

Federal Law No. (5) of 1985 On the Civil Transactions Law of the  
United Arab Emirates

Preamble

\* Amended by Federal Law No. (1) of 1987 dated 14/02/1987

We Zayed Bin Sultan Al Nahyan President of the United Arab Emirates  
State,

Pursuant to the perusal of the provisional\* Constitution, and

\* The word " Provisional " has been deleted from the Constitution of  
the United Arab Emirates, wherever mentioned, by virtue of Article (1)  
of the Constitutional Amendment No. (1) of 1996 dated 02/12/1996; this  
Constitution has become the permanent Constitution of the State.

Federal Law No. (1) of 1972 Concerning the Jurisdictions of the  
Ministers and the Powers of the Ministers and the amending laws  
thereof, and

Acting upon the proposal of the Minister of Justice and the approval  
of the Council of Ministers and the ratification of the Federal  
Supreme Council,

Have promulgated the following Law:

Article (1)

\* As amended by Federal Law No. (1) of 1987 dated 14/02/1987

The civil Transactions in the United Arab Emirates State shall be  
subject to the law, whereas the commercial transactions remain subject  
to the laws and regulations applicable in their regard, pending the  
issuance of the Federal Commercial Law.

Article (2)

\* As amended by Federal Law No. (1) of 1987 dated 14/02/1987

This Law shall be published in the Official Gazette and shall come  
into force as of 29 of March 1986.

Promulgated by Us at the Presidential Palace in Abu Dhabi

On December 15, 1985

Corresponding to 3 Rabi al-Thani, 1406

Zayed Bin Sultan Al-Nahyan,  
President of the United Arab Emirates State

CIVIL TRANSACTIONS LAW (CIVIL CODE) OF THE UAE

INTRODUCTORY TITLE. GENERAL PROVISIONS

Chapter One. Application of the Law and Its Effectiveness in Time and  
Place

Section I: The Law And Its Application

Article (1)

Legislative provisions shall be applicable to all matters dealt therein, in letter and context. In presence of an absolutely unambiguous text, there is no room for personal interpretation. In the absence of a text in this Law, the judge shall adjudicate according to the Islamic Sharia taking into consideration the choice of the most appropriate solutions in the schools of Imam Malek and Imam Ahmad Ben Hanbal and, if not found there, then in the schools of Imam El Shafe'i and Imam Abou Hanifa, as the interest so requires. Where no such solution is found, the judge shall decide according to custom, provided it is not incompatible with public policy and morals. In case the custom is restricted to a specific Emirate, it shall be effective therein.

#### Article (2)

In understanding, interpreting and construing the text, the rules and fundamentals of Islamic doctrine shall be followed.

#### Article (3)

Shall be considered of public policy, provisions relating to personal status, such as marriage, inheritance, lineage, provisions relating to systems of governance, freedom of trade, circulation of wealth, private ownership and other rules and foundations on which the society is based, provided that these provisions are not inconsistent with the imperative provisions and fundamental principles of the Islamic Sharia.

### Section II: Application of Law as to Time

#### Article (4)

1. A legislative provision may not be repealed or stopped except by a subsequent law provision expressly so stating, or including a provision inconsistent with the previous legislation, or regulating anew the matter formerly regulated by that legislation.
2. Where a law provision repeals another provision and the former is later repealed, this shall not entail reinstating the latter unless so expressly provided.

#### Article (5)

1. Provisions concerning capacity shall be applicable to persons to whom the conditions set forth in these provisions apply.
2. Where a person is capacitated under the old provisions and becomes incapacitated under the new provisions, this shall not affect his previous acts.

#### Article (6)

1. The new provisions relating to limitation of time for lawsuits shall apply as of their effective date on each unexpired period of limitation.
2. The old provisions shall, however, apply on matters concerning the

commencement, stay and interruption of limitation during the period preceding the effective date of the new provisions.

Article (7)

1. Where the new provision sets forth a period of limitation shorter than that presented in the old provision, the new period shall apply as of the effective date of the new provision even though the old period had already started to run.
2. Should the remainder of the period presented by the old provision be shorter than the period stated in the new provision, limitation shall operate upon the expiry of the said remainder.

Article (8)

Evidence in support shall be governed by the provisions in force at the time they are, or should have been prepared.

