all or part of the produce is borne equally by the two parties and gives rise to no claim by either party against the other.

Article 625

In amodiation, the lessee cannot assign the lease or sub-let the land amodiated without the consent of the lessor.

Article 626

The amodiation does not determine on the death of the lessor, but determines on the death of the lessee.

Article 627

When the amodiation ceases before the end of its term, the lessor must reimburse the lessee or his heirs for any expenditure made in respect of the crops which have not ripened, and pay equitable compensation for work that the lessee has done on the land.
If, however, the amodiation is dissolved by the death of the lessee, the heirs may, instead of claiming reimbursement of the expenses hereinbefore referred to, take the place of their principal until the crops have ripened, provided they are in a position to continue the proper cultivation of the land.

Lease of Wakf property.

Article 628

A Nazir has the right to let wakf property.
A beneficiary, even if he is the sole beneficiary, cannot grant a lease unless the right to do so has been given to him by the constituent of the wakf or unless he is authorized to do so by a person who has power to grant a lease, whether he be the Nazir or the judge.

Article 629

The Nazir is the person entitled to receive the rent, and payment must not be made to the beneficiary without the consent of the Nazir.

Article 630

The Nazir is not entitled to take the wakf property or lease even at the current rent for similar properties.
The Nazir may lease wakf property to his ascendants and descendants provided that the rent is the current rent for similar properties.

Article 631

A lease of wakf property is not valid if the rent is grossly inadequate, unless the lessor is the sole beneficiary with power to administer the wakf. In such a case, the lessee notwithstanding the gross inadequacy of the rent, will bind the lessor, but will not bind beneficiaries who succeed him.

Article 632

In case of the lease of wakf property, the estimation of the current rent for similar properties will be made at the time of the conclusion of contract of lease; any changes taking place after that date shall not be taken into account.

When a Nazir grants a lease of wakf property for a grossly inadequate rent, the lessee is bound, under penalty of resiliation of the contract, to make up the rent for similar properties.

Article 633

The Nazir cannot, without authority of the judge, lease wakf property for a period exceeding three years, even by successive contracts. Any lease entered into for a longer period shall be reduced to three years.
If, however, the Nazir is also either the founder or the sole beneficiary, he may, without it being necessary to obtain the authority of the judge, lease the wakf property for more than three years, subject to the right of the Nazir succeeding him to claim the reduction of the period to three years.

Article 634

The provisions relating to lease apply to the lease of wakf property, insofar as they are not incompatible with the preceding paragraphs.

Section II

Loan for Use

Article 635

A loan for use is a contract by which the lender undertakes to hand over to the borrower without valuable consideration, a non-consumable thing for his use during specific time or for a specific purpose, which thing the borrower undertakes to restitute after having used it.

1- Obligations of the Lender

Article 636

The lender is bound to hand over to the borrower the thing lent in the condition in which it was at the time of the conclusion of the contract of loan for use, and to leave him in possession of the thing lent during the period of the contract.

Article 637

If, during the period of loan, the borrower is obliged to incur expenses necessary for the preservation of the thing, the lender must reimburse him his expenses.
In the case of moneys usefully spent, the provisions with regard to expenses incurred by a possessor in bad faith will be applicable.

Article 638

The lender does not warrant against the dispossession of the thing loaned unless there has been an agreement for such warranty or the lender is deliberately concealed the cause of dispossession.
Similarly, the lender does not warrant against hidden defects. If, however, he has deliberately concealed such defects, or has warranted that the thing is free from defects, he is bound to compensate the borrower for any loss the borrower has suffered as a result thereof.

2- Obligations of the Borrower

Article 639

The borrower may only use the thing lent in the manner and to the extent provided for in the contract, according to the nature of the thing, or in accordance with custom. He must not assign the use to a third party, even gratuitously, without authority of the lender.
The borrower is not responsible for changes to or deterioration of the thing lent resulting from its use in accordance with the contract.

Article 640

When the use of the thing lent entails expenses by the borrower, he will not have the right to claim the refund thereof. He is bound to pay the necessary expenses for the normal maintenance of the thing.
The borrower may remove any additions that he has made to the thing lent, provided that he reinstates the thing in its original condition.

Article 641

The borrower is bound to take such care for the preservation of the thing as would take for the preservation of his own property; provided that the care he takes is not less than that which a reasonable person would take.
The borrower is, in any event, responsible for the thing lent arising from a fortuitous event or force majeure if it was possible for him to avoid such loss by using his own property, or if he could only preserve his own property or the thing lent and he preferred to preserve his own property.

Article 642

The borrower must, at the end of the loan, restitute the he thing received in its state at that time, without prejudice to his responsibility for loss or deterioration.
In the absence of an agreement to the contrary, the borrower must restitute the thing at the place that he received it.

3- Termination of the Loan for Use

Article 643

The loan for use comes to an end upon the expiration of the term agreed and, in default of such term being fixed, when the thing has served the purpose for which it was lent.
If there is no way by which the term of the loan for use can be fixed, the lender may demand its termination at any time.
The borrower may, in all cases, restitute the thing lent before the end of the loan. If, however, such restitution is prejudicial to the lender, he cannot be compelled to accept the thing.

Article 644

The lender may put an end to a loan for use at any time in the following cases:
a- if the lender has suddenly an urgent and unforeseen need of the thing;
b- if the borrower uses the thing improperly or neglects to take the necessary precautions for its preservation;

c- if the borrower becomes insolvent after the conclusion of the loan or if his insolvency before the conclusion of the loan was not known to the lender.

Article 645

In the absence of an agreement to the contrary, a loan for use ends with the death of the borrower.

Chapter III

Contracts for the hire of services

Section I

Contracts for work and concessions of public utility services

1- Contracts for work

Article 646

By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service in consideration for a remuneration which the other contracting parties undertakes to pay.

Obligations of the Contractor

Article 647

The contractor may undertake to supply his work only, the master of the work being responsible for the supply of materials which the contractor uses in or for the performance of his work.
The contractor may also undertake to supply the materials as well as his work.

Article 648

When the contractor undertakes to supply the whole or part of the materials to be used in the work, he is responsible for and warrants their good quality to the master.

Article 649

When the materials are supplied by the master, the contractor is bound to care for their preservation, to use then with technical skill, to account to the master for their use in the work and return to him any such materials that remain. If part of the materials becomes unfit for use owing to the contractor's neglect or lack of professional skill, the contractor is bound to refund to the master the value thereof.
In the absence of an agreement or trade custom to the contrary, the contractor shall provide, at his own expense, the tools and accessory appliances necessary for the performance of the work.

Article 650

If, in the course of execution, it is established that the contractor is performing the work in a manner that is defective or contrary to the agreement, the master may formally summon him to alter, within a reasonable period fixed by him, the manner in which he is performing the work. If after the expiration of such a period the contractor fails to adopt the manner of working, the master may

either demand resiliation of the contract or the handing over of the works to another contractor at the cost of the first contractor, in accordance with the provisions of Article 209.
Immediate resiliation of the contract may, however, be demanded without it being necessary to grant any delay, when rectification of the defective manner of performance is impossible.

Article 651

The architect and contractor are jointly and severally responsible for a period of ten years for the total or partial demolition of constructions or other permanent works erected by them, even if such destruction is due to a defect in the ground itself, and even if the master authorized the erection of the defective construction, unless, in this case, the constructions were intended by the parties to last for less than ten years.
The warranty imposed by the preceding paragraph extends to defects in constructions and erections which endanger the solidity and security of the works.
The period of ten years runs from the date of delivery of the works.
This article does not apply to the rights of action which a contractor may have against his sub-contractor.

Article 652

An architect who only undertakes to prepare the plans without being entrusted with the supervision of their execution, is responsible only for defects resulting from his plans.

Article 653

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void.

Article 654

Actions on the warranties above referred to are prescribed after three years from the date of destruction of the works or the discovery of defects.

Obligations of the Master

Article 655

When the contractor completes the works and places them at the master's disposal, the master shall, as soon as possible, take delivery in accordance with prevailing custom. When the master, in spite of being formally summoned, fails without reasonable cause, to take delivery of the works, the works will be deemed delivered to him.

Article 656

In the absence of a custom or an agreement to the contrary the price is payable upon delivery of the works.

Article 657

When a contract is concluded in accordance with an estimate drawn up on a unit price basis and it becomes apparent, during the course of the work, that it will be necessary, in order to complete the works according to the agreed plan, considerably to exceed the estimated price, the contractor is

bound to notify the master thereof forthwith and to inform him of the anticipated increase in price; if he fails to do so he forfeits his right to recover the expenses incurred in excess of the estimate.
When the estimated excess in the price for the execution of the plans is considerable, the master may rescind the contract and stop the work, provided that he does so without delay and pays the contractor for the cost of the work done by him, estimated in accordance with the terms of the contract, without being liable to compensate the contractor for the profit he would have realized if he had completed the works.

Article 658

When a contract is concluded on a lump sum basis according to a plan agreed with the master, the contractor has no claim to an increase of price, even if modifications and additions are made to the plan, unless such modifications or additions are due to a fault of the master, or have been authorized by the master and the price thereof agreed with the contractor.
Such agreement should be made in writing unless the principal contract was concluded verbally.
The contractor has no claim to an increase of price on the grounds of an increase in the price of raw materials, labor or any other item of expenditure, even if such increase is so great as to render the performance of the contract onerous.
When, however, as a result of exceptional events of a general character which could not be foreseen at the time the contract was concluded, the economic equilibrium between the respective obligations of the master and of the contractor breaks down, and the basis on which the financial estimates for the contract were computed has consequently disappeared, the judge may grant an increase of the price or order the resiliation of the contract.

Article 659

When the price has not been fixed in advance, it must be calculated according to the value of the work and the expenses of the contractor.

Article 660

An architect is entitled to a separate fee for the preparation of the plans and specifications and another for the supervision of the work.
If the fees are not specified in the contract they shall be fixed according to prevailing custom.
If, however, the work is not completed in conformity with the plans prepared by the architect, the fee shall be assessed on the basis of the time taken in their preparation, taking into consideration the nature of the work.

Sub-contracts

Article 661

A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract or unless the nature of the work presupposes reliance on his personal skill.
In such a case the contractor remains responsible to the master for his sub-contractor.

Article 662

Sub-contractors and workmen working for a contractor in the execution of a contract have a direct right of action against the master but only to the extent of such sums as are due by the master to the

main contractor on the date that action is commenced. Workmen of sub-contractors likewise have the same right of action against the main contractor and the master.
In the case of an attachment served by one of them upon the master or main contractor, workmen have a right of privilege on the sums due to the main contractor or to the sub-contractor at the time of the attachment, in proportion to the amount due to each of them. These sums may be paid to them direct.
The rights of sub-contractors and workmen provided for in this article have priority over those of a person to whom the contractor has assigned sums due to him by the master.

The End of a Contract for Work

Article 663

A master may terminate the contract and stop the work at any time before the completion of works, provided that he compensates the contractor for all expenses h has incurred, for the work that he has done and the profit that he would have made if he had completed the work.
The Court may, however, reduce the compensation due to the contractor for loss of profit if the circumstances justify such reduction. In particular, the Court shall deduct from such compensation any saving realized by the contractor as a result of the rescission of the contract by the master and any profit which the contractor could have made by employing his time otherwise.

Article 664

A contract for works comes to an end if the performance of the work for which the contract was concluded becomes impossible.

Article 665

When works are destroyed by a fortuitous event, before delivery to the master, the contractor has no claim either for the price of his work, or for reimbursement of his expenses. The loss of materials falls on the party who supplied them.
When, however, the contractor fails to comply with a formal summons to deliver the work or when the works are destroyed or deteriorate before the delivery by the fault of the contractor, he is under a liability to indemnify the master for the materials supplied to carry out the works.
When a master is formally summoned to take delivery of the works or when the works are destroyed or deteriorate by the fault of the master or by reason of a defect in the materials supplied by him, the master shall bear the loss resulting from the destruction of the materials and is liable to the contractor for his remuneration in addition to such compensation as may be due.

Article 666

A contract for work is dissolved by the death of the contractor if his personal skill was taken into account when the contract was concluded. If such personal skill was not taken into account, the contractor is not ipso facto dissolved and the master may not, except in cases in which Article 663 applies, resiliate the contract, unless the contractor's heirs do not offer sufficient guarantees for the due performance of the work.

Article 667

When the contract is dissolved by the death of the contractor, the master is bound to pay to the contractor's estate the value of the work already done and expenses incurred for the execution of the

work which has not been completed, to the extent of the benefit that he derives from such work and expenses.
The master may, on the other hand, demand delivery, against payment of a fair price, of the materials prepared and plans whose execution has been commenced.
These provisions also apply when the contractor who has commenced the work becomes unable to complete it owing to a cause beyond his control.

2- Concessions of Public Utility Services

Article 668

A concession of a public utility service is a contract whose object is the management of a public utility service of an economic nature. Such a contract is concluded between the administrative authority in charge of the organization of such a service and a private person or company to whom the exploitation of the service is entrusted for a fixed period.

Article 669

The concessionaire of a public utility service undertakes, by the contract concluded between him and the consumer, to provide the latter in a normal manner with the services corresponding to the rates which he collects, in accordance with the conditions stipulated in the contract of concession and its annexes and also with the conditions which the nature of the work and the laws applicable thereto demand.

Article 670

When the concessionaire of the public utility service enjoys a de jure or de facto monopoly service, he is bound to observe strict equality between consumers both as regards the services rendered and the rates charged.
The principle of equality does not exclude special treatment involving the reduction of remittance of rates, provided such treatment is granted to all persons who apply therefor and who fulfill the general conditions laid down by the concessionaire. The principle of equality entail, however, the prohibition of the concessionaire from granting to some consumers advantages which he refuses to grant to others.
Any discrimination granted contrary to the provisions of the preceding paragraph renders the concessionaire liable to compensation for the loss which may be caused, as a result of such discrimination to third parties, by the disturbance of the natural balance of fair competition.

Article 671

The rates laid down by the public authority will have force of law with regard to contracts entered into between the concessionaire and consumers; the parties shall not have the right to depart therefrom by agreement.
The rates may be revised or modified. If the rates are modified and such modification is ratified, the new rates become applicable, but without retroactive effect, from the date fixed for its coming into force by the act of ratification. Any contracts running (abonnements) at the time of modification of the rates will be subject to the increase or reduction of charges for the period of the contract unexpired at the date of coming into force of the new rates.

Article 672

Any irregularity or mistake in the application of the rates to individual contracts is subject to rectification.
If the irregularity or mistake operates to the detriment of the consumer, he shall be entitled to recover the amount paid in excess of the authorized charge. If such an irregularity or mistake operates to the detriment of the concessionaire of the public utility service, he shall be entitled to collect an amount to make up the authorized charge. Any agreement to the contrary is void. The right of recovery in either case is barred by prescription after one year from the date when the collection of the interest charge took place.

Article 673

Consumers, in the case of concessions for distribution of water, gas, electricity, power or other similar commodities, must support interruptions or irregularities for a short time to which installations of such services are normally subject, such as those necessary for the upkeep of the installation with which the service is maintained.
The concessionaire of these services may repudiate responsibility in respect of interruptions or irregularities of abnormal length or gravity, by proving that they are caused by force majeure not imputable to the operation of the service or by a fortuitous event which could not have been foreseen or whose consequences could not have been avoided by any vigilant management acting without undue regard to economy. A strike constitutes a fortuitous if the concessionaire establishes that it took place without any fault on his part and that it was not possible for him to replace strikers by other workmen or to avoid the consequences of their strike by any other means.

Section II

Contracts of Service

Article 674

A contract of service is one whereby one of the contracting parties undertakes to work in the service and under the supervision or control of the other party in consideration for a remuneration which the other party undertakes to pay.

Article 675

The provisions contained in this section apply only insofar as they are not expressly or impliedly inconsistent with special laws relating to service.
Such special laws define the categories of workers to which the provisions of this Section do not apply.

Article 676

The provisions of this Section as to contracts of service apply to the relationship between masters and canvassers, commercial representatives, commercial travellers, assurance agents and other intermediaries, even if they remunerated on a commission basis or if they work for the account of several employers at the same time, so long as these persons work under the orders and supervision of such masters.
When the services of a commercial representative or a commercial traveller comes to an end, even by reason of the expiration of the term of employment specified in the contract, he shall not be entitled to receive, by way of remuneration, the commission or discount, agreed upon or established by custom, or orders which do not reach the master until after the commercial representative or the

traveller has left his service, if such orders are the direct result of the employee's representations (demarches) to customers while he was in the master's service. Such employees, however, can only claim this right during the usual period for such claims established by custom in respect of each business.

1- Elements of a Contract

Article 677

In the absence of a provision to the contrary in law or administrative regulations, a contract of service is not required to be in any special form.

Article 678

A contract of service may be concluded either for a specific service or for a fixed period; it may also be entered into for an indefinite duration.
If a contract of service is entered for the lifetime of the worker or the master or for a period longer than five years, the worker, after the expiration of five years, may resiliate the contract without being liable to pay compensation, provided that he gives six months prior notice to the master.

Article 679

When a contract is entered into for a fixed period, it, ipso facto, comes to an end at the expiration of the term.
If the parties continue to carry out the contract after the expiration of the term, the contract will be deemed to have been renewed for an indefinite duration.

Article 680

When a contract is entered into for the performance of a specific work, it comes to an end when the agreed work has been completed.
When the work is, by its nature, capable of being renewed and the contract is continued after the completion of the work agreed, the contract will be deemed to have been impliedly renewed for the period necessary for the execution of the same work for a second time.

Article 681

The performance of services is presumed to be made for remuneration, if it is not customary for such services to be performed gratuitously or if such services come within the scope of the profession of the person who performs them.

Article 682

When a contract of service for an individual or a group of individuals or factory regulations do not specify the salary payable by the master, the salary will be fixed in accordance with the rates, if any applicable to work of a similar nature. If no rates exist, the salary will be fixed in accordance with the custom of the trade and the custom of the place where the work is performed. If there is no such custom, the judge will fix the salary in accordance with equity.
The same rules will apply to determine the nature and the extent of the work to be performed by the employee.

Article 683

The following sums form an integral part of the employee's salary and are taken into account in computing the attachable portion thereof:
i- commissions payable to canvassers, commercial travellers and commercial representatives;
ii- percentages payable to employees of commercial establishments on the price of sales effected by them and high cost of living allowances paid to them;
iii- any gratuity paid to a worker in addition to his salary, as well as fidelity bonuses, family allowances and other similar allowances, if payment of such sums is provided for in the individual contract of service or in the workshop regulations, or if these sums are customarily payable so that the worker regards such sums as forming part of his salary and not constituting a bounty, and provided that the amount of such payments is known before the attachment is made.

Article 684

Tips are deemed to be salary only in industries or trade where it is customary to pay tips and where tips are subject to regulations by which they can be controlled.
Tips are deemed to form part of the employee's salary when the amounts given as tips by customers of a particular commercial establishment to the employees are collected in a common fund for distribution to the workers by or under the supervision of the employer.
In some industries, such as hotels, restaurants, cafes, and bars, a worker's salary may consist solely of the tips he receives and the food he consumes.

