Death or Insolvency of the Lessee

Article 601

A contract of lease is not terminated either by the death of the lessor or of the lessee.

In the event of the death of the lessee, however, his heirs may claim the termination of the lease if they establish that, as a result of the death of the person whose estate they inherited, the burden of the lease has become too heavy for their resources or that the lease exceeds their needs. In such an event, the periods of notice of termination laid down in Article 563 shall be observed and the claim for termination of the lease made within six months at the most from the date of the death of the lessee.

Article 602

If the lease has been granted to the lessee solely on account of his calling or of other considerations relating to his person, his heirs or the lessor may, on his death, claim termination of the lease.

Article 603

The insolvency of the lessee does not render immediately payable rents that have not become due.

The lessor, however, may claim resiliation of the lease, unless he is provided within a reasonable time with securities guaranteeing the payment of rent not due. The lessee may also, if he is not given authority to assign the lease or to sub-let the property, claim the resiliation of the lease on payment of equitable compensation.

Article 604

In the case of a voluntary or forced transfer of the ownership of the leased property to a third party, the new owner is only bound by the lease if it has been given an established date prior to the act entailing the transfer of ownership.

The new owner may, however, avail himself of the contract of lease, even if he is not bound by such contract.

Article 605

A person acquiring the leased property, who is not bound by the lease, can only evict the lessee by giving him notice as provided for in Article 563.

In the absence of a provision to the contrary, the lessor must, if notice of eviction is given before the end of the lease, compensate the lessee. The lessee cannot be evicted before he receives compensation either from the lessor or from the new owner paying on behalf of the lessor, or until he has obtained an adequate security for the payment of such compensation.

Article 606

The lessee cannot set up rent paid in advance against a new owner, if the new owner proves that at the time of payment the lessee knew or should necessarily have known of the transfer of ownership. Failing proof thereof, the new owner has only a remedy against the lessor.

Article 607

When it has been agreed that the lessor may terminate the contract if he becomes personally in need of the property, he shall, if he exercises his right, be bound, unless otherwise agreed, to give the lessee notice of termination in accordance with the delays provided for in Article 563.

Article 608

When a lease is made for a fixed period, either of the contracting parties may, if serious and unforeseen circumstances arise of such a nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiration, provided he gives notice in accordance with the delays provided for in Article 563 and pays equitable compensation to the other party.

If it is the lessor who demands termination of the lease, the lessee will not be compelled to hand back the leased property before he has been compensated or obtained adequate guarantee.

Article 609

An official or an employee whose duties oblige him to change his place of residence may claim termination of the lease of his dwelling house, when his lease is made for a fixed period, provided that he gives notice of such termination in accordance with the delays provided for in Article 563. Any agreement to the contrary is void.

2. Certain Kinds of Leases

Leases of Agricultural Land

Article 610

If the leased property is agricultural land, the lessor is not bound to hand over to the lessee cattle and agricultural implements existing on the land unless they are included in the lease.

Article 611

When cattle and agricultural implements belonging to the lessor are handed over to the lessee, the lessee is under the obligation to take proper care of them and to maintain them in the manner required for their customary use.

Article 612

When a lease of agricultural land provides that the lease is made for one or several years, it is deemed to be for one or several completed annual rotation of crops.

Article 613

A lease of agricultural land must work the land in accordance with the requirements of normal agricultural use. He must, more particularly, maintain the land in a good state of production.

He must not, without the consent of the lessor, make any substantial change in the established method of cultivating the land, the effects of which might extend beyond the period of the lease.

Article 614

Subject to an agreement or custom to the contrary, the lessee is bound to carry out repairs necessary for the normal enjoyment of the leased land. He is in particular responsible for the clearing and maintenance of canals, trenches, channels and drains. He is also responsible for the normal maintenance of roads, dikes, bridges, fencing, wells, dwelling houses and farm buildings.

The erection of buildings and major repairs to existing buildings and dependencies on the land are, subject to any agreement or custom to the contrary, the responsibility of the lessor. The same rule applies as regards repairs to wells, canals, water channels and reservoirs.

Article 615

If the lessee has, as a result of force majeure, been prevented from preparing or sowing the land, or if the whole or the greater part of the seed has been destroyed thereby, he is, subject to any agreement to the contrary and as the case may be, relieved from payment of the whole or part of the rent.

Article 616

If, after having sown, a lessee loses all his crop by force majeure before harvest time, he can demand remission of the rent.

If the crop is only partially destroyed, but a considerable decrease in yield results therefrom, the lessee may demand a reduction of the rent.

The lessee cannot demand a remission or a reduction of rent if he is compensated against his loss either by the profits he has derived during the whole period of the lease, by an amount received under an insurance policy or by any other means.

Article 617

If, at the end of a lease, the harvest has not ripened for reasons not imputable to the lessee, he may, upon payment of a proportional rent, remain on the leased land until the harvest ripens.

Article 618

An outgoing lessee shall do nothing of a nature to diminish or retard the enjoyment of the land by an incoming lessee. He is bound, in particular, just before vacating the land, to allow the incoming lessee to prepare the land and to sow, if he does not sustain any injury thereby.

Amodiation

Article 619

Agricultural land and land planted with trees may be granted in amodiation to a lessee in consideration of the lessor taking a fixed share in the crop.

Article 620

In the absence of agreement or custom to the contrary, the conditions governing leases apply to amodiation, subject to the following provisions.

Article 621

The amodiation is, when no term is fixed, deemed to have been granted for one yearly rotation of crops.

Article 622

The lease in case of amodiation includes agricultural implements and cattle belonging to the lessor which are on the land at the time of the agreement.

Article 623

The lessee must give to the cultivation and to the preservation of the crop the same care that he gives to his own affairs.

The lessee is responsible for deterioration to the land during his enjoyment, unless he proves that he looked after the preservation and maintenance of the land with the care of a reasonable person.

The lessee is not bound to replace cattle that die or agricultural implements worn out through no fault of his own.

Article 624

The produce is divided between the two parties in the proportion agreed upon or established by custom; in default of agreement or custom the produce is divided equally.

Loss by reason of force majeure of all or part of the produce is borne equally by the two parties and gives rise to no claim by either party against the other.

Article 625

In amodiation, the lessee cannot assign the lease or sub-let the land amodiated without the consent of the lessor.

Article 626

The amodiation does not determine on the death of the lessor, but determines on the death of the lessee.

Article 627

When the amodiation ceases before the end of its term, the lessor must reimburse the lessee or his heirs for any expenditure made in respect of crops which have not ripened, and pay equitable compensation for work that the lessee has done on the land.

If, however, the amodiation is dissolved by the death of the lessee, his heirs may, instead of claiming reimbursement of the expenses herein before referred to, take the place of their principal until the crops have ripened, provided they are in a position to continue the proper cultivation of the land.

Lease of Wakf Property

Article 628

A Nazir has the right to let wakf property.

A beneficiary, even if he is the sole beneficiary, cannot grant a lease unless the right to do so has been given to him by the constituent of the wakf or unless he is authorized to do so by a person who has power to grant a lease, whether he be the Nazir or the judge.

Article 629

The Nazir is the person entitled to receive the rent, and payment must not be made to the beneficiary without the consent of the Nazir.

Article 630

The Nazir is not entitled to take the wakf property or lease even at the current rent for similar properties.

The Nazir may lease wakf property to his ascendants and descendants, provided that the rent is the current rent for similar properties.

Article 631

A lease of wakf property is not valid if the rent is grossly inadequate, unless the lessor is the sole beneficiary with power to administer the wakf. In such a case, the lease notwithstanding the gross inadequacy of the rent, will bind the lessor, but will not bind beneficiaries who succeed him.

Article 632

In cases of lease of wakf property, the estimation of the current rent for similar properties will be made at the time of the conclusion of the contract of lease; any changes taking place after that date shall not be taken into account.

When a Nazir grants a lease of wakf property for a grossly inadequate rent, the lessee is bound, under penalty of resiliation of the contract, to make up the rent to the rent for similar properties.

Article 633

The Nazir cannot, without authority of the judge, lease wakf property for a period exceeding three years, even by successive contracts. Any lease entered into for a longer period shall be reduced to three years.

If, however, the Nazir is also either the founder or the sole beneficiary, he may, without it being necessary to obtain the authority of the judge, lease the wakf property for more than three years, subject to the right of the Nazir succeeding him to claim the reduction of the period to three years.

Article 634

The provisions relating to lease apply to the lease of wakf property, insofar as they are not incompatible with the preceding provisions.

Section II

Loan for Use

Article 635

A loan for use is a contract by which the lender undertakes to hand over to the borrower without valuable consideration, a non-consumable thing for his use during a specific time or for a specific purpose, which thing the borrower undertakes to restitute after having used it.

1. Obligations of the Lender

Article 636

The lender is bound to hand over to the borrower the thing lent in the condition in which it was at the time of the conclusion of the contract of loan for use, and to leave him in possession of the thing lent during the period of the contract.

Article 637

If, during the period of loan, the borrower is obliged to incur expenses necessary for the preservation of the thing, the lender must reimburse him his expenses.

In the case of moneys usefully spent, the provisions with regard to expenses incurred by a possessor in bad faith will be applicable.

Article 638

The lender does not warrant against the dispossession of the thing loaned unless there has been an agreement for such warranty or the lender has deliberately concealed the cause of dispossession.

Similarly, the lender does not warrant against hidden defects. If, however, he has deliberately concealed such defects, or has warranted that the thing is free from defects, he is bound to compensate the borrower for any loss the borrower has suffered as a result thereof.

2. Obligations of the Borrower

Article 639

The borrower may only use the thing lent in the manner and to the extent provided for in the contract, according to the nature of the thing, or in accordance with custom. He must not assign the use to a third party, even gratuitously, without the authority of the lender.

The borrower is not responsible for changes to or deterioration of the thing lent resulting from its use in accordance with the contract.

Article 640

When the use of the thing lent entails expenses by the borrower, he will not have the right to claim the refund thereof. He is bound to pay the necessary expenses for the normal maintenance of the thing.

The borrower may remove any additions that he has made to the thing lent, provided that he reinstates the thing in its original condition.

Article 641

The borrower is bound to take such care for the preservation of the thing as he would take for the preservation of his own property; provided that the care he takes is not less than that which a reasonable person would take.

The borrower is, in any event, responsible for the loss of the thing lent arising from a fortuitous event or force majeure if it was possible for him to avoid such loss by using his own property, or if he could only preserve his own property or the thing lent and he preferred to preserve his own property.

Article 642

The borrower must, at the end of the loan, restitute the thing received in its state at that time, without prejudice to his responsibility for loss or deterioration.

In the absence of an agreement to the contrary, the borrower must restitute the thing at the place that he received it.

3. Termination of the Loan for Use

Article 643

The loan for use comes to an end upon the expiration of the term agreed and, in default of such term being fixed, when the thing has served the purpose for which it was lent.

If there is no way by which the term of the loan for use can be fixed, the lender may demand its termination at any time.

The borrower may, in all cases, restitute the thing lent before the end of the loan. If, however, such restitution is prejudicial to the lender, he cannot be compelled to accept the thing.

Article 644

The lender may put an end to a loan for use at any time in the following cases:

a) if the lender has suddenly an urgent and unforeseen need of the thing;

b) if the borrower uses the thing improperly or neglects to take the necessary precautions for its preservation; and

c) if the borrower becomes insolvent after the conclusion of the loan or if his insolvency before the conclusion of the loan was not known to the lender.

Article 645

In the absence of an agreement to the contrary, a loan for use ends with the death of the borrower.

Chapter III

Contracts for the Hire of Services

Section I

Contracts for Work and Concessions for Public Utility Services

1. Contracts for Work

Article 646

By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service in consideration of remuneration which the other contracting party undertakes to pay.

Obligations of the Contractor

Article 647

The contractor may undertake to supply his work only, the master of the work being responsible for the supply of materials which the contractor uses in or for the performance of his work.

The contractor may also undertake to supply the materials as well as his work.

Article 648

When the contractor undertakes to supply the whole or part of the materials to be used in the work, he is responsible for and warrants their good quality to the master.

Article 649

When the materials are supplied by the master, the contractor is bound to care for their preservation, to use them with technical skill, to account to the master for their use in the work and return to him any such materials that remain. If part of the materials becomes unfit for use owing to the contractor's neglect or lack of professional skill, the contractor is bound to refund to the master the value thereof.

In the absence of an agreement or trade custom to the contrary, the contractor shall provide, at his own expense, the tools and accessory appliances necessary for the performance of the work.

Article 650

If, in the course of execution, it is established that the contractor is performing the work in a manner that is defective or contrary to the agreement, the master may formally summon him to alter, within a reasonable period fixed by him, the manner in which he is performing the work. If after the expiration of such a period the contractor fails to adopt the proper manner of working, the master may either demand resiliation of the contract or the handing over of the works to another contractor at the cost of the first contractor, in accordance with the provisions of Article 209.

Immediate resiliation of the contract may, however, be demanded without it being necessary to grant any delay, when rectification of the defective manner of performance is impossible.

Article 651

The architect and contractor are jointly and severally responsible for a period of ten years for the total or partial demolition of constructions or other permanent works erected by them, even if such destruction is due to a defect in the ground itself, and even if the master authorized the erection of the defective construction, unless, in this case, the constructions were intended by the parties to last for less than ten years.

The warranty imposed by the preceding paragraph extends to defects in constructions and erections which endanger the solidity and security of the works.

The period of ten years runs from the date of delivery of the works.

This Article does not apply to the rights of action which a contractor may have against his sub-contractors.

Article 652

An architect who only undertakes to prepare the plans without being entrusted with the supervision of their execution, is responsible only for defects resulting from his plans.

Article 653

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void.

Article 654

Actions on the warranties above referred to are prescribed after three years from the date of the destruction of the works or the discovery of the defect.

Obligations of the Master

Article 655

When the contractor completes the works and places them at the master's disposal, the master shall, as soon as possible, take delivery in accordance with prevailing custom. When the master, in spite of being formally summoned, fails, without reasonable cause, to take delivery of the works, the works will be deemed to have been delivered to him.

Article 656

In the absence of a custom or an agreement to the contrary the price is payable upon delivery of the works.

Article 657

When a contract is concluded in accordance with an estimate drawn up on a unit price basis and it becomes apparent, during the course of the work, that it will be necessary, in order to complete the works according to the agreed plan, considerably to exceed the estimated price, the contractor is bound to notify the master thereof forthwith and to inform him of the anticipated increase in price; if he fails to do so he forfeits his right to recover the expenses incurred in excess of the estimate.

When the estimated excess in the price for the execution of the plans is considerable, the master may rescind the contract and stop the work, provided that he does so without delay and pays the contractor for the cost of the work done by him, estimated in accordance with the terms of the contract, without being liable to compensate the contractor for the profit he would have realized if he had completed the works.

Article 658

When a contract is concluded on a lump sum basis according to a plan agreed with the master, the contractor has no claim to an increase of price, even if modifications and additions are made to the plan, unless such modifications or additions are due to the fault of the master, or have been authorized by the master and the price thereof agreed with the contractor.

Such agreement should be made in writing unless the principal contract was concluded verbally.

The contractor has no claim to an increase of price on the grounds of an increase in the price of raw materials, labor or any other item of expenditure, even if such increase is so great as to render the performance of the contract onerous.

When, however, as a result of exceptional events of a general character which could not be foreseen at the time the contract was concluded, the economic equilibrium between the respective obligations of the master and of the contractor breaks down, and the basis on which the financial estimates for

the contract were computed has consequently disappeared, the judge may grant an increase of the price or order the resiliation of the contract.

Article 659

When the price has not been fixed in advance, it must be calculated according to the value of the work and the expenses of the contractor.

Article 660

An architect is entitled to a separate fee for the preparation of the plans and specifications and another for the supervision of the work.

If these fees are not specified in the contract, they shall be fixed according to prevailing custom.

If, however, the work is not completed in conformity with the plans prepared by the architect, the fee shall be assessed on the basis of the time taken in their preparation, taking into consideration the nature of the work.

Sub-contracts

Article 661

A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract, or unless the nature of the work presupposes reliance on his personal skill.

In such a case the contractor remains responsible to the master for his sub-contractor.

Article 662

Sub-contractors and workmen working for a contractor in the execution of a contract have a direct right of action against the master but only to the extent of such sums as are due by the master to the main contractor on the date that action is commenced. Workmen of sub-contractors likewise have the same right of action against the main contractor and the master.

In the case of an attachment served by one of them upon the master or the main contractor, workmen have a right of privilege on the sums due to the main contractor or to the sub-contractor at the time of the attachment, in proportion to the amount due to each of them. These sums may be paid to them directly.

The rights of sub-contractors and workmen provided for in this Article have priority over those of a person to whom the contractor has assigned sums due to him by the master.

The End of a Contract for Work

Article 663

A master may terminate the contract and stop the work at any time before the completion of the works, provided that he compensates the contractor for all expenses he has incurred, for the work that he has done and the profit that he would have made if he had completed the work.

The court may, however, reduce the compensation due to the contractor for loss of profit if the circumstances justify such reduction. In particular, the court shall deduct from such compensation any saving realized by the contractor as a result of the rescission of the contract by the master and any profit which the contractor could have made by employing his time otherwise.

Article 664

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes impossible.

Article 665

When works are destroyed by a fortuitous event, before delivery to the master, the contractor has no claim either for the price of his work, or for reimbursement of his expenses. The loss of materials falls on the party who supplied them.

When, however, the contractor fails to comply with a formal summons to deliver the works or when the works are destroyed or deteriorate before delivery by the fault of the contractor, he is under a liability to indemnify the master for the materials supplied to carry out the works.

When the master is formally summoned to take delivery of the works or when the works are destroyed or deteriorate by the fault of the master or by reason of a defect in the materials supplied by him, the master shall bear the loss resulting from the destruction of the materials and is liable to the contractor for his remuneration in addition to such compensation as may be due.

Article 666

A contract for work is dissolved by the death of the contractor if his personal skill was taken into account when the contract was concluded. If such personal skill was not taken into account, the contractor is not *ipso facto* dissolved and the master may not, except in cases in which Article 663 applies, resiliate the contract, unless the contractor's heirs do not offer sufficient guarantees for the due performance of the work.

Article 667

When the contract is dissolved by the death of the contractor, the master is bound to pay to the contractor's estate the value of the work already done and expenses incurred for the execution of the work which has not been completed, to the extent of the benefit that he derives from such work and expenses.

The master may, on the other hand, demand delivery, against payment of a fair price, of the materials prepared and plans whose execution has been commenced.

These provisions also apply when the contractor who has commenced the work becomes unable to complete it owing to a cause beyond his control.

2. Concessions of Public Utility Services

Article 668

A concession of a public utility service is a contract whose object is the management of a public utility service of an economic nature. Such a contract is concluded between the administrative authority in charge of the organization of such a service and a private person or company to whom the exploitation of the service is entrusted for a fixed period.

Article 669

The concessionaire of a public utility service undertakes, by the contract concluded between him and the consumer, to provide the latter in a normal manner with the services corresponding to the rates which he collects, in accordance with the conditions stipulated in the contract of concession and its annexes and also with the conditions which the nature of the work and the laws applicable thereto demand.

Article 670

When the concessionaire of the public utility service enjoys a *de jure* or *de facto* monopoly service, he is bound to observe strict equality between consumers both as regards the services rendered and the rates charged.

The principle of equality does not exclude special treatment involving the reduction or remittance of rates, provided such treatment is granted to all persons who apply therefor and who fulfill the general conditions laid down by the concessionaire. The principle of equality entails, however, the prohibition of the concessionaire from granting to some consumers advantages which he refuses to grant to others.

Any discrimination granted contrary to the provisions of the preceding paragraph renders the concessionaire liable to compensation for the loss which may be caused, as a result of such discrimination to third parties, by the disturbance of the natural balance of fair competition.

Article 671

The rates laid down by a public authority will have force of law with regard to contracts entered into between the concessionaire and consumers; the parties shall not have the right to depart therefrom by agreement.