Article (9)

Unless otherwise provided by law, periods of time shall be computed according to the Gregorian calendar.

Section III: Application of Law as to Place

Article (10)

The Law of the State of the United Arab Emirates shall authoritatively characterize the relationships when it is required to determine their nature in a case involving a conflict of laws in order to determine which of these laws is to be the governing law.

Article (11)

1. Civil status and capacity of persons are governed by the law of the State to which they belong by nationality. However, in financial dealings transacted in the State of the United Arab Emirates and producing their effects therein, should one of the parties be an incapacitated alien and the reason of his incapacity is not easily detected by the other party, this reason shall not affect his capacity.
2. The legal system related to foreign juridical personalities, such as companies, associations, institutions and others shall be governed by the law of the State where such personalities have the actual headquarters thereof. Should such personalities carry out an activity in the United Arab Emirates State, the national Law shall prevail.

Article (12)

1. For the objective conditions for the validity of marriage, the law of each of the spouses at the time of the conclusion of the marriage shall be referred to.
2. However, in the form, marriage between two foreigners, or between a foreigner and a national shall be deemed valid should it be concluded in accordance with the conditions of the State where it is concluded,

or should it take meet the conditions set forth by the law of each of the spouses.

#### Article (13)

1. The law of the State of the husband upon the conclusion of the marriage shall govern the personal and financial impacts set by the contract of marriage.
2. On the other hand, divorce shall be governed by the law of the State of the husband upon the time of divorce. As for the cases of divorce and separation, the law of the State of the husband upon the filing of the case shall apply.

#### Article (14)

In cases referred to in the preceding two articles, should one of the spouses be a national upon the conclusion of marriage, the law of the United Arab Emirates alone shall apply, with the exception of the condition of capacity for marriage.

#### Article (15)

The abidance by the alimony among relatives shall be governed by the law of the person commissioned therewith.

#### Article (16)

The objective matters related to guardianship, custody, tutelage and other objective systems to protect persons lacking capacity shall be governed by the law of the person whose protection is required.

#### Article (17)

1. Heritage shall be governed by the law of the testator upon the death thereof.
2. The state shall be entitled to the financial rights present on its territory and belonging to the foreigner having no heirs.
3. The objective provisions of the will and all actions related to the after-death stage shall be governed by the law of the State of the person carrying out such action upon the death thereof.
4. The form of the will and all actions related to the after-death stage shall be governed by the law of the State of the person carrying out such action upon the issuance thereof, or the law of the State in which such action took place.
5. Provided that the law of the United Arab Emirates prevails regarding the will issued by a foreigner about the real estate thereof in the State.

#### Article (18)

1. The acquisition ownership and other in kind rights shall be governed by the law of the location with regards to the real estate, and the law of the party where the moveable property is located upon the achievement of the reason entailing the acquisition, ownership or other in kind rights, or the loss thereof, and such with regards to such moveable property.

2. The law of the State where the fund is located shall determine whether such fund is a real estate or a moveable property.

#### Article (19)

1. Contractual commitments in form and context shall be governed by the law of the State where the common residence of the contracting parties is located. Should they have different residences, the law of the State where the contract is made shall apply, unless the parties agree otherwise, or the conditions show that another law is to be applied.

2. However, the law on the location of the real estate is the law to be applied on contracts made in this regard.

#### Article (20)

1. Non-contractual commitments shall be governed by the law of the State where the incident causing the commitment takes place.

2. The provisions of the preceding paragraph shall not apply regarding commitments arising from an illegal business, and such with regards to the incidents carried out abroad and considered legal in the United Arab Emirates, even if they are deemed illegal in the country where they take place.

#### Article (21)

The rules of jurisdictions and all procedural matters shall be governed by the law of the State where the case is filed or where procedures take place.

#### Article (22)

The provisions of the preceding articles shall not apply should there be a text in a special law or an international treaty enforced in the country that contradicts such provisions.

#### Article (23)

The principles of the special international law shall apply with regards to matters not mentioned in the preceding articles related to the conflict of laws.

#### Article (24)

The law of the United Arab Emirates shall apply with regards to stateless persons, or to persons having multiple nationalities. However, people proven to hold the UAE nationality and the nationality of another State, the law of the United Arab Emirates shall be applied.