2- Effects of a Contract

The Obligations of the Worker

Article 685

The worker must:
a- himself perform the work and in so doing use the care of a reasonable person;
b- obey the orders of the master relating to the performance of the agreed work and coming within the duties of the worker, if such orders are not contrary to the contract, to law or morality, and if obedience thereto does not entail danger;
c- preserve with care things entrusted to him for the performance of his work.
d- safeguard the industrial or commercial secrets of the work, even after the end of the contract.

Article 686

When the work entrusted to the worker enables him to know the clients of the master or to learn secrets of his business, the parties may agree that the worker will not be entitled, after the termination of the contract, to compete with the master or participate in a competitive undertaking.
In order, however, that any such agreement be valid, if it is necessary:
a- that the worker has attained his majority at the time the contract is entered into;
b- that the restriction be limited as to time, place and kind of work, to the extent necessary for the protection of the legitimate interests of the master.
The master cannot avail himself of such an agreement if he resiliates the contract or refuses to renew it, without the worker giving him adequate grounds for such action; nor can the master avail himself of such agreement if he himself has given the worker adequate grounds to resiliate the contract.

Article 687

When a contract contains a penalty clause applicable in the event of the breach of a condition in restrain of competition, and such a clause is so onerous as to be tantamount to pressure on the worker to compel him to remain in the service of the master for a longer time than that agreed, both the penalty clause and the condition in restraint of competition will be void.

Article 688

When the worker discovers a new invention while in the service of the master, the master will have no rights in respect of the invention, even if the worker has discovered the invention by reason of the work performed in the service of the master.
An invention discovered by a worker in the course of his work belongs, however to the master, if the nature of the work that the worker has undertaken to carry out requires him to give his time to invention or if the master has expressly stipulated in the contract that he will have the right to inventions discovered by the worker.
If the invention is of a serious economic importance, the worker may, in cases falling within the preceding paragraph, demand a special remuneration to be fixed in accordance with the principles of equity, taking into account in the assessment of such remuneration the extent of help supplied by the master and the use the worker has made of the master's installations for the purpose of the invention.

Article 689

In addition to the obligations laid down in the preceding articles, an employee must carry out obligations imposed upon him by special laws.

The Obligations of the Master

Article 690

The master must pay the worker his salary at the time and place agreed upon in the contract or established by custom, subject to the provisions in this connection contained in special laws.

Article 691

When a contract provides that the worker will be entitled in addition to or in lieu of the agreed salary, to a share of the master's profits or to a percentage of the gross receipts or of the amount of production or of the value of the savings effected, or to other remuneration of alike nature, the master is bound to render to the worker, after each balance sheet, an account of the amount payable to him in this respect.
The master must in addition supply to the worker, or a trustworthy person designated by the parties or by the Judge with the information necessary to verify the accuracy of such amount and allow him to consult his books for this purpose.

Article 692

When a workman or an employee comes to perform a day's work as stipulated in his contract of service, or declares his readiness to perform a day's work and is only prevented from so doing by a cause imputable to the master, he is entitled to his salary for the day.

Article 693

In addition to the obligation laid down in the preceding articles, the master is bound to carry out the obligations imposed on him by special laws.

The End of Contracts of Service

Article 694

Subject to the provisions of Articles 678 and 679, a contract of service ends at the expiration of the term fixed or upon the completion of the work in respect of which the contract was entered into.
When the duration of the contract is not fixed either by the agreement or by the nature of the work or by its object, each of the contracting parties may terminate his relationship with the other party; the exercise of this right must be preceded b notice, the manner and period of which are defined by special laws.

Article 695

When a contract entered into for an indefinite period is terminated by one of the parties without observing the delay required for notice or before the end of this delay, he is bound to compensate the other party for the whole period of the notice or for the portion thereof still to run. Subject to the provisions of special laws on the subject, such compensation will include, in addition to the fixed salary due for this period, all additional remuneration, provided the amount of such remuneration is fixed and defined.
When the contract is terminated vexatiously by one of the contracting parties, the other party may, in addition to the compensations due owing to failure to observe the delay required for notice, claim damages for the prejudice resulting from the unjustified termination of the contract. Discharge is deemed to be unjustified if it takes place as a result of the service of an attachment on the master or on account of debts contracted by the worker to third parties.

Article 696

Compensation on dismissal may be granted, even though the master has not himself dismissed the worker, if the master, by his own actions and especially vexatious treatment or by a breach of the conditions of contract, has obliged the worker to appear to have terminated the contract himself.
The transfer of a worker, without fault on his part, to a less profitable or less suitable post than that which he is occupying, is not deemed to be an indirect vexatious act if such transfer is necessary in the interests of the work. The transfer will, however, be deemed a vexatious act if it is made with the object of injuring the worker.

Article 697

A contract of service is not dissolved by the death of the master, unless the personality of the master was a factor taken into consideration in concluding the contract. The contract however, is dissolved by the death of the worker.
The rules laid down in special laws on the subject will be observed for the dissolution of the contract on account of the death or prolonged illness of the worker or of any other cause constituting force majeure which prevents the worker from continuing his work.

Article 698

Actions arising out of a contract of service are prescribed after one year from the time of the termination of the contract; but in the case of actions arising out of commission and profit sharing percentage of gross receipts, the period of prescription only begins from the time when the master hands to the worker a statement of what is due to him according to the last balance sheet.
Actions in connection with the disclosure of trade secrets or the enforcement of conditions of contract as to the protection of such secrets, are not subject to this special limitation.

Section III

Mandate

1- The Elements of Mandate

Article 699

Mandate is a contract whereby a mandatary binds himself to perform a judicial act on behalf of a mandator.

Article 700

In the absence of any provision of the law to the contrary, a mandate must be executed in the same form as that required for the execution of the juridical act in respect of which the mandate is given.

Article 701

A mandate given in general terms, which does not specify the nature of the juridical act in respect of which it is given, only confers on the mandatory the power to perform acts of management.
Granting of leases of no more than three years duration, acts of preservation and of maintenance, the recovery of rights and discharge of debts, are deemed to be acts of management. All acts of disposition necessary for management, as the sale of perishable crops, goods or movables, and the purchase of things necessary for the preservation and exploitation of the thing constituting the object of the mandate are deemed to be acts of management.

Article 702

A special mandate, in respect of any act which is not an act of management, is required, and in particular for a sale, a mortgage, a gift, a compromise, an admission, an arbitration, the tendering of an oath and representation before the Courts.
A special mandate to carry out a certain category of juridical acts is valid, save as regards gratuitous acts, even though the object of such acts is not specified.
A special mandate only confers on the mandatory a power to act in matters specified therein and in matters necessarily incidental thereto in accordance with the nature of each matter and prevailing custom.

2- The Effects of a Mandate

Article 703

The mandatary is bound to perform the mandate without exceeding the limits fixed therein.

He may, however, exceed these limits if he finds himself unable to notify the mandator thereof beforehand and if the circumstances are such that it can be assumed that the mandator could not have failed to approve the act. In such a case, the mandatory is bound to inform the mandator immediately that he has exceeded the limits of mandate.

Article 704

If the mandate is gratuitous, the mandatary must exercise in its performance the degree of care that he gives to his own affairs, without, however, being bound to exercise more diligence than a reasonable man.
When the mandate is given for remuneration, the mandatary must always exercise in its performance the diligence of a reasonable man.

Article 705

A mandatary is bound to give to his mandator all necessary information in connection with the execution of his mandate and render him an account thereof.

Article 706

The mandatory may not use the property of the mandator for his own benefit.
He is liable for interest on sums used by him for his own benefit from the moment when he commences to use them. He is also liable for interest on sums that he owes to the mandator from the time when he is served with a formal summons.

Article 707

When several mandataries are appointed, they are jointly and severally liable if the mandate is indivisible or if the damage sustained by the mandator is the result of their common fault. Mandataries, however, even if joint and several, are not responsible for the acts done by their co-mandataries in excess of the limits of the mandate or by a wrongful use of the mandate.
When several mandataries are appointed by the same document without being authorized to act severally, they must act jointly except in cases where an exchange of view is not essential, such as receiving a payment of paying a debt.

Article 708

A mandatary who nominates a substitute to perform his mandate without being authorized to do so, is responsible for the acts of the substitute as if they were his own acts: in such a case, the mandatary and his substitute are jointly and severally responsible.
When a mandatary is authorized to appoint a substitute without specifying the person, he is only liable for a faulty choice of the substitute or for faulty instructions that he gives to him.
In the two preceding cases, the mandator and the substitute of the mandatary have a direct right of action against each other.

Article 709

A mandate is deemed to be gratuitous in the absence of agreement which may be express or result by implication from the position of the mandatary.

When the remuneration is agreed, it is still subject to the assessment of the Judge, unless it has been voluntarily paid after the performance of the mandate.

Article 710

Whatever result the mandatary may have achieved in the performance of the mandate, the mandator must repay to the mandatary any expenses incurred by him for the normal performance of the mandate with interest from the date when such expenses were incurred. When the performance of the mandate requires the mandator to supply to the mandatary sums of money for expenditure in respect of the mandate, the mandator must advance such amounts, if requested by the mandatary so to do.

Article 711

The mandator is responsible for injury sustained by the mandatary, without fault on his part, in the normal performance of the mandate.

Article 712

When several persons appoint a sole mandatary for a common purpose, they are, in the absence of agreement to the contrary, jointly and severally liable to the mandatary as regards the consequences of the performance of the mandate.

Article 713

Articles 104 to 107, with regard to representation, apply to the relationship of a mandator and of a mandatary with third parties dealing with the mandatary.

The End of a Mandate

Article 714

The mandate comes to an end by the completion of the work or by the expiration of the period for which it was given and by the death of the mandator or of the mandatary.

Article 715

The mandator may, at any time and notwithstanding any agreement to the contrary, revoke or restrict the mandate. When, however, the mandate is remunerated, the mandator must indemnify the mandatory for loss sustained by him as a result of an intempestive or unjustified revocation.
When, however, the mandate has been given in the interests of a mandatary or of a third party, the mandator is not entitled to revoke or restrict the mandate without the consent of the person in whose interest the mandate was granted.

Article 716

The mandatary may, at any time and notwithstanding an agreement to the contrary, renounce his mandate. Renunciation is effected by notification to the mandator. When the mandate is remunerated, the mandatary must indemnify the mandator for loss sustained by him as a result of his renunciation, if it is intempestive or unjustified.

The mandatory, however, has not the right to renounce a mandate given in the interests of a third party, unless there are serious reasons justifying such remuneration and unless he notifies the third party and gives him time to take such action as may be necessary to safeguard his interests.

Article 717

The mandatory is bound, irrespective of the manner in which the mandate is terminated, to carry through any work he has commenced to such a condition that it is not exposed to deterioration.
When the mandate is extinguished by the death of the mandatary, his heirs, if they have the necessary legal capacity and knowledge of the mandate, are bound to inform the mandator immediately of the death of the mandatory and to take such steps as circumstances demand in the mandator's interests.

Section IV

Deposit

Article 718

Deposit is a contract whereby one person agrees to take delivery from another person a thing which he undertakes to keep in safe custody and return in kind.

1- The Obligations of the Depository

Article 719

The depository is bound to take delivery of the thing deposited.
He is not entitled to make use of the thing deposited without the express or implied authority of the depositor.

Article 720

When the deposit is gratuitous, the depository is bound to exercise, in the custody of the thing, the care which he employs in his own affairs, without, however, being bound to exercise a degree of diligence exceeding that of a reasonable person.
When the deposit is for remuneration, the depository must exercise in the custody of the thing deposited the diligence of a reasonable person.

Article 721

The depository may not, without the express authority of the depositor, appoint a substitute to take over the custody of the thing deposited, unless he is compelled to do so by reason of urgent and absolute necessity.

Article 722

The depository is bound to return the thing deposited as soon as he is required so to do by the depositor, unless it follows from the contract that the term of the deposit was fixed in the interests of the depository. The depository may, at any time, compel the depositor to take back the thing

deposited, unless if follows from the contract that the term of the deposit was fixed in the interests of the depositor.

Article 723

When the heir of a depository sells the thing deposited in good faith, he is only liable to refund to the owner the price which he has received or to assign to the owner his rights against the purchaser. If the alienation was gratuitous, he is liable to pay the value of the thing deposited at the time of the alienation.

2- The Obligations of the Depositor

Article 724

A deposit is deemed gratuitous. When, however, remuneration is stipulated, the depositor, in the absence of agreement to the contrary, is bound to pay such remuneration at the time the deposit ends.

Article 725

A depositor must repay the depository any expenses incurred for the preservation of the thing deposited and indemnify him against any loss he may incur as a result of the deposit.

3- Certain Kinds of Deposits

Article 726

When the object of the deposit is a sum of money or another thing of a consumable nature and the depository has been authorized to make use of it, the contract is deemed to be a contract of loan for consumption.

Article 727

Proprietors of hotels, inns or other similar establishments are responsible, in the performance of their obligation to keep safely the effects brought in by travellers or residents, even for the acts of casual frequenters of their establishments.
They are, however, liable, as regards sums of money, securities and articles of value, only up to a limit of L.E. 50, unless they have undertaken the safe custody of such things knowing their value, or unless they have refused, without just cause, to take them in charge, or if the loss has been caused by their gross negligence or by the gross negligence of one of their staff.

Article 728

A traveller must, as soon as he has knowledge of the theft, loss of, or damage to the thing, inform the proprietor of the hotel or the innkeeper, under pain, in the case of unjustifiable delay, of forfeiture of his rights.
His right of action against the hotel proprietor or innkeeper is prescribed after six months from the date of leaving the hotel or the inn.

Section V

Judicial Custody

Article 729

Judicial custody is a contract whereby the parties entrust to a third party a movable or an immovable or a property comprising both movables or immovables which is the subject of litigation or of legal rights that have not been established, which such third party undertakes to safeguard, manage and return, together with fruits collected thereon, to the person whose right thereto shall be established.

Article 730

The Court may order judicial custody:
i- in the cases provided for in the preceding article, when the parties concerned do not agree to custody;
ii- when a party with an interest in a movable or an immovable has reasonable grounds to fear imminent danger to property as a result of its remaining in the hands of its possessor;
iii- in other cases provided for by law.

Article 731

Judicial custody of wakf property may be ordered in the following cases:
i- when the office of Nazir is vacant or in the event of litigation between co-nazirs or between persons claiming to have a right to the office of Nazir, or when there is an action for the removal of the Nazir, provided it is established that the judicial deposit is an indispensable measure in order to safeguard the contingent rights of the interested parties. In such a case the deposit ends upon the appointment of a Nazir to the wakf, whether such appointment is provisional or definite;
ii- when the wakf is in debt;
iii- when one of the beneficiaries of he wakf is an insolvent debtor. The deposit will be ordered in respect of his share alone, if such share can be isolated even by means of a provisional partition, and, if not, the deposit will be ordered in respect of all the property of the wakf; in both cases the deposit will only be ordered if it is the only means of protecting the rights of the creditors against the wrongful administration or bad faith of the Nazir.

Article 732

The appointment of a receiver, whether by agreement or judicially, must be made with the unanimous consent of all the interested parties. Failing such consent, the receiver will be appointed by the judge.

Article 733

The obligations of the receiver, his rights and powers, are defined in the agreement or in the judgment ordering the deposit. In the absence of such definition, the provisions relating to deposit and to mandate will apply is so far as they do not conflict with the following provisions.

Article 734

A receiver is bound to ensure the preservation and administration of the property entrusted to him with the diligence of a reasonable person.
A receiver may not, either directly or indirectly, appoint one of the interested parties in his place to carry out the whole or part of his mission, without the consent of the other parties.

Article 735

Apart from administrative acts, a receiver must not act without the consent of all interested parties or the authority of the court.

Article 736

A receiver may not be remunerated unless he has renounced all remuneration.

Article 737

A receiver must keep regular books of account. The Judge may order his books to be stamped by the Court.
He is bound to render to the interested parties, at least once each year, an account of the receipts and expenditure with supporting vouchers. If the receiver is appointed by the Court, he must also deposit a copy of his account at the Court's Registry.

Article 738

The deposit comes to an end either by the agreement of all the interested parties or by decision of the Court.
The receiver must then forthwith restitute the property entrusted to him to the person chosen by the interested parties or designated by the Judge.

Chapter IV

Aleatory Contracts

Section I

Gaming and Betting

Article 739

Any agreement relating to a game of chance or a bet is void.
A person who loses in a game of chance or on a bet may, notwithstanding any agreement to the contrary, reclaim what he has paid within three years from the time when he made payment. He may prove such payment by all available means.

Article 740

Bets between persons taking part personally in sports are excepted from the provisions of the preceding article. The Judge may, nevertheless, reduce the stake if excessive.
Legally authorized lotteries are also excepted.

Section II

Life Annuities

Article 741

A person may for valuable consideration or gratuitously bind himself to pay another person periodical payments during his lifetime.
This obligation may be created either by contract or by will.

Article 742

A life annuity may be granted for the life of the beneficiary of the grantor or of a third party.
In the absence of an agreement to the contrary, a life annuity is presumed to have been settled for the duration of the beneficiary's life.

Article 743

Subject to the requirements of the law as to the form of contracts for gifts, a contract providing for an annuity is valid only if made in writing.

Article 744

A stipulation in the contract that a life annuity is not attachable is only valid when the life annuity is settled gratuitously.

Article 745

A beneficiary is only entitled to the annuity for the number of days for which the person on whose life the annuity has been settled lives.
When, however, it is provided that the annuity is payable in advance, the beneficiary will be entitled to the installment which has fallen due.

Article 746

If the grantor does not fulfil his obligation, the beneficiary may demand due performance of the contract. He may also, if the contract is for valuable consideration, apply for the resiliation of the contract together with such damages as may be due.

Section III

Contracts of Insurance

1- General Provisions

Article 747

Insurance is a contract whereby the insurer undertakes, in consideration of a premium or any other pecuniary payment, to pay to the assured or the beneficiary for whose benefit the insurance is

contracted, a sum of money or annuity or any other pecuniary prestation upon the occurrence of the event of the risk specified in the contract.

Article 748

Provisions relating to insurance contracts, which are not mentioned in this Code, are regulated by special laws.

Article 749

Any lawful economic interest which a person may have in the non-occurrence of a specified risk may be subject of insurance.

Article 750

The following conditions in a policy of insurance are void:
i- a condition providing for the forfeiture of the right to the benefit of the insurance on account of breach of the law or of regulations, unless such breach constitutes a crime or a deliberate misdemeanor;
ii- a condition providing for the forfeiture of the rights assured on account of his delay in notifying the authorities of the occurrence of the risk insured or in producing documents, if it appears from the circumstances that there was a reasonable excuse for the delay;
iii- a printed condition relating to cases involving nullity or forfeiture, which is not shown in a clear manner;
iv- any arbitration condition included in the general printed conditions of the policy and not as a special agreement distinct from the general conditions;
v- any other clause of an arbitrary nature, the breach whereof appears to have no bearing on the occurrence of the event insured against.

Article 751

The insurer shall only be bound to indemnify the assured for the actual loss arising as a result of the occurrence of the risk insured against, to the extent of the amount insured.

Article 752

Actions arising out of insurance contracts shall be barred by limitation after the expiation of three years from the date of the occurrence which gave rise to such actions.
This period, however, shall only run:
a- in the event of concealment of particulars or of false or inexact declarations of particulars, in respect of the risk insured against, from the day when the insurer had knowledge thereof;
b- in the event of the occurrence of the risk insured against, from the date when the interested parties had knowledge thereof.