The rates may be revised or modified. If the rates are modified and such modification is ratified, the new rate becomes applicable, but without retroactive effect, from the date fixed for its coming into force by the act of ratification. Any contracts running (abonnements) at the time of modification of the rates will be subject to the increase or reduction of charges for the period of the contract unexpired at the date of coming into force of the new rates.

Article 672

Any irregularity or mistake in the application of the rates to individual contracts is subject to rectification.

If the irregularity or mistake operates to the detriment of the consumer, he shall be entitled to recover the amount paid in excess of the authorized charge. If such an irregularity or mistake operates to the detriment of the concessionaire of the public utility service, he shall be entitled to collect an amount to make up the authorized charge. Any agreement to the contrary is void. The right of recovery in either case is barred by prescription after one year from the date when the collection of the incorrect charge took place.

Article 673

Consumers, in the case of concessions for the distribution of water, gas, electricity, power or other similar commodities, must support interruptions or irregularities for a short time to which installations of such services are normally subject, such as those necessary for the upkeep of the installation with which the service is maintained.

The concessionaire of these services may repudiate responsibility in respect of interruptions or irregularities of abnormal length or gravity, by proving that they are caused by "force majeure" not imputable to the operation of the service, or by a fortuitous event which could not have been foreseen or whose consequences could not have been avoided by any vigilant management acting without undue regard to economy. A strike constitutes a fortuitous event if the concessionaire establishes that it took place without any fault on his part and that it was not possible for him to replace strikers by other workmen or to avoid the consequences of their strike by any other means.

Section II

Contracts of Service

Article 674

A contract of service is one whereby one of the contracting parties undertakes to work in the service and under the supervision or control of the other contracting party in consideration of a remuneration which such other party undertakes to pay.

Article 675

The provisions contained in this Section apply only insofar as they are not expressly or impliedly inconsistent with special laws relating to service.

Such special laws define the categories of workers to which the provisions of this Section do not apply.

Article 676

The provisions of this Section as to contracts of service apply to the relationship between masters and canvassers, commercial representatives, commercial travelers, assurance agents and other intermediaries, even if they are remunerated on a commission basis or if they work for the account

of several employers at the same time, so long as these persons work under the orders and supervision of such masters.

When the services of a commercial representative or a commercial traveler come to an end, even by reason of the expiration of the term of employment specified in the contract, he shall be entitled to receive, by way of remuneration, the commission or discount, agreed upon or established by custom, on orders which do not reach the master until after the commercial representative or the traveler has left his service, if such orders are the direct result of the employee's representations (demarches) to customers while he was in the master's service. Such employees, however, can only claim this right during the usual period for such claims established by custom in respect of each business.

1. Elements of a Contract

Article 677

In the absence of provisions to the contrary in law or in administrative regulations, a contract of service is not required to be in any special form.

Article 678

A contract of service may be concluded either for a specific service or for a fixed period; it may also be entered into for an indefinite duration.

If a contract of service is entered into for the lifetime of the worker or the master or for a period longer than five years, the worker, after the expiration of five years, may resiliate the contract without being liable to pay compensation, provided that he gives six months prior notice to the master.

Article 679

When a contract of service is entered into for a fixed period, it, *ipso facto*, comes to an end at the expiration of the term.

If the parties continue to carry out the contract after the expiration of the term, the contract will be deemed to have been renewed for an indefinite duration.

Article 680

When a contract is entered into for the performance of a specific work, it comes to an end when the agreed work has been completed.

When the work is, by its nature, capable of being renewed and the contract is continued after the completion of the work agreed, the contract will be deemed to have been impliedly renewed for the period necessary for the execution of the same work a second time.

Article 681

The performance of services is presumed to be made for remuneration, if it is not customary for such services to be performed gratuitously or if such services come within the scope of the profession of the person who performs them.

Article 682

When a contract of service for an individual or a group of individuals or factory regulations do not specify the salary payable by the master, the salary will be fixed in accordance with the rates, if any, applicable to work of a similar nature. If no rates exist, the salary will be fixed in accordance with the custom of the trade and the custom of the place where the work is performed. If there is no such custom, the judge will fix the salary in accordance with equity.

The same rules will apply to determine the nature and the extent of the work to be performed by the employee.

Article 683

The following sums form an integral part of an employee's salary and are taken into account in computing the attachable portion thereof:

i) commissions payable to canvassers, commercial travelers and commercial representatives;

ii) percentages payable to employees of commercial establishments on the price of sales effected by them and high cost of living allowances paid to them;

iii) any gratuity paid to a worker in addition to his salary, as well as fidelity bonuses, family allowances and other similar allowances, if payment of such sums is provided for in the individual contract of service or in the workshop regulations, or if these sums are customarily payable so that the worker regards such sums as forming part of his salary and not constituting a bounty, and provided that the amount of such payments is known before the attachment is made.

Article 684

Tips are deemed to be salary only in industries or trades where it is customary to pay tips and where tips are subject to regulations by which they can be controlled.

Tips are deemed to form part of the employee's salary when the amounts given as tips by customers of a particular commercial establishment to the employees are collected in a common fund for distribution to the workers by or under the supervision of the employer.

In some industries, such as hotels, restaurants, cafes, and bars, a worker's salary may consist solely of the tips he receives and the food he consumes.

2. Effects of a Contract

The Obligations of the Worker

Article 685

The worker must:

a) himself perform the work and in so doing use the care of a reasonable person;

b) obey the orders of the master relating to the performance of the agreed work and coming within the duties of the worker, if such orders are not contrary to the contract, to law or to morality, and if obedience thereto does not entail danger;

c) preserve with care things entrusted to him for the performance of his work; and

d) safeguard the industrial or commercial secrets of the work, even after the end of the contract.

Article 686

When the work entrusted to the worker enables him to know the clients of the master or to learn the secrets of his business, the parties may agree that the worker will not be entitled, after the termination of the contract, to compete with the master or participate in a competitive undertaking.

In order, however, that any such agreement be valid, it is necessary:

a) that the worker has attained his majority at the time the contract is entered into; and

b) that the restriction be limited as to time, place and kind of work, to the extent necessary for the protection of the legitimate interests of the master.

The master cannot avail himself of such an agreement if he resiliates the contract or refuses to renew it, without the worker giving him adequate grounds for such action; nor can the master avail himself of such agreement if he himself has given the worker adequate grounds to resiliate the contract.

Article 687

When the contract contains a penalty clause applicable in the event of the breach of a condition in restrain of competition, and such a clause is so onerous as to be tantamount to pressure on the worker to compel him to remain in the service of the master for a longer time than that agreed, both the penalty clause and the condition in restraint of competition will be void.

Article 688

When the worker discovers a new invention while in the service of the master, the master will have no rights in respect of the invention, even if the worker has discovered the invention by reason of the work performed in the service of the master.

An invention discovered by a worker in the course of his work belongs, however, to the master, if the nature of the work that the worker has undertaken to carry out requires him to give his time to invention or if the master has expressly stipulated in the contract that he will have the right to inventions discovered by the worker.

If the invention is of serious economic importance, the worker may, in cases falling within the preceding paragraph, demand a special remuneration to be fixed in accordance with the principles of equity, taking into account in the assessment of such remuneration the extent of help supplied by the master and the use the worker has made of the master's installations for the purpose of the invention.

Article 689

In addition to the obligations laid down in the preceding articles, an employee must carry out obligations imposed upon him by special laws.

The Obligations of the Master

Article 690

The master must pay the worker his salary at the time and place agreed upon in the contract or established by custom, subject to the provisions in this connection contained in special laws.

Article 691

When a contract provides that the worker will be entitled, in addition to or in lieu of the agreed salary, to a share of the master's profits or to a percentage of the gross receipts or of the amount of the production or of the value of the savings effected, or to other remuneration of a like nature, the master is bound to render to the worker, after each balance sheet, an account of the amount payable to him in this respect.

The master must, in addition, supply the worker, or a trustworthy person designated by the parties or by the judge, with the information necessary to verify the accuracy of such account and allow him to consult his books for this purpose.

Article 692

When a workman or an employee comes to perform a day's work as stipulated in his contract of service, or declares his readiness to perform a day's work and is only prevented from so doing by a cause imputable to the master, he is entitled to his salary for the day.

Article 693

In addition to the obligations laid down in the preceding articles, the master is bound to carry out the obligations imposed on him by special laws.

The End of Contracts of Service

Article 694

Subject to the provisions of Articles 678 and 679, a contract of service ends at the expiration of the term fixed or upon the completion of the work in respect of which the contract was entered into.

When the duration of the contract is not fixed either by the agreement or by the nature of the work or by its object, each of the contracting parties may terminate his relationship with the other party; the exercise of this right must be preceded by notice, the manner and period of which are defined by special laws.

Article 695

When a contract entered into for an indefinite period is terminated by one of the parties without observing the delay required for notice or before the end of this delay, he is bound to compensate the other party for the whole period of the notice or for the portion thereof still to run. Subject to the provisions of special laws on the subject, such compensation will include, in addition to the fixed salary due for this period, all additional remuneration, provided the amount of such remuneration is fixed and defined.

When the contract is terminated vexatiously by one of the contracting parties, the other party may, in addition to the compensation due owing to failure to observe the delay required for notice, claim damages for the prejudice resulting from the unjustified termination of the contract. Discharge is deemed to be unjustified if it takes place as a result of the service of an attachment on the master or on account of debts contracted by the worker to third parties.

Article 696

Compensation on dismissal may be granted, even though the master has not himself dismissed the worker, if the master, by his own actions and especially vexatious treatment or by a breach of the conditions of contract, has obliged the worker to appear to have terminated the contract himself.

The transfer of a worker, without fault on his part, to a less profitable or less suitable post than that which he is occupying, is not deemed to be an indirect vexatious act if such transfer is necessary in the interests of the work. The transfer will, however, be deemed a vexatious act if it is made with the object of injuring the worker.

Article 697

A contract of service is not dissolved by the death of the master, unless the personality of the master was a factor taken into consideration in concluding the contract. The contract, however, is dissolved by the death of the worker.

The rules laid down in special laws on the subject will be observed for the dissolution of the contract on account of death or prolonged illness of the worker or of any other cause constituting force majeure which prevents the worker from continuing his work.

Article 698

Actions arising out of a contract of service are prescribed after one year from the time of the termination of the contract; but in the case of actions arising out of commission and profit sharing and percentage of gross receipts, the period of prescription only begins from the time when the master hands to the worker a statement of what is due to him according to the last balance sheet.

Actions in connection with the disclosure of trade secrets or the enforcement of conditions of contract as to the protection of such secrets, are not subject to this special limitation.

Section III

Mandate

1. The Elements of Mandate

Article 699

Mandate is a contract whereby a mandatary binds himself to perform a judicial act on behalf of a mandator.

Article 700

In the absence of any provision of the law to the contrary, a mandate must be executed in the same form as that required for the execution of the juridical act in respect of which the mandate is given.

Article 701

A mandate given in general terms, which does not specify the nature of the juridical act in respect of which it is given, only confers on the mandatary the power to perform acts of management.

Granting of leases of not more than three years duration, acts of preservation and of maintenance, the recovery of rights and discharge of debts, are deemed to be acts of management. All acts of disposition necessary for management, as the sale of perishable crops, goods or movables, and the purchase of things necessary for the preservation and exploitation of the thing constituting the object of the mandate are deemed to be acts of management.

Article 702

A special mandate, in respect of any act which is not an act of management, is required, and in particular for a sale, a mortgage, a gift, a compromise, an admission, an arbitration, the tendering of an oath and representation before the courts.

A special mandate to carry out a certain category of juridical acts is valid, save as regards gratuitous acts, even though the object of such acts is not specified.

A special mandate only confers on the mandatary a power to act in matters specified therein and in matters necessarily incidental thereto in accordance with the nature of each matter and prevailing custom.

2. The Effects of a Mandate

Article 703

The mandatary is bound to perform the mandate without exceeding the limits fixed therein.

He may, however, exceed these limits if he finds himself unable to notify the mandator thereof beforehand and if the circumstances are such that it can be assumed that the mandator could not have failed to approve the act. In such a case, the mandatary is bound to inform the mandator immediately that he has exceeded the limits of mandate.

Article 704

If the mandate is gratuitous, the mandatary must exercise in its performance the degree of care that he gives to his own affairs, without, however, being bound to exercise more diligence than a reasonable man.

When the mandate is given for remuneration, the mandatary must always exercise in its performance the diligence of a reasonable man.

Article 705

A mandatary is bound to give to his mandator all necessary information in connection with the execution of his mandate and render him an account thereof.

Article 706

The mandatary may not use the property of the mandator for his own benefit.

He is liable for interest on sums used by him for his own benefit from the moment when he commences to use them. He is also liable for interest on sums that he owes the mandator from the time when he is served with a formal summons.

Article 707

When several mandataries are appointed, they are jointly and severally liable if the mandate is indivisible or if the damage sustained by the mandator is the result of their common fault. Mandataries, however, even if joint and several, are not responsible for the acts done by their co-mandataries in excess of the limits of the mandate or by a wrongful use of the mandate.

When several mandataries are appointed by the same document without being authorized to act severally, they must act jointly except in cases where an exchange of views is not essential, such as receiving a payment or paying a debt.

Article 708

A mandatary who nominates a substitute to perform his mandate without being authorized to do so, is responsible for the acts of the substitute as if they were his own acts: in such a case, the mandatary and his substitute are jointly and severally responsible.

When a mandatary is authorized to appoint a substitute without specifying the person, he is only liable for a faulty choice of the substitute or for faulty instructions that he gives to him.

In the two preceding cases, the mandator and the substitute of the mandatary have a direct right of action against each other.

Article 709

A mandate is deemed to be gratuitous in the absence of agreement which may be express or result by implication from the position of the mandatary.

When the remuneration is agreed, it is still subject to the assessment of the judge, unless it has been voluntarily paid after the performance of the mandate.

Article 710

Whatever result the mandatary may have achieved in the performance of the mandate, the mandator must repay to the mandatary any expenses incurred by him for the normal performance of the mandate with interest from the date when such expenses were incurred. When the performance of the mandate requires the mandator to supply to the mandatary sums of money for expenditure in respect of the mandate, the mandator must advance such amounts, if requested by the mandatary so to do.

Article 711

The mandator is responsible for injury sustained by the mandatary, without fault on his part, in the normal performance of the mandate.

Article 712

When several persons appoint a sole mandatary for a common purpose, they are, in the absence of agreement to the contrary, jointly and severally liable to the mandatary as regards the consequences of the performance of the mandate.

Article 713

Articles 104 to 107, with regard to representation, apply to the relationship of a mandator and of a mandatary with third parties dealing with the mandatary.

The End of a Mandate

Article 714

The mandate comes to an end by the completion of the work or by the expiration of the period for which it was given and by the death of the mandator or of the mandatary.

Article 715

The mandator may, at any time and notwithstanding any agreement to the contrary, revoke or restrict the mandate. When, however, the mandate is remunerated, the mandator must indemnify the mandatary for loss sustained by him as a result of an intempestive or unjustified revocation.

When, however, the mandate has been given in the interests of a mandatary or of a third party, the mandator is not entitled to revoke or restrict the mandate without the consent of the person in whose interest the mandate was granted.

Article 716

The mandatary may, at any time and notwithstanding an agreement to the contrary, renounce his mandate. Renunciation is effected by notification to the mandator. When the mandate is remunerated, the mandatary must indemnify the mandator for loss sustained by him as a result of his renunciation, if it is intempestive or unjustified.

The mandatary, however, has not the right to renounce a mandate given in the interests of a third party, unless there are serious reasons justifying such renunciation and unless he notifies the third party and gives him time to take such action as may be necessary to safeguard his interests.

Article 717

The mandatary is bound, irrespective of the manner in which the mandate is terminated, to carry through any work he has commenced to such a condition that it is not exposed to deterioration.

When the mandate is extinguished by the death of the mandatary, his heirs, if they have the necessary legal capacity and knowledge of the mandate, are bound to inform the mandator immediately of the death of the mandatary and to take such steps as circumstances demand in the mandator's interests.

Section IV

Deposit

Article 718

Deposit is a contract whereby one person agrees to take delivery from another person of a thing which he undertakes to keep in safe custody and return in kind.

1. The Obligations of the Depository

Article 719

The depository is bound to take delivery of the thing deposited.

He is not entitled to make use of the thing deposited without the express or implied authority of the depositor.

Article 720

When the deposit is gratuitous, the depository is bound to exercise, in the custody of the thing, the care which he employs in his own affairs, without, however, being bound to exercise a degree of diligence exceeding that of a reasonable person.

When the deposit is for remuneration, the depository must exercise in the custody of the thing deposited the diligence of a reasonable person.

Article 721

The depository may not, without the express authority of the depositor, appoint a substitute to take over the custody of the thing deposited, unless he is compelled to do so by reason of urgent and absolute necessity.

Article 722

The depository is bound to return the thing deposited as soon as he is required so to do by the depositor, unless it follows from the contract that the term of the deposit was fixed in the interests of the depository. The depository may, at any time, compel the depositor to take back the thing deposited, unless if follows from the contract that the term of the deposit was fixed in the interests of the depositor.

Article 723

When the heir of a depository sells the thing deposited in good faith, he is only liable to refund to the owner the price which he has received or to assign to the owner his rights against the purchaser. If the alienation was gratuitous, he is liable to pay the value of the thing deposited at the time of alienation.

2. The Obligations of the Depositor

Article 724

A deposit is deemed to be gratuitous. When, however, remuneration is stipulated, the depositor, in the absence of agreement to the contrary, is bound to pay such remuneration at the time the deposit ends.

Article 725

A depositor must repay the depository any expenses incurred for the preservation of the thing deposited and indemnify him against any loss he may incur as a result of the deposit.

3. Certain Kinds of Deposits

Article 726

When the object of the deposit is a sum of money or another thing of a consumable nature and the depository has been authorized to make use of it, the contract is deemed to be a contract of loan for consumption.

Article 727

Proprietors of hotels, inns or other similar establishments are responsible, in the performance of their obligation to keep safely the effects brought in by travelers and residents, even for the acts of casual frequenters of their establishments.

They are, however, liable, as regards sums of money, securities and articles of value, only up to a limit of L.E. 50, unless they have undertaken the safe custody of such things knowing their value, or unless they have refused, without just cause, to take them in their charge, or if the loss has been caused by their gross negligence or by the gross negligence of one of their staff.

Article 728

A traveler must, as soon as he has knowledge of the theft, loss of, or damage to the thing, inform the proprietor of the hotel or the innkeeper, under pain, in the case of unjustifiable delay, of forfeiture of his rights.

His right of action against the hotel proprietor or innkeeper is prescribed after six months from the date of his leaving the hotel or the inn.

Section V

Judicial Custody

Article 729

Judicial custody is a contract whereby the parties entrust to a third party a movable or an immovable or a property comprising both movables or immovables which is the subject of litigation or of legal rights that have not been established, which such third party undertakes to safeguard, manage and return, together with fruits collected thereon, to the person whose right thereto shall be established.

Article 730

The court may order judicial custody:

i) in the cases provided for in the preceding article, when the parties concerned do not agree to the custody;

ii) when a party with an interest in a movable or an immovable has reasonable grounds to fear imminent danger to the property as a result of its remaining in the hands of its possessor;

iii) in other cases provided for by law.

Article 731

Judicial custody of wakf property may be ordered in the following cases:

i) when the office of nazir is vacant or in the event of litigation between co-nazirs or between persons claiming to have a right to the office of nazir, or when there is an action for the removal of the nazir, provided it is established that the judicial deposit is an indispensable measure in order to safeguard the contingent rights of the interested parties. In such a case the deposit ends upon the appointment of a nazir to the wakf, whether such appointment is provisional or definite;

ii) when the wakf is in debt;

iii) when one of the beneficiaries of the wakf is an insolvent debtor. The deposit will be ordered in respect of his share alone, if such share can be isolated even by means of a provisional partition, and, if not, the deposit will be ordered in respect of all the property of the wakf; in both cases the deposit will only be ordered if it is the only means of protecting the rights of the creditors against the wrongful administration or bad faith of the nazir.

Article 732

The appointment of a receiver, whether by agreement or judicially, must be made with the unanimous consent of all the interested parties. Failing such consent, the receiver will be appointed by the judge.