#### Article (25)

Where, in the provisions of the preceding Articles, the governing law is that of a specific country that has a multi-legislative system, the domestic law in this country shall indicate which law in this system should be applied. In the absence of such indication, the prevailing law or the law of the domicile, as the case may be, shall apply.

Article (26)

1. Should the governing law be a foreign one, its domestic provisions shall be applied, to the exclusion of the private international law provisions.

2. The Law of the United Arab Emirates State shall, however, be applied in case of renvoi to its provisions from the governing law.

Article (27)

The provisions of the law indicated by the foregoing provisions may not be applied in case they are contrary to the Islamic Sharia, public policy or morals in the United Arab Emirates State.

Article (28)

The law of the United Arab State shall apply in case the existence of the governing foreign law cannot be established or its context cannot be delimited.

Chapter Two. Certain Doctrinal Principles and Rules Of Interpretation

Article (29)

Ignorance of the Sharia provisions is no excuse.

Article (30)

Exceptions may neither be applied by analogy nor receive extended interpretation.

Article (31)

What is established by a mandatory provision shall have precedence over obligation prescribed by a condition.

Article (32)

That without which an obligation cannot be fulfilled is itself an obligation.

Article (33)

A rule and its cause, go together in their existence or their negation.

Article (34)

Fungibles are not perishable.

Article (35)

Certainty is not removed by doubt.

Article (36)

Things, in principle, should remain as they were.

Article (37)

In principle, a person's financial is free from liability.

Article (38)

Contingent characteristics are considered, in principle, as non-existing.

Article (39)

What is established to exist at a certain time shall remain in existence, unless there is evidence to the contrary.

Article (40)

An event should in principle be attributed to its nearest time of occurrence.

Article (41)

No analogy may be made with what has proven to be contrary to analogy.

Article (42)

1. No prejudice caused and no harm inflicted.
2. Prejudice should be removed.
3. Prejudice is not removed by a similar one.

Article (43)

Necessities allow breaking prohibitions.

Article (44)

Preventing corruption is better than drawing benefits.

Article (45)

Compulsion does not impair the right of third parties.

Article (46)

1. General or particular, usage is binding.
2. Usage, if constant or prevalent, shall be taken into consideration.
3. Truth shall remain unchanged if corroborated by usage.

Article (47)

Utilization by the public is evidence to be followed.

Article (48)

What is impossible by usage is impossible in fact.

Article (49)

Prevalence and notoriety shall be taken into account not rareness.

Article (50)

That which is known by usage is equivalent to a stipulated condition.

Article (51)

Designation by usage is a designation by text.

Article (52)

Where an impediment conflicts with a requirement, the former shall have precedence.

Article (53)

Accessory is appurtenant and may not be individualized independently.

Article (54)

Where the principal is forfeited, the ancillary follows.

Article (55)

That is forfeited, alike the inexistent, shall not come back to existence.

Article (56)

Voidance shall extend to the thing and its contents.

Article (57)

Where the principal is void the substitute shall be sought.

Article (58)

To be effective against the public, a disposition is contingent on interest thereto.

Article (59)

Answer reproduces the question.

Article (60)

Imagination is not taken into consideration.

Article (61)

No consideration is to be given to a belief overtly incorrect.

Article (62)

What is established by proof amounts to eye-witnessing.

Article (63)

A person is bound by his acknowledgment.

Article (64)

An auxiliary matter may be established by proof though the principal is not.

Article (65)

Appearance may stand as a proof for defense but not for claiming a right.

Article (66)

Land tax is due by the exploiter.

Article (67)

Charges in consideration of profits.



Article (68)

An order to dispose of someone else's property is void.

Article (69)

He who accelerates the happening of a thing, before it is due, shall be deprived of it.

Article (70)

He who challenges what has been done from his part his attempt shall turn against him.

### Chapter Three. Persons

#### Section I: Physical Persons

Article (71)

1. Personality of a human being starts at his birth alive and ends upon its death.
2. The law shall determine the rights of a fetus.

Article (72)

1. Birth and death events are established through their recording in the ad hoc registers.
2. Where the evidence is missing or if it appears that the data recorded are not true, any legal means of proof is accepted.

Article (73)

Provisions concerning foundlings are regulated by a special law.

Article (74)

Provisions relating to missing persons or absentees are regulated by a special law.