Article 753

Any agreement contrary to the provisions of this Section shall be void unless such agreement is in favor of the assured or of the beneficiary.

2- Certain Classes of Insurance

Life Insurance

Article 754

Sums which the insurer undertakes to pay, in the case of life assurance, to the assured or to the beneficiary, upon the occurrence of the event insured against or on the maturity date stipulated in the assurance policy, shall become due from the time of occurrence of the event or upon maturity, without it being necessary to establish that the assured or the beneficiary suffered any loss.

Article 755

The assurance of the life of a third party is void unless such third party consents thereto in writing prior to the issue of the policy. If such third party is under legal incapacity the contract will not be valid unless consented to by his legal representative.
Such consent is also necessary for the validity of the assignment of the right to the benefit under the assurance or for the validity of a mortgage on such a right.

Article 756

The insurer is released from the obligation to pay the sum assured if the life assured commits suicide. The insurer shall, however, be bound to pay to the persons to whom the right reverts a sum equal to the amount of the insurance reserve.
When suicide is due to an illness whereby the patient lost control of his actions, the obligation of the insurer remains in its entirety. It is for the insurer to establish that the life assured died as a result of suicide and for the beneficiary to establish that the life assured had, at the time he committed suicide, lost control of his actions.
When an assurance policy contains a clause by which the insurer is bound to pay the sum assured even if the suicide was committed voluntarily and knowingly by the life assured, such a clause is only enforceable if suicide was committed after two years from the date of the contract.

Article 757

When an assurance is taken out on the life of a person other than the assured, the insurer is released from his obligations if the assured deliberately causes the death of the life assured or if the death occurs at his instigation.
When a life assurance is taken out in favor of a person other than the assured, such person shall not benefit from the assurance if he has deliberately caused the death of the life assured or if such death occurred at his instigation. In case of an attempted homicide, the assured shall have the right to substitute another person for the beneficiary even if the beneficiary had already accepted the insurance benefit stipulated in his favor.

Article 758

It may be agreed in life assurance that the sum assured shall be paid either to person nominated or to persons to be nominated at a later date by the assured.
The assurance shall be deemed to have been made in favor of nominated beneficiaries if the assured stated in the contract that the assurance was made in favor of his spouse or his children or descendants, born or to be born, or of his heirs without referring to them by name. Should the assurance be contracted in favor of the heirs without their being named, such heirs shall be entitled

to the sum assured in proportion to their respective shares in the inheritance. This right will devolve on them even if they renounce their inheritance.
By spouse is meant the person proved to have such capacity at the time of the death of the assured, and by children are meant the descendants proved to have the right to inherit at that time.

Article 759

An assured who has undertaken to pay periodical premiums may release himself from the contract at any time by written notice sent to the insurer prior to the expiration of the current period. In such event he shall be released from payment of subsequent premiums.

Article 760

In whole life contracts which do not contain a condition that the assured shall remain alive for a specified period and in all contracts providing for payment of the sum assured after a specified number of years, the assured may, after payment of at least three yearly premiums and notwithstanding any agreement to the contrary, convert the original policy into a paid up policy against a reduction of the sum assured. This provision is subject to the condition that the event insured against is bound to occur.
Life assurance, if temporary, shall not be subject to reduction.

Article 761

Should the assurance be reduced, the reduction shall not exceed the following limits:
i- in whole life contracts, the reduced sum assured shall not be less than the amount to which the assured would have been entitled if he had paid an amount equal to the assurance reserve on the date of the reduction, less 1% of the original sum assured, as if this sum had constituted a single premium payable in respect of an assurance of the same nature calculated according to the rates on the basis of which the original contract of assurance was concluded;
ii- in contracts in which it is agreed that payment of the sum assured will be made after a certain number of years, the reduced sum assured shall not be less than a fraction of the original sum assured calculated proportionately to the premiums paid.

Article 762

The assured may also, after payment of at least three yearly premiums, surrender the policy, provided that the event insured against is bound to occur.
A temporary assurance contract is not subject to surrender.

Article 763

Conditions relating to reduction and surrender are deemed to form part of the general conditions of the assurance and should be inserted in the policy.

Article 764

Neither incorrect particulars nor misstatements as to the age of the life assured shall render the assurance void, unless the true age of the life assured exceeds the limit specified in the table of rates.

In all other cases, if, as a result of incorrect particulars or misstatements, the premium agreed upon is less than the premium which should have been paid, the sum assured shall be reduced in the proportion that the agreed premium bears to the premiums which should be paid on the basis of the true age.
Should, however, the agreed premium be higher than the premium which should have been paid on the basis of the true age of the life assured the insurer shall be bound to refund, without interest, the excess received by him and to reduce the subsequent premiums to the limit corresponding to the true age of the life assured.

Article 765

In life assurance, the insurer who has paid the sum assured shall not be entitled to be subrogated to the rights of the assured or of the beneficiary against the person who caused the event insured against or against the person responsible therefor.

Insurance against Fire

Article 766

In insurance against fire, the insurer is liable for all damage resulting from a fire or the beginning of a fire which may become an actual fire, or from the risk of a fire which may occur.
His liability is not limited solely to the damage resulting directly from the fire but also includes damage which is necessarily the result of the fire and particularly damage caused to things covered by the insurance by reason of salvage measures or of measures to prevent the extension of the fire.
Notwithstanding any agreement to the contrary, the insurer is also liable for the loss or disappearance of the things covered by the insurance, occurring during the fire, unless he can establish that this was occasioned by theft.

Article 767

An insurer guarantees compensation for all damage resulting from fire, even if the fire broke out owing to a defect in the thing insured.

Article 768

An insurer is liable for damage resulting from the unintentional fault of the insured and also for any damage resulting from a fortuitous event of force majeure
An insurer is not, however, responsible for losses damage caused deliberately or fraudulently by the insured, notwithstanding any agreement to the contrary.

Article 769

An insured is liable for damage caused by persons for whose acts the insured is responsible, whatever may the nature or extent of their faults.

Article 770

Should the thing insured be encumbered with a pledge, mortgage or other real warranty, these rights will be transferred to the compensation due to the debtor by virtue of the contract of insurance.

If these rights have been published or notified to the insurer, even by letter sent by registered post, the insurer is only entitled to pay the amount due by him to the insured with the consent of the creditors.
When the thing insured has been attached or has been placed in judicial deposit, the insurer, if duly notified thereof in the manner set out in the preceding paragraph, shall not pay any sum due by him to the insured.

Article 771

The insurer shall be, by virtue of law, subrogated into the rights of action of the insured against the author of the act causing the damage involving the responsibility of the insurer, to the extent of the compensation he has paid in respect of the fire, unless the author of the damage is a relative of or related by marriage to the insured living together in the same house, or a person for whose acts the insured is responsible.

Chapter V

Suretyship

Section I

The Elements of Suretyship

Article 772

Suretyship is a contract whereby a person guarantees the performance of an obligation by giving an undertaking to the creditors to fulfil such obligation should the debtor fail to do so.

Article 773

Suretyship can only be established by writing, even if the principal obligation can be established by oral evidence.

Article 774

When a debtor undertakes to offer a surety, he is bound to produce a solvent person residing in Egypt or an adequate real security instead of the surety.

Article 775

Suretyship may be given without the knowledge and even in spite of the opposition of the debtor.

Article 776

Suretyship is valid only if the obligation to which it applies is valid.

Article 777

When a person guarantees the obligation of a debtor who is legally incapable and such guarantee is given because of the debtor's lack of capacity, the surety is bound to perform the obligation if the guaranteed debtor fails to do so himself.

Article 778

Suretyship may be entered into in respect of a future debt, if the amount for which the guarantee is given is fixed beforehand. Suretyship may also be entered into in respect of a conditional liability.
A surety however who has given his guarantee for a future debt, but has not fixed the duration of such guarantee, may revoke his guarantee at any time provided that the guaranteed debt has not been created.

Article 779

Suretyship entered into in respect of a commercial debt is deemed to be a civil act, even if the surety is a trader.
The suretyship resulting from a backer's signatures and endorsements on negotiable instruments, is always deemed to be a commercial act.

Article 780

Suretyship cannot be entered into in respect of a sum greater than that due by the debtor, nor can it be subject to more onerous conditions than the debt guaranteed.
Suretyship may be entered into in respect of a smaller sum and subject to less onerous conditions.

Article 781

In the absence of an express agreement, suretyship extends to the accessories of the debt, to the expenses of the first demand for payment and to the expenses incurred after notice has been given to the surety.

Section II.

The Effects of Suretyship

1- The Relationship between the Surety and the Creditor

Article 782

A surety is discharged simultaneously with the debtor, and is entitled to avail himself of all defenses that are open to the debtor.
When, however, the defense raised by the debtor is based on his lack of legal capacity, the surety who was cognizant thereof at the time the contract was entered into is not entitled to raise this defense.

Article 783

When the creditor has accepted a thing of another kind in payment of the debt, the surety is discharged, even if the thing given in payment is revendicated.

Article 784

A surety is discharged to the extent of the value of any warranties which the creditor has lost by his own fault.
The warranties referred to in this article are the securities assigned to guarantee the debt, even if they are provided after the suretyship was entered into; also any securities provided in accordance with the Law.

Article 785

A surety is not discharged merely by reason of the creditor's delay in taking proceedings or of the creditor not taking proceedings.
A surety is, however, discharged if the creditor does not take proceedings against the debtor within six months from the date of the summons served on him by the surety, unless the debtor himself provides an adequate guarantee to the surety.

Article 786

When a debtor becomes bankrupt, the creditor is bound to prove his debt in the bankruptcy, under penalty of being deprived of his remedy against the surety to the extent of the loss suffered by the surety as a result of the creditor's failure to prove his debt.

Article 787

A creditor is bound to hand over to the surety, at the time of the discharge of the debt, all documents that are necessary to enable him to exercise his right of action.
When a debt is secured by a pledge of an movable or by a right of retention on a movable, the creditor must surrender such securities to the surety.
When, however, the debt is secured by a charge on an immovable property, the creditor must comply with the formalities required for the transfer of such security. The expenses of such transfer are borne by the surety, subject to his right of action against the debtor.

Article 788

A creditor has not the right to take proceedings against the surety alone, unless he has first taken proceedings against the debtor.
He can only levy execution on the property of the surety after he has distrained all the property of the debtor; it is for the surety, in such a case, to claim this right.

Article 789

When a surety demands that the debtor's property shall first be distrained, he must at his own expense indicate to the creditor property of the debtor sufficient to satisfy the whole debt.
Property so indicated by the surety will not be taken into account if it is situated outside Egyptian territory, or if it is subject of a dispute.

Article 790

When the surety has indicated property belonging to the debtor, the creditor will be responsible to the surety for the debtor's insolvency if the creditor fails to take the necessary proceedings in due time.

Article 791

When a real security is assigned either by law or by agreement as guarantee of a debt, and suretyship is also entered into subsequently or at the same time, without a stipulation that the surety is jointly and severally liable with the debtor, the surety's property can only be seized and sold after the real security assigned as guarantee has been realized.

Article 792

When there are several sureties for the same debt by one contract and it does not provide for their joint and several liability, the debt is apportioned between them and the creditor has only a right of action against each of the sureties to the extent of his share in the suretyship.
If several sureties have undertaken to guarantee the same debt by successive contracts, each surety is liable for the whole debt, unless he has reserved the right to apportion the liability amongst the co-sureties.

Article 793

A surety who has jointly and severally guaranteed the debtor cannot demand that the debtor's property first be distrained.

Article 794

A surety who has jointly and severally guaranteed the debtor may avail himself of all defenses which a surety who is not jointly and severally liable may invoke with regard to the debt.

Article 795

Judicial and legal sureties are always jointly and severally liable.

Article 796

When there are several sureties jointly and severally liable, a surety who has paid the whole debt on maturity may call upon each of the other sureties to pay his share of the debt as well as a proportion part in the share of any joint and several surety who is insolvent.

Article 797

A surety may be guaranteed by another surety. In such a case, the creditor may not call upon the principal surety's guarantee until he has taken action against the principal surety, unless two sureties are themselves jointly and severally liable.

2- The Relationship between the Surety and the Debtor

Article 798

A surety must give the debtor notice before paying on pain of forfeiture of his right of action against the debtor, if the latter has himself paid the debt or has grounds, at the date of maturity, for having the debt declared void or extinguished.
If the debtor does not object to the payment, the surety retains his right of action against him, even though the debtor had himself paid the debt or had grounds for having the debt declared void or extinguished.

Article 799

A surety who has paid the debt is subrogated to all the rights of the creditor against the debtor; if however he pays only part of the debt, the surety can only exercise such rights in respect of that part he has paid after the creditor has recovered from the debtor the whole of the debt due.

Article 800

A surety who has paid the debt has a right of action against the debtor whether the suretyship was entered into with or without the knowledge of the debtor.
This right of action includes the right to claim the capital amount of the debt, interest and expenses. The surety, however, only has a right of action in respect of those expenses which he has incurred from the date he has notified the principal debtor of the proceedings taken against him.
A surety is entitled to interest at the legal rate on all amounts that he has paid from the date of payment.

Article 801

When there are several debtors jointly and severally liable for one and the same debt, a surely who has guaranteed them all, has a remedy against each of them for all that he has paid in respect of the debt.

SECOND PART

REAL RIGHTS

BOOK III

The Principal Real Rights

Chapter I

The Right of Ownership

Section I

The Right of Ownership in General

1- Limits and Sanctions

Article 802

The owner of a thing has alone, within the limits of the law, the right to use, enjoy and dispose of it.

Article 803

The owner of a thing also owns everything that constitutes an essential element of the thing owned and which cannot be separated therefrom without the thing owned perishing, deteriorating or changing.
The ownership of land includes that which is above and below, as far as it can be usefully enjoyed in height and depth.
The ownership of the surface of the land may, by law or by agreement, be separated from that which is above it and that which is below it.

Article 804

In the absence of a provision of the law or of an agreement to the contrary, ownership carries with it the right to all fruits, products and accessories of the thing owned.

Article 805

No one can be deprived of his property except in the cases and in the manner provided for by law and upon payment of fair compensation.

2- Restrictions on the Right of Ownership

Article 806

An owner must, in the exercise of his rights, comply with the laws, decrees and regulations having for their object the interests of the public and of individuals. He must also observe the following provisions.

Article 807

The owner must not exercise his rights in an excessive manner detrimental to his neighbors property.
The neighbors has no right of action against his neighbor for the unusual unavoidable inconveniences resulting from neighborhood, but he may claim the suppression of such inconveniences if they exceed the usual limits, taking into consideration in this connection, custom, the nature of the properties, their respective situations and the use for which they are intended. A license issued by a competent authority is not a bar to the exercise of such a right of action.

Article 808

A person who constructs a private canal or drain in conformity with the regulations in force has the exclusive right to its use.
Neighboring owners may, however, use the canal or drain for the irrigation or the drainage required for their land after the owner of the canal or the drain has used it to the satisfaction of his own needs. The neighboring owners must, in such case, contribute to the cost of construction and of maintenance of the canal or drain, each in proportion to the area of land benefiting thereby.

Article 809

An owner must allow a passage through his land of the water necessary for the irrigation of land situate at a distance from the source of the water and of drainage of water coming from neighboring properties, so that it may flow into the nearest public drain, provided that hi is adequately compensated.

Article 810

When damage is caused to land by a canal or drain which crosses it, either by reason of failure to clear the drain or by reason of the bad state of its banks, the owner of the land has the right to claim adequate compensation for the damage done.

Article 811

In the absence of agreement between the common users of a canal or drain as to the execution of the necessary repairs, they may, upon the demand of one of them, be compelled to contribute to the cost of such repairs.

Article 812

An owner whose land is cut off from, or has no adequate exit on to, a public road, shall, if he cannot obtain an exit to the public road without great expense or great difficulty, have a right of way over the neighboring land as may be necessary for the normal working and use of his land and as long as his land continues to be so cut off, subject to payment of fair compensation. This right of way must be exercised over land and at the place where the passage causes the least possible damage.
If the land is cut off from the public road as a result of the property having been divided in consequence of a legal disposition, and it is possible to provide an adequate right of way over parts of the land so divided, the right of way can be claimed over those parts.

Article 813

Every owner has the right to compel his neighbors to place boundary marks along the boundaries of their adjoining properties.
The cost of such delimitation will be shared between them.

Article 814

An owner of a party wall has the right to make use of it for the purpose for which it was intended and to use it for the support of beams to carry his own roof, provided that the wall has not to support too great a weight for its strength.
When a party wall becomes unfit for the purpose for which it is normally intended, the cost of repairs or reconstruction will be borne by the co-proprietors in proportion to their respective shares.

Article 815

An owner may, if he has good reason to do so, heighten a party wall, provided that he does not thereby cause serious prejudice to his co-owner. He must alone bear the cost of heightening as well as of the maintenance of the part so heightened and carry out the necessary work, so that the wall may support the extra weight due to the heightening without its strength being diminished.

If the party wall is not able to support the heightening, the co-owner who desires to heighten the wall must reconstruct the wall entirely at his own cost, in such a way as the thickening shall, as far as possible, abut on his side. The reconstructed wall remains, apart from the heightened parts, a party wall, but the neighbors who has re-heightened the wall cannot claim compensation whatever.

Article 816

A neighbors who has not contributed to the expense of heightening may become a co-proprietor of the heightened part if he pays half the cost thereof and the value of half of the ground covered by the increased thickness, if any.

Article 817

In the absence of proof to the contrary, a wall which at the time of its construction separated two buildings is deemed to be a party wall up to the point at which it ceases to be a common wall to the two buildings.

Article 818

An owner cannot compel his neighbors to walk in his property to assign to him a part of a wall or of the land on which the wall is constructed, except in a case provided for in Article 816.
An owner of a wall may not, however, demolish the wall on his own initiative if the demolition injures his neighbor whose property is closed in by it, unless he has good reason for so doing.

Article 819

A neighbor is not entitled to have a direct view over his neighbor at a distance of less than one meter. This distance is measured from the outside face of the wall in which the opening is made or from the outside line of the balcony or other projection.
If a direct view has been acquired by prescription of a distance of less than one meter over the property of a neighbor, such neighbor cannot himself build at a distance of less than one meter, measured in the manner indicated above, as long as the whole length of the building in which the view was opened.

Article 820

A neighbor is not entitled to have an oblique view over the property of his neighbor at a distance less than fifty centimeters from the outside edge of the opening. The prohibition ceases to have effect if the oblique view over the neighboring property is at the same time a direct view over a public road.

Article 821

No distance is laid down for an opening for a light shaft if the base of the opening is above the limit of the normal height of a man and if the opening is intended only for air and light and cannot give a view over the neighboring property.

Article 822

Factories, wells, steam engines and establishments injurious to neighbors must be constructed at the distance and subject to conditions laid down by regulations.

Article 823

If a contract or a will contains a clause stipulating the inalienability of a property, such a clause will only be valid if based on a legitimate reason and limited to a reasonable duration.
The reason is deemed to be legitimate if the alienability is stipulated with a view of protecting a lawful interest of the person disposing of the property or of the person in whose favor the property is disposed of, or of a third party.
A reasonable duration may extend for the life of the person disposing of, or the person in whose favor the property is disposed of, or of a third party.

Article 824

When the clause as to inalienability in the contract or the will is valid in accordance with the provisions of the preceding article, any alienation contrary to such clause is void.