Article 733

The obligations of the receiver, his rights and powers, are defined in the agreement or in the judgment ordering the deposit. In the absence of such definition, the provisions relating to deposit and to mandate will apply in so far as they do not conflict with the following provisions.

Article 734

A receiver is bound to ensure the preservation and administration of the property entrusted to him with the diligence of a reasonable person.

A receiver may not, either directly or indirectly, appoint one of the interested parties in his place to carry out the whole or part of his mission, without the consent of the other parties.

Article 735

Apart from administrative acts, a receiver must not act without the consent of all interested parties or the authority of the court.

Article 736

A receiver may be remunerated unless he has renounced all remuneration.

Article 737

A receiver must keep regular books of account. The judge may order his books to be stamped by the court.

He is bound to render to the interested parties, at least once each year, an account of the receipts and expenditure with supporting vouchers. If the receiver is appointed by the court, he must also deposit a copy of his account at the court's registry.

Article 738

The deposit comes to an end either by agreement of all the interested parties or by decision of the court.

The receiver must then forthwith restitute the property entrusted to him to the person chosen by the interested parties or designated by the judge.

Chapter IV

Aleatory Contracts

Section I

Gaming and Betting

Article 739

Any agreement relating to a game of chance or a bet is void.

A person who loses in a game of chance or on a bet may, notwithstanding any agreement to the contrary, reclaim what he has paid within three years from the time when he made the payment. He may prove such payment by all available means.

Article 740

Bets between persons taking part personally in sports are excepted from the provisions of the preceding Article. The judge may, nevertheless, reduce the stake if excessive.

Legally authorized lotteries are also excepted.

Section II

Life Annuities

Article 741

A person may for valuable consideration or gratuitously bind himself to pay another person periodical payments during his lifetime.

This obligation may be created either by contract or by will.

Article 742

A life annuity may be granted for the life of the beneficiary of the grantor or of a third party.

In the absence of an agreement to the contrary, a life annuity is presumed to have been settled for the duration of the beneficiary's life.

Article 743

Subject to the requirements of the law as to the form of contracts for gifts, a contract providing for an annuity is valid only if made in writing.

Article 744

A stipulation in the contract that a life annuity is not attachable is only valid when the life annuity is settled gratuitously.

Article 745

A beneficiary is only entitled to the annuity for the number of days for which the person on whose life the annuity has been settled lives.

When, however, it is provided that the annuity is payable in advance, the beneficiary will be entitled to the installment which has fallen due.

Article 746

If the grantor does not fulfil his obligation, the beneficiary may demand due performance of the contract. He may also, if the contract is for valuable consideration, apply for the resiliation of the contract together with such damages as may be due.

Section III

Contracts of Insurance

1 General Provisions

Article 747

Insurance is a contract whereby the insurer undertakes, in consideration of a premium or any other pecuniary payment, to pay to the assured or the beneficiary for whose benefit the insurance is contracted, a sum of money or an annuity or any other pecuniary prestation upon the occurrence of the event or the risk specified in the contract.

Article 748

Provisions relating to insurance contracts, which are not mentioned in this Code, are regulated by special laws.

Article 749

Any lawful economic interest which a person may have in the non-occurrence of a specified risk may be the subject of insurance.

Article 750

The following conditions in a policy of insurance are void:

i) a condition providing for the forfeiture of the right to the benefit of the insurance on account of a breach of the law or of regulations, unless such breach constitutes a crime or a deliberate misdemeanor;

ii) a condition providing for the forfeiture of the rights of the assured on account of his delay in notifying the authorities of the occurrence of the risk insured or in producing documents, if it appears from the circumstances that there was a reasonable excuse for the delay;

iii) any printed condition relating to cases involving nullity or forfeiture, which is not shown in a clear manner;

iv) any arbitration condition included in the general printed conditions of the policy and not as a special agreement distinct from the general conditions; and

v) any other clause of an arbitrary nature, the breach whereof appears to have no bearing on the occurrence of the event insured against.

Article 751

The insurer shall only be bound to indemnify the assured for the actual loss arising as a result of the occurrence of the risk insured against, to the extent of the amount insured.

Article 752

Actions arising out of insurance contracts shall be barred by limitation after the expiation of three years from the date of the occurrence which gave rise to such actions.

This period, however, shall only run:

i) in the event of concealment of particulars or of a false or inexact declaration of particulars, in respect of the risk insured against, from the day when the insurer had knowledge thereof; and

ii) in the event of the occurrence of the risk insured against, from the date when the interested parties had knowledge thereof.

Article 753

Any agreement contrary to the provisions of this Section shall be void unless such agreement is in favor of the assured or of the beneficiary.

2. Certain Classes of Insurance

Life Insurance

Article 754

Sums which the insurer undertakes to pay, in the case of life assurance, to the assured or to the beneficiary, upon the occurrence of the event insured against or on the maturity date stipulated in the assurance policy, shall become due from the time of occurrence of the event or upon maturity, without it being necessary to establish that the assured or the beneficiary suffered any loss.

Article 755

The assurance of the life of a third party is void unless such third party consents thereto in writing prior to the issue of the policy. If such third party is under legal incapacity, the contract will not be valid unless consented to by his legal representative.

Such consent is also necessary for the validity of the assignment of the right to the benefit under the assurance or for the validity of a mortgage on such a right.

Article 756

The insurer is released from the obligation to pay the sum assured if the life assured commits suicide. The insurer shall, however, be bound to pay to the persons to whom the right reverts a sum equal to the amount of the insurance reserve.

When suicide is due to an illness whereby the patient lost control of his actions, the obligation of the insurer remains in its entirety. It is for the insurer to establish that the life assured died as a result of suicide and for the beneficiary to establish that the life assured had, at the time he committed suicide, lost control of his actions.

When an assurance policy contains a clause by which the insurer is bound to pay the sum assured even if the suicide was committed voluntarily and knowingly by the life assured, such a clause is only enforceable if suicide was committed after two years from the date of the contract.

Article 757

When an assurance is taken out on the life of a person other than the assured, the insurer is released from his obligations if the assured deliberately causes the death of the life assured or if the death occurs at his instigation.

When a life assurance is taken out in favor of a person other than the assured, such other person shall not benefit from the assurance if he has deliberately caused the death of the life assured or if such death occurred at his instigation. In the case of an attempted homicide, the assured shall have the right to substitute another person for the beneficiary even if the beneficiary had already accepted the insurance benefit stipulated in his favor.

Article 758

It may be agreed in life assurance that the sum assured shall be paid either to persons nominated or to persons to be nominated at a later date by the assured.

The assurance shall be deemed to have been made in favor of nominated beneficiaries if the assured stated in the contract that the assurance was made in favor of his spouse or his children or descendants, born or to be born, or of his heirs without referring to them by name. Should the assurance be contracted in favor of the heirs without their being named, such heirs shall be entitled to the sum assured in proportion to their respective shares in the inheritance. This right will devolve on them even if they renounce their inheritance.

By spouse is meant the person proved to have such capacity at the time of the death of the assured, and by children are meant the descendants proved to have the right to inherit at that time.

Article 759

An assured who has undertaken to pay periodical premiums may release himself from the contract at any time by written notice sent to the insurer prior to the expiration of the current period. In such event he shall be released from payment of subsequent premiums.

Article 760

In whole life contracts which do not contain a condition that the assured shall remain alive for a specified period and in all contracts providing for payment of the sum assured after a specified number of years, the assured may, after payment of at least three yearly premiums and notwithstanding any agreement to the contrary, convert the original policy into a paid up policy against a reduction of the sum assured. This provision is subject to the condition that the event insured against is bound to occur.

Life assurance, if temporary, shall not be subject to reduction.

Article 761

Should the assurance be reduced, the reduction shall not exceed the following limits:

i) in whole life contracts, the reduced sum assured shall not be less than the amount to which the assured would have been entitled if he had paid an amount equal to the assurance reserve on the date of the reduction, less 1% of the original sum assured, as if this sum had constituted a single premium payable in respect of an assurance of the same nature calculated according to the rates on the basis of which the original contract of assurance was concluded; and

ii) in contracts in which it is agreed that payment of the sum assured will be made after a certain number of years, the reduced sum assured shall not be less than a fraction of the original sum assured calculated proportionately to the premiums paid.

Article 762

The assured may also, after payment of at least three yearly premiums, surrender the policy, provided that the event insured against is bound to occur.

A temporary assurance contract is not subject to surrender.

Article 763

Conditions relating to reduction and surrender are deemed to form part of the general conditions of the assurance and should be inserted in the policy.

Article 764

Neither incorrect particulars nor misstatements as to the age of the life assured shall render the assurance void, unless the true age of the life assured exceeds the limit specified in the table of rates.

In all other cases, if, as a result of incorrect particulars or misstatements, the premium agreed upon is less than the premium which should have been paid, the sum assured shall be reduced in the proportion that the agreed premium bears to the premiums which should be paid on the basis of the true age.

Should, however, the agreed premium be higher than the premium which should have been paid on the basis of the true age of the life assured, the insurer shall be bound to refund, without interest, the excess received by him and to reduce the subsequent premiums to the limit corresponding to the true age of the life assured.

Article 765

In life assurance, the insurer who has paid the sum assured shall not be entitled to be subrogated to the rights of the assured or of the beneficiary against the person who caused the event insured against or against the person responsible therefor.

Insurance against Fire

Article 766

In insurance against fire, the insurer is liable for all damage resulting from fire or the beginning of a fire which may become an actual fire, or from the risk of a fire which may occur.

His liability is not limited solely to damage resulting directly from the fire but also includes damage which is necessarily the result of the fire and particularly damage caused to things covered by the insurance by reason of salvage measures or of measures to prevent the extension of the fire.

Notwithstanding any agreement to the contrary, the insurer is also liable for the loss or disappearance of the things covered by the insurance, occurring during the fire, unless he can establish that this was occasioned by theft.

Article 767

An insurer guarantees compensation for all damage resulting from fire, even if the fire broke out owing to a defect in the thing insured.

Article 768

An insurer is liable for damage resulting from the unintentional fault of the insured and also for any damage resulting from a fortuitous event or force majeure.

An insurer is not, however, responsible for losses and damage caused deliberately or fraudulently by the insured, notwithstanding any agreement to the contrary.

Article 769

An insurer is liable for damage caused by persons for whose acts the insured is responsible, whatever may be the nature or extent of their fault.

Article 770

Should the thing insured be encumbered with a pledge, mortgage or other real warranty, these rights will be transferred to the compensation due to the debtor by virtue of the contract of insurance.

If these rights have been published or notified to the insurer, even by letter sent by registered post, the insurer is only entitled to pay the amount due by him to the insured with the consent of the creditors.

When the thing insured has been attached or has been placed in judicial deposit, the insurer, if duly notified thereof in the manner set out in the preceding paragraph, shall not pay any sum due by him to the insured.

Article 771

The insurer shall be, by virtue of law, subrogated into the rights of action of the insured against the author of the act causing the damage involving the responsibility of the insurer, to the extent of the compensation he has paid in respect of the fire, unless the author of the damage is a relative of or related by marriage to the insured living together in the same house, or a person for whose acts the insured is responsible.

Chapter V

Suretyship

Section I

The Elements of Suretyship

Article 772

Suretyship is a contract whereby a person guarantees the performance of an obligation by giving an undertaking to the creditors to fulfil such obligation should the debtor fail to do so.

Article 773

Suretyship can only be established by writing, even if the principal obligation can be established by oral evidence.

Article 774

When a debtor undertakes to offer a surety, he is bound to produce a solvent person residing in Egypt or an adequate real security instead of the surety.

Article 775

Suretyship may be given without the knowledge and even in spite of the opposition of the debtor.

Article 776

Suretyship is valid only if the obligation to which it applies is valid.

Article 777

When a person guarantees the obligation of a debtor who is legally incapable and such guarantee is given because of the debtor's lack of capacity, the surety is bound to perform the obligation if the guaranteed debtor fails to do so himself.

Article 778

Suretyship may be entered into in respect of a future debt, if the amount for which the guarantee is given is fixed beforehand. Suretyship may also be entered into in respect of a conditional liability.

A surety, however, who has given his guarantee for a future debt, but has not fixed the duration of such guarantee, may revoke his guarantee at any time provided that the guaranteed debt has not been created.

Article 779

Suretyship entered into in respect of a commercial debt is deemed to be a civil act, even if the surety is a trader.

The suretyship resulting from backers' signatures and endorsements on negotiable instruments, is always deemed to be a commercial act.

Article 780

Suretyship cannot be entered into in respect of a sum greater than that due by the debtor, nor can it be subject to more onerous conditions than the debt guaranteed.

Suretyship may be entered into in respect of a smaller sum and subject to less onerous conditions.

Article 781

In the absence of an express agreement, suretyship extends to the accessories of the debt, to the expenses of the first demand for payment and to the expenses incurred after notice has been given to the surety.

Section II

The Effects of Suretyship

1. The Relationship between the Surety and the Creditor

Article 782

A surety is discharged simultaneously with the debtor, and is entitled to avail himself of all the defenses that are open to the debtor.

When, however, the defense raised by the debtor is based on his lack of legal capacity, the surety who was cognizant thereof at the time the contract was entered into is not entitled to raise this defense.

Article 783

When the creditor has accepted a thing of another kind in payment of the debt, the surety is discharged, even if the thing given in payment is revendicated.

Article 784

A surety is discharged to the extent of the value of any warranties which the creditor has lost by his own fault.

The warranties referred to in this Article are the securities assigned to guarantee the debt, even if they were provided after the suretyship was entered into; also any securities provided in accordance with the law.

Article 785

A surety is not discharged merely by reason of the creditor's delay in taking proceedings or of the creditor not taking proceedings.

A surety is, however, discharged if the creditor does not take proceedings against the debtor within six months from the date of the summons served on him by the surety, unless the debtor himself provides an adequate guarantee to the surety.

Article 786

When a debtor becomes bankrupt, the creditor is bound to prove his debt in the bankruptcy, under penalty of being deprived of his remedy against the surety to the extent of the loss suffered by the surety as a result of the creditor's failure to prove his debt.

Article 787

A creditor is bound to hand over to the surety, at the time of the discharge of the debt, all documents that are necessary to enable him to exercise his right of action.

When the debt is secured by a pledge of a movable or by a right of retention on a movable, the creditor must surrender such securities to the surety.

When, however, the debt is secured by a charge on an immovable property, the creditor must comply with the formalities required for the transfer of such security. The expenses of such transfer are borne by the surety, subject to his right of action against the debtor.

Article 788

A creditor has not the right to take proceedings against the surety alone, unless he has first taken proceedings against the debtor.

He can only levy execution on the property of the surety after he has distrained all the property of the debtor; it is for the surety, in such a case, to claim this right.

Article 789

When a surety demands that the debtor's property shall first be distrained, he must at his own expense indicate to the creditor property of the debtor sufficient to satisfy the whole debt.

Property so indicated by the surety will not be taken into account if it is situated outside Egyptian territory, or if it is the subject of a dispute.

Article 790

When the surety has indicated property belonging to the debtor, the creditor will be responsible to the surety for the debtor's insolvency if the creditor fails to take the necessary proceedings in due time.

Article 791

When a real security is assigned either by law or by agreement as guarantee of a debt, and suretyship is also entered into subsequently or at the same time, without a stipulation that the surety is jointly and severally liable with the debtor, the surety's property can only be seized and sold after the real security assigned as guarantee has been realized.

Article 792

When there are several sureties for the same debt by one contract and it does not provide for their joint and several liability, the debt is apportioned between them and the creditor has only a right of action against each of the sureties to the extent of his share in the suretyship.

If several sureties have undertaken to guarantee the same debt by successive contracts, each surety is liable for the whole debt, unless he has reserved the right to apportion the liability amongst the co-sureties.

Article 793

A surety who has jointly and severally guaranteed the debtor cannot demand that the debtor's property first be distrained.

Article 794

A surety who has jointly and severally guaranteed the debtor may avail himself of all defenses which a surety who is not jointly and severally liable may invoke with regard to the debt.

Article 795

Judicial and legal sureties are always jointly and severally liable.

Article 796

When there are several sureties jointly and severally liable, a surety who has paid the whole debt on maturity may call upon each of the other sureties to pay his share of the debt as well as a proportional part in the share of any joint and several surety who is insolvent.

Article 797

A surety may be guaranteed by another surety. In such a case, the creditor may not call upon the principal surety’s guarantee until he has taken action against the principal surety, unless the two sureties are themselves jointly and severally liable.

2. The Relationship between the Surety and the Debtor

Article 798

A surety must give the debtor notice before paying, on pain of forfeiture of his right of action against the debtor, if the latter has himself paid the debt or has grounds, at the date of maturity, for having the debt declared void or extinguished.

If the debtor does not object to the payment, the surety retains his right of action against him, even though the debtor had himself paid the debt or had grounds for having the debt declared void or extinguished.

Article 799

A surety who has paid the debt is subrogated to all the rights of the creditor against the debtor; if however, he pays only part of the debt, the surety can only exercise such rights in respect of that part he has paid after the creditor has recovered from the debtor the whole of the debt due.

Article 800

A surety who has paid the debt has a right of action against the debtor whether the suretyship was entered into with or without the knowledge of the debtor.

This right of action includes the right to claim the capital amount of the debt, interest and expenses. The surety, however, only has a right of action in respect of those expenses which he has incurred from the date he has notified the principal debtor of the proceedings taken against him.

A surety is entitled to interest at the legal rate on all amounts that he has paid from the date of payment.

Article 801

When there are several debtors jointly and severally liable for one and the same debt, a surety who has guaranteed them all, has a remedy against each of them for all that he has paid in respect of the debt.

SECOND PART

REAL RIGHTS

BOOK III

The Principal Real Rights

Chapter I

The Right of Ownership

Section I

The Right of Ownership in General

1. Limits and Sanctions

Article 802

The owner of a thing has alone, within the limits of the law, the right to use, enjoy and dispose of it.

Article 803

The owner of a thing also owns everything that constitutes an essential element of the thing owned and which cannot be separated therefrom without the thing owned perishing, deteriorating or changing.

The ownership of land includes that which is above and below, as far as it can be usefully enjoyed in height and depth.

The ownership of the surface of the land may, by law or by agreement, be separated from that which is above it and that which is below it.

Article 804

In the absence of a provision of the law or of an agreement to the contrary, ownership carries with it the right to all fruits, products and accessories of the thing owned.

Article 805

No one can be deprived of his property except in the cases and in the manner provided for by law and upon payment of fair compensation.

2. Restrictions on the Right of Ownership

Article 806

An owner must, in the exercise of his rights, comply with the laws, decrees and regulations having for their object the interests of the public and of individuals. He must also observe the following provisions.

Article 807

The owner must not exercise his rights in an excessive manner detrimental to his neighbor's property.

The neighbor has no right of action against his neighbor for the usual unavoidable inconveniences resulting from neighborhood, but he may claim the suppression of such inconveniences if they exceed the usual limits, taking into consideration in this connection custom, the nature of the properties, their respective situations and the use for which they are intended. A license issued by a competent authority is not a bar to the exercise of such a right of action.

Article 808

A person who constructs a private canal or drain in conformity with the regulations in force has the exclusive right to its use.

Neighboring owners may, however, use the canal or drain for the irrigation or the drainage required for their land after the owner of the canal or of the drain has used it to the satisfaction of his own needs. The neighboring owners must, in such a case, contribute to the cost of construction and of maintenance of the canal or drain, each in proportion to the area of land benefiting thereby.

Article 809

An owner must allow a passage through his land of the water necessary for the irrigation of land situate at a distance from the source of the water and of drainage water coming from neighboring properties, so that it may flow into the nearest public drain, provided that he is adequately compensated.

Article 810

When damage is caused to land by a canal or drain which crosses it, either by reason of failure to clear the drain or by reason of the bad state of its banks, the owner of the land has the right to claim adequate compensation for the damage done.

Article 811

In the absence of an agreement between the common users of a canal or a drain as to the execution of the necessary repairs, they may, upon the demand of one of them, be compelled to contribute to the cost of such repairs.