Article (75)

1. Nationality of the State of the United Arab Emirates is regulated by law.
2. A citizen, wherever this expression appears in the Civil Transaction Law, means the person who has the nationality of the Emirates State, the alien being the person who has not such nationality.

Article (76)

1. The family of a person is composed of his spouse and relatives.
2. Relatives are all those of common ancestry.

Article (77)

1. Direct kinship is the relation between ascendants and descendants.
2. Indirect kinship is the relation between persons of common

ancestry, without being an ascendant or descendant of the other, regardless of the degree of consanguinity.

Article (78)

In calculating the degree of direct kinship, each descendant is a degree upward to the ascendant not counting the latter. In calculating the degree of indirect kinship, degrees are counted upwards from the descendant to the common ancestor and then downwards from this latter to the other descendant, each descendant, excluding the common ancestor, is counted a degree.

Article (79)

A relative of one of the spouses is considered of the same degree of kinship in relation to the other spouse.

Article (80)

1. Every person has a name and surname, the latter shall attach to his children's name.
2. A special law shall regulate the mode of acquiring and changing names and surnames.

Article (81)

1. Domicile is the place where a person habitually resides.
2. A person may have at the same time more than one domicile.
3. Where a person has no habitual residence, he shall be considered without domicile.

Article (82)

The place where a person carries out a trade, a profession or a craft shall be considered his domicile as concerns his activities relating to his trade, profession or craft.

Article (83)

1. The domicile of a minor, interdicted, missing or absent person shall be the domicile of his legal representative.
2. The minor authorized to carry out a trade shall have a special domicile as concerns the acts and dealings to which he is considered by law apt to perform.

Article (84)

1. A person may elect a domicile of choice to perform a specific legal act.
2. Election of a domicile must be established in writing.
3. A domicile elected for the performance of a legal act shall be considered the domicile for all matters relating to this act, including execution procedures, unless it is expressly specified that this domicile is restricted to certain acts to the exclusion of all others.

Article (85)

1. Every person attaining the legal age, enjoying full mental capacity and not interdicted shall be considered of full capacity to exercise his rights provided for in this Law and all laws deriving therefrom.
2. A person shall be considered of full age if he completes twenty one lunar years.

#### Article (86)

1. Whoever is devoid of discernment because of age, imbecility or insanity shall not have the capacity to exercise his civil rights.
2. A child below the age of seven shall be considered devoid of discernment.

#### Article (87)

Whoever has attained the age of discernment but not the age of full capacity and whoever has attained the legal age but is prodigal or simple-minded, shall be considered lacking capacity as determined by law.

#### Article (88)

In matters of tutorship, guardianship or curatorship, incapacitated persons and those lacking capacity, as the case may be, shall be subject to the conditions set forth in the law.

#### Article (89)

No one may give up his personal freedom or capacity or modify the provisions thereof.

#### Article (90)

Whoever has been subject of an unlawful infringement to one of the rights intrinsic to his personality may ask for the cessation of such infringement and payment of damages for the prejudice sustained.

#### Article (91)

Whoever is unjustifiably disputed in the use of his name, surname or both or if his name or surname, or both, are misappropriated, may ask the cessation of this infringement and payment of damages for the prejudice sustained.

### Section II: Juristic Persons

#### Article (92)

Juristic persons are:

- a) The State, the Emirates, the municipalities and other administrative units within the conditions determined by law.
- b) Public Administrations, Services establishments and institutions endowed, by law, juristic personality.
- c) Islamic organizations to which the State recognizes juristic personality.
- d) Wakfs.

- e) Civil and commercial companies with the exception of those excluded by a special law provision.
- f) Private associations and institutions established in accordance with the law.
- g) Any group of persons or property that the law endows with juristic personality.

#### Article (93)

1. Within the limits set forth by law, a juristic person enjoys all rights except those inherent to the natural characteristics of a human being.

2. It shall have:

- a) An independent financial status.
  - b) Capacity within the limits specified in its constitution deed or as determined by law.
  - c) The right to sue.
  - d) An independent domicile. The domicile of a juristic person is the place where its administration set-up is situated. The administration seat of juristic persons that have their principal office abroad but carry out activities within the State, shall, as regards the State Law, be the place where their local administration is located.
3. It must have a representative to express its will.

#### Article (94)

Juristic persons are governed by their specific law provisions.