3- Joint Ownership

Provisions Relating to Joint Ownership

Article 825

When two or more persons are owners of the same thing, but their respective shares are not divided, they are co-owners and, in the absence of proof to the contrary, their shares are deemed to be equal.

Article 826

Every co-owner in common is the absolute owner of his share. He may alienate his share and collect the fruits thereof and make use of his share provided he does not injure the rights of the other co-owners.
If, however, the alienation relates to a specific part in the property held in common, and such part does not come within the share of the settler when a partition is made, the right of the acquirer is transferred to the part that has devolved on the settler as a result of the partition with effect from the moment of the alienation. If the acquirer did not know that the settler was not the owner of the specific part of property which he has alienated he shall have the right to demand the cancellation of the alienation.

Article 827

In the absence of an agreement to the contrary, the management of a property held in common belongs jointly to all the owners in common.

Article 828

A decision taken by the majority of the co-owners as to ordinary acts of management is binding on all of them. The majority shall be calculated on the basis of the value of their shares. Failing a majority, the Court may, upon the application of any one of the co-owners, take such measures as may be necessary in the circumstances and appoint, if needs be, a manager to manage the property owned in common.
The majority may select a manager and may also establish rules for the management and fuller enjoyment of the property owned in common, which rules shall also be binding upon the successors in title of all the co-owners whether such successors in title are universal or particular.

A co-owner who conducts the management of the joint property, without any objection being raised by the other co-owners, is considered to be their mandatory.

Article 829

Co-owners who possess at least three quarters of the property held in common may decide, with a view to obtaining greater enjoyment of the property, to make essential modifications or changes, in the use for which the property was intended, which exceed the normal scope of management, provided that these decisions are notified to the other co-owners. Dissenting co-owners have a right of action in the Courts within two months from the date of notification.
The Court before which such an action is brought may, if it approves the decision taken by the majority, also order measures of expediency. The Court may in particular, order that security be given to the dissenting co-owners so as to guarantee any compensation that may become due to him.

Article 830

Every co-owner may also, even without the consent of the other co-owners, take necessary measures for the preservation of the property in common.

Article 831

In the absence of any provision to the contrary, the cost of the management of a property held in common, as well as the cost of its preservation, the taxes payable thereon, and all other charges resulting from the common holding or connected with the property held in common, shall be borne by all the co-owners each proportionally to his share.

Article 832

Co-owners who possess three-quarters at least of the property held in common may decide to alienate the property, provided that their decision is founded on serious grounds and that the decision is notified to the other co-owners. A dissenting co-owner has a right of action before the Court within a delay of two months from the date of notification. The Court will decide, in accordance with the circumstances, in a case where the partition of the property held in common is contrary to the interests of the co-owners, whether the alienation of the property should be carried out.

Article 833

A co-owner of a movable or of a property consisting of movables and immovables may, before partition, repurchase any undivided share which has been sold by another co-owner to a third person. Such repurchase must be made within a delay of thirty days from the day on which he had knowledge of the sale or from the day on which the sale was notified to him. The right of repurchase is exercised by means of a summons notified to both the vendor and the purchaser. The co-owner who has repurchased the share sold will be subrogated into all the rights and obligations of the purchaser if he compensates him for all that he has spent.
If several co-owners exercise their right to repurchase, each of them shall have the right to repurchase a part proportional to his share.

The Cessation of Joint Ownership by Partition

Article 834

Every co-owner may demand the partition of property held in common, unless he is bound to remain a co-owner in common by reason of a provision of the law or of an agreement. It is not permitted, by agreement, to prohibit partition for a period exceeding five years. When the period stipulated does not exceed five years, the agreement shall bind a co-owner and his successors in title.

Article 835

Co-owners may, if they are all in agreement, divide the property held in common in whatever manner they deem fit. If one of them is subject to legal incapacity, the formalities laid down by law will have to be observed.

Article 836

If co-owners are not in agreement as regards the partition of the property held in common, the co-owner who wishes to withdraw from the joint ownership shall summon his co-owners to appear before the Summary Court.
The Court shall delegate, if need be, one or more experts to proceed with the valuation of the property held in common and to divide it into separate parts if the property can be divided in separate parts in kind without materially decreasing its value.

Article 837

The expert will proceed with the composition of the separate parts taking a basis the smallest share, even where the partition is only a partial one. If the partition cannot be effected in this manner, the expert may proceed directly to allot a separate part to each co-owner.
If one of the co-owners cannot obtain all his share in kind, he shall be compensated by a payment equal to the shortage in his share.

Article 838

The Summary Court will decide upon any disputes relating to the composition of the separate parts and any other disputes coming within its competence.
In the case of disputes which the Summary Court has not competence to settle, the Court will refer the parties to the Court of First Instance and will fix a date at which they must appear. The proceedings for partition will be held up until such disputes have been finally settled.

Article 839

Upon the disputes being disposed of and the separate lots allocated directly, the Summary Court will give judgment allocating to each owner the divided part which devolves on him.
If there has been no direct allotment of the separate parts, the partition of the property will be effected by drawing lots. The Court will draw up a proces-verbal thereof and give judgment allocating to each co-owner his divided part.

Article 840

If one of the co-owners is absent or under legal incapacity a judgment of partition which has become final will be ratified by the Court in accordance with the provisions of law.

Article 841

When a property cannot be divided on kind or when such partition involves a serious diminution in the value of the property it shall be sold in the manner laid down by the Code of Procedure. Sale by auction will be restricted to the co-owners in common if they ask for it unanimously.

Article 842

The personal creditors of any co-owner may oppose a partition in kind or a sale by auction without their intervention in the proceedings. Such opposition must be notified to all co-owners and has the effect of compelling the co-owners to join the opposing creditors in every stage of the proceedings: otherwise the partition will be without effect as regards such opposing creditors. In any case, inscribed creditors must be joined before an action for partition is introduced.
If the partition has already taken place, the creditors who have not intervened cannot attack it unless there has been fraud.

Article 843

Each co-partitioner is deemed to have been owner of that part of the property that falls to him from the date that he became co-owner in common and never to have been owner of the other parts.

Article 844

The co-partitioners warrant each other against other interference or eviction due to a cause that existed previous to the partition. Each one of them is liable, in proportion to his share, to indemnify a co-partitioner entitled to such indemnity, on the basis of the value of the property at the moment of partition. If one of the co-partitioners happens to be insolvent, the share falling on him will be borne by the co-partitioner entitled to the indemnity all the solvent co-partitioners.
No such warranty, however, exists when there is an express agreement waiving the warranty in the particular case which would have given rise to the warranty. The warranty also ceases to be binding if the eviction is due to a fault of the co-partitioner himself.

Article 845

Partition by agreement may be rescinded if one of the co-partitioners succeeds in proving that he has been injured to the extent of more than one fifth of his share, on the basis of the value of the property at the time of the partition.
The action for rescission must be commenced within the year following the partition. The defendant can stop the action and prevent the new partition, by giving the plaintiff the amount by which his share is short in money or in kind.

Article 846

By a provisional partition, co-owners agree to allot to each other the enjoyment of a divided part of the property equal to each of their shares in the property held in common in consideration of a renunciation in favor of each other of the right of enjoyment of the other parts. Such an agreement cannot be entered into for a duration of more than five years. If no duration has been fixed, or the agreed period has expired, and no new agreement has been entered into, the period of the provisional partition will be for a year renewable, unless one of the co-owners gives notice of termination to his co-owners three months before the end of the current year.

If such a provisional partition remains in force for fifteen years it is converted into a final partition, unless otherwise agreed by the co-owners.
If one of the co-owners remains in possession of a divided share for fifteen years, such possession is presumed to have taken place as a result of a provisional partition.

Article 847

A provisional partition also takes place when the co-owners agree that each of them shall, the one after the other, enjoy all the property held in common for a period corresponding to his share.

Article 848

A provisional partition is governed as regards its validity as against third parties, the capacity of co-partitioners, their rights and obligations, and means of proof, by the provisions of the law relating to contracts of lease, in so far as they are not incompatible with the nature of such a partition.

Article 849

The co-owners may agree, during the process of a final partition, to enter into a provisional partition. Such provisional partition will remain in force until the conclusion of the final partition.
If the co-owners cannot reach an agreement for a provisional partition, such a partition may, upon the application of one of the co-owners, be ordered by the Summary Judge upon he advice, if necessary, of an expert.

Obligatory Joint Ownership

Article 850

The co-owners of a property held in common cannot demand its partition if it follows, from the use to which the property is intended, that it should always remain in common.

Family Joint Ownership

Article 851

The members of the same family who have a common occupation or interest may agree in writing to create a family joint ownership. This joint ownership consists either of an inheritance which the member of a family agree to leave wholly or partly in joint ownership or of any other property belonging to them which they agree to place in family joint ownership.

Article 852

A family joint ownership may be created be agreement for a period not exceeding fifteen years. Each one of the co-owners may, however, if there are serious grounds to do so, apply to the Court for authority to withdraw his share of the joint property before the end of the agreed term.
When no period is fixed for such joint ownership, each one of the co-owners may withdraw his share after six months from the day he gives notice to this effect to the other co-owners.

Article 853

Co-owners cannot demand partition so long as the family joint ownership continues, and no co-owner can dispose of his share in favor of a person who is not a member of the family without the consent of all the co-owners.
If a person who is not a member of the family acquires, as a result of a voluntary or forced alienation, the share of one of the co-owners, he only becomes a partner in the family joint ownership if he and the other co-owners consent thereto.

Article 854

Co-owners who own the majority in value of the shares, may appoint amongst themselves one or more managers. Subject to any agreement to the contrary, the manager may introduce such changes in the intended use of the property held in common as may ensure a better enjoyment of the property.
A manager may be discharged in the same manner as he was appointed, notwithstanding any agreement to the contrary. The Court may also, upon the demand of any owner, discharge him if there are serious grounds to do so.

Article 855

Subject to the preceding provisions, family joint ownership will be governed by the provisions of the law relating to joint property and to mandate.

Ownership of Storeys in Buildings

Article 856

In the absence of any provisions to the contrary in the title deeds, when the different storeys or various apartments of a building belong to different owners, such owners are considered co-owners of the ground and of the parts of the building intended for the common use of all, especially of the foundations, the main walls, the main entrances, yards, roofs, lifts, passages, corridors, the floor supports and pipes of all kinds with the exception of pipes inside the storeys or the apartments.
These parts of the building held in common cannot be divided; each of the owners has a share in these parts in proportion to the value of his share in the building. No owner can dispose of his share in the parts held in common independently of his share in the building.
The inner walls which separate two apartments belong as a party property to the owners of these two apartments.

Article 857

Every owner may, with a view to enjoying his part of the building, utilize the parts held in common, in accordance with the use for which they are intended, provided he does not prevent the other owners exercising their rights.
No modification can be made to the parts held in common, even in the event of reconstruction, without the consent of all the owners, unless such modification, made by one of the owners, at his own cost, is of such a nature to facilitate the use of the parts held in common, does not change the use to which they were intended and is not prejudicial to the other owners.

Article 858

Every owner must participate in the cost of the preservation, maintenance, management and reconstruction of the parts held in common. Subject to any agreement to the contrary the share of every owner in these costs will be calculated in proportion to the value of his share in the building.
No owner can renounce his share in the parts held in common with a view to avoiding participation in the costs referred to above.

Article 859

The owner of a lower storey is bound to execute works and repairs necessary to prevent the higher storey from falling.
If he refuses to execute the necessary repairs, the Judge may order the sale of the lower storey. In any case, the Judge des Referes may order the execution or urgent repairs.

Article 860

If the building falls down, the owner of the lower storey is bound to rebuild his storey, failing which, the Judge may order the sale of the lower storey, unless the owner of the upper storey offers to rebuild the lower storey himself at the cost of the owner of the lower storey.
In this latter event, the owner of the upper storey may refuse to allow the owner of the lower storey to occupy or make use of his storey until he has repaid the amount of his debt. He may also obtain authority to let or to occupy the lower storey in repayment of the amount due to him.

Article 861

The owner of the upper storey shall not heighten the building in such a way as to injure the lower storey.

Syndicates of Owners of Storeys of a Single Building

Article 862

When a building divided into storeys or apartments, belongs to several owners, each owner may form a syndicate amongst themselves.

A syndicate may also have for its object the construction or the acquisition of buildings with a view to allocating the ownership of parts of such buildings to members of the syndicate.

Article 863

A syndicate may, with the consent of all it members, establish rules with a view to assuring a better enjoyment and the good management of the building held in common.

Article 864

In the absence of such rules or if such rules do not contain provisions in respect of certain points, the right to manage the parts held in common belongs to the syndicate, whose decisions will be, in this respect binding, provided that all the interested parties have been summoned to a meeting by registered letter and that the decisions have been taken by a majority of the owners, calculated on the basis of the value of their shares.

Article 865

The syndicate may, with the consent of the majority prescribed in the preceding article, take out collective insurances against risks to the building or to the co-owners jointly and may authorize, at the expense of the owners who so demand, all works or installations which increase the value of all or part of the building, upon the conditions and subject to such compensation and other obligations as may be laid down by the syndicate, in the interests of the co-owners.

Article 866

A representative shall be appointed by the majority of the owners, as provided for in Article 864, to carry out the decisions of the syndicate. If the required majority is not obtained, a representative of the syndicate will be appointed, at the request of one of the co-owners and upon the other owners being called to give their views, by the President of the Court of First Instance within whose jurisdiction the building is situate. The representative of the syndicate shall, if need be, upon his own initiative, take all necessary measures for the preservation, protection and maintenance of all parts held in common. He shall be entitled to call on any party concerned to perform these obligations. These provisions shall apply in the absence of any provision to the contrary in the rules of the syndicate.
The representative of the syndicate shall represent the syndicate before the Courts, even against the owners if need be.

Article 867

The remuneration of the representative of the syndicate will be fixed in the decision or order appointing him.
The representative of the syndicate may be discharged by a decision taken by the majority of the co-owners, as laid down in Article 864, or by an order of the President of the Court of First Instance within whose jurisdiction the building is situate, after the co-owners have been summoned to be heard on the question of his discharge.

Article 868

If the building is destroyed by fire or otherwise, the co-owners are, subject to any agreement to the contrary, bound to conform to the decision of the syndicate as to its reconstruction taken by the majority, as provided for in Article 864.
If the syndicate decides to reconstruct the building, any amount due as compensation on account of the destruction of the building shall, without prejudice to the rights of the registered creditors, be set aside for the costs of reconstruction.

Article 869

Any loan made by the syndicate to one of the co-owners, in order to assist him to carry out his obligations, will be secured by a privileged charge on his divided part as well as on his undivided share in the parts of the building held in common.
The rank of this privilege will date from its registration.

Section II

Acquisition of Ownership

1. Acquisition by Appropriation

The Appropriation of Movables without an Owner

Article 870

Whoever takes possession of a movable which has no owner, with the intention of its appropriation, acquires the ownership thereof.

Article 871

A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing his ownership thereto.
Animals, other than domestic animals, are deemed to have no owner as long as they are at liberty. If one of such animals, after losing its liberty, regains its freedom, it becomes without an owner if the owner does not seek it immediately or ceases to seek for it. An animal that has become tame and is accustomed to return to the same place becomes again without an owner if it loses this habit.

Article 872

Buried or hidden treasure to which no one can establish ownership belongs to the owner or the bare owner of the property on which it is discovered.
Treasure discovered on wakf property belongs to the founder of the wakf or to his heirs.

Article 873

Rights of fishing and hunting and rights to things found and to antiquities are governed by special regulations.

The Appropriation of Immovables which have no Owner

Article 874

Uncultivated land which has no owner is the property of the State.
The appropriation or the possession of uncultivated land can only be effected with the authority of the State in accordance with the regulations.
If, however, an Egyptian cultivates or plants uncultivated land or builds thereon, he becomes forthwith owner of the cultivated, planted or built on, even without authority of the State, but he loses his ownership by non-user for five consecutive years during the first fifteen years following his acquisition of ownership.

Acquisition by Inheritance and Winding up of an Estate

Article 875

The establishment of the heirs or their hereditary shares and of the devolution of the property of the estate on them is governed by Mohammedan Law and by the laws with regard to inheritance and estates.
The following provisions apply to the winding up of an estate.

The Appointment of an Administrator

Article 876

In the absence of the appointment of a testamentary executor by the deceased, the Court may, at the request of an interested party, if it considers it necessary to do so, appoint an administrator of the estate a person chosen unanimously by the heir. In the absence of such unanimity, the Judge will, after having heard the heirs, chose an administrator, if possible from among the heirs.

Article 877

A person appointed administrator may decline to act or may, after having acted as an administrator, renounce the appointment in accordance with the provisions of the mandate.
The Judge may also, for adequate reasons, either at the request of any interested parties or at the request of the Ministere Public, or of his own initiative, discharge an administrator and replace him by another.

Article 878

The appointment of a testamentary executor by the deceased must be confirmed by the Judge.
The rules applicable to an administrator of an estate apply equally to a testamentary executor.

Article 879

The greffier of the Court must enter, day by day, the Court orders as to the appointment of administrators and the confirmation of testamentary executors in a public register, recording the names of the deceased person in accordance with the form prescribed for alphabetical indexes. He must enter in the margin of the register all orders of revocation and all renunciations.
The entry of the order as to the appointment of an administrator will, as regards third parties dealing with the heirs in connection with immovable property belonging to the estate, have the same affect as the entry provided for in Article 914.

Article 880

An administrator shall, upon his appointment, take possession of the property of the estate and proceed with the winding up of the estate under the control of the Court. He may apply to the Court for remuneration commensurate with the duties performed by him.
The estate shall bear the costs of the winding up. These costs will have a privilege in the same preferential rank as legal expenses.

Article 881

The Court must, at the request of any interested party or of the Ministere Public, or on its own initiative, take, if need be urgent necessary measures for the preservation of the property of the estate. The Court may in particular order that the property be placed under seal and that cash, securities and articles of value be placed in deposit.

Article 882

The administrator must immediately pay, out of the assets of the estate, burial and funeral expenses in accordance with the social standing of the deceased. He must also obtain an order from the "Juge de Service" (Judge in Chambers) authorizing him to make, pending the final winding up, an adequate alimentary allowance to such heirs as were supported by the deceased and to deduct such payments from the share in the estate of each heir to whom such alimentary allowance is made.

Any dispute arising as regards such an allowance shall be settled by the Juge de Service.

Inventory of the Estate

Article 883

As from the date of the entry of an order appointing an administrator, the creditors of an estate can only take proceedings or continue proceedings already commenced in connection with the estate against the administrator.
Any distribution opened against the deceased before his death, in which the order of allotment has not become final, must, at the request of any interested party, be suspended until all the debts of the estate have been settled.

Article 884

No heir may dispose of estate assets, recover estate debts, or set off a personal debt against a debt of the estate until an inheritance certificate, provided for in Article 901 has been delivered to him.

Article 885

An administrator is bound, during the winding up, to take the necessary measures to preserve and administer the property of the estate. He must also represent the estate before the Courts and proceed with the recovery of debts due to the estate.
An administrator is, even if he is not remunerated, responsible to the same extent as a paid mandatory. The Judge may call on him to render an account of his administration at periodical intervals.