Article 812

An owner whose land is cut off from, or has no adequate exit on to, a public road, shall, if he cannot obtain an exit to the public road without great expense or great difficulty, have a right of way over the neighboring land as may be necessary for the normal working and use of his land and as long as his land continues to be so cut off, subject to payment of fair compensation. This right of way must be exercised over land and at the place where the passage causes the least possible damage.

If the land is cut off from the public road as a result of the property having been divided in consequence of a legal disposition, and it is possible to provide an adequate right of way over parts of the land so divided, the right of way can be claimed only over those parts.

Article 813

Every owner has the right to compel his neighbor to place boundary marks along the boundaries of their adjoining properties.

The cost of such delimitation will be shared between them.

Article 814

An owner of a party wall has the right to make use of it for the purpose for which it was intended and to use it for the support of beams to carry his own roof, provided that the wall has not to support too great a weight for its strength.

When a party wall becomes unfit for the purpose for which it is normally intended, the cost of repairs or reconstruction will be borne by the co-proprietors in proportion to their respective shares.

Article 815

An owner may, if he has good reason to do so, heighten a party wall, provided that he does not thereby cause serious prejudice to his co-owner. He alone must bear the cost of heightening as well as of the maintenance of the part so heightened and carry out the necessary work, so that the wall may support the extra weight due to the heightening without its strength being diminished.

If the party wall is not able to support the heightening, the co-owner who desires to heighten the wall must reconstruct the wall entirely at his own cost, in such a way as the thickening shall, as far as possible, abut on his side. The reconstructed wall remains, apart from the heightened parts, a party wall, but the neighbor who has re-heightened the wall cannot claim any compensation whatever.

Article 816

A neighbor who has not contributed to the expenses of heightening may become a co-proprietor of the heightened part if he pays half the cost thereof and the value of half of the ground covered by the increased thickness, if any.

Article 817

In the absence of proof to the contrary, a wall which at the time of its construction separated two buildings is deemed to be a party wall up to the point at which it ceases to be a common wall to the two buildings.

Article 818

An owner cannot compel his neighbors to walk in his property or to assign to him part of a wall or of the land on which the wall is constructed, except in a case provided for in Article 816.

An owner of a wall may not, however, demolish the wall on his own initiative if the demolition injures his neighbor whose property is closed in by it, unless he has good reason for so doing.

Article 819

A neighbor is not entitled to have a direct view over his neighbor at a distance of less than one meter. This distance is measured from the outside face of the wall in which the opening is made or from the outside line of the balcony or other projection.

If a direct view has been acquired by prescription of a distance of less than one meter over the property of a neighbor, such neighbor cannot himself build at a distance of less than one meter, measured in the manner indicated above, along the whole length of the building in which the view was opened.

Article 820

A neighbor is not entitled to have an oblique view over the property of his neighbor at a distance less than fifty centimeters from the outside edge of the opening. The prohibition ceases to have effect if the oblique view over the neighboring property is at the same time a direct view over a public road.

Article 821

No distance is laid down for an opening for a light shaft if the base of the opening is above the limit of the normal height of a man and if the opening is intended only for air and light and cannot give a view over the neighboring property.

Article 822

Factories, wells, steam engines and establishments injurious to neighbors must be constructed at the distance and subject to conditions laid down by regulations.

Article 823

If a contract or a will contains a clause stipulating the inalienability of a property, such a clause will only be valid if based on a legitimate reason and limited to a reasonable duration.

The reason is deemed to be legitimate if the inalienability is stipulated with a view to protecting a lawful interest of the person disposing of the property or of the person in whose favor the property is disposed of, or of a third party.

A reasonable duration may extend for the life of the person disposing of, or the person in whose favor the property is disposed of, or of a third party.

Article 824

When the clause as to inalienability in the contract or in the will is valid in accordance with the provisions of the preceding article, any alienation contrary to such a clause is void.

3. Joint Ownership

Provisions Relating to Joint Ownership

Article 825

When two or more persons are owners of the same thing, but their respective shares are not divided, they are co-owners and, in the absence of proof to the contrary, their shares are deemed to be equal.

Article 826

Every co-owner in common is the absolute owner of his share. He may alienate his share and collect the fruits thereof and make use of his share provided he does not injure the rights of the other co-owners.

If, however, the alienation relates to a specific part in the property held in common, and such part does not come within the share of the settler when a partition is made, the right of the acquirer is transferred to the part that has devolved on the settler as a result of the partition with effect from the moment of the alienation. If the acquirer did not know that the settler was not the owner of the specific part of property which he has alienated, he shall have the right to demand the cancellation of the alienation.

Article 827

In the absence of an agreement to the contrary, the management of a property held in common belongs jointly to all the owners in common.

Article 828

A decision taken by the majority of the co-owners as to ordinary acts of management is binding on all of them. The majority shall be calculated on the basis of the value of their shares. Failing a majority, the Court may, upon the application of any one of the co-owners, take such measures as may be necessary in the circumstances and appoint, if needs be, a manager to manage the property owned in common.

The majority may select a manager and may also establish rules for the management and fuller enjoyment of the property owned in common, which rules shall also be binding upon the successors in title of all the co-owners whether such successors in title are universal or particular.

A co-owner who conducts the management of the joint property, without any objection being raised by the other co-owners, is considered to be their mandatory.

Article 829

Co-owners who possess at least three quarters of the property in common may decide, with a view to obtaining greater enjoyment of the property, to make essential modifications or changes, in the use for which the property was intended, which exceed the normal scope of management, provided that these decisions are notified to the other co-owners. Dissenting co-owners have a right of action in the Courts within two months from the date of notification.

The Court before which such an action is brought may, if it approves the decision taken by the majority, also order measures of expediency. The Court may, in particular, order that security be given to the dissenting co-owners so as to guarantee any compensation that may become due to him.

Article 830

Every co-owner may also, even without the consent of the other co-owners, take measures necessary for the preservation of the property in common.

Article 831

In the absence of any provision to the contrary, the cost of the management of a property held in common, as well as the cost of its preservation, the taxes payable thereon, and all other charges resulting from the common holding or connected with the property held in common, shall be borne by all the co-owners each proportionally to his share.

Article 832

Co-owners who possess three-quarters at least of the property held in common may decide to alienate the property, provided that their decision is founded on serious grounds and that the decision is notified to the other co-owners. A dissenting co-owner has a right of action before the court within a delay of two months from the date of notification. The court will decide, in accordance with the circumstances, in a case where the partition of the property held in common is contrary to the interests of the co-owners, whether the alienation of the property should be carried out.

Article 833

A co-owner of a movable or of a property consisting of movables and immovables may, before partition, repurchase any undivided share which has been sold by another co-owner to a third person. Such repurchase must be made within a delay of thirty days from the day on which he had knowledge of the sale or from the day on which the sale was notified to him. The right of repurchase is exercised by means of a summons notified to both the vendor and the purchaser. The co-owner who has repurchased the share sold will be subrogated into all the rights and obligations of the purchaser if he compensates him for all that he has spent.

If several co-owners exercise their right to repurchase, each of them shall have the right to repurchase a part proportional to his share.

The Cessation of Joint Ownership by Partition

Article 834

Every co-owner may demand the partition of property held in common, unless he is bound to remain a co-owner in common by reason of a provision of the law or of an agreement. It is not permitted, by agreement, to prohibit partition for a period exceeding five years. When the period stipulated does not exceed five years, the agreement shall bind a co-owner and his successors in title.

Article 835

Co-owners may, if they are all in agreement, divide the property held in common in whatever manner they deem fit. If one of them is subject to legal incapacity, the formalities laid down by law will have to be observed.

Article 836

If co-owners are not in agreement as regards the partition of the property held in common, the co-owner who wishes to withdraw from the joint ownership shall summon his co-owners to appear before the Summary Court.

The court shall delegate, if need be, one or more experts to proceed with the valuation of the property held in common and to divide it into separate parts if the property can be divided into separate parts in kind without materially decreasing its value.

Article 837

The expert will proceed with the composition of the separate parts by taking as a basis the smallest share, even where the partition is only a partial one. If the partition cannot be effected in this manner, the expert may proceed directly to allot a separate part to each co-owner.

If one of the co-owners cannot obtain all his share in kind, he shall be compensated by a payment equal to the shortage in his share.

Article 838

The Summary Court will decide upon any disputes relating to the composition of the separate parts and any other disputes coming within its competence.

In the case of disputes which the Summary Court has not competence to settle, the court will refer the parties to the Court of First Instance and will fix a date at which they must appear. The proceedings for partition will be held up until such disputes have been finally settled.

Article 839

Upon the disputes being disposed of and the separate lots allocated directly, the Summary Court will give judgment allocating to each owner the divided part which devolves on him.

If there has been no direct allotment of the separate lots, the partition of the property will be effected by drawing lots. The court will draw up a proces-verbal thereof and give judgment allocating to each co-owner his divided part.

Article 840

If one of the co-owners is absent or under legal incapacity a judgment of partition which has become final will be ratified by the court in accordance with the provisions of law.

Article 841

When a property cannot be divided in kind or when such partition involves a serious diminution in the value of the property it shall be sold in the manner laid down by the Code of Procedure. Sale by auction will be restricted to the co-owners in common if they ask for it unanimously.

Article 842

The personal creditors of any co-owner may oppose a partition in kind or a sale by auction without their intervention in the proceedings. Such opposition must be notified to all co-owners and has the effect of compelling the co-owners to join the opposing creditors in every stage of the proceedings: otherwise the partition will be without effect as regards such opposing creditors. In any case, inscribed creditors must be joined before an action for partition is introduced.

If the partition has already taken place, the creditors who have not intervened cannot attack it unless there has been fraud.

Article 843

Each co-partitioner is deemed to have been owner of the part of the property that falls to him from the day that he became co-owner in common and never to have been owner of the other parts.

Article 844

The co-partitioners warrant each other against interference or eviction due to a cause that existed previous to the partition. Each one of them is liable, in proportion to his share, to indemnify a co-partitioner entitled to such indemnity, on the basis of the value of the property at the moment of partition. If one of the co-partitioners happens to be insolvent, the share falling on him will be borne by the co-partitioner entitled to the indemnity and all the solvent co-partitioners.

No such warranty, however, exists when there is an express agreement waiving the warranty in the particular case which would have given rise to the warranty. The warranty also ceases to be binding if the eviction is due to a fault of the co-partitioner himself.

Article 845

Partition by agreement may be rescinded if one of the co-partitioners succeeds in proving that he has been injured to the extent of more than one fifth of his share, on the basis of the value of the property at the time of the partition.

The action for rescission must be commenced within the year following the partition. The defendant can stop the action and prevent the new partition, by giving the plaintiff the amount by which his share is short in money or in kind.

Article 846

By a provisional partition, co-owners agree to allot to each other the enjoyment of a divided part of the property equal to each of their shares in the property held in common in consideration of a renunciation in favor of each other of the right of enjoyment of the other parts. Such an agreement cannot be entered into for a duration of more than five years. If no duration has been fixed, or the agreed period has expired, and no new agreement has been entered into, the period of the provisional partition will be for a year renewable, unless one of the co-owners gives notice of termination to his co-owners three months before the end of the current year.

If such a provisional partition remains in force for fifteen years it is converted into a final partition, unless otherwise agreed by the co-owners. If one of the co-owners remains in possession of a divided share for fifteen years, such possession is presumed to have taken place as a result of a provisional partition.

Article 847

A provisional partition also takes place when the co-owners agree that each of them shall, the one after the other, enjoy all the property held in common for a period corresponding to his share.

Article 848

A provisional partition is governed, as regards its validity as against third parties, the capacity of co-partitioners, their rights and obligations, and means of proof, by the provisions of the law relating to contracts of lease, in so far as they are not incompatible with the nature of such a partition.

Article 849

The co-owners may agree, during the process of a final partition, to enter into a provisional partition. Such provisional partition will remain in force until the conclusion of the final partition.

If the co-owners cannot reach an agreement for a provisional partition, such a partition may, upon the application of one of the co-owners, be ordered by the Summary Judge upon the advice, if necessary, of an expert.

Obligatory Joint Ownership

Article 850

The co-owners of a property held in common cannot demand its partition if it follows, from the use to which the property is intended, that it should always remain in common.

Family Joint Ownership

Article 851

The members of the same family who have a common occupation or interest may agree in writing to create a family joint ownership. This joint ownership consists either of an inheritance which the members of a family agree to leave wholly or partly in joint ownership or of any other property belonging to them which they agree to place in family joint ownership.

Article 852

A family joint ownership may be created by agreement for a period not exceeding fifteen years. Each one of the co-owners may, however, if there are serious grounds to do so, apply to the court for authority to withdraw his share of the joint property before the end of the agreed term.

When no period is fixed for such joint ownership, each one of the co-owners may withdraw his share after six months from the day he gives notice to this effect to the other co-owners.

Article 853

Co-owners cannot demand partition so long as the family joint ownership continues, and no co-owner can dispose of his share in favor of a person who is not a member of the family without the consent of all the co-owners.

If a person who is not a member of the family acquires, as a result of a voluntary or forced alienation, the share of one of the co-owners, he only becomes a partner in the family joint ownership if he and the other co-owners consent thereto.

Article 854

Co-owners who own the majority in value of the shares, may appoint amongst themselves one or more managers. Subject to any agreement to the contrary, the manager may introduce such changes in the intended use of the property held in common as may ensure a better enjoyment of the property.

A manager may be discharged in the same manner as he was appointed, notwithstanding any agreement to the contrary. The court may also, upon the demand of any owner, discharge him if there are serious grounds to do so.

Article 855

Subject to the preceding provisions, family joint ownership will be governed by the provisions of the law relating to joint property and to mandate.

Ownership of Storeys in Buildings

Article 856

In the absence of any provisions to the contrary in the title deeds, when the different storeys or various apartments of a building belong to different owners, such owners are considered co-owners of the ground and of the parts of the building intended for the common use of all, especially of the foundations, the main walls, the main entrances, yards, roofs, lifts, passages, corridors, the floor supports and pipes of all kinds with the exception of pipes inside the storeys or the apartments.

These parts of the building held in common cannot be divided; each of the owners has a share in these parts in proportion to the value of his share in the building. No owner can dispose of his share in the parts held in common independently of his share in the building.

The inner walls which separate two apartments belong as party property to the owners of these two apartments.

Article 857

Every owner may, with a view to enjoying his part of the building, utilize the parts held in common, in accordance with the use for which they are intended, provided he does not prevent the other owners exercising their rights.

No modification can be made to the parts held in common, even in the event of reconstruction, without the consent of all the owners, unless such modification, made by one of the owners, at his own cost, is of such a nature as to facilitate the use of the parts held in common, does not change the use to which they were intended and is not prejudicial to the other owners.

Article 858

Every owner must participate in the cost of the preservation, maintenance, management and reconstruction of the parts held in common. Subject to any agreement to the contrary, the share of every owner in these costs will be calculated in proportion to the value of his share in the building.

No owner can renounce his share in the parts held in common with a view to avoiding participation in the costs referred to above.

Article 859

The owner of a lower storey is bound to execute works and repairs necessary to prevent the higher storey from falling.

If he refuses to execute the necessary repairs, the judge may order the sale of the lower storey. In any case, the "Judge des Referes" may order the execution of urgent repairs.

Article 860

If the building falls down, the owner of the lower storey is bound to rebuild his storey, failing which, the judge may order the sale of the lower storey, unless the owner of the upper storey offers to rebuild the lower storey himself at the cost of the owner of the lower storey.

In this latter event, the owner of the upper storey may refuse to allow the owner of the lower storey to occupy or make use of his storey until he has repaid the amount of his debt. He may also obtain authority to let or to occupy the lower storey in repayment of the amount due to him.

Article 861

The owner of the upper storey shall not heighten the building in such a way as to injure the lower storey.

Syndicates of Owners of Storeys of a Single Building

Article 862

When a building, divided into storeys or apartments, belongs to several owners, such owners may

form a syndicate amongst themselves.

A syndicate may also have for its object the construction or the acquisition of buildings with a view to allocating the ownership of parts of such buildings to members of the syndicate.

Article 863

A syndicate may, with the consent of all it members, establish rules with a view to assuring a better enjoyment and the good management of the building held in common.

Article 864

In the absence of such rules or if such rules do not contain provisions in respect of certain points, the right to manage the parts held in common belongs to the syndicate, whose decisions will be, in this respect, binding, provided that all the interested parties have been summoned to a meeting by registered letter and that the decisions have been taken by a majority of the owners, calculated on the basis of the value of their shares.

Article 865

The syndicate may, with the consent of the majority prescribed in the preceding article, take out collective insurances against risks to the building or to the co-owners jointly and may authorize, at the expense of the owners who so demand, all works or installations which increase the value of all or part of the building, upon the conditions and subject to such compensation and other obligations as may be laid down by the syndicate, in the interests of the co-owners.

Article 866

A representative shall be appointed by the majority of the owners, as provided for in Article 864, to carry out the decisions of the syndicate. If the required majority is not obtained, a representative of the Syndicate will be appointed, at the request of one of the co-owners and upon the other owners being called to give their views, by the President of the Court of First Instance within whose jurisdiction the building is situate. The representative of the Syndicate shall, if need be, upon his own initiative, take all necessary measures for the preservation, protection and maintenance of all parts held in common. He shall be entitled to call on any party concerned to perform these obligations. These provisions shall apply in the absence of any provision to the contrary in the rules of the Syndicate.

The representative of the Syndicate shall represent the Syndicate before the courts, even against the owners if need be.

Article 867

The remuneration of the representative of the Syndicate will be fixed in the decision or order appointing him.

The representative of the syndicate may be discharged by a decision taken by the majority of the co-owners, as laid down in Article 864, or by an order of the President of the Court of First Instance within whose jurisdiction the building is situate, after the co-owners have been summoned to be heard on the question of his discharge.

Article 868

If the building is destroyed by fire or otherwise, the co-owners are, subject to any agreement to the contrary, bound to conform to the decision of the syndicate as to its reconstruction taken by the majority, as provided in Article 864.

If the syndicate decides to reconstruct the building, any amount due as compensation on account of the destruction of the building shall, without prejudice to the rights of the registered creditors, be set aside for the costs of reconstruction.

Article 869

Any loan made by the syndicate to one of the co-owners, in order to assist him to carry out his obligations, will be secured by a privileged charge on his divided part as well as on his undivided share in the parts of the building held in common.

The rank of this privilege will date from its registration.

Section II

Acquisition of Ownership

1. Acquisition by Appropriation

The Appropriation of Movables without an Owner

Article 870

Whoever takes possession of a movable which has no owner, with the intention of its appropriation, acquires the ownership thereof.

Article 871

A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing his ownership thereto.

Animals, other than domestic animals, are deemed to have no owner as long as they are at liberty. If one of such animals, after losing its liberty, regains its freedom, it becomes without an owner if the owner does not seek for it immediately or ceases to seek for it. An animal that has become tame and is accustomed to return to the same place becomes again without an owner if it loses this habit.

Article 872

Buried or hidden treasure to which no one can establish ownership belongs to the owner or the bare owner of the property on which it is discovered.

Treasure discovered on wakf property belongs to the founder of the wakf or to his heirs.

Article 873

Rights of fishing and hunting and rights to things found and to antiquities are governed by special regulations.

The Appropriation of Immovables which have no Owner

Article 874

Uncultivated land which has no owner is the property of the State.

The appropriation or the possession of uncultivated land can only be effected with the authority of the State in accordance with the regulations.

If, however, an Egyptian cultivates or plants uncultivated land or builds thereon, he becomes forthwith owner of the part cultivated, planted or built on, even without the authority of the State, but he loses his ownership by non-user for five consecutive years during the first fifteen years following his acquisition of ownership.

Acquisition by Inheritance and Winding up of an Estate

Article 875

The establishment of the heirs or their hereditary shares and of the devolution of the property of the estate on them is governed by Mohammedan Law and by the laws with regard to inheritance and estates.

The following provisions apply to the winding up of an estate.