### Chapter Four. Things and Property

#### Article (95)

Property is any object or right that has a negotiable value.

#### Article (96)

Property may be "mutaqawwim" or "non-mutaqawwim". Mutaqawwim (negotiable) property is that which it is permissible for a Muslim lawfully to enjoy, and non-mutaqawwim (non-negotiable) property is that which it is not permissible for a Muslim lawfully to enjoy.

#### Article (97)

Anything that may be subject to physical or legal possession, may be exploited lawfully and is not by nature or by law non-negotiable, can constitute the subject matter or proprietary rights.

#### Article (98)

Things that are outside the ambit of trade by their nature are those which may not be subject to exclusive possession. Things that are outside the ambit of trade by law are those that the law forbids that they be the object of proprietary rights.

#### Article (99)

1. Fungibles are those things which units and parts are so close that one may customarily stand for the other without any significant difference and which are estimated in dealings by number, measure, volume and weight.

2. Non-fungibles are those which units are significantly different in characteristics and value or are rare in circulation.

#### Article (100)

1. Consumables are those things which specifications may not be effectively utilized only by consumption or disposal.

2. Usable things are those which usufruct is materialized only by repeated use without affecting their existence.

#### Article (101)

Anything which is settled and fixed in space and cannot be moved without deterioration or alteration of its shape is an immovable property. Any other thing is movable.

#### Article (102)

An immovable property by destination is a movable put by its proprietor on a land he owns, destined for its service or exploitation even though not permanently fixed to stay.

#### Article (103)

1. Public property consists of all movable or immovable properties owned by the State and public juristic persons destined for public utility in fact or by virtue of a law.

2. This property may not, under all circumstances, be disposed of, seized or appropriated by prescription.

### Chapter Five. The Right

#### Section I: Scope of Exercising a Right

#### Article (104)

Legal allowance negates warranties, so who utilizes his right legally does not warrant remedying the prejudice resulting therefrom.

#### Article (105)

1. Sustenance of private harm is justified in order to avoid public prejudice.

2. A more severe prejudice is removed by sustaining a less severe one.

#### Section II: Abuse Of The Exercise Of A Right

#### Article (106)

1. Warranty is a must for whoever unlawfully uses his right.

2. Use of a right is unlawful when:

- a) there is an intention to trespass;
- b) the interests sought to be achieved by such use are contrary to the provisions of the Islamic Sharia, the law, public policy or morals;
- c) the expected interests are not commensurate with the prejudice sustained by other persons;
- d) it exceeds what is usually accepted by custom and usage.

### Section III: Different Kinds Of Rights

#### Article (107)

Rights are personal, real or moral.

#### Article (108)

A personal right is a legal bond between a creditor and debtor where the former asks the latter to transfer a real right, or the performance or forbearance of an act.

#### Article (109)

1. A real right is a direct authority over a specific thing given by the Law to a specific person.
2. The real right may be principal or accessory.

#### Article (110)

1. Principal real rights are ownership, disposal, usufruct, use, lodging, shared occupation, easements, Wakf and all what is so considered by law.
2. Accessory real rights are surety mortgage, possessory mortgage and privilege.

#### Article (111)

1. Moral rights are those exercised over intangible things.
2. Copyrights, rights of inventors, artists, trademarks and all other moral rights are subject to special laws.

### Section IV: Proof of Rights

#### 1. Means of Proof

#### Article (112)

Means of proof are:

- a) Writing;
- b) Testimony;
- c) Presumptions;
- d) Eye-witnessing and expertise;
- e) Avowal;
- f) Oath.

## 2. General Rules of Evidence

### Article (113)

The onus of proof lies on the creditor, in establishing his right and on the debtor, in refuting it.

### Article (114)

Writing, testimony, irrefutable presumptions, eye – witnessing are means of proof with extensible effects, while avowal only binds the acknowledger.

### Article (115)

Every testimony that includes drawing an advantage to the witness or repelling a detriment away from him, shall be disregarded.

### Article (116)

The testimony of a dumb person and his oath, through his usual signs, shall be accepted if he ignores writing.

### Article (117)

Burden of proof is on the claimant and oath on the denying.

### Article (118)

Evidence is used to prove the contrary of what is apparent and oath to corroborate what originally exists.

### Article (119)

Oath is accepted from the one who takes it in order to prove his innocence but not to obligate others.