Article 886

An administrator must publish a notice calling on the creditors and debtors of the estate to submit particulars of their claims and of their debts within a delay of three months from the last publication of the notice.
This notice must be posted on the main door of the residence of the Omdah in the town or village in which the estate property is situate, or on the main door of the police station in the town where this property is situate, and on the notice board of the Summary Court within the jurisdiction of which the deceased was domiciled at the date of his death. The notice must also be published in a daily newspaper with a wide circulation.

Article 887

An administrator must, within four months from the date of his appointment, file with the registry of the Court a statement of the assets and liabilities of the estate with an estimate of their value. He must also, within the same time, inform every interested party by registered letter of the filing of the statement.

An administrator may apply to the Judge for an extension of time, if this extension is justified by circumstances.

Article 888

An administrator may employ, for the preparation of the inventory and for the estimation of the value of the property of the estate an expert or a person with the necessary special experience.
An administrator must record claims and debts disclosed by the papers of the deceased, shown in public registers or coming to his knowledge in any other way. The heirs must also advise the administrator of all debts and claims of the estate known to them.

Article 889

Any person, including an heir, who fraudulently appropriates a part of the assets of the estate, is liable to the penalties for misappropriation.

Article 890

Any dispute as to the accuracy of the inventory, particularly as regards the omission of assets, claims or debts of the estate, or as to the entry in the records, should be submitted to the Court by petition at the request of any interested party within the thirty days following the notice of the filing of the inventory.
The Court will investigate the dispute. If the Court considers the claim to be a serious one, it will admit the claim by an order which is subject to recourse in accordance with the provisions of the Code of Procedure.
If the dispute has not already been submitted to the Court of Justice, the Court will fix a day within which the interested party should submit the claim to the competent Court, which Court will deal with the matter as one of urgency.

Discharge of the Debts of the Estate

Article 891

Upon the expiration of the delay fixed for the submission of disputes arising on the inventory, the administrator will proceed upon the authority of the Court, with the payment of those debts of the estate which are uncontested. Debts which are contested will be settled after the final decision of the Court on the litigation.

Article 892

In the event of the estate being insolvent or of the possibility of it being insolvent, the administrator must suspend the discharge of any debt, even uncontested, pending final decisions in respect of all disputes arising as to the debts of the estate.

Article 893

The administrator will discharge the debts of the estate with funds derived from claims recovered, cash in hand, proceeds of the sale of securities at market prices, proceeds of the sale of movables and, if the funds so obtained are insufficient, with the proceeds of the sale of immovable property of the estate.
The sale of movable and immovable property of an estate will be made by public auction in the manner and subject to the delays laid down for forced sales, unless all the heirs agree the sale shall be carried

out by negotiation or in any other manner. If the estate is insolvent the approval of all creditors is also necessary. The heirs are always entitled to take part in the auction.

Article 894

The Court may, at the request of all heirs, pronounce the immediate exigibility of a debt not yet due for payment, and fix the amount payable to the creditor in accordance with the provisions of Article 554.

Article 895

If the heir do not unanimously agree to demand the immediate exigibility of a debt not yet due for payment, the Court will proceed with the distribution of the debts not yet due for payment and of the assets of the estate, so that each heir takes from such debts and assets a portion corresponding to the net value of his share in the inheritance.
The Court will give each creditor of the estate an adequate guarantee on a movable or immovable property, reserving, however, to any creditor who had a special security that same security. When this is not possible, even by the additional security given by the heirs on their won property, or by any other arrangement, the Court will charge all the estate assets to provide such security.
In all cases, if security has been given on an immovable property and has not already been published, such security must be published in accordance with the provisions laid down as to the publication of judgment charges on real property.

Article 896

Any heir may, after the distribution of the debts not yet due for payment, pay the amount allocated to him before the due date in conformity with Article 894.

Article 897

Creditors of the estate, whose debts have not been paid because they were not shown in the inventory and were not secured by a charge on the property of the estate, have no remedy against third parties who have acquired, in good faith, a real right on this property, but have a right of action against the heirs to the extent to which the heirs have benefited.

Article 898

An administrator shall, after discharge of the debts of the estate, proceed with the payment of the legacies and other charges.

Delivery and Division of the Property of the Estate

Article 899

The residue of the property of the estate, after settlement of the liabilities, devolves on the heirs in proportion to their shares in the inheritance.

Article 900

An administrator shall deliver to the heirs the property of the estate devolving on them.

The heirs may, upon the expiration of the time fixed for the submission of the disputes arising on the inventory, demand that all or part of the things or cash which are not required for the winding up of the estate be provisionally delivered to them, with or without security.

Article 901

The Court will give to each heir who produces an Elam Charei, or any other equivalent document as to the inheritance, a certificate establishing his rights in the inheritance, the extent of his share therein and the estate property devolving on him.

Article 902

An heir may call upon the administrator to deliver to him his share in the estate as a divided part, unless such an heir is obliged to remain an owner in common by reason of an agreement or a provision of the law.

Article 903

When a demand for a division should be admitted, the administrator will proceed with the division amicably, but this division will only become final upon the unanimous approval of the heirs.
If the heirs do not unanimously approve the division, the administrator must bring an action for the division in accordance with the provisions of the law; the cost of this action will be charged to the estate and deducted from the hereditary shares of the co-sharers.

Article 904

The rules laid down for partition of property held in common, especially those as regards warranty against disturbances and eviction, lesion and preferential rights of a partitioner, shall apply to the division of the estate, as well as the following provisions.

Article 905

In the absence of an agreement between the heirs as to the division of family papers or articles having a sentimental value for the heirs owing to their relationship to the deceased, the Court shall order either the sale of these articles or their allocation to one of the heirs, with or without deduction of their value from his share in the estate, taking into account both custom and personal circumstances of the heirs.

Article 906

If there is, amongst the property of an estate, an agricultural, industrial or commercial enterprise constituting a distinct economic unity, it must be allotted as a whole to such one of the heirs who applies for it if he is the most capable of the heirs to carry on the enterprise. The price of such an enterprise will be fixed in accordance with its value and will be deducted from his share in the estate. If the heirs are all equally capable of carrying on the enterprise, it shall be allocated to the heir who offers the highest price, provided that this price shall not be less than the price for similar enterprises.

Article 907

If, at the time of division, a debt due to the estate is allocated to one of the heirs, the other heirs are not , in the absence of an agreement to the contrary, guarantors of the debtor, if he becomes insolvent subsequent to the division.

Article 908

A will dividing the property of the estate between the heirs of a testator and setting out the share of each heir or of certain of the heirs is valid. If the value of the share so given to one of them exceeds his hereditary share, the excess is deemed to a be a legacy by will.

Article 909

A division made by disposition (mortis causa) may always be revoked. It becomes irrevocable on the death of the testator.

Article 910

If such a division does not include all the property of the deceased at the date of his death, that property which has not been included in the division devolves in common on the heirs in accordance with the rules as to inheritance.

Article 911

If one or more of the contingent heirs included in the division predecease the deceased, the divided part allotted to him or them devolves in common on the other heirs in accordance with the rules as to inheritance.

Article 912

The general rules as to division, with the exception of those relating to lesion, apply to the division made by disposition (mortis causa).

Article 913

If the debts of the estate are not included in the division or if these debts are included and the creditors do not agree to the division, any heir may, if these debts are not settled in agreement with the creditors, call for a division of the estate in accordance with Article 895. In this case, account must be taken, as far as possible, of the division made by the deceased and the considerations which guided him as regards such division.

Rules Applicable to Estates that have not been Wound Up

Article 914

When an estate has not been wound up in accordance with the preceding provisions, the unsecured creditors of the estate may take action, in respect of their claims or their legacies, on an immovable property of the estate which has been alienated or which has been charged with real rights to the benefit of third parties, provided that they have recorded such claims in accordance with the provisions of the law.

3- Acquisition by Will

Article 915

Wills are governed by the rules of Mohammedan Law and by laws on Wills.

Article 916

Every legal disposition made by a person during an illness immediately preceding his death, with the object of making a gift, is deemed to be a testamentary disposition and must be governed by the rules applicable to wills, no matter what description has been given to such an act.
The heirs of the person who has made a legal disposition are the persons on whom falls the onus of proving that it was made by the deceased during an illness immediately preceding his death. This proof may be tendered in any way and the date of the legal instrument establishing the disposition cannot be invoked against the heirs, unless it is an established date.
If the heirs establish that the legal disposition was made by the deceased during an illness immediately preceding his death, the act is deemed to be a gift, (i.e. a testamentary disposition), unless the beneficiary proves that the contrary was the case. The above provisions are subject to any special provisions to the contrary.

Article 917

In the absence of any evidence to the contrary, when a person disposes of a property in favor of one of his heirs, reserving at the same time in some manner the possession and enjoyment of the property so disposed of during his lifetime, the disposition is deemed to be a testamentary disposition and must be governed by the rules applicable to wills.

4- Acquisition by Accession

The Right of Accession in Respect of Immovable Property

Article 918

Alluvium formed gradually and imperceptibly by the river belongs to the repairian owners.

Article 919

Land uncovered by the sea belongs to the State.
No one may encroach upon the sea shore except for the purpose of restoring boundaries of his property which has been covered by the sea.

Article 920

Owners of lands adjoining still waters, such as lakes and ponds, do not acquire ownership over land uncovered by the retreat of these waters, nor do they lose their ownership over land which such waters overflow.

Article 921

The ownership of land displaced or uncovered by the river and of islands formed in its channel, is regulated by special laws.

Article 922

All buildings, plantations and other works existing above or below the ground are deemed to have been carried out by the owner of the land at his own expense and belong to him.
It may be proved, however, that such works were made by a third party at his own expense, as it may be proved that the owner of the land has transferred the ownership of works already existing or the right to erect and own such works to a third party.

Article 923

Constructions, plantations and other works carried out with materials belonging to another, become the exclusive property of the owner of the land when the removal of these materials is not possible without seriously damaging the works, or even when it is possible to do so but proceedings to recover the property are not commenced within a year from the date on which the owner of the materials knew of their incorporation in the works.
When the owner of the land acquires the property of the materials, he must pay their value together with an indemnity, if indemnity is due. When, however, the owner of the materials recovers the materials, their removal must be effected at the cost of the owner of the land.

Article 924

When a third party caries out works with his own materials on land which he knows is not his property, without the consent of the owner of the land, the owner of the land may, within a year from the day on which he learns of the execution of the works, demand either their removal at the cost of the third party who erected them, together with an indemnity, if indemnity is due, or their retention against payment of their break-up value or of a sum equal to the increased value they have given to the land.
A third party who carried out the works may claim the right to remove them if he does not cause any damage to the land in so doing., unless the owner of the land chooses to keep the works in accordance with the provisions of the preceding article.

Article 925

If the third party who carried out the works mentioned in the preceding article honestly believed that he was entitled to do so, the owner of the land has no the right to demand their removal, but he may, at his option, and provided the third party does not claim their removal, pay the third party either the value of the materials and the cost of the work or a sum equal to the increased value that the works have given to the land.
If, however, the works are so extensive that the payment of the amount due in respect thereof is onerous for the owner of the land, he may claim the conveyance of the ownership of the land to the third party against payment of an adequate compensation.

Article 926

If a third party carries out works with his own materials, with the permission of the owner of the land, the owner of the land cannot, in the absence of agreement with regard to these works, demand their

removal. The owner of the land must pay to the third party, if the third party does not himself ask for their removal, one of the two amounts laid down in the first paragraph of the preceding article.

Article 927

The provisions of Article 982 apply as regards payment of compensation referred to in the three preceding articles.

Article 928

If during the construction of a building on his own land, an owner encroaches in good faith on part of an adjoining land, the Court may, within its discretion, compel the owner of the adjoining land to transfer to his neighbor the ownership of that part which is occupied by the building, against payment of adequate compensation.

Article 929

Light constructions, such as sheds, shops and shelters, erected on the land of another, which are not intended to be maintained permanently, shall be the property of the person who erected them.

Article 930

If a third party carries out works with materials belonging to another party, the owner of the materials cannot claim their restitution but he has a claim for compensation against the third party, and also against the owner of the land up to the amount remaining due by him in respect of the value of the works.

The Right of Accession in Respect of Movable Property

Article 931

When two movables belonging to two different owners become mingled in such a way that they cannot be separated without deterioration, the Court, in the absence of any agreement between the two owners, shall decide the matter in accordance with the rules of equity, having regard to the damage already done, the circumstances and the good faith of each of the two parties.

5- Acquisition by Contract

Article 932

The ownership of movables and immovables and other real rights are transferred by contract, when the contract refers to an object belonging to the person disposing of it, in accordance with Article 204 and subject also to the following provisions.

Article 933

The ownership of a movable which is described only as regards its species is transferred only upon its identification in accordance with Article 205.

Article 934

Ownership and other real rights over immovable property are not transferred either between parties or as regards third parties unless the rules laid down in the law regulating the publication of real rights is observed.
The law regulating the publication of real rights above referred to shall indicate the acts, judgments and instruments which should be published, whether they have the effect of transferring the ownership or not, and shall determine the rules as regards such publication.

6- Acquisition by Preemption

Conditions for the Exercise of Preemption

Article 935

Preemption is the opportunity that a person has to substitute himself in a sale of immovable property in the place of the purchaser, in the cases and subject to the conditions laid down in the following articles.

Article 936

The right of preemption belongs:
a- to the bare owner, in the case of a sale of all or part of the usufruct attached to a bare property;
b- to the co-owner in common, in case of a sale to a third party of a part of the property held in common;
c- to the usufructuary, in case of a sale of all or part of the bare property which produces his usufruct;
d- in case of hekr, to the bare owner if the sale relates to the right of hekr; and to the beneficiary of the hekr if the sale related to the bare property;
e- to the neighboring owner in the following cases:
i- in the case of buildings or building land whether situated in a town or in a village;
ii- if the land enjoys a right of servitude over the land of a neighbor, or if a right of servitude exists in favor of the land of a neighbor over the land sold;

iii- if the land of a neighbor adjoins the land sold on two sides and the value is at least half of the value of the land sold.

Article 937

When several persons preempt, the right of preemption will be exercised in the order set out in the preceding article.
If several persons of the same degree exercise the right of preemption, the rights of preemption will belong to each one of them in proportion to his share.
If a purchaser is, in accordance with the provisions laid down in the preceding article, entitled to exercise the right of preemption, he will be preferred to other preemptors of the same degree or of a lower degree, but those of a higher degree will have priority over him.

Article 938

If a person acquires a property which may be subject to preemption and sells it prior to any notification of an intention to preempt or prior to the transcription of such notification in accordance with article

942, preemption can only be exercised against the second purchaser and subject to the conditions upon which he has purchased the property.

Article 939

Preemption cannot be exercised:
a- if the sale is made by public auction in accordance with the provisions prescribed by law;
if the sale is made between ascendants and descendants, between spouses or between relatives to the fourth degree, or between relatives by marriage to the second degree;
c- if the property sold is destined for religious purposes, or to be annexed to property already used for such purposes.
A wakf cannot exercise the right of preemption.

The Procedure for Preemption.

Article 940

Whoever desires to exercise the right of preemption must, on pain of forfeiture of his right, notify both the vendor and the purchaser of his intention within a period of fifteen days from the date of a formal summons served on him either by the vendor or by the purchaser. This period is increased if necessary by the time allowance for distance.

Article 941

The formal summons provided for in the preceding article must, on pain of nullity, contain the following particulars:

a- an adequate description of the property subject to preemption;
b- the amount of the price, the costs and the conditions of sale, and the first names, surnames, professions and domiciles of the vendor and the purchaser.

Article 942

Notification of intention to exercise the right of preemption must, on pain of nullity, be made through the Court. It is not valid as against third parties unless it is transcribed.
The actual sale price must, within thirty days at the most from the date of this notification, be deposited in full at the Caisse of the Court of the district in which the property is situated, and in any event before the introduction of the action in preemption. If this deposit is not made within the prescribed time and manner, the right of preemption shall be forfeited.

Article 943

An action in preemption must, under pain of forfeiture, be introduced against the vendor and the purchaser before the Court of the district in which the property is situated, and enrolled on the Court list within thirty days from the date of notification provided for in the preceding article. The case will be disposed of as a matter of urgency.

Article 944

Without prejudice to the rules with regard to transcription, the judgment which finally establishes the right to preemption will constitute the title of the ownership of the preemptor.

The Effects of Preemption

Article 945

The preemptor is, vis-a-vis the vendor, substituted for the purchaser, in all his rights and obligations.
The preemptor is not, however, entitled to benefit from the delay granted to the purchaser for payment of the price unless he obtains the consent of the vendor.
If, after preemption, the property is claimed by a third party, the preemptor will only have a right of action against the vendor.

Article 946

If, before the notification of preemption, the purchaser has built or planted on the property preempted, the preemptor is bound, at the option of the purchaser, to pay to the purchaser either the amount spent by him or the amount of the increase in value of the property as a result of such construction or plantations.
When, however, such constructions or plantations have been made after the notification of preemption, the preemptor may claim their removal. If he prefers to retain them, he is only bound to pay the value of the building materials and the labor of the planting expenses.

Article 947

Mortgages charges registered against the purchaser, and any sale made by him and any real right granted by or registered against him after the date of transcription of the notification of preemption, are not valid as against the preemptor. Registered creditors, however, will retain their rights of preference on that part of the price of the property which reverts to the purchaser.

Forfeiture of the Right of Preemption

Article 948

The right of preemption is forfeited in the following cases:
a- if the preemptor renounces his rights, even before the sale;
b- if four months have elapsed since the date of registration of the deed of sale;
c- in all other cases prescribed by law.

7- Possession

Acquisition, Transfer and Loss of Possession

Article 949

Possession does not result from acts that are done by permission or merely tolerated.
Possession obtained by acts of violence, secretly or in a dubious manner has effects, as regards the person against whom the violence, secrecy or dubious means were exercised, only from the time that such unlawful means have ceased.

Article 950

A person lacking discretion may acquire possession by the intervention of his legal representative.

Article 951

Possession may be exercised by an intermediary, provided that he exercises it in the name of the possessor and that his relationship to the possessor is such that he is obliged to obey his instructions as regards the possession.

In case of doubt, a person who is actually in possession is presumed to be in possession on his own behalf. If he continues a former possession, the continuation of such possession is presumed to be on behalf of the person who commenced the possession.

Article 951

Possession is transmitted by a possessor to another by mutual agreement, without actual delivery of the thing which is the object of possession being made, provided the person to whom the possession has been transmitted is able to assume control of the right over the thing forming the object of possession.

Article 953

Possession may be transmitted without actual delivery if the possessor continues the possession on behalf of his successor in title or if the successor in title continues the possession for his account.

Article 954

The handing over of documents issued in respect of goods entrusted to a carrier or deposited in store, is equivalent to the handing over of the goods themselves.

If, however, the documents are handed over to one person and the goods to another, both being in good faith, the person who receives the goods has the preference.

Article 955

Possession is transmitted with all its features to a universal successor in title. When the original possessor was of bad faith, his successor in title may, however, if he establishes his good faith, avail himself thereof.

A successor in title holding under a special title may add to his possession that of the original possessor for the legal effect of possession.

Article 956

Possession ceases when the possessor abandons his actual control over the right or when he loses it in any other way.

Article 957

Possession does no cease if a temporary obstacle prevents the possessor from exercising his actual control over the right.
Possession ceases, however, if this obstacle continues for a whole year and is the result of a new possession exercised against the wish or without the knowledge of the possessor. The period of one year runs from the moment from which the new possession commences, if it takes place openly, or from the day on which the former possessor knew of it, if it commences secretly.

