

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A provision of a law can only be repealed by a subsequent law expressly providing for such repeal, or containing a provision inconsistent with a provision of the former law or regulating anew a matter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 cuius*, 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 immovable, 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 such contractual obligation is governed 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 immovable, however, are governed by the law of the place in which the immovable is situated.

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 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 situated. A corporation whose seat of management is situated 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 situated.

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 or 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 immovable. 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 collusion.

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 causes 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 222 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 the identity of the person who was responsible. An action for damages is prescribed in any case after fifteen years from the date on which the unlawful act was committed.

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 by agreement, entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The responsibility exists 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 been prevented, even if he had exercised the 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 only partial, unless he shows that the accident did not occur as a result of negligent maintenance or the age of, or a 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 the 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 provisions 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 has 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 not under an 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 the restitution to the profit he has gained as a result of the premature payment to the extent of the loss suffered by the debtor. 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 a 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 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 not 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 a payment unduly received is prescribed after three years from the day on which the payor knew of his right to claim restitution and in any case after fifteen years from the date upon which the right arose.

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 use 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 mandatory 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 mandatory 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 be the representative of the person for whom he has acted, if he has devoted to the management of the work the care of a reasonable person, even if the object in view has not been achieved. The person for whom the voluntary agent has acted will be bound to carry out the obligations entered into on his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances 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 work, 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 a contract.

Article 197

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

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 confirming 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 a measure is 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 the 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 the 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 resolutive, the condition itself is deemed to be inexistent.

An obligation depending upon a resolutive 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 resolutive 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 resolutive 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 reconstitute 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 so long as it has not been accepted by the creditor, or so 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 imputation 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 form is required for release even if it is the release of an obligation whose existence was conditional upon a special form required by law or by the agreement entered into by the parties.

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.

The term of prescription for revenue due by a holder in bad faith and for revenue due by a nazir of a wakf to the beneficiaries is fifteen years.

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) the rights of action of merchants and manufacturers in respect of things supplied to persons who do not trade in these articles, as well as the rights of action of hotel and restaurant proprietors for the cost of accommodation and food and for expenses incurred by them on behalf of 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 the existence of the debt or that they know that the debt 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; in the case of an action on a warranty against eviction, only from the date 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 by an attachment, by the application of a creditor for the admission of his claim in a bankruptcy or in a distribution, or by any act of a creditor to claim his right in the course of legal proceedings.

Article 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 hands of his creditor as 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 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 benefit of prescription before he has acquired the right to invoke it, nor can he agree to a term of prescription other than that fixed by law.

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 resolutive 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.