### Article (120)

1. Do not take an oath except on request of the opponent.
2. The judge may on his own direct the oath to one of the parties in one of the following instances:
  - a) Claim and prove that he has a right in an estate. He shall take oath that he apparently did not recover his dues from the decedent and did not discharge him or transfer his right to someone else and the decedent does not have a mortgage in consideration of this right.
  - b) There is evidence that he is entitled to a property, he takes an oath that he did not sell or donate it or that title thereto was not transferred by any means whatsoever.
  - c) Return of a defective property, he takes oath that he did not accept the defect, in words or through a sign.
  - d) In case he is adjudged a preemptory right, he takes oath that he did not forfeit his preemptory right by any means whatsoever.

### Article (121)

The statement of a translator registered in the ad hoc register shall, as regulated by law, be accepted.

#### Article (122)

No argument is accepted in case of contradiction. It shall not affect the court judgment if established thereafter. The interested party may revert for warranty on the witness.

### 3. Application of Roles of Evidence

#### Article (123)

Except where it is in conflict with the foregoing provisions, rules specified in the relevant special laws shall be followed by the courts, as concerns rules and procedures of evidence as well as the conditions of acceptance of evidence confirming the right.

## BOOK ONE. PERSONAL OBLIGATIONS AND RIGHTS

### PART ONE. SOURCES OF PERSONAL OBLIGATIONS AND RIGHTS

#### Article (124)

Personal obligations or rights derive from the legal acts of disposal and facts and from the law. The sources of obligations are:

- 1) The contract;
- 2) Unilateral act;
- 3) Tort;
- 4) The beneficial act;
- 5) The law.

### Chapter One. The Contract

#### Section I: General Provisions

#### Article (125)

A contract is the meeting of an offer issued by one of the contracting parties with the acceptance made by the other party and their concordance in such a manner as to produce their effect on the object of the contract and results in a binding obligation on each party in consideration of the obligation of the other party.

A meeting of more than two minds may agree to produce a legal effect.

#### Article (126)

The object of a contract may consist of:

- a) Property, movable or immovable, corporeal or incorporeal;
- b) Usufruct of the property;
- c) A specific act or service;
- d) Any other thing that is not prohibited by law or violating public policy or morals.

#### Article (127)



An offense or violation may not constitute the object of a contract.

#### Article (128)

1. Nominate or innominate contracts are governed by the rules contained in this chapter.
2. Rules exclusively applicable to certain contracts are specified in the specified in the special provisions regulating same, whether in this law or any other.

### Section II: Constituents, Validity and Implementation of Contracts and the Options

#### 1. Formation of a Contract

#### Article (129)

The necessary elements for the formation of a contract are:

- a) Meeting of minds of the contracting parties on the main elements;
- b) The object of the contract must be something possible, specified or specifiably, and negotiable;
- c) The obligations arising out of the contract must have a licit cause.

#### Article (130)

A contract is formed by the meeting of an offer with an acceptance, with due observance of any special conditions provided for in the law for its formation.

#### Article (131)

The offer and acceptance are the expression of a will used for the formation of a contract. The one expressed first is the offer and the second is the acceptance.

#### Article (132)

Expression of the will may be verbal or in writing, whether in the past or present tenses or imperative mood, if intended for immediate observation, or by signs customary followed, even from a non-dumb person, or by effective exchange proving mutual assent or by taking any other attitude indicating beyond any doubt mutual assent.

#### Article (133)

Future tense that denotes an absolute promise may form the contract as a binding promise, if so intended by the contracting parties.

#### Article (134)

1. Display of goods and services showing the consideration thereto is considered an offer.
2. Publication, advertising and lists of current prices as well as any other statement concerning offers or requests addressed to the public or to individuals shall not, in case of doubt, be considered an offer

but an invitation to contract.

#### Article (135)

1. No statement may be attributed to a silent person. However, circumstantial silence shall constitute acceptance.
2. Silence shall amount to acceptance namely in case of previous dealings between the contracting parties that are met by the offer made or where the offer is made to the benefit or the offeree.

#### Article (136)

Following the offer and until the end of their meeting, the contracting parties have the option to accept or reject it. The offer becomes invalid if withdrawn by the offeror after the offer but prior to acceptance, or if one of the contracting parties states or does an act indicating retraction of the offer. Any statement made thereafter is irrelevant.