The Appointment of an Administrator

Article 876

In the absence of the appointment of a testamentary executor by the deceased, the court may, at the request of an interested party, if it considers it necessary to do so, appoint as administrator of the estate a person chosen unanimously by the heirs. In the absence of such unanimity, the judge will, after having heard the heirs, choose an administrator, if possible from among the heirs.

Article 877

A person appointed administrator may decline to act or may, after having acted as administrator, renounce the appointment in accordance with the provisions of the mandate.

The judge may also, for adequate reasons, either at the request of any of the interested parties or at the request of the Ministere Public, or of his own initiative, discharge an administrator and replace him by another.

Article 878

The appointment of a testamentary executor by the deceased must be confirmed by the judge.

The rules applicable to an administrator of an estate apply equally to a testamentary executor.

Article 879

The greffier of the court must enter, day by day, the court orders as to the appointment of administrators and the confirmation of testamentary executors, in a public register, recording the names of the deceased person in accordance with the form prescribed for alphabetical indexes. He must enter in the margin of the register all orders of revocation and all renunciations.

The entry of the order as to the appointment of an administrator will, as regards third parties dealing with the heirs in connection with immovable property belonging to the estate, have the same effect as the entry provided for in Article 914.

Article 880

An administrator shall, upon his appointment, take possession of the property of the estate and proceed with the winding up of the estate under the control of the court. He may apply to the court for remuneration commensurate with the duties performed by him.

The estate shall bear the costs of the winding up. These costs will have a privilege in the same preferential rank as legal expenses.

Article 881

The court must, at the request of any interested party or of the Ministere Public, or on its own initiative, take, if need be urgent, necessary measures for the preservation of the property of the estate. The court may, in particular, order that the property be placed under seal and that cash, securities and articles of value be placed in deposit.

Article 882

The administrator must immediately pay, out of the assets of the estate, burial and funeral expenses in accordance with the social standing of the deceased. He must also obtain an order from the "Juge de Service" (Judge in Chambers) authorizing him to make, pending the final winding up, an adequate alimentary allowance to such heirs as were supported by the deceased and to deduct such payments from the share in the estate of each heir to whom such alimentary allowance is made.

Any dispute arising as regards such an allowance shall be settled by the Juge de Service.

Inventory of the Estate

Article 883

As from the date of the entry of the order appointing an administrator, the creditors of an estate can only take proceedings or continue proceedings already commenced in connection with the estate against the administrator.

Any distribution opened against the deceased before his death, in which the order of allotment has not become final, must, at the request of any interested party, be suspended until all the debts of the estate have been settled.

Article 884

No heir may dispose of estate assets, recover estate debts, or set off a personal debt against a debt of the estate until an inheritance certificate, provided for in Article 901, has been delivered to him.

Article 885

An administrator is bound, during the winding up, to take the necessary measures to preserve and administer the property of the estate. He must also represent the estate before the courts and proceed with the recovery of debts due to the estate.

An administrator is, even if he is not remunerated, responsible to the same extent as a paid mandatory. The judge may call on him to render an account of his administration at periodical intervals.

Article 886

An administrator must publish a notice calling on the creditors and debtors of the estate to submit particulars of their claims and of their debts within a delay of three months from the last publication of the notice.

This notice must be posted on the main door of the residence of the Omdah in the town or village in which the estate property is situate, or on the main door of the police station in the town where this property is situated, and on the notice board of the Summary Court within the jurisdiction of which the deceased was domiciled at the date of his death. The notice must also be published in a daily newspaper with a wide circulation.

Article 887

An administrator must, within four months from the date of his appointment, file with the registry of the court a statement of the assets and liabilities of the estate with an estimate of their value. He must also, within the same time, inform every interested party by registered letter of the filing of the statement.

An administrator may apply to the judge for an extension of time, if this extension is justified by circumstances.

Article 888

An administrator may employ, for the preparation of the inventory and for the estimation of the value of the property of the estate an expert or a person with the necessary special experience.

An administrator must record claims and debts disclosed by the papers of the deceased, shown in public registers or coming to his knowledge in any other way. The heirs must also advise the administrator of all debts and claims of the estate known to them.

Article 889

Any person, including an heir, who fraudulently appropriates a part of the assets of the estate, is liable to the penalties for misappropriation.

Article 890

Any dispute as to the accuracy of the inventory, particularly as regards the omission of assets, claims or debts of the estate, or as to the entry in the records, should be submitted to the court by petition at the request of any interested party within the thirty days following the notice of the filing of the inventory.

The court will investigate the dispute. If the court considers the claim to be a serious one, it will admit the claim by an order which is subject to recourse in accordance with the provisions of the Code of Procedure.

If the dispute has not already been submitted to a court of justice, the court will fix a delay within which the interested party should submit the claim to the competent court, which court will deal with the matter as one of urgency.

Discharge of the Debts of the Estate

Article 891

Upon the expiration of the delay fixed for the submission of disputes arising on the inventory, the administrator will proceed upon the authority of the court, with the payment of those debts of the estate which are uncontested. Debts which are contested will be settled after the final decision of the court on the litigation.

Article 892

In the event of the estate being insolvent or of the possibility of it being insolvent, the administrator must suspend the discharge of any debt, even uncontested, pending final decisions in respect of all disputes arising as to debts of the estate.

Article 893

The administrator will discharge the debts of the estate with funds derived from claims recovered, cash in hand, proceeds of the sale of securities at market prices, proceeds of the sale of movables and, if the funds so obtained are insufficient, with the proceeds of the sale of immovable property of the estate.

The sale of movable and immovable property of an estate will be made by public auction in the manner and subject to the delays laid down for forced sales, unless all the heirs agree the sale shall be carried out by negotiation or in any other manner. If the estate is insolvent, the approval of all the creditors is also necessary. The heirs are always entitled to take part in the auction.

Article 894

The court may, at the request of all heirs, pronounce the immediate exigibility of a debt not yet due for payment, and fix the amount payable to the creditor in accordance with the provisions of Article 544.

Article 895

If the heirs do not unanimously agree to demand the immediate exigibility of a debt not yet due for payment, the court will proceed with the distribution of the debts not yet due for payment and of the assets of the estate, so that each heir takes from such debts and assets a portion corresponding to the net value of his share in the inheritance.

The court will give each creditor of the estate an adequate guarantee on a movable or immovable property, reserving, however, to any creditor who had a special security that same security. When this is not possible, even by additional security given by the heirs on their own property, or by any other arrangement, the court will charge all the estate assets to provide such security.

In all these cases, if security has been given on an immovable property and has not already been published, such security must be published in accordance with the provisions laid down as to the publication of judgment charges on real property.

Article 896

Any heir may, after the distribution of the debts not yet due for payment, pay the amount allocated to him before the due date in conformity with Article 894.

Article 897

Creditors of the estate, whose debts have not been paid because they were not shown in the inventory and were not secured by a charge on the property of the estate, have no remedy against third parties who have acquired, in good faith, a real right on this property, but have a right of action against the heirs to the extent to which the heirs have benefited.

Article 898

An administrator shall, after discharge of the debts of the estate, proceed with the payment of the legacies and other charges.

Delivery and Division of the Property of the Estate

Article 899

The residue of the property of the estate, after settlement of the liabilities, devolves on the heirs in proportion to their shares in the inheritance.

Article 900

An administrator shall deliver to the heirs the property of the estate devolving on them.

The heirs may, upon the expiration of the time fixed for the submission of the disputes arising on the inventory, demand that all or part of the things or cash which are not required for the winding up of the estate be provisionally delivered to them, with or without security.

Article 901

The court will give to each heir who produces an Elam Charei, or any other equivalent document as to the inheritance, a certificate establishing his rights in the inheritance, the extent of his share therein and the estate property devolving on him.

Article 902

An heir may call upon the administrator to deliver to him his share in the estate as a divided part, unless such an heir is obliged to remain an owner in common by reason of an agreement or a provision of the law.

Article 903

When a demand for division should be admitted, the administrator will proceed with the division amicably, but this division will only become final upon the unanimous approval of the heirs.

If the heirs do not unanimously approve the division, the administrator must bring an action for the division in accordance with the provisions of the law; the costs of this action will be charged to the estate and deducted from the hereditary shares of the co-sharers.

Article 904

The rules laid down for partition of property held in common, especially those as regards warranty against disturbances and eviction, lesion and the preferential rights of a partitioner, shall apply to the division of estates, as well as the following provisions.

Article 905

In the absence of an agreement between the heirs as to the division of family papers or articles having a sentimental value for the heirs owing to their relationship to the deceased, the court shall order either the sale of these articles or their allocation to one of the heirs, with or without deduction of their value from his share in the estate, taking into account both custom and the personal circumstances of the heirs.

Article 906

If there is, amongst the property of an estate, an agricultural, industrial or commercial enterprise constituting a distinct economic unity, it must be allotted as a whole to such one of the heirs who applies for it if he is the most capable of the heirs to carry on the enterprise. The price of such an enterprise will be fixed in accordance with its value and will be deducted from his share in the estate. If the heirs are all equally capable of carrying on the enterprise, it shall be allocated to the heir who offers the highest price, provided that this price shall not be less than the price for similar enterprises.

Article 907

If, at the time of division, a debt due to the estate is allocated to one of the heirs, the other heirs are not, in the absence of an agreement to the contrary, guarantors of the debtor, if he becomes insolvent subsequent to the division.

Article 908

A will dividing the property of the estate between the heirs of the testator and setting out the share of each heir or of certain of the heirs is valid. If the value of the share so given to one of them exceeds his hereditary share, the excess is deemed to be a legacy by will.

Article 909

A division made by disposition (mortis causa) may always be revoked. It becomes irrevocable on the death of the testator.

Article 910

If such a division does not include all the property of the deceased at the date of his death, that property which has not been included in the division devolves in common on the heirs in accordance with the rules as to inheritance.

Article 911

If one or more of the contingent heirs included in the division predecease the deceased, the divided part allotted to him or them devolves in common on the other heirs in accordance with the rules as to inheritance.

Article 912

The general rules as to division, with the exception of those relating to lesion, apply to the division made by disposition (mortis causa).

Article 913

If the debts of the estate are not included in the division, or if these debts are included and the creditors do not agree to the division, any heir may, if these debts are not settled in agreement with the creditors, call for a division of the estate in accordance with Article 895. In this case, account must be taken, as far as possible, of the division made by the deceased and the considerations which guided him as regards such division.

Rules Applicable to Estates that have not been Wound Up

Article 914

When an estate has not been wound up in accordance with the preceding provisions, the unsecured creditors of the estate may take action, in respect of their claims or their legacies, on the immovable property of the estate which has been alienated or which has been charged with real rights to the benefit of third parties, provided that they have recorded such claims in accordance with the provisions of the law.

3. Acquisition by Will

Article 915

Wills are governed by the rules of Mohammedan Law and by laws on Wills.

Article 916

Every legal disposition made by a person during an illness immediately preceding his death, with the object of making a gift, is deemed to be a testamentary disposition and must be governed by the rules applicable to wills, no matter what description has been given to such an act.

The heirs of the person who has made such a legal disposition are the persons on whom falls the onus of proving that it was made by the deceased during an illness immediately preceding his death. This proof may be tendered in any way and the date of the legal instrument establishing the disposition cannot be invoked against the heirs, unless it is an established date.

If the heirs establish that the legal disposition was made by the deceased during an illness immediately preceding his death, the act is deemed to be a gift, (i.e. a testamentary disposition), unless the beneficiary proves that the contrary was the case. The above provisions are subject to any special provisions to the contrary.

Article 917

In the absence of any evidence to the contrary, when a person disposes of a property in favor of one of his heirs, reserving at the same time in some manner the possession and the enjoyment of the property so disposed of during his lifetime, the disposition is deemed to be a testamentary disposition and must be governed by the rules applicable to wills.

4. Acquisition by Accession

The Right of Accession in Respect of Immovable Property

Article 918

Alluvium formed gradually and imperceptibly by the river belongs to the reparian owners.

Article 919

Land uncovered by the sea belongs to the State.

No one may encroach upon the seashore except for the purpose of restoring the boundaries of his property which has been covered by the sea.

Article 920

Owners of lands adjoining still waters, such as lakes and ponds, do not acquire ownership over land uncovered by the retreat of these waters, nor do they lose their ownership over land which such waters overflow.

Article 921

The ownership of land displaced or uncovered by the river and of islands formed in its channel, is regulated by special laws.

Article 922

All buildings, plantations and other works existing above or below the ground are deemed to have been carried out by the owner of the land at his own expense and belong to him.

It may be proved, however, that such works were made by a third party at his own expense, as it may be proved that the owner of the land has transferred the ownership of works already existing or the right to erect and own such works to a third party.

Article 923

Constructions, plantations and other works carried out with materials belonging to another, become the exclusive property of the owner of the land when the removal of these materials is not possible without seriously damaging the works, or even when it is possible to do so but proceedings to recover the property are not commenced within a year from the date on which the owner of the materials knew of their incorporation in the works.

When the owner of the land acquires the property of the materials, he must pay their value together with an indemnity, if indemnity is due. When, however, the owner of the materials recovers the materials, their removal must be effected at the cost of the owner of the land.

Article 924

When a third party caries out works with his own materials on land which he knows is not his property, without the consent of the owner of the land, the owner of the land may, within a year from the day on which he learns of the execution of the works, demand either their removal at the cost of the third party who erected them, together with an indemnity, if indemnity is due, or their retention against payment of their break-up value or of a sum equal to the increased value they have given to the land.

A third party who carried out the works may claim the right to remove them if he does not cause any damage to the land in so doing., unless the owner of the land chooses to keep the works in accordance with the provisions of the preceding article.

Article 925

If the third party who carried out the works mentioned in the preceding article honestly believed that he was entitled to do so, the owner of the land has not the right to demand their removal, but he may, at his option, and provided the third party does not claim their removal, pay the third party either the value of the materials and the cost of the work or a sum equal to the increased value that the works have given to the land.

If, however, the works are so extensive that the payment of the amount due in respect thereof is onerous for the owner of the land, he may claim the conveyance of the ownership of the land to the third party against payment of adequate compensation.

Article 926

If a third party carries out works with his own materials, with the permission of the owner of the land, the owner of the land cannot, in the absence of an agreement with regard to these works, demand their removal. The owner of the land must pay to the third party, if the third party does not himself ask for their removal, one of the two amounts laid down in the first paragraph of the preceding article.

Article 927

The provisions of Article 982 apply as regards payment of compensation referred to in the three preceding articles.

Article 928

If during the construction of a building on his own land, an owner encroaches in good faith on part of an adjoining land, the court may, within its discretion, compel the owner of the adjoining land to transfer to his neighbor the ownership of that part which is occupied by the building, against payment of adequate compensation.

Article 929

Light constructions, such as sheds, shops and shelters, erected on the land of another, which are not intended to be maintained permanently, shall be the property of the person who erected them.

Article 930

If a third party carries out works with materials belonging to another party, the owner of the materials cannot claim their restitution but he has a claim for compensation against the third party, and also against the owner of the land up to the amount remaining due by him in respect of the value of the works.

The Right of Accession in Respect of Movable Property

Article 931

When two movables belonging to two different owners become mingled in such a way that they cannot be separated without deterioration, the court, in the absence of any agreement between the two owners, shall decide the matter in accordance with the rules of equity, having regard to the damage already done, the circumstances and the good faith of each of the two parties.

5. Acquisition by Contract

Article 932

The ownership of movables and immovables and other real rights are transferred by contract, when the contract refers to an object belonging to the person disposing of it, in accordance with Article 204 and subject also to the following provisions.

Article 933

The ownership of a movable which is described only as regards its species is transferred only upon its identification in accordance with Article 205.

Article 934

Ownership and other real rights over immovable property are not transferred either between parties or as regards third parties unless the rules laid down in the law regulating the publication of real rights are observed.

The law regulating the publication of real rights above referred to shall indicate the acts, judgments and instruments which should be published, whether they have the effect of transferring the ownership or not, and shall determine the rules as regards such publication.

6. Acquisition by Preemption

Conditions for the Exercise of the Right of Preemption

Article 935

Preemption is the opportunity that a person has to substitute himself in a sale of immovable property in the place of the purchaser, in the cases and subject to the conditions laid down in the following articles.

Article 936

The right of preemption belongs:

a) to the bare-owner, in the case of a sale of all or part of the usufruct attached to a bare property;

b) to the co-owner in common, in case of a sale to a third party of a part of the property held in common;

c) to the usufructuary, in case of a sale of all or part of the bare property which produces his usufruct;

d) in case of hekr, to the bare-owner if the sale relates to the right of hekr; and to the beneficiary of the hekr if the sale relates to the bare property; and

e) to the neighboring owner in the following cases:

   i) in the case of buildings or building land whether situated in a town or in a village;

ii) if the land enjoys a right of servitude over the land of a neighbor, or if a right of servitude exists in favor of the land of a neighbor over the land sold; and

iii) if the land of a neighbor adjoins the land sold on two sides and the value is at least half of the value of the land sold.

Article 937

When several persons preempt, the right of preemption will be exercised in the order set out in the preceding article.

If several persons of the same degree exercise the rights of preemption, the right of preemption will belong to each one of them in proportion to his share.

If a purchaser is, in accordance with the provisions laid down in the preceding article, entitled to exercise the right of preemption, he will be preferred to other preemptors of the same degree or of a lower degree, but those of a higher degree will have priority over him.

Article 938

If a person acquires a property which may be subject to preemption and sells it prior to any notification of an intention to preempt or prior to the transcription of such notification in accordance with Article 942, preemption can only be exercised against the second purchaser and subject to the conditions upon which he has purchased the property.

Article 939

Preemption cannot be exercised:

a) if the sale is made by public auction in accordance with the procedure prescribed by law;

b) if the sale is made between ascendants and descendants, between spouses or between relatives to the fourth degree, or between relatives by marriage to the second degree; and

c) if the property sold is destined for religious purposes, or to be annexed to property already used for such purposes.

A wakf cannot exercise the right of preemption.

The Procedure for Preemption

Article 940

Whoever desires to exercise the right of preemption must, on pain of forfeiture of his right, notify both the vendor and the purchaser of his intention within a period of fifteen days from the date of a formal

summons served on him either by the vendor or by the purchaser. This period is increased, if necessary, by the time allowance for distance.

Article 941

The formal summons provided for in the preceding article must, on pain of nullity, contain the following particulars:

a) an adequate description of the property subject to preemption; and

b) the amount of the price, the costs, the conditions of sale, and the first names, surnames, professions and domiciles of the vendor and the purchaser.

Article 942

Notification of intention to exercise the right of preemption must, on pain of nullity, be made through the court. It is not valid as against third parties unless it is transcribed.

The actual sale price must, within thirty days at the most from the date of this notification, be deposited in full at the "Caisse" of the court of the district in which the property is situated, and in any event before the introduction of the action in preemption. If this deposit is not made within the prescribed time and manner, the right of preemption shall be forfeited.

Article 943

An action in preemption must, under pain of forfeiture, be introduced against the vendor and the purchaser before the court of the district in which the property is situated, and enrolled on the court list within thirty days from the date of notification provided for in the preceding article. The case will be disposed of as a matter of urgency.

Article 944

Without prejudice to the rules with regard to transcription, the judgment which finally establishes the right to preemption will constitute the title of ownership of the preemptor.

The Effects of Preemption

Article 945

The preemptor is, vis-a-vis the vendor, substituted for the purchaser in all his rights and obligations.

The preemptor is not, however, entitled to benefit from the delay granted to the purchaser for payment of the price unless he obtains the consent of the vendor.

If, after preemption, the property is claimed by a third party, the preemptor will only have a right of action against the vendor.

Article 946

If, before the notification of preemption, the purchaser has built or planted on the property preempted, the preemptor is bound, at the option of the purchaser, to pay to the purchaser either the amount spent by him or the amount of the increase in value of the property as a result of such constructions or plantations.

When, however, such constructions or plantations have been made after the notification of preemption, the preemptor may claim their removal. If he prefers to retain them, he is only bound to pay the value of the building materials and the labor of the planting expenses.

Article 947

Mortgages and charges registered against the purchaser, and any sale made by him and any real right granted by or registered against him after the date of transcription of the notification of preemption, are not valid as against the preemptor. Registered creditors, however, will retain their rights of preference on that part of the price of the property which reverts to the purchaser.