Protection of Possession (*The three possessory actions*)

Article 958

A person who is in possession of an immovable and who loses possession thereof may, during the year which follows his loss of possession, claim to be reinstated in possession. If the loss of possession was secret, the delay of one year commences from the day on which the loss of possession is discovered.
A person who exercises possession on behalf of another person may also claim to be reinstated in possession.

Article 959

A person losing possession after having been in possession for less than a year can claim to be reinstated if the person dispossessing him has not a better possession than his own. The possession is better if found on a legal title. If neither possessor has a title or both possessors have titles of equal value, the better possession is that which commenced first.
If the loss of possession takes place by violence, the possessor may always claim restitution within a year following the loss of possession.

Article 960

A person who has been dispossessed may take proceedings, within the time allowed by law, for recovery of possession against the person who has possession of the property of which he was dispossessed, even if such person acted in good faith.

Article 961

A person who remains in possession of an immovable for a whole year may, if he is disturbed in his possession, take proceedings during the year which follows the disturbance for the discontinuance of the disturbance.

Article 962

A person who remains in possession of an immovable for a whole year may, if he has good grounds to fear disturbance as a result of new works which threaten his possession, apply to the Judge to order the suspension of such works, provided that they have not been finished and that a year has not elapsed since the commencement of the works which may cause him damage.
The Judge may either stop or authorize the continuance of the works. In both cases he may order the provision of an adequate guarantee: in the case of a judgment ordering the suspension of the works, to cover compensation for damage caused by the suspension if a final decision shows that the claim for discontinuance of the works was without foundation; and in the case of a judgment ordering the continuance of the works, to cover the cost of their total or partial demolition as compensation for the damage suffered by the possessor if he obtains a final judgment in his favor.

Article 963

When several persons claim possession of the same right, the person who has actual possession is presumed to be provisionally the possessor unless it is established that he acquired possession in a wrongful manner.

Article 964

The possessor of a right is presumed, until the contrary is proved, to be its rightful possessor.

Article 965

The possessor of a right who is unaware that he infringes the right of another is presumed to be in good faith, unless his ignorance was the result of a serious mistake.
If the possessor is a juristic person, it is the good or bad faith of its representative that will be taken into account.
Good faith is always presumed in the absence of proof to the contrary.

Article 966

The good faith of a possessor ceases only from such time as he becomes aware that his possession infringes the rights of another.
Good faith ceases as soon as the defects of the possession have been notified to the possessor in the writ by which legal proceedings are commenced. A person who has usurped the possession of another by violence is deemed to have acted in bad faith.

Article 967

Subject to proof to the contrary, possession continues to have the same character that it had at the time it was acquired.

Effects of Possession. Acquisitive Prescription

Article 968

A person who has possession of a movable or immovable without being its owner, or of a real right over a movable or immovable without a just title thereto, may acquire the ownership of the thing or the title to the real right if his possession continues uninterrupted for fifteen years.

Article 969

When a person remains in possession, in good faith and by virtue of a just title, of an immovable or of a real right over an immovable, the period of acquisitive prescription is five years.
Good faith is required only at the moment of conveyance of the right.
A just title is a document of title emanating from a person who is not the owner of the property or the beneficiary of the right that it is desired to acquire by prescription, and must be duly transcribed.

Article 970

In any case, wakf property and hereditary rights are only acquired by prescription by possession for thirty-three years.

Article 971

Present possession, whose existence can be proved to have existed at an ascertained previous time, is presumed to have existed during the intervening time unless the contrary is proved.

Article 972

No one can set up prescription contrary to his title: that is to say that no one may by himself and in his own interests change the cause and origin of his possession.
A person may, however, acquire a title by prescription if the nature of his possession is changed either by the act of a third party or if such person sets up an adverse claim against the owner; but in such a case prescription only runs from the date of such change.

Article 973

Subject to the following provisions, the rules as to extinctive prescription, in so far as they are not incompatible with the nature of acquisitive prescription, are applicable as regards the calculation of the period of prescription, its suspension or interruption, claims are regards prescription in Court, the renunciation of prescription and any agreement as to modification of the period.

Article 974

Acquisitive prescription, whatever its period, is suspended if any cause exists for such suspension.

Article 975

Acquisitive prescription is interrupted if the possessor abandons or loses possession even by the act of a third party.
Prescription is not, however, interrupted by loss of possession if the possessor recovers possession within a year or takes proceedings for the recovery of possession within that period.

The Acquisition of Movables by Prescription

Article 976

A person in possession of a movable, of a real right over a movable or of a bearer warranty by virtue of a just title becomes the owner thereof if at the moment he acquired possession, he was of good faith.
If he enters into possession in good faith by virtue of a just title, in the belief of the thing is free of all charges and encumbrances, he acquires the thing free of such charges and encumbrances.
Subject to proof to the contrary, mere possession is a presumption of a just title and good faith.

Article 977

A person who has lost or has been robbed of a movable or a bearer warrant, can, within three years from the date of the loss or the theft, bring an action to recover it from a third party in possession, even if such third party is of good faith.

When the thing stolen is found in the possession of a third party who bought it in good faith on the market, at a public sale or from a merchant selling similar articles, such third party is entitled to recover from the person claiming restitution the price he paid for the thing.

The Acquisition of the Fruits by Possession

Article 978

A possessor acquires all fruits collected so long as he is of good faith.
Natural or industrial fruits are deemed to be collected from the moment they are separated. Legal fruits are deemed collected day by day.

Article 979

A possessor in bad faith is responsible for all the fruits that he has collected or that he has failed to collect, from the moment he became of bad faith. He may, however, claim refund of his expenses in connection with the production of fruits.

Recovery of Expenses

Article 980

The owner to whom the property is restituted must pay to the possessor all the expenditure of a necessary kind that he has incurred.
The provisions of Articles 924 and 925 shall apply as regard expenditure of an advantageous kind.
If the expenditure is of a luxurious nature, the possessor cannot claim repayment of any of such expenditure. He may, however, remove works he has made, provided he restores the property to its original condition, unless the owner prefers to keep the works upon payment of their break up value.

Article 981

A person who takes possession from a previous owner or possessor, may, if he establishes that he has paid to such previous owner or possessor the expenditure incurred by him, demand repayment from the person claiming ownership.

Article 982

The Jude may, at the request of the owner, select the method which he considers suitable for the repayment of the expenses referred to in the two preceding articles. He may also order repayment by periodical installments, provided that the necessary security is supplied. The owner may free himself from this obligation by paying in advance a sum equal to the amount of such installments less interest calculated at the legal rate up to the date fixed for payment.

Liability in the Event of Loss

Article 983

A possessor in good faith, who has enjoyed the thing in accordance with his presumed rights, is not liable to pay any compensation on this account to the person to whom he must restitute the thing.

He is only liable for the loss or deterioration of the thing up to the amount of profit he has received in consequence of such loss or deterioration.

Article 984

If the possessor is a possessor in bad faith, he is liable for the loss or deterioration of the thing, even fortuitous, unless he proves that such loss or deterioration would have occurred if the thing had been in the possession of the person claiming retitution.

Chapter II

Rights Derived From the Right of Ownership

Section I

The Right to Usufruct, the right of User and the right of Occupation

1- Usufruct

Article 985

The right of usufruct may be acquired by a legal disposition, by preemption or prescription.
Usufruct may be bequeathed by will to successive persons if they are alive at the moment of the bequest; it may also be bequeathed to a child <en ventre>.

Article 986

The rights and obligations of a usufructuary are governed by the conditions imposed by the deed which the usufruct is created and by the provisions contained in the following articles.

Article 987

The fruits of the property which is subject to the usufruct revert to the usufructuary, in proportion to the period of his usufruct, subject to the provisions of paragraph 2 of Article 993.

Article 988

The usufructuary must use the property in the state in which he has received if and according to the object for which it was intended; he must observe the rules of good management.
The owner may object to any use of the property that is unlawful or unsuitable to the nature of the property. If the owner proves that his right s are endangered, he may demand security and if the usufructuary does not provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to its nature, the Judge may take the property from him and entrust it to a third party for its management; the Judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

Article 989

The usufructuary is liable, during the continuance of his enjoyment, for all normal charges in respect of the property subject to the usufruct and all expenses for repairs incidental to its maintenance.

The owner is obliged to pay abnormal expenses and the cost of heavy repairs which do not arise from any fault on the part of the usufructuary, but the usufructuary is bound to pay to the owner interest on the amount expended by him in this respect. If the usufructuary has himself advanced the cost, he is entitled to obtain repayment of the capital amount paid by him when the usufruct terminates.

Article 990

The usufructuary must preserve the thing with usual diligence of a normal man.
He is responsible for the loss of the property even through no fault on his part, if he has delayed to restitute the property to its owner after the termination of the usufruct.

Article 991

The usufructuary must give notice to the owner without delay if the property perishes, deteriorates or requires major repairs the cost of which should be borne by the owner, or if it is necessary to take protective measures against an unforeseen danger. The usufructuary must also advise the owner if a third party claims to have a right over the property.

Article 992

When the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof; if no security is given, the movable in question shall be sold and the proceeds invested in public funds and the income thereof paid to the usufructuary.
A usufructuary who has given security may use such things as are consumable provided that he replaces them when his usufruct comes to an end. The usufructuary is entitled to the natural increase of flocks and herds, after replacing therefrom such animals as have perished accidentally.

Article 993

The usufruct terminates at the end of the time for which it was fixed. If no time is fixed, it is deemed to have been created for the lifetime of the usufructuary. It ceases in any case upon the death of the usufructuary even before the end of the fixed time.
When there are standing crops on the land which is subject to the usufruct, at the end of the time fixed for the usufruct or upon the death of the usufructuary, such land shall be left in possession of the usufructuary or of his heirs until the crops are ripe for harvesting, but the usufructuary or his heir shall pay rent for that period.

Article 994

Usufruct is extinguished by the loss of the property, but the usufruct is transmitted to any property obtained in lieu of the property destroyed.
If the loss is not due to the fault of the owner, he is not bound to restore the property to its original condition, but if he restores the property, the usufruct is re-created in favor of the usufructuary if the loss was not imputable to him; in such a case paragraph 2 of Article 989 applies.

Article 995

The right of usufruct is extinguished by non-user during a period of fifteen years.

The Right of User and Occupation

Article 996

Subject to the conditions laid down in the deed by which the right is created, the extent of the right of user and of the right of occupation is determined by the personal requirements of the beneficiary and of his family.

Article 997

The right of user and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for serious reasons.

Article 998

Subject to the preceding provisions, the rules as regards the right of usufruct apply to the right of user and to the right of occupation, if they are not incompatible with the nature of these two rights.

Section II

The Right of Hekr

Article 999

Hekr cannot be concluded for a period exceeding sixty years. If a longer period is fixed or if the period is not fixed the hekr is deemed to have been concluded for a period of sixty years.

Article 1000

Hekr can only be concluded for reasons of necessity or expediency and with the permission of the Charie Court of First Instance in the district in which the land or that part of the land which is most valuable is situate. It must be established by virtue of a deed drawn up by the President of the Court, or by a Judge or by a notary delegated by him for the purpose, and must be published in accordance with the provisions of the law relating to the publication of real rights.

Article 1001

The grantee of a hekr may dispose of his right; this right is transmissible by inheritance.

Article 1002

Constructions, plantations and other works carried out be the grantee of the hekr belong to him absolutely. He may dispose of them separately or together with the right of hekr.

Article 1003

A grantee of the hekr must pay the agreed rent to the grantor of the hekr.
In the absence of a provision to the contrary in the contract creating the hekr, the rent is payable at the end of each year.

Article 1004

A hekr cannot be concluded at a rent less than that paid for similar lands.
This rent is increased or diminished at the rental value of similar lands rises or falls by more than one fifth, provided that eight years have passed since the last valuation.

Article 1005

The estimation of this rise or fall is made on the basis of the rental value of the land at the time of valuation, taking into account its marketable value and the demand for it, and regardless of any constructions or plantations on it.
Improvements or deteriorations caused to the land or to the value of the neighboring land by the grantee of the hekr, as well as his surface rights over the land, should be disregarded.

Article 1006

The new estimate applies only from the time agreed between the parties, or, in the absence of an agreement, from the date of the commencement of the legal proceedings.

Article 1007

The grantee of the hekr must take the necessary measures to make the land suitable for exploitation, taking into account the agreed conditions, the nature of the soil, the use to which it is intended and local custom.

Article 1008

The right of hekr terminates at the end of the period fixed.
The right terminates, however, before the end of the period fixed, if the grantee of the hekr dies before having built on or planted the land, unless all the heirs ask for the maintenance of the hekr.
The right of hekr also terminates before the end of the period fixed, if the land burdened with the hekr ceases to be wakf property, unless this cessation results from the revocation of the wakf or the reduction of the period of wakf by the founder, in which case the hekr is maintained until the end of its period.

Article 1009

The grantor of the hekr may demand resiliation of the contract if the rent is not paid to him for three consecutive years.

Article 1010

In the absence of an agreement to the contrary, the grantor of the hekr may, upon resiliation or termination of the contract, claim either the removal of the buildings and plantations or their

maintenance against payment of the value of the buildings and plantations in their existing state or their value if removed, whichever is the lesser.
The Court may accord the grantor of the hekr a time for payment if exceptional circumstances exist that justify such a delay, in which case the grantor must furnish to gurantee the payment of the amount due by him.

Article 1011

The right of hekr is extinguished by non-user during a period of fifteen years, unless the right of hekr is constituted in wakf, in which case it is extinguished by non-user during a period of thirty three years.

Article 1012

Subject to the provisions of Article 1008, paragraph 3, no hekr may, from the date upon which this law comes into force, be established on land that is not constituted in wakf.
Hekr existing on lands that are not constituted in wakf at the time that this law comes into force are subject to the provisions of the preceding articles.

Some Kinds of Hekr

Article 1013

Idjaratein is a contract by which a wakf creates a hekr on land on which buildings are erected which are in need of repair, in consideration of the immediate payment of a sum of money equal to the value of these buildings and the payment of an annual rent for the land equal to the rental value of similar lands.
Subject to the provisions of the preceding paragraph, the rule as to hekr apply to such a contract.

Article 1014

The Kholou-el-intifaa is a contract by which a wakf grants a lease of a property even without the permission of the Judge, in consideration of a fixed rent for an indefinite period of time.
In accordance with this contract, the lessee undertakes to render the property fit for exploitation; the wakf may, at any time, resiliate the contract by due notice in accordance with the rules as to contracts of lease, provided that the wakf compensates the lessee for his expenses in accordance with the provisions of Article 179.
Subject to he provisions of the two preceding paragraphs, the provisions relating to leases of wakf property are applicable to such a contract.

Section III

Servitudes

Article 1015

A servitude is a right which limits the enjoyment of a property for the benefit of another property belonging to another owner. A servitude may be imposed on State property in so far as it is not incompatible with the use for which such property is intended.

Article 1016

The right to a servitude is acquired by a legal disposition or by inheritance.
Only apparent servitudes, including rights of way, can be acquired by prescription.

Article 1017

Apparent servitudes may also be created by the intention of the original owner.
An intention of the original owner is deemed to exist when it is established, by any means of proof, that the owner of two separate properties has made between the two properties an apparent distinction, thereby creating a relationship of subordination between them which would indicate the existence of a servitude if the two properties belonged to different owners. If, in such a case, the two properties pass into the hands of different owners without any change in their condition, a servitude is deemed, in the absence of a clear condition to the contrary, to have been constituted to the benefit of or has as a burden on the two properties respectively.

Article 1018

In the absence of an agreement to the contrary, if specific restrictions have been imposed limiting the right of the owner of a property to build freely thereon, such as the prohibition to build above a certain height or on an area in excess of a specific area, such restrictions constitute servitudes which are burdens one the property concerned in favor of properties to whose benefit these restrictions have been imposed.
Any breach of these servitudes gives rise to a claim for material redress. The Court may, however, only grant damages if it considers that there are reasons for so doing.

Article 1019

Servitudes are governed by rules laid down in the deed by which they are created, by local custom and by the following provisions.

Article 1020

The owner of the dominant tenement is entitled to carry out any works necessary to use and preserve his right of servitude; he must use his right in the least harmful manner possible.
No requirements of the dominant tenement cannot entail any increase in the burden of the servitude.

Article 1021

In the absence of an agreement to the contrary, the owner of the servient tenement is under no obligation to carry out work for the benefit of the dominant tenement, unless it is an accessory work necessitated by the normal use of the servitude.

Article1022

In the absence of an agreement to the contrary, the cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.
If the owner of the servient tenement is responsible for carrying out these works at his own cost, he has always the right to free himself of this burden by abandoning the servient tenement wholly or in part to the owner of the dominant property.

If the works also benefit the owner of the servient tenement, the cost of upkeep falls on the two parties in proportion to the profit derived by each of them.

Article 1023

The owner of the servient tenement has no right to do anything which will tend to diminish the use made of the servitude or to make it more inconvenient. He cannot, in particular, either change the condition in which the land was or change the place originally fixed for the use of the servitude by another.
When, however, the place originally fixed has become such as to increase the burden of the servitude or to cause the servitude to hinder the owner of the servient tenement making improvements to the servient tenement, he may demand that the servitude be transferred to another part of the property or to another property belonging to him or to an third party who consents thereto, provided that the owner of the dominant tenement is able to exercise his rights of servitude in these new conditions as easily as he was able to do before the change.

Article 1024

If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property is not increased.
If, however, the servitude only benefits one of the divided parts of the dominant tenement, the owner of the servient tenement may demand that it ceases as regards the other parts.

Article 1025

If the servitude tenement is divided, the servitude continues to subsist in respect of each part thereof.
If, however, the servitude is not actually used and cannot be used on certain of these divided parts, the owner of each of them may demand that it ceases as regards the part belonging to him.

Article 1026

Rights to a servitude cease to exist by the expiration of the period for which they were created, by the total loss of the servient tenement or of the dominant tenement and by the acquisition of the two properties by the same owner; the rights to the servitude are, however, revived if the two properties cease, with retroactive effect, to be held jointly by the same owner.

Article 1027

The rights to a servitude are extinguished by non-user for a period of fifteen years; if the servitude is created for the benefit of a wakf property, this period shall be thirty three years. The manner of the exercise of a right of servitude may, as the servitude itself, be modified by prescription.
The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favor of the other co-owners; in the same way, the suspension of prescription in favor of one of these co-owners, suspends prescription in favor of the others.

Article 1028

The servitude ceases to exist if conditions so change that the right can no longer be used.
The servitude is revived if conditions are reestablished in such a way that the right can again be used, unless the right of servitude has been extinguished by non-user.

Article 1029

The owner of a servient tenement may free himself wholly or partially of the servitude, if the servitude has lost all its utility for the dominant tenement or if its actual utility has been reduced out of proportion to the burden imposed on the servient tenement.

BOOK IV

ACCESSORY RIGHTS OR REAL SECURITIES

Chapter I

Mortgages

Article 1030

Mortgage is a contract by which a creditor acquires, over an immovable appropriated to the payment of his debt, a real right by which he obtains preference, over ordinary creditors and creditors following him in rank, for the payment of his claim out of the price of the immovable, no matter into whose hands the immovable has passed.