#### Article (137)

During the contract meeting, giving consideration to what is not meant by the parties is a relinquishment of what was intended.

#### Article (138)

Repetition of the offer prior to acceptance avoids the first offer. Only the second offer shall be taken into consideration.

#### Article (139)

1. Where a time is fixed for acceptance, the offeror is bound to maintain his offer until the expiry of the period fixed.
2. The said time may be inferred from the surrounding circumstances, or from the nature of the transaction.

#### Article (140)

1. Acceptance must be concordant with the offer.
2. Where the acceptance includes additions, restrictions or modifications to the offer, it shall be considered a rejection that includes a new offer.

#### Article (141)

1. A contract is not formed except through the agreement of the parties on the essential elements of the obligation and on all the other legitimate conditions which the parties consider them to be essential.
2. Where the parties agree on the essential elements of the obligation and on all the other legitimate conditions which the parties consider them to be essential, reserving some detailed to be agreed upon at a later date and did not condition the formation of the contract on the agreement on these matters, the contract is considered formed. Should any difference arise as to these pending details, the judge shall decide thereon according to the nature of the transaction and the law provisions.

#### Article (142)

1. The contract between absent persons shall be considered formed at the place and time where and when the offeror has knowledge of the acceptance, unless there is an agreement or a law provision to the contrary.
2. The offeror is considered to have taken knowledge of the acceptance at the place and time where and when this acceptance has reached him, unless evidence to the contrary is established.

#### Article (143)

Contract by telephone or any similar means shall, as to place be considered as made between parties who are not present, in the same contract meeting, and, as to time, it shall be considered as formed between parties present in the same meeting.

#### Article (144)

Auction sales contracts are only formed by knocking down to the successful bidder. A bid is foreclosed by a higher bid, even if invalid, and by closing the auction without it being knocked down to any bidder.

#### Article (145)

Acceptance in contracts of adhesion is confined to adhesion to standard conditions laid down by the offeror to all his customers and which are not subject to discussion.

#### Article (146)

1. An agreement by which both or one of the parties undertake to enter into a specific contract in the future shall not be formed unless it specifies all the material matters of the contract to be concluded and the period set for its formation.
2. Where the law conditions the formation of a contract to a specific form, this form should be observed in the agreement embodying a promise to enter into such a contract.

#### Article (147)

Where a person promises to make a contract and then breaches his promise and is sued by the other party claiming the fulfillment thereof, and where the conditions required for the formation of the contract, namely those relating to form, are satisfied, the judgment when it becomes res judicata shall be a substitute for the contract.

#### Article (148)

1. In the absence of a clause to the contrary in the contract, the payment of earnest money is evidence that the contract has become final and may not be relinquished.
2. Where the parties agree that the earnest money paid is the sanction for withdrawal from the contract, either party may withdraw. If the payor of the earnest money is the one who withdraws he shall lose it

and the person who has received the earnest money and withdraws from the contract shall repay double the amount received.

## 2. Representation in Contracting

### Article (149)

Unless the law otherwise provides, a contract may be made in person or through a representative.

### Article (150)

1. Representation in contract may be conventional or legal.
2. The proxy deed issued by the principal shall determine the authority of the proxy, when conventional, and this authority shall be determined by the law, when legal.

### Article (151)

Whoever personally makes any contract for his own account he alone shall be bound by its provisions.

### Article (152)

1. Where the contract is formed by way of representation, the person of the representative and not the principal is taken into consideration when examining lack of consent or the effect of actual or supposed knowledge of special circumstances.
2. Nevertheless, where the representative is an agent acting according to specific instructions issued by his principal, the latter may not avail himself of the agent's ignorance of circumstances known or should have been known by him.

### Article (153)

Should the representative, within the powers of his representation, conclude a contract in the principal's name, the provisions of this contract and all ensuing rights and obligations shall accrue to the principal.

### Article (154)

If the contracting party does not disclose at the time of making the contract that he acts in his representative capacity, the effect of the contract shall not ascribe to the principal, be he a creditor or a debtor, unless it is supposed beyond doubt that the third party with whom the representative contracted has knowledge of the existing representation or it is indifferent to him to contract with the principal or the representative.