Forfeiture of the Right of Preemption

Article 948

The right of preemption is forfeited in the following cases:

a) if the preemptor renounces his right, even before the sale;

b) if four months have elapsed since the date of the registration of the deed of sale; and

c) in all other cases prescribed by law.

7. Possession

Acquisition, Transfer and Loss of Possession

Article 949

Possession does not result from acts that are done by permission or merely tolerated.

Possession obtained by acts of violence, secretly or in a dubious manner has effect, as regards the person against whom the violence, secrecy or dubious means were exercised, only from the time that such unlawful means have ceased.

Article 950

A person lacking discretion may acquire possession by the intervention of his legal representative.

Article 951

Possession may be exercised by an intermediary, provided that he exercises it in the name of the possessor and that his relationship to the possessor is such that he is obliged to obey his instructions as regards the possession.

In case of doubt, a person who is actually in possession is presumed to be in possession on his own behalf. If he continues a former possession, the continuation of such possession is presumed to be on behalf of the person who commenced the possession.

Article 952

Possession is transmitted by a possessor to another by mutual agreement, without actual delivery of the thing which is the object of possession being made, provided the person to whom the possession has been transmitted is able to assume control of the right over the thing forming the object of possession.

Article 953

Possession may be transmitted without actual delivery if the possessor continues the possession on behalf of his successor in title or if the successor in title continues the possession for his own account.

Article 954

The handing over of documents issued in respect of goods entrusted to a carrier or deposited in store, is equivalent to the handing over of the goods themselves.

If, however, the documents are handed over to one person and the goods to another, both being in good faith, the person who receives the goods has the preference.

Article 955

Possession is transmitted with all its features to a universal successor in title. When the original possessor was of bad faith, his success or in title may, however, if he establishes his good faith, avail himself thereof.

A successor in title holding under a special title may add to his possession that of the original possessor for the legal effect of possession.

Article 956

Possession ceases when the possessor abandons his actual control over the right or when he loses it in any other way.

Article 957

Possession does not cease if a temporary obstacle prevents the possessor from exercising his actual control over the right.

Possession ceases, however, if this obstacle continues for a whole year and is the result of a new possession exercised against the wish or without the knowledge of the possessor. The period of one year runs from the moment from which the new possession commences, if it takes place openly, or from the day on which the former possessor knew of it, if it commences secretly.

Protection of Possession (*The three possessory actions*)

Article 958

A person who is in possession of an immovable and who loses possession thereof may, during the year which follows his loss of possession, claim to be reinstated in possession. If the loss of possession was secret, the delay of one year commences from the day on which the loss of possession is discovered.

A person who exercises possession on behalf of another person may also claim to be reinstated in possession.

Article 959

A person losing possession after having been in possession for less than a year, can claim to be reinstated if the person dispossessing him has not a better possession than his own. The possession is better if founded on a legal title. If neither possessor has a title nor both possessors have titles of equal value, the better possession is that which commenced first.

If the loss of possession takes place by violence, the possessor may always claim restitution within a year following the loss of possession.

Article 960

A person who has been dispossessed may take proceedings, within the time allowed by law, for recovery of possession against the person who has possession of the property of which he was dispossessed, even if such person acted in good faith.

Article 961

A person who remains in possession of an immovable for a whole year may, if he is disturbed in his possession, take proceedings during the year which follows the disturbance for the discontinuance of the disturbance.

Article 962

A person who remains in possession of an immovable for a whole year may, if he has good grounds to fear disturbance as a result of new works which threaten his possession, apply to the Judge to order the suspension of such works, provided that they have not been finished and that a year has not elapsed since the commencement of the works which may cause him damage.

The Judge may either stop or authorize the continuance of the works. In both cases he may order the provision of an adequate guarantee: in the case of a judgment ordering the suspension of the works, to cover compensation for damage caused by the suspension if a final decision shows that the claim for discontinuance of the works was without foundation; and in the case of a judgment ordering the

continuance of the works, to cover the cost of their total or partial demolition as compensation for the damage suffered by the possessor if he obtains a final judgment in his favor.

Article 963

When several persons claim possession of the same right, the person who has actual possession is presumed to be provisionally the possessor unless it is established that he acquired possession in a wrongful manner.

Article 964

The possessor of a right is presumed, until the contrary is proved, to be its rightful owner.

Article 965

The possessor of a right who is unaware that he infringes the right of another is presumed to be of good faith, unless his ignorance was the result of a serious mistake.

If the possessor is a juristic person, it is the good or bad faith of its representative that will be taken into account.

Good faith is always presumed in the absence of proof to the contrary.

Article 966

The good faith of a possessor ceases only from such time as he becomes aware that his possession infringes the rights of another.

Good faith ceases as soon as the defects of the possession have been notified to the possessor in the writ by which legal proceedings are commenced. A person who has usurped the possession of another by violence is deemed to have acted in bad faith.

Article 967

Subject to proof to the contrary, possession continues to have the same character that it had at the time it was acquired.

Effects of Possession. Acquisitive Prescription

Article 968

A person who has possession of a movable or immovable without being its owner, or of a real right over a movable or immovable without a just title thereto, may acquire the ownership of the thing or the title to the real right if his possession continues uninterrupted for fifteen years.

Article 969

When a person remains in possession, in good faith and by virtue of a just title, of an immovable or of a real right over an immovable, the period of acquisitive prescription is five years.

Good faith is required only at the moment of conveyance of the right.

A just title is a document of title emanating from a person who is not the owner of the property or the beneficiary of the right that it is desired to acquire by prescription, and must be duly transcribed.

Article 970

In any case, wakf property and hereditary rights are only acquired by prescription by possession for thirty-three years.

Article 971

Present possession, whose existence can be proved to have existed at an ascertained previous time, is presumed to have existed during the intervening time unless the contrary is proved.

Article 972

No one can set up prescription contrary to his title: that is to say that no one may by himself and in his own interests change the cause and origin of his possession.

A person may, however, acquire a title by prescription if the nature of his possession is changed either by the act of a third party or if such person sets up an adverse claim against the owner; but in such a case prescription only runs from the date of such change.

Article 973

Subject to the following provisions, the rules as to extinctive prescription, in so far as they are not incompatible with the nature of acquisitive prescription, are applicable as regards the calculation of the period of prescription, its suspension or interruption, claims as regards prescription in court, the renunciation of prescription and any agreement as to modification of the period.

Article 974

Acquisitive prescription, whatever its period, is suspended if any cause exists for such suspension.

Article 975

Acquisitive prescription is interrupted if the possessor abandons or loses possession even by the act of a third party.

Prescription is not, however, interrupted by loss of possession if the possessor recovers possession within a year or takes proceedings for the recovery of possession within that period.

The Acquisition of Movables by Prescription

Article 976

A person in possession of a movable, of a real right over a movable or of a bearer warrant by virtue of a just title becomes the owner thereof if at the moment he acquired possession, he was of good faith.

If he enters into possession, in good faith and by virtue of a just title, in the belief that the thing is free of all charges and encumbrances, he acquires the thing free of such charges and encumbrances.

Subject to proof to the contrary, mere possession is a presumption of a just title and good faith.

Article 977

A person who has lost or has been robbed of a movable or a bearer warrant, can, within three years from the date of the loss or the theft, bring an action to recover it from a third party in possession, even if such third party is of good faith.

When the thing lost or stolen is found in possession of a third party who bought it in good faith on the market, at a public sale or from a merchant selling similar articles, such third party is entitled to recover from the person claiming restitution the price he paid for the thing.

The Acquisition of the Fruits by Possession

Article 978

A possessor acquires all fruits collected so long as he is of good faith.

Natural or industrial fruits are deemed to be collected from the moment that they are separated. Legal fruits are deemed to be collected day by day.

Article 979

A possessor in bad faith is responsible for all the fruits that he has collected or that he has failed to collect, from the moment he became of bad faith. He may, however, claim refund of his expenses in connection with the production of the fruits.

Recovery of Expenses

Article 980

The owner to whom the property is restituted must pay to the possessor all expenditure of a necessary kind that he has incurred.

The provisions of Articles 924 and 925 shall apply as regards expenditure of an advantageous kind.

If the expenditure is of a luxurious nature, the possessor cannot claim repayment of any of such expenditure. He may, however, remove works he has made, provided he restores the property to its original condition, unless the owner prefers to keep the works upon payment of their break up value.

Article 981

A person who takes possession from a previous owner or possessor, may, if he establishes that he has paid to such previous owner or possessor the expenditure incurred by him, demand repayment from the person claiming ownership.

Article 982

The Jude may, at the request of the owner, select the method which he considers suitable for the repayment of the expenses referred to in the two preceding articles. He may also order repayment by periodical installments, provided that the necessary security is supplied. The owner may free himself from this obligation by paying in advance a sum equal to the amount of such installments less interest calculated at the legal rate up to the date fixed for payment.

Liability in the Event of Loss

Article 983

A possessor in good faith who has enjoyed the thing in accordance with his presumed rights, is not liable to pay any compensation on this account to the person to whom he must restitute the thing.

He is only liable for the loss or deterioration of the thing up to the amount of profit he has received in consequence of such loss or deterioration.

Article 984

If the possessor is a possessor in bad faith, he is liable for the loss or deterioration of the thing, even fortuitous, unless he proves that such loss or deterioration would have occurred even if the thing had been in the possession of the person claiming restitution.

Chapter II

Rights Derived from the Right of Ownership

Section I

The Right to Usufruct, the right of User and the right of Occupation

1. Usufruct

Article 985

The right of usufruct may be acquired by a legal disposition, by preemption or prescription.

Usufruct may be bequeathed by will to successive persons if they are alive at the moment of the bequest; it may also be bequeathed to a child “en ventre”.

Article 986

The rights and obligations of a usufructuary are governed by the conditions imposed by the deed by which the usufruct is created and by the provisions contained in the following articles.

Article 987

The fruits of the property which is subject to the usufruct revert to the usufructuary, in proportion to the period of his usufruct, subject to the provisions of paragraph 2 of Article 993.

Article 988

The usufructuary must use the property in the state in which he has received it and according to the object for which it was intended; he must observe the rules of good management.

The owner may object to any use of the property that is unlawful or unsuitable to the nature of the property. If the owner proves that his rights are endangered, he may demand security and if the usufructuary does not provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to its nature, the judge may take the property from him and entrust it to a third party for its management; the judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

Article 989

The usufructuary is liable, during the continuance of his enjoyment, for all normal charges in respect of the property subject to the usufruct and all expenses for repairs incidental to its maintenance.

The owner is obliged to pay abnormal expenses and the cost of heavy repairs which do not arise from any fault on the part of the usufructuary, but the usufructuary is bound to pay to the owner interest on the amount expended by him in this respect. If the usufructuary has himself advanced the cost, he is entitled to obtain repayment of the capital amount paid by him when the usufruct terminates.

Article 990

The usufructuary must preserve the thing with the usual diligence of a normal man.

He is responsible for the loss of the property even through no fault on his part, if he has delayed to restitute the property to its owner after the termination of the usufruct.

Article 991

The usufructuary must give notice to the owner without delay if the property perishes, deteriorates or requires major repairs the cost of which should be borne by the owner, or if it is necessary to take protective measures against an unforeseen danger. The usufructuary must also advise the owner if a third party claims to have a right over the property.

Article 992

When the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof; if no security is given, the movable in question shall be sold and the proceeds invested in public funds and the income thereof paid to the usufructuary.

A usufructuary who has given security may use such things as are consumable provided that he replaces them when his usufruct comes to an end. The usufructuary is entitled to the natural increase of flocks and herds, after replacing therefrom such animals as have perished accidentally.

Article 993

The usufruct terminates at the end of the time for which it was fixed. If no time is fixed, it is deemed to have been created for the lifetime of the usufructuary. It ceases in any case upon the death of the usufructuary even before the end of the fixed time.

When there are standing crops on the land which is subject to the usufruct, at the end of the time fixed for the usufruct or upon the death of the usufructuary, such land shall be left in possession of the usufructuary or of his heirs until the crops are ripe for harvesting, but the usufructuary or his heirs shall pay rent for that period.

Article 994

Usufruct is extinguished by the loss of the property, but the usufruct is transmitted to any property obtained in lieu of the property destroyed.

If the loss is not due to the fault of the owner, he is not bound to restore the property to its original condition, but if he restores the property, the usufruct is re-created in favor of the usufructuary if the loss was not imputable to him; in such a case paragraph 2 of Article 989 applies.

Article 995

The right of usufruct is extinguished by non-user during a period of fifteen years.

The Right of User and Occupation

Article 996

Subject to the conditions laid down in the deed by which the right is created, the extent of the right of user and of the right of occupation is determined by the personal requirements of the beneficiary and of his family.

Article 997

The right of user and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for serious reasons.

Article 998

Subject to the preceding provisions, the rules as regards the right of usufruct apply to the right of user and to the right of occupation, if they are not incompatible with the nature of these two rights.

Section II

The Right of Hekr

Article 999

Hekr cannot be concluded for a period exceeding sixty years. If a longer period is fixed or if the period is not fixed the hekr is deemed to have been concluded for a period of sixty years.

Article 1000

Hekr can only be concluded for reasons of necessity or expediency and with the permission of the Charei Court of First Instance in the district in which the land or that part of the land which is most valuable is situated. It must be established by virtue of a deed drawn up by the President of the court, or by a judge or by a notary delegated by him for the purpose, and must be published in accordance with the provisions of the law relating to the publication of real rights.

Article 1001

The grantee of a hekr may dispose of his right; this right is transmissible by inheritance.

Article 1002

Constructions, plantations and other works carried out by the grantee of the hekr belong to him absolutely. He may dispose of them separately or together with the right of hekr.

Article 1003

A grantee of the hekr must pay the agreed rent to the grantor of the hekr.

In the absence of a provision to the contrary in the contract creating the hekr, the rent is payable at the end of each year.

Article 1004

A hekr cannot be concluded at a rent less than that paid for similar lands.

This rent is increased or diminished at the rental value of similar lands rises or falls by more than one fifth, provided that eight years have passed since the last valuation.

Article 1005

The estimation of this rise or fall is made on the basis of the rental value of the land at the time of valuation, taking into account its marketable value and the demand for it, and regardless of any constructions or plantations on it.

Improvements or deteriorations caused to the land or to the value of the neighboring land by the grantee of the hekr, as well as his surface rights over the land, should be disregarded.

Article 1006

The new estimate applies only from the time agreed between the parties, or, in the absence of an agreement, from the date of the commencement of the legal proceedings.

Article 1007

The grantee of the hekr must take the necessary measures to make the land suitable for exploitation, taking into account the agreed conditions, the nature of the soil, the use to which it is intended and local custom.

Article 1008

The right of hekr terminates at the end of the period fixed.

The right terminates, however, before the end of the period fixed, if the grantee of the hekr dies before having built on or planted the land, unless all the heirs ask for the maintenance of the hekr.

The right of hekr also terminates before the end of the period fixed, if the land burdened with the hekr ceases to be wakf property, unless this cessation results from the revocation of the wakf or the reduction of the period of wakf by the founder, in which case the hekr is maintained until the end of its period.

Article 1009

The grantor of the hekr may demand the resiliation of the contract if the rent is not paid to him for three consecutive years.

Article 1010

In the absence of an agreement to the contrary, the grantor of the hekr may, upon resiliation or termination of the contract, claim either the removal of the buildings and plantations or their maintenance against payment of the value of the buildings and plantations in their existing state or their value if removed, whichever is the lesser.

The court may accord the grantor of the hekr a time for payment if exceptional circumstances exist that justify such a delay, in which case the grantor must furnish security to guarantee the payment of the amount due by him.

Article 1011

The right of hekr is extinguished by non-user during a period of fifteen years, unless the right of hekr is constituted in wakf, in which case it is extinguished by non-user during a period of thirty three years.

Article 1012

Subject to the provisions of Article 1008, paragraph 3, no hekr may, from the date upon which this law comes into force, be established on land that is not constituted in wakf.

Hekr existing on lands that are not constituted in wakf at the time that this law comes into force are subject to the provisions of the preceding articles.

Some Kinds of Hekr

Article 1013

Idjaratein is a contract by which a wakf creates a hekr on land on which buildings are erected which are in need of repair, in consideration of the immediate payment of a sum of money equal to the value of these buildings and the payment of an annual rent for the land equal to the rental value of similar lands.

Subject to the provisions of the preceding paragraph, the rules as to hekr apply to such a contract.

Article 1014

The Kholou-el-intifaa is a contract by which a wakf grants a lease of a property even without the permission of the judge, in consideration of a fixed rent for an indefinite time.

In accordance with this contract, the lessee undertakes to render the property fit for exploitation; the wakf may, at any time, resiliate the contract by due notice in accordance with the rules as to contracts of lease, provided that the wakf compensates the lessee for his expenses in accordance with the provisions of Article 179.

Subject to the provisions of the two preceding paragraphs, the provisions relating to leases of wakf property are applicable to such a contract.

Section III

Servitudes

Article 1015

A servitude is a right which limits the enjoyment of a property for the benefit of another property belonging to another owner. A servitude may be imposed on State property in so far as it is not incompatible with the use for which such property is intended.

Article 1016

The right to a servitude is acquired by a legal disposition or by inheritance.

Only apparent servitudes, including rights of way, can be acquired by prescription.

Article 1017

Apparent servitudes may also be created by the intention of the original owner.

An intention of the original owner is deemed to exist when it is established, by any means of proof, that the owner of two separate properties has made between the two properties an apparent distinction, thereby creating a relationship of subordination between them which would indicate the existence of a servitude if the two properties belonged to different owners. If, in such a case, the two properties pass into the hands of different owners without any change in their condition, a servitude is deemed, in the absence of a clear condition to the contrary, to have been constituted to the benefit of or has as a burden on the two properties respectively.

Article 1018

In the absence of an agreement to the contrary, if specific restrictions have been imposed limiting the right of the owner of a property to build freely thereon, such as the prohibition to build above a certain height or on an area in excess of a specific area, such restrictions constitute servitudes which are burdens one the property concerned in favor of properties to whose benefit these restrictions have been imposed.

Any breach of these servitudes gives rise to a claim for material redress. The court may, however, only grant damages if it considers that there are reasons for so doing.

Article 1019

Servitudes are governed by rules laid down in the deed by which they are created, by local custom and by the following provisions.

Article 1020

The owner of the dominant tenement is entitled to carry out any works necessary to use and preserve his right of servitude; he must use his right in the least harmful manner possible.

No requirements of the dominant tenement cannot entail any increase in the burden of the servitude.

Article 1021

In the absence of an agreement to the contrary, the owner of the servient tenement is under no obligation to carry out work for the benefit of the dominant tenement, unless it is an accessory work necessitated by the normal use of the servitude.

Article1022

In the absence of an agreement to the contrary, the cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.

If the owner of the servient tenement is responsible for carrying out these works at his own cost, he has always the right to free himself of this burden by abandoning the servient tenement wholly or in part to the owner of the dominant property.

If the works also benefit the owner of the servient tenement, the cost of upkeep falls on the two parties in proportion to the profit derived by each of them.

Article 1023

The owner of the servient tenement has no right to do anything which will tend to diminish the use made of the servitude or to make it more inconvenient. He cannot, in particular, either change the condition in which the land was or change the place originally fixed for the use of the servitude by another.

When, however, the place originally fixed has become such as to increase the burden of the servitude or to cause the servitude to hinder the owner of the servient tenement making

improvements to the servient tenement, he may demand that the servitude be transferred to another part of the property or to another property belonging to him or to a third party who consents thereto, provided that the owner of the dominant tenement is able to exercise his rights of servitude in these new conditions as easily as he was able to do before the change.

Article 1024

If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property is not increased.

If, however, the servitude only benefits one of the divided parts of the dominant tenement, the owner of the servient tenement may demand that it ceases as regards the other parts.

Article 1025

If the servitude tenement is divided, the servitude continues to subsist in respect of each part thereof.