Section I

The Constitution of Mortgages

Article 1031

A mortgage can only be constituted by an authentic document.
The costs of this authentic document are, in the absence of an agreement to the contrary, borne by the mortgagor.

Article 1032

The mortgagor may be the debtor himself or a third party who consents to the mortgage of his property in the interests of the debtor.
In both cases, the mortgagor must be the owner of the mortgaged property and must have legal capacity to dispose of it.

Article 1033

If the mortgagor is not the owner of the mortgaged property, the mortgage contract becomes valid if ratified by the true owner of the property by an official deed. In the absence of ratification, the mortgage is only effective from the time that the immovable becomes the property of the mortgagor.

A mortgage on property in expectancy is void.

Article 1034

A mortgage constituted by an owner whose title to the property is subsequently annulled, resiliated, abolished or ceases to exist for any other reason, remains a valid mortgage in favor of the mortgagee creditor if he has acted in good faith at the time of the conclusion of the mortgage.

Article 1035

In the absence of any provision of the law to the contrary, a mortgage can only be constituted on immovable property.
The mortgaged property must be marketable and capable of being sold by public auction; it must be specifically and precisely described both as regards its nature and situation, and such description must be contained either in the deed constituting the mortgage or in a subsequent authentic document, otherwise the mortgage is void.

Article 1036

In the absence of an agreement to the contrary, and without prejudice to the privilege provided for by Article 1148 attached to sums due to contractors or to architects, a mortgage extends to the accessories of the mortgaged property which are considered to be immovable accessories, particularly to servitudes, properly forming part of the immovable as a result of the use to which it is put and to improvements and other works which benefit the owner.

Article 1037

From the date of the transcription of the formal summons to pay, the fruits and revenues of the mortgaged property shall be assimilated to the immovable and distributed in the same way as the price of the property.

Article 1038

The owner of constructions erected on land belonging to a third party may grant a mortgage on these constructions. In such a case, the mortgage shall have a preferential claim for recovery of his debt on the price of the break up value of the constructions if they are demolished, and on the compensation paid by the owner of the land if he keeps the constructions in accordance with the rules of accession.

Article 1039

A mortgage granted by all the co-owners of an immovable held in common remains effective whatever may be the ultimate result of a partition of the immovable or if its sale by auction owing to impossibility of partition.
If one of the owners grants a mortgage on his undivided share or on a divided part of an immovable and, as a result of the partition, a property other than the mortgaged property is attributed to him, the mortgage will be transferred, with its degree of priority, to a portion of this property equivalent in value to the value of the property formerly mortgaged. This portion will, upon petition, be fixed by an order of the Judge. The mortgagee shall be bound, within ninety days of the notification of the transcription of the partition made to him by any interested party, to proceed with a new inscription describing the portion of the property to which the mortgage has been transferred. The mortgage so transferred shall not have any prejudicial effect on a mortgage already granted by all the co-owners or on the privileges of co-partitioners.

Article 1040

A mortgage may be granted to secure a conditional, future or contingent debt, and may also be granted to secure an opened credit or the opening of a current account, provided that the amount of the debt secured, or the maximum amount which such debt may attain, is fixed in the mortgage deed.

Article 1041

In the absence of a provision of the law or of an agreement to the contrary, every part of the mortgaged immovable or immovables shall secure the whole of the debt, and each part of the debt is secured by the whole of the mortgaged immovable or immovables.

Article 1042

In the absence of a provision of the law to the contrary, the mortgage cannot be separated from the debt that it secures, but depends both as regards its validity and as regards its extinction, upon the debt itself.
If the mortgagor is a person other than the debtor, he may, in addition to the defenses that are personal to him, avail himself of those which belong to the debtor as regards the debt: he keeps this right notwithstanding the renunciation of the debtor.

Section II

The Effects of a Mortgage

The Effects of a Mortgage as Between the Parties

As Regards the Mortgagor

Article 1043

A mortgagor may dispose of the mortgaged property, but any disposal of the property by him does not affect the right of the mortgagee creditor.

Article 1044

The mortgagor may carry on the management of the mortgaged property and collects the fruits thereof until such time as they become incorporated in the immovable property.

Article 1045

A lease entered into by a mortgagor cannot have effect against a mortgagee unless such lease has been given an established date before the transcription of the formal summons to pay. A lease that has not an established date before this transcription or that has been entered into after the transcription of the summons, without payment of the rent having being made in advance, will not have effect as against a mortgagee, unless it may be considered to fall within the category of acts of good management.
If the duration of the lease entered into before the transcription of the summons exceeds nine years, the lease has effect against the mortgagee only for nine years, unless it was transcribed before the inscription of the mortgage.

Article 1046

A receipt or an assignment of rent in advance for a period not exceeding three years is not valid as against a mortgagee unless it has an established date prior to the transcription of the summons to pay.
If the payment of the assignment of rent is made for a period exceeding three years, it will only be valid as against a mortgagee if it has been transcribed before the inscription of the mortgage. In default of such transcription the period will be reduced to three years, subject to the provisions of the preceding paragraph.

Article 1047

A mortgagor is the guarantor of the effectiveness of the mortgage. The mortgagee may oppose any act or omission that appreciably diminishes his security, and, in the case of emergency, take all necessary protective measures and claim from the mortgagor the expenses incurred in this respect.

Article 1048

If the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim adequate security or immediate payment of the debt.
If the loss or deterioration is not imputable to the mortgagor and the mortgagee does not agree to leave his claim without security, the debtor may either furnish adequate security or pay the debt in full before it falls due. In the latter case, if the debt does not carry interest, the mortgagee has only a right to an amount equal to the amount of his claim less the interest calculated at the legal rate from the date of payment to the date of maturity.
In all cases, if acts are done which may result in the loss of or deterioration to the mortgaged property, or which may render the mortgaged property insufficient to secure the debt, the mortgagee may apply to the Judge to order the cessation of such acts and the adoption of necessary measures to avoid the occurrence of the loss.

Article 1049

In the event of loss of or deterioration to the mortgaged property for any reason whatsoever, the mortgage is transferred, in its order of rank, to any right obtained as a result of such loss or deterioration, such as compensation, monies paid on account of insurance or payments on account of expropriation for public utility.

As Regards the Mortgagee

Article 1050

If the mortgagor is a person other than the debtor, only the mortgaged property, to the exclusion of his other property, may be proceeded against and the mortgagor shall not, in the absence of an agreement to the contrary, have the right to demand the sale of the debtor's property before the sale of the mortgaged property.

Article 1051

A creditor may, upon a summons to the debtor to pay, proceed, within the delays and in accordance with the forms prescribed by the Code of Procedure, with the expropriation and the sale of the mortgaged property.
If the mortgagor is a person other than the debtor, he may avoid any proceedings against him by abandoning the mortgaged property, according to the procedures and the rules laid down for the abandonment of an immovable by a third party holder.

Article 1052

Any agreement, even if entered into after the constitution of the mortgage, which authorizes the creditor in case of non-payment of the debt on maturity to acquire the mortgaged property at a fixed price, whatever that price may be, or to sell the mortgaged property without observing the formalities prescribed by law, is void.
It may, however, be agreed after the debt or one of the installments of the debt has fallen due, that the debtor transfers to the creditor the mortgaged property in payment of the debt.

2- The Effects of Mortgage as Regards Third Parties

Article 1053

Subject to the provisions laid down for bankruptcy, a mortgage shall be effective as regards third parties only if the deed or the judgment establishing the mortgage has been inscribed before third parties have acquired real rights on the property.
The assignment of a right secured by an inscription, the right resulting from the legal or contractual subrogation into that right and the assignment of priority in rank of an inscription in favor of another creditor, are only enforceable as against third parties if they are inscribed in the margin of the original inscription.

Article 1054

The inscription, its renewal, its radiation, the annulment of radiation and all the effects thereof are governed by the provisions of the law regulating the publication of real rights.

Article 1055

In the absence of an agreement to the contrary, the mortgagor shall bear the cost of inscription, it renewal and its radiation.

The Right of Preference and the Right of Tracing

Article 1056

Mortgagees will be paid before unsecured creditors out of the proceeds of sale of the mortgaged property, or out of any monies obtained in substitution thereof, in the order of the rank of their inscriptions, even when their inscriptions are entered on the same day.

Article 1057

A mortgage ranks from the date of its inscription, even if it secures a conditional, future or contingent debt.

Article 1058

The inscription of a mortgage will have the effect of automatically collocating and ranking with the mortgaged debt the costs of the deed, of the inscription and of the renewal.
If the rate of interest is fixed in the deed, the inscription of the mortgage will have the effect of collocating in the same rank as the mortgage debt the interests of the two years immediately preceding the transcription of the formal summons to pay and the interest due since that date to the date of sale by pubic auction, without prejudice to specific inscriptions made to secure other interest that has already become due, which interest will take rank with effect as from the date of the registration of such specific inscriptions. The transcription of one of the creditors of a formal summons to pay will benefit all the other creditors.

Article 1059

A mortgagee may, within the limits of his secured debts, assign his rank in favor of another creditor having a mortgage inscribed on the same property. The defenses available against the first creditor, with exception of those connected with the extinction of his claim when that extinction occurs after the assignment of the rank, can be raised against the second creditor.

Article 1060

A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property against a third party holder, unless this third party holder chooses to pay the debt, redeem the mortgage or abandon the property.
Any person is deemed to be a third party holder who acquires in any way the ownership of the property or any other real right over the property capable of being mortgaged, without being personally responsible for the debt secured by the mortgage.

Article 1061

A third party holder may, upon maturity of the debt secured by the mortgage, pay the debt and its accessories including the costs of proceedings from the date of the formal summons, and will retain this right up to the date of the sale by public auction. In such a case, he has a claim for all he has paid against the debtor and against the former owner of the mortgaged property. He may also be subrogated into the rights of the creditor who has been paid in full, with the exception of those rights relative to guarantees furnished by a person other than the debtor.

Article 1062

A third party holder must retain the inscription of the mortgage to the benefit of which he is subrogated to the creditor, and renew it, if necessary, until radiation of the inscriptions that existed, at the time of the transcription of his title to the property.

Article 1063

If, by reason of his acquisition of the mortgaged property, the third party holder is debtor of a sum due immediately for payment and sufficient to satisfy all the creditors whose rights are inscribed on the property, each one of the creditors may compel him to pay his claim provided that his title deed to the property has been transcribed.
If the debt owed by the third party holder is not yet due for payment, or is less than the debts due to the creditors, or different from them, the creditors may, if they are all agreed, claim from the third

party holder payment of what he owes, up to the amount due to them, and payment will be effected in accordance with the conditions on which he has agreed to pay in his original undertaking, and at the time agreed upon for payment.
In neither case can the third party holder avoid payment to the creditors by abandoning the property, but when payment has been made to the creditors the property is deemed to be free of all mortgages and the third party holder has the right to call for the radiation of the inscriptions existing on the property.

Article 1064

The third party holder who has transcribed his title to the property may purge the property of any mortgage inscribed before the transcription of his title.
He can exercise this right even before the mortgagees have served upon the debtor a formal summons to pay, or have served upon the third party holder any summons, and he keeps this right up to the date of the filing in Court of the conditions of sale of the property.

Article 1065

If the third part holder decides to proceed with the purge of the property, he must serve upon the inscribed creditors, at their elected domiciles indicated in their inscriptions, summons containing the following particulars:
a- an extract of his title deed, setting the out particulars and the nature and date of the act of disposition, the name in full and precise particulars of the previous owner of the property, the situation and a detailed and precise description of the property, and, if the disposal is a sale, the price and the charges, if any, that may be considered as part of the price;
b- the date and number of the transcription of his title;
c- the sum at which he values the property, even if the property is disposed of by sale: this sum must not be less than the reserve price in the case of expropriation nor in any case less than the sum remaining to be paid by the third party holder on the price of the property if the act of disposition was a sale. If parts of the property are charged with separate mortgages, each part must be valued separately;
d- a list of rights inscribed on the property before the transcription of his title: this list shall contain the date of the inscriptions, the amount of the inscribed debts and the names of the creditors.

Article 1066

The third party holder must, by the same summons, declare that he is prepared to pay off the inscribed debts up to the amount at which he has valued the property; his offer need not be accompanied by actual production of the money but must be an offer of a sum payable in cash, whatever may be the date at which the inscribed debts accrue due..

Article 1067

Every inscribed creditor and every surety of an inscribed debt has the right to apply for the sale of the property which the third party holder wishes to purge, provided that his application is made within thirty days of the date of the last formal summons. This period will be increased by the additional time allowed for distance between the actual and elected domicile of the creditor; this additional time allowed for distance shall not exceed thirty additional days.

Article 1068

The application shall be made by a summons to the third party holder and to the former owner, signed by the applicant or his representative holding a special mandate for this purpose. The applicant must deposit at the Caisse of the Court a sum which is sufficient to cover the cost of the sale by auction, but he shall have no right to a refund of expenses advanced by him if no higher price than that offered by the third party holder is obtained as a result of the auction. The failure to comply with any one of these conditions entails the nullity of the application.
The applicant may not renounce his application without the consent of all the inscribed creditors and all the sureties.

Article 1069

When an application is made for the sale of a property, the formalities laid down for compulsory expropriation must be followed. The sale shall take place at the request of either the applicant or of the third party holder, whoever shall have more interest in expediting the sale. The applicant must mention in the notices of sale the price at which he has valued the property.
The purchaser by auction is liable, in addition to payment of the price of the adjudication and the cost of formalities for the purge, to refund to the third party holder who is disposed the cost of his deed, of its transcription and the cost of the summons served by him.

Article 1070

If the sale of the property is not applied for within the period and in accordance with the procedures laid down, the ownership of the property, freed from all inscriptions, shall be vested finally on the third party holder if he pays the sum at which he has valued the property to the creditors whose rank entitles them to payment, or if he deposits this sum at the Caisse of the Court.

Article 1071

The abandonment of the mortgaged property is made by a declaration submitted to the Registrar of the competent Court of First Instance by the third party holder who must apply for the entry of his declaration in the margin of the transcription of the formal summons to pay and who must, within five days from the date of the declaration, notify the abandonment to the creditor who is conducting the proceedings of expropriation.
The party who has most interest to expedite the sale may apply to the Judge des Referes for the nomination of a receiver against whom the proceedings of expropriation may be taken. The third party holder, if he applies, will be appointed receiver.

Article 1072

If the third party holder does not opt for payment of the inscribed debts, the purge of the property or the abandonment of the property, the mortgagee can only take expropriation procedures against him, in accordance with the provisions of the Code of Procedure, after he has summoned him to pay the debt accrued due or to abandon the property. This summons shall be notified after or at the same time as the summons to pay is served on the debtor.

Article 1073

The third part holder who has transcribed his title deed and who was not a party to the proceedings in which judgment was given against the debtor to pay the debt may, if the judgment was subsequent to the transcription of his title, raise the defenses which could have been raised by the debtor.

He may, in any case, raise the defenses which the debtor still has the right to raise after the judgment.

Article 1074

The third party holder may take part in the auction on condition that he does not offer a price lower than the sum that he still owes on the price of the property which is being sold.

Article 1075

If the mortgaged property is expropriated, even after proceedings for purge or abandonment have been taken and the third party holder acquires the property at auction, he will be deemed to be the owner of the property by virtue of his original title deed and the property will be purged of all inscriptions if he pays the price for which he acquired the property at the auction or if he deposits the price in the Caisse of the Court.

Article 1076

If, in the preceding cases, a person other than the third party holder acquires the property at the auction, he will hold his right be virtue of the judgment of adjudication from the third party holder.

Article 1077

If the price at which the property sold by auction exceeds the total of the sums due to the inscribed creditors, the difference in excess belongs to the third party holder; and the mortgagee creditors of the third party holder may be paid out of this excess.

Article 1078

Servitudes and other real rights that the third party holder had on the property before he acquired the property are re-vested in him.

Article 1079

The third party holder is liable to restitute the fruits of the mortgages property from the date he has been summoned either to pay or abandon the property. If legal proceedings are abandoned within three year, he has only to account for the fruits as from the day that a new summons is served on him.

Article 1080

The third party holder has, against his preceding owner, a right of action for warranty to the extent that a successor in title has against the person from whom he has acquired the property for valuable consideration or as a gift.
He has also a right of action against the debtor for payment of any sums paid by him, for any reason whatsoever, in excess of the amount due by him in accordance with his title deed. He is subrogated into the rights of the creditors discharged by him, particularly into the guarantees furnished by the debtor, but not into those furnished by a party other than the debtor.

Article 1081

The third party holder is personally liable towards creditors for any deterioration caused to the immovable by his negligence.

Section III

Extinguishment of the Mortgage

Article 1082

The mortgage is extinguished when the secured debt is extinguished; it is revived, together with the debt, if the cause by reason of which it was extinguished disappears, without prejudice, however, to the rights acquired by a third party in good faith in the interval between the extinguishment of the right and its revival.

Article 1083

When the formalities of a purge are carried out, the mortgage is definitely extinguished even if the ownership of the third party holder who proceeded with the purge disappears for any cause whatsoever.

Article 1084

When the mortgaged property is sold by public auction as a result of compulsory expropriation proceedings taken against either the owner, the third party holder or the receiver to whom the abandoned property was delivered, the mortgage rights encumbering the property are extinguished by the deposit of the purchase price or by payment thereof to the inscribed creditors, who by virtue of their rank are entitled to receive payment of their claims out of that price.

Chapter II

Judgment Charges upon Immovable Property

Section I

The Constitution of a Judgment Charge

Article 1085

Every creditor who has obtained an enforceable judgment rendered on the merits of the case in which the debtor is condemned to a liquidated amount, may, if he is in good faith, obtain as security for his claim in principal, interest and costs, a judgment charge over the immovable property of his debtor.

Article 1086

A judgment charge cannot be obtained by virtue of a judgment rendered by a foreign Court or by virtue of an arbitration award until the judgment or the ward has been made enforceable.

Article 1087

A judgment charge may be obtained by virtue of a judgment confirming a compromise or an agreement between the parties, but not by virtue of a judgment rendered as to the validity of a signature.

Article 1088

A judgment charge can only be obtained on one or more specific immovables belonging to the debtor at the time of the inscription of this right and capable of being sold by public auction.

Article 1089

A creditor who wishes to obtain a judgment charge on the immovable property of his debtor must submit an application to the President of the Court of First Instance in the district in which the immovable property on which he desires to obtain the charge is situated.
An authentic copy of the judgment or a certificate by the greffier of the Court containing the operative part of the judgement must be annexed to this application which will contain the following particulars:
a- the creditor's surname, first names, profession, actual place of abode, and elected domicile within the town in which the Court is situated;
b- the surname, first names, profession and place of abode of the debtor;
c- the date of the judgment and designation of the Court that rendered the judgment;
d- the amount of the debt. If the debt mentioned in the judgment is not a liquid amount, the President of the Court may liquidate it provisionally and fix the amount for which a judgment charge may be obtained;
e- an exact and precise description of the immovable properties, their situation, together with documents establishing their value.

Article 1090

The President of the Court will record his order for a judgment charge at the foot of the application.
The President of the Court should, however, in giving an order for a judgment charge, take into consideration the amount of the debt and the approximate value of the immovable properties set out in the application, and should, if necessary, restrict the judgment charge to some or only one of these immovables, or to a part in an immovable if he considers that this is sufficient to secure the principal of the debt, the interest thereon and the cost thereof due to the creditors.