If, however, the servitude is not actually used and cannot be used on certain of these divided parts, the owner of each of them may demand that it ceases as regards the part belonging to him.

Article 1026

Rights to a servitude cease to exist by the expiration of the period for which they were created, by the total loss of the servient tenement or of the dominant tenement and by the acquisition of the two properties by the same owner; the rights to the servitude are, however, revived if the two properties cease, with retroactive effect, to be held jointly by the same owner.

Article 1027

The rights to a servitude are extinguished by non-user for a period of fifteen years; if the servitude is created for the benefit of a wakf property, this period shall be thirty three years. The manner of the exercise of a right of servitude may, as the servitude itself, be modified by prescription.

The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favor of the other co-owners; in the same way, the suspension of prescription in favor of one of these co-owners, suspends prescription in favor of the others.

Article 1028

The servitude ceases to exist if conditions so change that the right can no longer be used.

The servitude is revived if conditions are reestablished in such a way that the right can again be used, unless the right of servitude has been extinguished by non-user.

Article 1029

The owner of a servient tenement may free himself wholly or partially of the servitude, if the servitude has lost all its utility for the dominant tenement or if its actual utility has been reduced out of proportion to the burden imposed on the servient tenement.

BOOK IV

ACCESSORY REAL RIGHTS OR REAL SECURITIES

Chapter I

Mortgages

Article 1030

Mortgage is a contract by which a creditor acquires, over an immovable appropriated to the payment of his debt, a real right by which he obtains preference, over ordinary creditors and creditors following him in rank, for the payment of his claim out of the price of the immovable, no matter into whose hands the immovable has passed.

Section I

The Constitution of Mortgages

Article 1031

A mortgage can only be constituted by an authentic document.

The costs of this authentic document are, in the absence of an agreement to the contrary, borne by the mortgagor.

Article 1032

The mortgagor may be the debtor himself or a third party who consents to mortgage his property in the interests of the debtor.

In both cases, the mortgagor must be the owner of the mortgaged property and must have legal capacity to dispose of it.

Article 1033

If the mortgagor is not the owner of the mortgaged property, the mortgage contract becomes valid if ratified by the true owner of the property by an official deed. In the absence of ratification, the mortgage is only effective from the time that the immovable becomes the property of the mortgagor.

A mortgage on property in expectancy is void.

Article 1034

A mortgage constituted by an owner whose title to the property is subsequently annulled, resiliated, abolished or ceases to exist for any other reason, remains a valid mortgage in favor of the mortgagee creditor if he has acted in good faith at the time of the conclusion of the mortgage.

Article 1035

In the absence of any provision of the law to the contrary, a mortgage can only be constituted on immovable property.

The mortgaged property must be marketable and capable of being sold by public auction; it must be specifically and precisely described both as regards its nature and situation, and such description must be contained either in the deed constituting the mortgage or in a subsequent authentic document, otherwise the mortgage is void.

Article 1036

In the absence of an agreement to the contrary, and without prejudice to the privilege provided for by Article 1148 attached to sums due to contractors or to architects, a mortgage extends to the accessories of the mortgaged property which are considered to be immovable accessories, particularly to servitudes, properly forming part of the immovable as a result of the use to which it is put and to improvements and other works which benefit the owner.

Article 1037

From the date of the transcription of the formal summons to pay, the fruits and revenues of the mortgaged property shall be assimilated to the immovable and distributed in the same way as the price of the property.

Article 1038

The owner of constructions erected on land belonging to a third party may grant a mortgage on these constructions. In such a case, the mortgage shall have a preferential claim for recovery of his debt on the price of the break up value of the constructions if they are demolished, and on the compensation paid by the owner of the land if he keeps the constructions in accordance with the rules of accession.

Article 1039

A mortgage granted by all the co-owners of an immovable held in common remains effective whatever may be the ultimate result of a partition of the immovable or if its sale by auction owing to impossibility of partition.

If one of the owners grants a mortgage on his undivided share or on a divided part of an immovable and, as a result of the partition, a property other than the mortgaged property is attributed to him, the mortgage will be transferred, with its degree of priority, to a portion of this property equivalent in value to the value of the property formerly mortgaged. This portion will, upon petition, be fixed by an order of the judge. The mortgagee shall be bound, within ninety days of the notification of the transcription of the partition made to him by any interested party, to proceed with a new inscription describing the portion of the property to which the mortgage has been transferred. The mortgage so transferred shall not have any prejudicial effect on a mortgage already granted by all the co-owners or on the privileges of co-partitioners.

Article 1040

A mortgage may be granted to secure a conditional, future or contingent debt, and may also be granted to secure an opened credit or the opening of a current account, provided that the amount of

the debt secured, or the maximum amount which such debt may attain, is fixed in the mortgage deed.

Article 1041

In the absence of a provision of the law or of an agreement to the contrary, every part of the mortgaged immovable or immovables shall secure the whole of the debt, and each part of the debt is secured by the whole of the mortgaged immovable or immovables.

Article 1042

In the absence of a provision of the law to the contrary, the mortgage cannot be separated from the debt that it secures, but depends both as regards its validity and as regards its extinction, upon the debt itself.

If the mortgagor is a person other than the debtor, he may, in addition to the defenses that are personal to him, avail himself of those which belong to the debtor as regards the debt: he keeps this right notwithstanding the renunciation of the debtor.

Section II

The Effects of a Mortgage

1. The Effects of a Mortgage as between the Parties

As Regards the Mortgagor

Article 1043

A mortgagor may dispose of the mortgaged property, but any disposal of the property by him does not affect the right of the mortgagee creditor.

Article 1044

The mortgagor may carry on the management of the mortgaged property and collect the fruits thereof until such time as they become incorporated in the immovable property.

Article 1045

A lease entered into by a mortgagor cannot have effect against a mortgagee unless such lease has been given an established date before the transcription of the formal summons to pay. A lease that has not an established date before this transcription or that has been entered into after the transcription of the summons, without payment of the rent having been made in advance, will not have effect as against a mortgagee, unless it may be considered to fall within the category of acts of good management.

If the duration of the lease entered into before the transcription of the summons exceeds nine years, the lease has effect against the mortgagee only for nine years, unless it was transcribed before the inscription of the mortgage.

Article 1046

A receipt or an assignment of rent in advance for a period not exceeding three years is not valid as against a mortgagee unless it has an established date prior to the transcription of the summons to pay.

If the payment of the assignment of rent is made for a period exceeding three years, it will only be valid as against a mortgagee if it has been transcribed before the inscription of the mortgage. In default of such transcription the period will be reduced to three years, subject to the provisions of the preceding paragraph.

Article 1047

A mortgagor is the guarantor of the effectiveness of the mortgage. The mortgagee may oppose any act or omission that appreciably diminishes his security, and, in the case of emergency, take all necessary preservative measures and claim from the mortgagor the expenses incurred in this respect.

Article 1048

If the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim adequate security or immediate payment of the debt.

If the loss or deterioration is not imputable to the mortgagor and the mortgagee does not agree to leave his claim without security, the debtor may either furnish adequate security or pay the debt in full before it falls due. In the latter case, if the debt does not carry interest, the mortgagee has only a right to an amount equal to the amount of his claim less the interest calculated at the legal rate from the date of payment to the date of maturity.

In all cases, if acts are done which may result in the loss of or deterioration to the mortgaged property, or which may render the mortgaged property insufficient to secure the debt, the mortgagee may apply to the judge to order the cessation of such acts and the adoption of the necessary measures to avoid the occurrence of the loss.

Article 1049

In the event of loss of or deterioration to the mortgaged property for any reason whatsoever, the mortgage is transferred, in its order of rank, to any right obtained as a result of such loss or deterioration, such as compensation, monies paid on account of insurance or payments on account of expropriation for public utility.

As Regards the Mortgagee

Article 1050

If the mortgagor is a person other than the debtor, only the mortgaged property, to the exclusion of his other property, may be proceeded against and the mortgagor shall not, in the absence of an agreement to the contrary, have the right to demand the sale of the debtor's property before the sale of the mortgaged property.

Article 1051

A creditor may, upon a summons to the debtor to pay, proceed, within the delays and in accordance with the forms prescribed by the Code of Procedure, with the expropriation and the sale of the mortgaged property.

If the mortgagor is a person other than the debtor, he may avoid any proceedings against him by abandoning the mortgaged property, according to the procedure and the rules laid down for the abandonment of an immovable by a third party holder.

Article 1052

Any agreement, even if entered into after the constitution of the mortgage, which authorizes the creditor in case of non-payment of the debt on maturity to acquire the mortgaged property at a fixed price, whatever that price may be, or to sell the mortgaged property without observing the formalities prescribed by law, is void.

It may, however, be agreed after the debt or one of the installments of the debt has fallen due, that the debtor transfers to the creditor the mortgaged property in payment of the debt.

2. The Effects of Mortgage as Regards Third Parties

Article 1053

Subject to the provisions laid down for bankruptcy, a mortgage shall be effective as against third parties only if the deed or the judgment establishing the mortgage has been inscribed before third parties have acquired real rights on the property.

The assignment of a right secured by an inscription, the right resulting from the legal or contractual subrogation into that right and the assignment of priority in rank of an inscription in favor of another creditor, are only enforceable as against third parties if they are inscribed in the margin of the original inscription.

Article 1054

The inscription, its renewal, its radiation, the annulment of radiation and all the effects thereof are governed by the provisions of the law regulating the publication of real rights.

Article 1055

In the absence of an agreement to the contrary, the mortgagor shall bear the cost of inscription, its renewal and its radiation.

The Right of Preference and the Right of Tracing

Article 1056

Mortgagees will be paid before unsecured creditors out of the proceeds of sale of the mortgaged property, or out of any monies obtained in substitution thereof, in the order of the rank of their inscriptions, even when their inscriptions are entered on the same day.

Article 1057

A mortgage ranks from the date of its inscription, even if it secures a conditional, future or contingent debt.

Article 1058

The inscription of a mortgage will have the effect of automatically collocating and ranking with the mortgage debt the costs of the deed, of the inscription and of the renewal.

If the rate of interest if fixed in the deed, the inscription of the mortgage will have the effect of collocating in the same rank as the mortgage debt the interest of the two years immediately preceding the transcription of the formal summons to pay and the interest due since that date to the date of sale by pubic auction, without prejudice to specific inscriptions made to secure other interest that has already become due, which interest will take rank with effect as from the date of the registration of such specific inscriptions. The transcription by one of the creditors of a formal summons to pay will benefit all the other creditors.

Article 1059

A mortgagee may, within the limits of his secured debts, assign his rank in favor of another creditor having a mortgage inscribed on the same property. The defenses available against the first creditor, with the exception of those connected with the extinction of his claim when that extinction occurs after the assignment of the rank, can be raised against the second creditor.

Article 1060

A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property against a third party holder, unless this third party holder chooses to pay the debt, redeem the mortgage or abandon the property.

Any person is deemed to be a third party holder who acquires in any way the ownership of the property or any other real right over the property capable of being mortgaged, without being personally responsible for the debt secured by the mortgage.

Article 1061

A third party holder may, upon maturity of the debt secured by the mortgage, pay the debt and its accessories including the costs of proceedings from the date of the formal summons, and will retain this right up to the date of the sale by public auction. In such a case, he has a claim for all he has paid against the debtor and against the former owner of the mortgaged property. He may also be subrogated into the rights of the creditor who has been paid in full, with the exception of those rights relative to guarantees furnished by a person other than the debtor.

Article 1062

A third party holder must maintain the inscription of the mortgage to the benefit of which he is subrogated to the creditor, and renew it, if necessary, until radiation of the inscriptions that existed, at the time of the transcription of his title to the property.

Article 1063

If, by reason of his acquisition of the mortgaged property, the third party holder is debtor of a sum due immediately for payment and sufficient to satisfy all the creditors whose rights are inscribed on the property, each one of the creditors may compel him to pay his claim provided that his title deed to the property has been transcribed.

If the debt owed by the third party holder is not yet due for payment, or is less than the debts due to the creditors, or different from them, the creditors may, if they are all agreed, claim from the third party holder payment of what he owes, up to the amount due to them, and payment will be effected in accordance with the conditions on which he has agreed to pay in his original undertaking, and at the time agreed upon for payment.

In neither case can the third party holder avoid payment to the creditors by abandoning the property, but when payment has been made to the creditors the property is deemed to be free of all mortgages and the third party holder has the right to call for the radiation of the inscriptions existing on the property.

Article 1064

The third party holder who has transcribed his title to the property may purge the property of any mortgage inscribed before the transcription of his title.

He can exercise this right even before the mortgagees have served upon the debtor a formal summons to pay, or have served upon the third party holder any summons, and he keeps this right up to the date of the filing in court of the conditions of sale of the property.

Article 1065

If the third part holder decides to proceed with the purge of the property, he must serve upon the inscribed creditors, at their elected domiciles indicated in their inscriptions, summons containing the following particulars:

a) an extract of his title deed, setting out the particulars and the nature and date of the act of disposition, the name in full and precise particulars of the previous owner of the property, the situation and a detailed and precise description of the property, and, if the disposal is a sale, the price and the charges, if any, that may be considered as part of the price;

b) the date and number of the transcription of his title;

c) the sum at which he values the property, even if the property is disposed of by sale: this sum must not be less than the reserve price in the case of expropriation nor in any case less than the sum remaining to be paid by the third party holder on the price of the property if the act of disposition was a sale. If parts of the property are charged with separate mortgages, each part must be valued separately;

d) a list of rights inscribed on the property before transcription of his title: this list shall contain the date of the inscriptions, the amount of the inscribed debts and the names of the creditors.

Article 1066

The third party holder must, by the same summons, declare that he is prepared to pay off the inscribed debts up to the amount at which he has valued the property; his offer need not be accompanied by actual production of the money but must be an offer of a sum payable in cash, whatever may be the date at which the inscribed debts accrue due.

Article 1067

Every inscribed creditor and every surety of an inscribed debt has the right to apply for the sale of the property which the third party holder wishes to purge, provided that his application is made within thirty days of the date of the last formal summons. This period will be increased by the additional time allowed for distance between the actual and elected domicile of the creditor; this additional time allowed for distance shall not exceed thirty additional days.

Article 1068

The application shall be made by a summons to the third party holder and to the former owner, signed by the applicant or his representative holding a special mandate for this purpose. The applicant must deposit at the Caisse of the court a sum which is sufficient to cover the cost of the sale by auction, but he shall have no right to a refund of expenses advanced by him if no higher price than that offered by the third party holder is obtained as a result of the auction. The failure to comply with any one of these conditions entails the nullity of the application.

The applicant may not renounce his application without the consent of all the inscribed creditors and all the sureties.

Article 1069

When an application is made for the sale of a property, the formalities laid down for compulsory expropriation must be followed. The sale shall take place at the request of either the applicant or of the third party holder, whoever shall have more interest in expediting the sale. The applicant must mention in the notices of sale the price at which he has valued the property.

The purchaser by auction is liable, in addition to payment of the price of the adjudication and the cost of formalities for the purge, to refund to the third party holder who is dispossessed the cost of his deed, of its transcription and the cost of the summons served by him.

Article 1070

If the sale of the property is not applied for within the period and in accordance with the procedure laid down, the ownership of the property, freed from all inscriptions, shall be vested finally on the third party holder if he pays the sum at which he has valued the property to the creditors whose rank entitles them to payment, or if he deposits this sum at the Caisse of the court.

Article 1071

The abandonment of the mortgaged property is made by a declaration submitted to the Registrar of the competent Court of First Instance by the third party holder who must apply for the entry of his declaration in the margin of the transcription of the formal summons to pay and who must, within five days from the date of the declaration, notify the abandonment to the creditor who is conducting the proceedings of expropriation.

The party who has most interest to expedite the sale may apply to the Judge des Referes for the nomination of a receiver against whom the proceedings of expropriation may be taken. The third party holder, if he applies, will be appointed receiver.

Article 1072

If the third party holder does not opt for payment of the inscribed debts, the purge of the property or the abandonment of the property, the mortgagee can only take expropriation proceedings against him, in accordance with the provisions of the Code of Procedure, after he has summoned him to pay the debt accrued due or to abandon the property. This summons shall be notified after or at the same time as the summons to pay is served on the debtor.

Article 1073

The third part holder who has transcribed his title deed and who was not a party to the proceedings in which judgment was given against the debtor to pay the debt may, if the judgment was subsequent to the transcription of his title, raise the defenses which could have been raised by the debtor.

He may, in any case, raise defenses which the debtor still has the right to raise after the judgment.

Article 1074

The third party holder may take part in the auction on condition that he does not offer a price lower than the sum that he still owes on the price of the property which is being sold.

Article 1075

If the mortgaged property is expropriated, even after proceedings for purge or abandonment have been taken and the third party holder acquires the property at the auction, he will be deemed to be the owner of the property by virtue of his original title deed and the property will be purged of all inscriptions if he pays the price for which he acquired the property at the auction or if he deposits the price in the Caisse of the court.

Article 1076

If, in the preceding cases, a person other than the third party holder acquires the property at the auction, he will hold his right be virtue of the judgment of adjudication from the third party holder.

Article 1077

If the price at which the property is sold by auction exceeds the total of the sums due to the inscribed creditors, the difference in excess belongs to the third party holder; and the mortgagee creditors of the third party holder may be paid out of this excess.

Article 1078

Servitudes and other real rights that the third party holder had on the property before he acquired the property are re-vested in him.

Article 1079

The third party holder is liable to restitute the fruits of the mortgaged property from the date he has been summoned either to pay or abandon the property. If legal proceedings are abandoned within three years, he has only to account for the fruits as from the day that a new summons is served on him.

Article 1080

The third party holder has, against his preceding owner, a right of action for warranty to the extent that a successor in title has against the person from whom he has acquired the property for valuable consideration or as a gift.

He has also a right of action against the debtor for payment of any sums paid by him, for any reason whatsoever, in excess of the amount due by him in accordance with his title deed. He is subrogated into the rights of the creditors discharged by him, particularly into the guarantees furnished by the debtor, but not into those furnished by a party other than the debtor.

Article 1081

The third party holder is personally liable towards creditors for any deterioration caused to the immovable by his negligence.

Section III

Extinguishment of the Mortgage

Article 1082

The mortgage is extinguished when the secured debt is extinguished; it is revived, together with the debt, if the cause by reason of which it was extinguished disappears, without prejudice, however, to the rights acquired by a third party in good faith in the interval between the extinguishment of the right and its revival.

Article 1083

When the formalities of a purge are carried out, the mortgage is definitely extinguished even if the ownership of the third party holder who proceeded with the purge disappears for any cause whatsoever.

Article 1084

When the mortgaged property is sold by public auction as a result of compulsory expropriation proceedings taken against either the owner, the third party holder or the receiver to whom the abandoned property was delivered, the mortgage rights encumbering the property are extinguished

by the deposit of the purchase price or by payment thereof to the inscribed creditors who, by virtue of their rank, are entitled to receive payment of their claims out of that price.

Chapter II

Judgment Charges upon Immovable Property

Section I

The Constitution of a Judgment Charge

Article 1085

Every creditor who has obtained an enforceable judgment rendered on the merits of the case in which the debtor is condemned to a liquidated amount, may, if he is of good faith, obtain as security for his claim in principal, interest and costs, a judgment charge over the immovable property of his debtor.

He cannot, after the death of the debtor, obtain a judgment charge on immovable property forming part of the estate.

Article 1086

A judgment charge cannot be obtained by virtue of a judgment rendered by a foreign court or by virtue of an arbitration award until the judgment or the award has been made enforceable.

Article 1087

A judgment charge may be obtained by virtue of a judgment confirming a compromise or an agreement between the parties, but not by virtue of a judgment rendered as to the validity of a signature.

Article 1088

A judgment charge can only be obtained on one or more specific immovables belonging to the debtor at the time of the inscription of this right and capable of being sold by public auction.

Article 1089

A creditor who wishes to obtain a judgment charge on the immovable property of his debtor must submit an application to the President of the Court of First Instance in the district in which the immovable property on which he desires to obtain the charge is situated.