Article 1091

Upon the same day as the order authorizing the judgment charge is rendered, the greffier of the Court must notify it to the debtor, endorse it on the authenticated copy of the judgment or on the certificate annexed to the application for a judgment charge, and inform the greffier of the Court that has rendered the judgment so that he may endorse the order on any other copy of the judgment or on any other certificate that will be delivered to the creditor.

Article 1092

The debtor may lodge an appeal against the order authorizing the judgment charge either before the judge who has given the order or before the Court of First Instance.
An endorsement must be made, in the margin of the inscription, of any order or of any judgment annulling the order which has authorized the judgment charge.

Article 1093

If, either at the time of the application or as a result of an appeal by the debtor, the President of the Court rejects the application of the creditor for a judgment charge, the creditor may appeal to the Court of First Instance against the order rejecting the application.

Section II

The Effects of a Judgment Charge, its Reduction and Extinguishment

Article 1094

Any interested party may apply for the reduction of the judgment charge to reasonable proportions, if the value of the immovable properties charged therewith is in excess of the amount which is sufficient to secure the debt.
The reduction of the judgment charge may be operated either by way of restriction of the charge to one part of the immovable or immovables on which it is inscribed or by the transfer of the charge to another immovable the value of which adequately secures the debt.
The costs required for carrying out the reduction, even if made with the consent of the creditor, are payable by the person who has applied for the reduction.

Article 1095

A creditor who has obtained a judgment charge has the same rights as a mortgagee who has obtained a mortgage. Subject to any special provision of the law, the judgment charge is governed by the same provisions as a mortgage, especially as regards its inscription, its renewal, its radiation, the indivisibility of the right, its effect and its extinguishment.

Chapter III

Rights Derived from the Right of Ownership

Pledge

Section I

Elements of a Pledge

Article 1096

Pledge is a contract by which a person undertakes, as security for his debt or that of a third party, to hand over to the creditor or to a third person chosen by the parties, a thing over which he constitutes, in favor of the creditor, a real right, and by which the creditor is allowed to retain the thing pledged until repayment of the debt and to obtain payment of his claim out of the price of such thing, no matter in whose hands it may be, in preference to unsecured creditors and to creditors following him in rank.

Article 1097

Only movables or immovables which can be sold independently by public auction may be the object of a pledge.

Article 1098

The provisions of Article 1033 and Articles 1040 to 1042 relating to mortgage are applicable to pledge.

Section II

The Effects of a Pledge

1- Between the contracting parties

Obligations of the Pledgor

Article 1099

The pledgor is bound to deliver the thing pledged to the creditor or to the third person chosen by the contracting parties to hold the thing.
Provisions relating to the obligation as to the delivery of a thing sold apply to the obligation as to the delivery of a thing pledged.

Article 1100

The pledge is extinguished if the thing pledged returns into the hands of the pledgor, unless the pledgee proves that return took place for a reason that was not intended to extinguish the pledge, subject always to the rights of third parties.

Article 1101

The pledgor guarantees the pledge and its efficacy. He must not do anything which diminishes the value of the thing pledged or prevents the creditor exercising his rights derived from the contract. The pledgee may, in case of urgency, take at the cost of the pledgor all necessary measures for the preservation of the thing pledged.

Article 1102

A pledgor guarantees the thing pledged against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.
The provisions of Articles 1048 and 1049, relating to the loss or deterioration of a mortgaged property and to the transfer of the right of the creditor to any rights or property that have replaced the mortgaged property, apply to pledge.

Obligations of the Pledgee

Article 1103

If the pledgee takes delivery of the thing pledged, he must use for its preservation and maintenance the care expected from a reasonable person. He must answer for its loss or deterioration unless he can show that they were due to a cause not imputable to him.

Article 1104

The pledgee may not derive any gratuitous advantage from the thing pledged.
He must, in the absence of any agreement to the contrary, make the thing pledged render all the fruits that it is capable of producing.
The net revenue and the benefit that he obtains from the use of the thing pledged, must be applied in reduction of the debt, even before it falls due: such revenue or benefit shall be imputed in the first place to expenses he has incurred for the preservation of and repairs to the thing pledged, then to expenses and interest, and then to the capital amount of the debt.

Article 1105

If the thing pledged produces fruits or revenue, and the parties have agreed to substitute these fruits or revenue in whole or in part for interest, such an agreement will be valid to the extent that it does not exceed the maximum conventional rate of interest authorized by the law.
If the parties have not agreed that the fruits will be substituted for interest, and have not fixed the rate of interest, the interest will be fixed at the legal rate, provided that it does not exceed the amount of the fruits. If the parties have not fixed a date for payment of the secured debt, the creditor can only demand payment of his claim by a deduction from the fruits, subject to the right of the debtor to pay off his debt at any time he chooses to do so.

Article 1106

The pledgee shall manage the thing pledged and shall use in such management the care expected from a reasonable person. He may not, without the consent of the pledgor, change the method of exploitation of the thing pledged and is bound to advise the pledgor immediately of any matter that requires his intervention.
If the pledgee misuses this right or is guilty of bad management or gross negligence, the pledgor shall have the right to demand that the thing pledged be placed in judicial deposit or to claim restitution of the thing against payment of his debt. In the latter case, if the secured debt is not subject to interest and is not yet due for payment, the creditor will only be entitled to a sum equal to the amount of the debt, less interest at the legal rate from the date of payment to the date of maturity.

Article 1107

A pledgee must, upon receipt of his debt and the accessories, expenses and compensation for losses attached thereto, restitute the thing pledged to the pledgor.

Article 1108

The provisions of Article 1050, relating to the responsibility of a mortgagor who is not a debtor, and the provisions of Article 1052, relating to appropriation in case of non-payment and to sale without recourse to legal formalities, apply to pledge.

2- As Regards Third Parties

Article 1109

The thing pledged must be held by the pledgee or by the third party chosen by the parties to make the pledge valid as against third parties.

The thing pledged may secure several debts.

Article 1110

Pledge confers upon the pledgee the right to retain the thing pledged against any other person, subject to the rights of third parties which have been preserved in accordance with the law.
If the pledgee loses possession of the thing unknowingly or against his will, he has the right to claim the thing from any other person in accordance with the provisions of the law as to possession.

Article 1111

A contract of pledge secures not only the capital of the debt, but also and in the same rank:
a- expenses of a necessary kind incurred for the preservation of the thing pledged;
b- compensation for loses resulting from defects in the thing pledged;
c- the cost of the contract of loan, of the contract of pledge and its inscription, if any;
d- the costs incurred for the enforcement of the pledge;
e- all interest that has fallen due, subject to the provisions of Article 230.

Section III

Extinguishment of a Pledge

Article 1112

A right of pledge is extinguished as a result of the extinguishment of the secured debt: it is revived with the debt if the cause of the extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquired in the interval between the extinguishment and the revival of the right of pledge.

Article 1113

A right of pledge is also extinguished by one of the following causes:
a- the renunciation of the right by the pledgee if he has the legal capacity to liberate the debtor of the debt. The renunciation may result tacitly if the creditor voluntarily gives up the thing pledged or if he agrees without reserve to its alienation. If, however, the thing pledged is charged with a right in favor of a third party, the renunciation of the pledgee is only valid as regards such third party if such third party consents;
b- the union of the right of pledge and that of ownership of the thing pledged in one and the same person;
c- the loss of the thing pledged or the extinguishment of the right given in pledge.

Section IV

Certain Kinds of Pledge

1- Pledge of an Immovable (Antichresis)

Article 1114

A pledge of an immovable is only valid as against third parties if, in addition to delivery of the pledged immovable to the pledgee, the contract of pledge is inscribed. The provisions governing the inscription of a mortgage apply to the inscription of pledge of an immovable.

Article 1115

A pledgee of an immovable may lease the immovable to the pledgor without the contract of pledge being less valid as against third parties. If the lease is agreed to in the contract of pledge, it must be mentioned in the inscription of the pledge, but if the lease is agreed to after the pledge, it must be noted in the margin of that inscription. Notation is not necessary if the lease is tacitly renewed.

Article 1116

A pledgee of an immovable must provide for the maintenance of the immovable, pay the expenses necessary for its preservation, the annual taxes and charges, and deduct the amount of these expenses from the fruits he has collected or obtain repayment from the price of the immovable in the rank of privilege accorded by law to such expenses.
He may free himself of these obligations by abandoning his right to the pledge.

2- Pledge of a Movable

Article 1117

A pledge of a movable is only valid against third parties if, in addition to the delivery of the movable pledged, it is constituted by a written contract adequately setting out the amount of the secured debt and the object of the pledge and having an established date. The rank of the secured creditor will be fixed in accordance with such established date.

Article 1118

The rules relating to the effects of possession of material movables and of bearer securities apply to the pledge of a movable.
A pledgee in good faith may, in particular, avail himself of his right of pledge even if the pledgor was not qualified to dispose of the thing pledged. On the other hand, a third party holder in good faith, even after the date of the pledge, may avail himself of the right he has acquired over the thing pledged.

Article 1119

If the thing pledged appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that it will not suffice to secure the claim of the pledgee, and the pledgor does not apply for the restitution of the thing in exchange for another thing, either the pledgee or the pledgor may apply to the Judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.
The Judge shall, when the authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the thing pledged to the price thereof.

Article 1120

If a suitable occasion presents itself for the sale of the thing pledged and the sale is advantageous, the pledgor may, even before the maturity of the debt, apply to the Judge for authority to sell the

thing. The Judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

Article 1121

The pledgee may, upon failure of payment of the debt, apply to the Judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.
The pledgee may also apply to the Judge for an order authorizing him to appropriate the thing pledged in payment of the debt, the value thereof being charged against him in accordance with an estimate by experts.

Article 1122

The preceding provisions apply in so far as they are not incompatible either with provisions of commercial laws or provisions relating to institutions authorized to lend money on pledge, or with the laws and regulations governing special cases as to the pledge of movables.

3- Pledge of Debts

Article 1123

A pledge of a debt is only valid as regards the debtor upon notification to or acceptance by the debtor of the pledge, as provided for in Article 305.
The pledge is only valid as against third parties if the pledgee holds the title of the pledged debt. The rank of the pledge is fixed as at the established date of the notification or of the acceptance of the pledge.

Article 1124

Nominative bonds and bonds payable to order may be pledged in accordance with the special procedure prescribed by law for the transfer of such bonds, provided that it is stated that the transfer is made by way of pledge; the contract of pledge is completed without notification being necessary.

Article 1125

A debt that cannot be assigned or attached, cannot be pledged.

Article 1126

In the absence of an agreement to the contrary, the pledgor has the right to collect the interest on the pledged debt which falls due after the constitution of the pledge. He has also the right to collect periodical payments appertaining to the pledged debt upon condition that he sets off the amounts so collected by him first against expenses, then against the interest and then against the capital of the debt secured by the pledge.
A pledgee is bound to look to the protection of the pledged debt. If he has the right to collect any part of the debt without the intervention of the pledgor, he is bound to collect such part of the debt at the time and place fixed for payment and immediately inform the pledgor thereof.

Article 1127

The debtor of a debt given in pledge may set up against the pledgee the defenses relative to the validity of the debt secured by the pledge as well as those defenses he may have against his own creditor, to the extent that an assigned debtor may set up defenses against the assignee in the case of an assignment of debt.

Article 1128

If a pledged debt falls due for payment before the actual debt secured by the pledge, the debtor must discharge his debt to the pledgee and the pledgor jointly. The pledgee and the pledgor may each demand the debtor to deposit the amount paid by him, in which case the pledge is transferred to the amount so deposited.
The pledgee and the pledgor must, without prejudice to the rights of the secured creditors, cooperate together for the investment of the amount paid by the debtor to the best advantage of the pledgor, and they must immediately constitute a new pledge in favor of the pledgee.

Article 1129

If the pledged debt and the secured debt fall due, the pledgee who has not been paid may collect the debt pledged up to the amount due to him and demand that the debt be sold or be allocated to him in accordance with the provisions of Article 1121, par.2.

Chapter IV

Privileged Rights

Section I

General Provisions

Article 1130

A privilege is a right of preference granted by law to a particular right by reason of its quality.
No right is privileged except by virtue of a provision of the law.

Article 1131

The rank of a privilege is fixed by law; in the absence of a formal provision of the law fixing the preferential rank of a privileged right it ranks after any other privilege provided for in this Chapter.
In the absence of a provision of the law to the contrary, privileged rights of the same rank will be paid rateably.

Article 1132

General privileges extend to all movable and immovable property of the debtor. Special privileges are limited to a specific movable or immovable only.

Article 1133

A privilege cannot be set up against a holder in good faith of a movable.

A lessor of an immovable and an hotel proprietor are deemed, in so far as this article applies, to be holders of furniture used in leased premises and of effects brought into the hotel by travellers respectively.
If a creditor has reasonable grounds to apprehend that movables charged with a privilege in his favor will be misappropriated, he may apply for them to be placed in judicial custody.

Article 1134

Provisions of the law relating to mortgages are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights. The provisions relating to purge, to inscription and the effects of inscription, and to renewal and radiation of inscription, are in particular applicable to privileges over immovables.
General privileges, however, even over immovables, are not subject to publication nor do they give a right of tracing the property into the hands of subsequent holders. Privileges over immovables securing sums due to the State Treasury are also not subject to publication. All these privileges rank prior to any other privilege over immovables or mortgages, whatever may be the date of their inscription. As between each other, the privilege securing sums due to the State Treasury ranks prior to general privileges.

Article 1135

Provisions applying to the loss or deterioration of mortgaged property apply also to privileges.

Article 1136

In the absence of a provision of the law to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a mortgage or a pledge.

Section II

Kinds of Privileges

Article 1137

In addition to the privileges established by special provisions of the law, the rights enumerated in the following articles are privileged.

1- General Privileges and Special Privileges over Movables

Article 1138

Costs of legal proceedings incurred in the common interest of all the creditors, for the preservation and the sale of the property of the debtor, have a privilege over the price of such property.
Such costs are payable in priority to any other claim, whether privileged or secured by a mortgage, including claims of creditors for whose benefit such costs have been incurred. Costs incurred for the sale of the property are payable in priority to the costs of the procedure of distribution.

Article 1139

Sums due to the State Treasury for taxes, duties and other dues of any kind are privileged in accordance with conditions laid down by laws and regulations issued in this connection.

Such sums shall be paid out of the proceeds of sale of the property charged with this privilege, in whosoever's hands it may be, and before all other rights, whether privileged or secured by a mortgage, except costs of legal proceedings.

Article 1140

Expenses incurred for the preservation of, and repairs of a necessary kind to, a movable are secured by a privilege over the movable as a whole.
Such expenses are payable out of the proceeds of sale of the movable so charged, and rank immediately after the costs of legal proceedings and sums due to the State Treasury. As between them such expenses will rank in the inverse order of the dates on which they were incurred.

Article 1141

The following claims are secured by a privilege over all the debtor's property, whether movable of immovable:
a- Sums due to servants, clerks, workmen and other wage-earners for wages and emoluments of any kind due to them for the last six months;
b- Sums due for foodstuffs and clothes supplied to the debtor and to persons depending on him during the last six months;
c- alimony due by the debtor to members of his family, for the last six months.
These claims rank immediately after the costs of legal proceedings, sums due to the State Treasury and expenses for the preservation of and repairs to the property. As between them such claims are paid rateably.

Article 1142

Sums disbursed for seeds, manure and other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent: they will have all the same rank.
Such sums are payable out of the proceeds of the sale of the crop, immediately after the claims above referred to.
Sums due in respect of agricultural implements are, in a like manner and in the same rank, secured by a privilege over these implements.

Article 1143

House and agricultural rents for two years, or for the duration of the lease if less than two years, and all sums due to the lessor by virtue of the contract of lease, are secured by a privilege over all attachable movables and crops existing on the leased property and belonging to the lessee.
Subject to the provisions relating to stolen or lost property, this privilege is enforceable even when the immovables belong to the wife of the lessee or to a third party, as long as it is not established that the lessor had knowledge, at the time the movables were brought onto the leased property, of the existence of a third party's rights.
This privilege is also enforceable over movables and crops belonging to a sub-lessee, if the lessor had expressly prohibited sub-letting. If sub-letting was not prohibited, the privilege will only be enforceable up to the amount due by the sub-lessee to the principal lessee on the date a formal summons is served by the lessor upon the sub-lessee.
These privileged claims are payable out of the proceeds of sale of such movables and crops subject to such privilege, immediately after the claims above mentioned, with the exception of such claims

in respect of which the privilege does not operate as against the lessor in as much as he is a third party holder in good faith.
If movables and crops so charged are removed from the leased property, notwithstanding the objection of the lessor or without his knowledge, and the movables remaining on the property are not sufficient to secure the privileged claim, the privilege is enforceable on the movables and crops so removed subject to rights acquired on these movables and crops by third parties in good faith. The privilege shall remain in force for three years from the date of removal, even to the detriment of a third party's rights, if the lessor effects within the prescribed time limit an attachment on the movables and crops removed. If, however, the movables and crops are sold to a purchaser in good faith in the market by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

Article 1144

Sums due to hotel proprietors by a traveller for accommodation, food and expenses incurred for his account, are secured by a privilege over the effects brought by the traveller to the hotel or its annexes.
Unless it can be shown that the hotel proprietor knew of the existence of a third party's rights over these effects at the time they were brought on to the premises, this privilege may be enforced on these effects, even if they do not belong to the traveller, provided that they are not lost or stolen property. An hotel proprietor may, if he has not been paid in full, object to the removal of these effects, and if they are removed notwithstanding his objection or without his knowledge, the privilege continues to be enforceable on them, subject to the rights acquired by third parties in good faith.
An hotel proprietor's privilege has the same rank as a lessor's privilege. Should the effects in question be subject to both claims, the first in date will have priority, unless it is not enforceable against the other.

Article 1145

Sums due to a vendor of a movable for price and accessories are secured by a privilege over the movable sold. This privilege is enforceable as long as the movable sold preserves its identity, subject to the rights acquired in good faith by third parties and subject to the special provisions applicable in commercial matters.
The privilege follows in rank privileges over movables above referred to. It operates, however, as against the lessor and the hotel proprietor, if it can be proved that they had knowledge of such privilege at the time the thing sold was brought onto the leased property or into the hotel.

Article 1146

Co-owners who have partitioned a movable have a privilege over this movable in respect of their respective remedies against each other resulting from partition, and for repayment of any difference reverting to them in the partition.
The privilege of a co-partitioner has the same rank as a vendor's privilege. Should the movable in question be subject to both rights, the first in date will have priority.

2- Special Privileges over Immovables

Article 1147

The price and accessories due to a vendor of an immovable are secured by a privilege over the immovable sold.
Such privilege must be inscribed, notwithstanding the transcription of the sale, and its rank is fixed by the date of inscription.

Article 1148

Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works, have a privilege over such works but only in respect of the increase in value resulting from such works as at the time of alienation of the immovable.
Such a privilege must be inscribed: its rank is fixed by the date of its inscription.

Article 1149

Co-owners who have partitioned an immovable have a privilege over this immovable in respect of their respective remedies against each other resulting from the partition, including the right to claim payment of any difference reverting to them in the partition. This privilege must be inscribed: its rank is fixed by the date of its inscription