An authenticated copy of the judgment or a certificate by the greffier of the court containing the operative part of the judgement must be annexed to this application which will contain the following particulars:

a) the creditor's surname, first names, profession, actual place of abode, and elected domicile within the town in which the court is situated;

b) the surname, first names, profession and place of abode of the debtor;

c) the date of the judgment and designation of the court that rendered the judgment;

d) the amount of the debt. If the debt mentioned in the judgment is not a liquid amount, the President of the court may liquidate it provisionally and fix the amount for which a judgment charge may be obtained; and

e) an exact and precise description of the immovable properties, their situation, together with documents establishing their value.

Article 1090

The President of the court will record his order for a judgment charge at the foot of the application.

The President of the court should, however, in giving an order for a judgment charge, take into consideration the amount of the debt and the approximate value of the immovable properties set out in the application, and should, if necessary, restrict the judgment charge to some or one only of these immovables, or to a part in an immovable if he considers that this is sufficient to secure the principal of the debt, the interest thereon and the cost thereof due to the creditors.

Article 1091

Upon the same day as the order authorizing the judgment charge is rendered, the greffier of the court must notify it to the debtor, endorse it on the authenticated copy of the judgment or on the certificate annexed to the application for a judgment charge, and inform the greffier of the court that has rendered the judgment so that he may endorse the order on any other copy of the judgment or on any other certificate that will be delivered to the creditor.

Article 1092

The debtor may lodge an appeal against the order authorizing the judgment charge either before the judge who has given the order or before the Court of First Instance.

An endorsement must be made, in the margin of the inscription, of any order or of any judgment annulling the order which has authorized the judgment charge.

Article 1093

If, either at the time of the application or as a result of an appeal by the debtor, the President of the court rejects the application of the creditor for a judgment charge, the creditor may appeal to the Court of First Instance against the order rejecting the application.

Section II

The Effects of a Judgment Charge, its Reduction and Extinguishment

Article 1094

Any interested party may apply for the reduction of the judgment charge to reasonable proportions, if the value of the immovable properties charged therewith is in excess of the amount which is sufficient to secure the debt.

The reduction of the judgment charge may be operated either by way of restriction of the charge to one part of the immovable or immovables on which it is inscribed or by the transfer of the charge to another immovable the value of which adequately secures the debt.

The costs required for carrying out the reduction, even if made with the consent of the creditor, are payable by the person who has applied for the reduction.

Article 1095

A creditor who has obtained a judgment charge has the same rights as a mortgagee who has obtained a mortgage. Subject to any special provision of the law, the judgment charge is governed by the same provisions as a mortgage, especially as regards its inscription, its renewal, its radiation, the indivisibility of the right, its effect and its extinguishment.

Chapter III

Rights Derived from the Right of Ownership

Pledge

Section I

Elements of a Pledge

Article 1096

Pledge is a contract by which a person undertakes, as security for his debt or that of a third party, to hand over to the creditor or to a third person chosen by the parties, a thing over which he constitutes, in favor of the creditor, a real right, and by which the creditor is allowed to retain the thing pledged until repayment of the debt and to obtain payment of his claim out of the price of such thing, no matter in whose hands it may be, in preference to unsecured creditors and to creditors following him in rank.

Article 1097

Only movables or immovables which can be sold independently by public auction may be the object of a pledge.

Article 1098

The provisions of Article 1033 and Articles 1040 to 1042 relating to mortgage are applicable to pledge.

Section II

The Effects of a Pledge

1. Between the Contracting Parties

Obligations of the Pledgor

Article 1099

The pledgor is bound to deliver the thing pledged to the creditor or to the third person chosen by the contracting parties to hold the thing.

Provisions relating to the obligation as to delivery of a thing sold apply to the obligation as to delivery of a thing pledged.

Article 1100

The pledge is extinguished if the thing pledged returns into the hands of the pledgor, unless the pledgee proves that the return took place for a reason that was not intended to extinguish the pledge, subject always to the rights of third parties.

Article 1101

The pledgor guarantees the pledge and its efficacy. He must not do anything which diminishes the value of the thing pledged or prevents the creditor exercising his rights derived from the contract. The pledgee may, in case of urgency, take at the cost of the pledgor all necessary measures for the preservation of the thing pledged.

Article 1102

A pledgor guarantees the thing pledged against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.

The provisions of Articles 1048 and 1049, relating to the loss or deterioration of mortgaged property and to the transfer of the right of the creditor to any rights or property that have replaced the mortgaged property, apply to pledge.

Obligations of the Pledgee

Article 1103

If the pledgee takes delivery of the thing pledged, he must use for its preservation and maintenance the care expected from a reasonable person. He must answer for its loss or deterioration unless he can show that they were due to a cause not imputable to him.

Article 1104

The pledgee may not derive any gratuitous advantage from the thing pledged.

He must, in the absence of an agreement to the contrary, make the thing pledged render all the fruits that it is capable of producing.

The net revenue and the benefit that he obtains from the use of the thing pledged, must be applied in reduction of the debt, even before it falls due: such revenue or benefit shall be imputed in the first place to expenses he has incurred for the preservation of and repairs to the thing pledged, then to expenses and interest, and then to the capital amount of the debt.

Article 1105

If the thing pledged produces fruits or revenue, and the parties have agreed to substitute these fruits or revenue in whole or in part for interest, such an agreement will be valid to the extent that it does not exceed the maximum conventional rate of interest authorized by the law.

If the parties have not agreed that the fruits will be substituted for interest, and have not fixed the rate of interest, the interest will be fixed at the legal rate, provided that it does not exceed the amount of the fruits. If the parties have not fixed a date for payment of the secured debt, the creditor can only demand payment of his claim by a deduction from the fruits, subject to the right of the debtor to pay off his debt at any time he chooses to do so.

Article 1106

The pledgee shall manage the thing pledged and shall use in such management the care expected from a reasonable person. He may not, without the consent of the pledgor, change the method of exploitation of the thing pledged and is bound to advise the pledgor immediately of any matter that requires his intervention.

If the pledgee misuses this right or is guilty of bad management or gross negligence, the pledgor shall have the right to demand that the thing pledged be placed in judicial deposit or to claim restitution of the thing against payment of his debt. In the latter case, if the secured debt is not subject to interest and is not yet due for payment, the creditor will only be entitled to a sum equal to the amount of the debt, less interest at the legal rate from the date of payment to the date of maturity.

Article 1107

A pledgee must, upon receipt of his debt and the accessories, expenses and compensation for losses attached thereto, restitute the thing pledged to the pledgor.

Article 1108

The provisions of Article 1050, relating to the responsibilities of a mortgagor who is not the debtor, and the provisions of Article 1052, relating to appropriation in case of non-payment and to sale without recourse to legal formalities, apply to pledge.

2. As Regards Third Parties

Article 1109

The thing pledged must be held by the pledgee or by the third party chosen by the parties to make the pledge valid as against third parties.

The thing pledged may secure several debts.

Article 1110

Pledge confers upon the pledgee the right to retain the thing pledged against any other person, subject to the rights of third parties which have been preserved in accordance with the law.

If a pledgee loses possession of the thing unknowingly or against his will, he has the right to reclaim the thing from any other person in accordance with the provisions of the law as to possession.

Article 1111

A contract of pledge secures not only the capital of the debt, but also and in the same rank:

a) expenses of a necessary kind incurred for the preservation of the thing pledged;

b) compensation for losses resulting from defects in the thing pledged;

c) the cost of the contract of loan, of the contract of pledge and of its inscription, if any;

d) the costs incurred for the enforcement of the pledge; and

e) all interest that has fallen due, subject to the provisions of Article 230.

Section III

Extinguishment of a Pledge

Article 1112

A right of pledge is extinguished as a result of the extinguishment of the secured debt: it is revived with the debt if the cause of the extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquired in the interval between the extinguishment and the revival of the right of pledge.

Article 1113

A right of pledge is also extinguished by one of the following causes:

a) the renunciation of the right by the pledgee if he has the legal capacity to liberate the debtor of the debt. The renunciation may result tacitly if the creditor voluntarily gives up the thing pledged or if he agrees without reserve to its alienation. If, however, the thing pledged is charged with a right in favor of a third party, the renunciation of the pledgee is only valid as regards such third party if such third party consents;

b) the union of the right of pledge and that of ownership of the thing pledged in one and the same person;

c) the loss of the thing pledged or the extinguishment of the right given in pledge.

Section IV

Certain Kinds of Pledge

1. Pledge of an Immovable (Antichresis)

Article 1114

A pledge of an immovable is only valid as against third parties if, in addition to delivery of the pledged immovable to the pledgee, the contract of pledge is inscribed. The provisions governing the inscription of a mortgage apply to the inscription of pledge of an immovable.

Article 1115

A pledgee of an immovable may lease the immovable to the pledgor without the contract of pledge being less valid as against third parties. If the lease is agreed to in the contract of pledge, it must be mentioned in the inscription of the pledge, but if the lease is agreed to after the pledge, it must be noted in the margin of that inscription. Notation is not necessary if the lease is tacitly renewed.

Article 1116

A pledgee of an immovable must provide for the maintenance of the immovable, pay the expenses necessary for its preservation, the annual taxes and charges, and deduct the amount of these expenses from the fruits he has collected or obtain repayment from the price of the immovable in the rank of privilege accorded by law to such expenses.

He may free himself of these obligations by abandoning his right to the pledge.

2. Pledge of a Movable

Article 1117

A pledge of a movable is only valid against third parties if, in addition to the delivery of the movable pledged, it is constituted by a written contract adequately setting out the amount of the secured debt and the object of the pledge and having an established date. The rank of the secured creditor will be fixed in accordance with such established date.

Article 1118

The rules relating to the effects of possession of material movables and of bearer securities apply to the pledge of a movable.

A pledgee in good faith may, in particular, avail himself of his right of pledge even if the pledgor was not qualified to dispose of the thing pledged. On the other hand, a third party holder in good faith, even after the date of the pledge, may avail himself of the right he has acquired over the thing pledged.

Article 1119

If the thing pledged appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that it will not suffice to secure the claim of the pledgee, and the pledgor does not apply for the restitution of the thing in exchange for another thing, either the pledgee or the pledgor may apply to the judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.

The judge shall, when authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the thing pledged to the price thereof.

Article 1120

If a suitable occasion presents itself for the sale of the thing pledged and the sale is advantageous, the pledgor may, even before the maturity of the debt, apply to the judge for authority to sell the thing. The judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

Article 1121

The pledgee may, upon failure of payment of the debt, apply to the judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.

The pledgee may also apply to the judge for an order authorizing him to appropriate the thing pledged in payment of the debt, the value thereof being charged against him in accordance with an estimate by experts.

Article 1122

The preceding provisions apply, in so far as they are not incompatible either with provisions of commercial laws or provisions relating to institutions authorized to lend money on pledge, or with the laws and regulations governing special cases as to the pledge of movables.

3. Pledge of Debts

Article 1123

A pledge of a debt is only valid as regards the debtor upon notification to or acceptance by the debtor of the pledge, as provided for in Article 305.

The pledge is only valid as against third parties if the pledgee holds the title of the pledged debt. The rank of the pledge is fixed as at the established date of the notification or of the acceptance of the pledge.

Article 1124

Nominative bonds and bonds payable to order may be pledged in accordance with the special procedure prescribed by law for the transfer of such bonds, provided that it is stated that the transfer is made by way of pledge; the contract of pledge is completed without notification being necessary.

Article 1125

A debt that cannot be assigned or attached, cannot be pledged.

Article 1126

In the absence of an agreement to the contrary, the pledgee has the right to collect the interest on the pledged debt which falls due after the constitution of the pledge. He has also the right to collect periodical payments appertaining to the pledged debt upon condition that he sets off the amounts so collected by him first against expenses, then against the interest and then against the capital of the debt secured by the pledge.

A pledgee is bound to look to the protection of the pledged debt. If he has the right to collect any part of the debt without the intervention of the pledgor, he is bound to collect such part of the debt at the time and place fixed for payment and immediately inform the pledgor thereof.

Article 1127

The debtor of a debt given in pledge may set up against the pledgee the defenses relative to the validity of the debt secured by the pledge as well as those defenses he may have against his own creditor, to the extent that an assigned debtor may set up defenses against the assignee in the case of an assignment of debt.

Article 1128

If a pledged debt falls due for payment before the actual debt secured by the pledge, the debtor must discharge his debt to the pledgee and the pledgor jointly. The pledgee and the pledgor may each demand the debtor to deposit the amount paid by him, in which case the pledge is transferred to the amount so deposited.

The pledgee and the pledgor must, without prejudice to the rights of the secured creditor, cooperate together for the investment of the amount paid by the debtor to the best advantage of the pledgor, and they must immediately constitute a new pledge in favor of the pledgee.

Article 1129

If the pledged debt and the secured debt fall due, the pledgee who has not been paid may collect the debt pledged up to the amount due to him and demand that the debt be sold or be allocated to him in accordance with the provisions of Article 1121, par.2.

Chapter IV

Privileged Rights

Section I

General Provisions

Article 1130

A privilege is a right of preference granted by law to a particular right by reason of its quality.

No right is privileged except by virtue of a provision of the law.

Article 1131

The rank of a privilege is fixed by law; in the absence of a formal provision of the law fixing the preferential rank of a privileged right it ranks after any other privilege provided for in this Chapter.

In the absence of a provision of the law to the contrary, privileged rights of the same rank will be paid rateably.

Article 1132

General privileges extend to all movable and immovable property of the debtor. Special privileges are limited to a specific movable or immovable only.

Article 1133

A privilege cannot be set up against the holder in good faith of a movable.

A lessor of an immovable and a hotel proprietor are deemed, in so far as this article applies, to be holders of furniture used in leased premises and of effects brought into the hotel by travelers respectively.

If a creditor has reasonable grounds to apprehend that movables charged with a privilege in his favor will be misappropriated, he may apply for them to be placed in judicial custody.

Article 1134

Provisions of the law relating to mortgages are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights. The provisions relating to purge, to inscription and the effects of inscription, and to renewal and radiation of inscription, are in particular applicable to privileges over immovables.

General privileges, however, even over immovables, are not subject to publication nor do they give a right of tracing the property into the hands of subsequent holders. Privileges over immovables securing sums due to the State Treasury are also not subject to publication. All these privileges rank prior to any other privilege over immovables or mortgages, whatever may be the date of their inscription. As between each other, the privilege securing sums due to the State Treasury ranks prior to general privileges.

Article 1135

Provisions applying to the loss or deterioration of mortgaged property apply also to privileges.

Article 1136

In the absence of a provision of the law to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a mortgage or a pledge.

Section II

Kinds of Privileges

Article 1137

In addition to the privileges established by special provisions of the law, the rights enumerated in the following articles are privileged.

1. General Privileges and Special Privileges over Movables

Article 1138

Costs of legal proceedings incurred, in the common interest of all the creditors, for the preservation and sale of the property of the debtor, have a privilege over the price of such property.

Such costs are payable in priority to any other claim, whether privileged or secured by a mortgage, including claims of creditors for whose benefit such costs have been incurred. Costs incurred for the sale of the property are payable in priority to the costs of the procedure of distribution.

Article 1139

Sums due to the State Treasury for taxes, duties and other dues of any kind are privileged in accordance with conditions laid down by laws and regulations issued in this connection.

Such sums shall be paid out of the proceeds of sale of the property charged with this privilege, in whosoever's hands it may be, and before all other rights, whether privileged or secured by a mortgage, except costs of legal proceedings.

Article 1140

Expenses incurred for the preservation of, and repairs of a necessary kind to, a movable are secured by a privilege over the movable as a whole.

Such expenses are payable out of the proceeds of sale of the movable so charged, and rank immediately after the costs of legal proceedings and sums due to the State Treasury. As between them such expenses will rank in the inverse order of the dates on which they were incurred.

Article 1141

The following claims are secured by a privilege over all the debtor's property, whether movable or immovable:

a) sums due to servants, clerks, workmen and other wage-earners for wages and emoluments of any kind due to them for the last six months;

b) sums due for foodstuffs and clothes supplied to the debtor and to persons depending on him during the last six months; and

c) alimony due by the debtor to members of his family, for the last six months.

These claims rank immediately after the costs of legal proceedings, sums due to the State Treasury and expenses for the preservation of and repairs to the property. As between them such claims are paid rateably.

Article 1142

Sums disbursed for seeds, manure and other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent: they will all have the same rank.

Such sums are payable out of the proceeds of the sale of the crop, immediately after the claims above referred to.

Sums due in respect of agricultural implements are, in a like manner and in the same rank, secured by a privilege over these implements.

Article 1143

House and agricultural rents for two years, or for the duration of the lease if less than two years, and all sums due to the lessor by virtue of the contract of lease, are secured by a privilege over all attachable movables and crops existing on the leased property and belonging to the lessee.

Subject to the provisions relating to stolen or lost property, this privilege is enforceable even when the movables belong to the wife of the lessee or to a third party, as long as it is not established that the lessor had knowledge, at the time the movables were brought onto the leased property, of the existence of a third party's rights.

This privilege is also enforceable over movables and crops belonging to a sub-lessee, if the lessor had expressly prohibited sub-letting. If sub-letting was not prohibited, the privilege will only be enforceable up to the amount due by the sub-lessee to the principal lessee on the date a formal summons is served by the lessor upon the sub-lessee.

These privileged claims are payable out of the proceeds of sale of such movables and crops subject to such privilege, immediately after the claims above mentioned, with the exception of claims in respect of which the privilege does not operate as against the lessor in as much as he is a third party holder in good faith.

If movables and crops so charged are removed from the leased property, notwithstanding the objection of the lessor or without his knowledge, and the movables remaining on the property are

not sufficient to secure the privileged claims, the privilege is enforceable on the movables and crops so removed subject to rights acquired on these movables and crops by third parties in good faith. The privilege shall remain in force for three years from the date of removal, even to the detriment of a third party's rights, if the lessor effects within the prescribed time limit an attachment on the movables and crops removed. If, however, the movables and crops are sold to a purchaser in good faith in the market by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

Article 1144

Sums due to hotel proprietors by a traveler for accommodation, food and expenses incurred for his account, are secured by a privilege over the effects brought by the traveler to the hotel or its annexes.

Unless it can be shown that the hotel proprietor knew of the existence of a third party's rights over these effects at the time they were brought on to the premises, this privilege may be enforced on these effects, even if they do not belong to the traveler, provided that they are not lost or stolen property. A hotel proprietor may, if he has not been paid in full, object to the removal of these effects, and if they are removed notwithstanding his objection or without his knowledge, the privilege continues to be enforceable on them, subject to the rights acquired by third parties in good faith.

A hotel proprietor's privilege has the same rank as a lessor's privilege. Should the effects in question be subject to both claims, the first in date will have priority, unless it is not enforceable as against the other.

Article 1145

Sums due to a vendor of a movable for price and accessories are secured by a privilege over the movable sold. This privilege is enforceable as long as the movable sold preserves its identity, subject to the rights acquired in good faith by third parties and subject to the special provisions applicable in commercial matters.

This privilege follows in rank privileges over movables above referred to. It operates, however, as against the lessor and the hotel proprietor, if it can be proved that they had knowledge of such privilege at the time the thing sold was brought onto the leased property or into the hotel.

Article 1146

Co-owners who have partitioned a movable have a privilege over this movable in respect of their respective remedies against each other resulting from partition, and for repayment of any difference reverting to them in the partition.

The privilege of a co-partitioner has the same rank as a vendor's privilege. Should the movable in question be subject to both rights, the first in date will have priority.

2. Special Privileges over Immovables

Article 1147

The price and accessories due to the vendor of an immovable are secured by a privilege over the immovable sold.

Such privilege must be inscribed, notwithstanding the transcription of the sale, and its rank is fixed by the date of inscription.

Article 1148

Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works, have a privilege over such works but only in respect of the increase in value resulting from such works as at the time of alienation of the immovable.

Such a privilege must be inscribed: its rank is fixed by the date of its inscription.

Article 1149

Co-owners who have partitioned an immovable have a privilege over this immovable in respect of their respective remedies against each other resulting from the partition, including their right to claim payment of any difference reverting to them in the partition. This privilege must be inscribed: its rank is fixed by the date of its inscription