### Article (155)

Where both the representative and the other party who contracted with him ignore, at the moment of making the contract, the expiry of the representation, the effect of the contract made by the representative shall ascribe to the principal or his successors.

#### Article (156)

Except where otherwise provided by law or by commercial rules, no one may contract with himself in the name of his principal, whether the contract is for his own account or for that of another person, without authorization from the principal. However, the principal may, in this case, ratify the contract.

### 3. Capacity to Contract

#### Article (157)

Every person has capacity to contract unless such capacity is withdrawn or limited by law.

#### Article (158)

The minor below the age of discernment has no right to dispose of his property and all his acts in this respect are deemed to be void.

#### Article (159)

1. Pecuniary dispositions of the discerning minor are valid, if totally beneficial to him, and void if entirely detrimental.
2. All acts of disposition that may vary between being profitable or detrimental depend of the ratification of the tutor, within the limits he initially is allowed to dispose of, or of the minor after attaining legal age.
3. The age of discernment is seven full Hegira years.

#### Article (160)

1. The tutor has to authorize the minor who has completed eighteen Hegira years of age to take delivery for administration purposes, of all or part of his property.
2. The court may, after hearing the guardian, authorize the minor who has completed eighteen Hegira years of age to take delivery of all part of his property to administer it.
3. The Law shall determine the governing provisions in this respect.

#### Article (161)

The authorized minor, as concerns the acts falling within the authorization, shall be considered as a person of full legal age.

#### Article (162)

A minor whether under tutorship or guardianship, may not engage in trade unless he completes eighteen Hegira years of age and has secured the full or restricted authority of the court in his respect.

#### Article (163)

1. The judge may grant authorization to the discerning minor, in case the tutor withholds such authorization; and the latter may not thereafter claim interdiction of the minor.

2. The judge may, after authorization restore interdiction on the minor.

Article (164)

The tutor on the minor is his father then the tutor of the latter, the paternal grandfather, the judge or the guardian appointed by him.

Article (165)

The law shall determine the capacity required from the tutor to perform the tutorship rights on the property.

Article (166)

Administration contracts made by the guardian on the minor's property are valid and effective in accordance with the conditions and in the instances determined the law.

Article (167)

Acts of disposition made by the guardian on the minor's property and which are not considered as acts of administration are valid and effective in accordance with the conditions and in the instances determined by law.

Article (168)

1. Minors, insane and mentally deficient persons are interdicted per se.
2. Prodigal and irrational persons are interdicted by order of the judge. The interdiction shall be removed according to the rules and procedures set forth in the law.
3. The order of interdiction shall be notified to the interdicted and the reason therefore shall be made public.

Article (169)

The interdicted insane persons and those mentally deficient of full legal age shall be treated as incapacitated minors.

Article (170)

1. Acts of disposition made by prodigals and irrational persons, pursuant to the registration of the application or judgment of interdiction or to the application for reinstatement of tutorship or to the order of imposing it anew, shall be governed by the same provisions as the dispositions made by persons lacking capacity.
2. Acts of disposition prior to registration shall not be void or voidable unless they are made under exploitation or through connivance.

Article (171)

1. The court may authorize the interdicted prodigal and irrational person to take possession of, and administer, all or part of his properties.
2. The law shall determine the relevant provisions in this respect.

#### Article (172)

The laws shall determine the procedures to be followed for interdiction, the administration of the interdict's properties, their exploitation or disposal thereof and all other matters related to tutorship, guardianship and curatorship.

#### Article (173)

If a person who is deaf / dumb, blind and deaf, or blind and mute, and for such reason unable to express his will, the judge can appoint a judicial assistant to help him in such disposition, according to the manner showed by the law.

#### Article (174)

Acts performed by tutors, guardians and curators shall be valid within the limits set forth in the law.

#### Article (175)

The person who lacks capacity and resorts to fraudulent means to cover his incapacity shall be liable to damages.

### 4. Defective Assent

#### A) Duress

#### Article (176)

Duress is a wrongful coercion by which a person is induced to do something without his consent. Duress may be made by using violence or intimidation, physical or moral.

#### Article (177)

Duress is violent where it threatens to inflict a serious and imminent danger to the person or to his property; otherwise, if of a lesser degree, it is duress by intimidation.

#### Article (178)

A threat to inflict harm to a person's parents, children, spouse or sibling, as well as the threat of a risk prejudicial to honor is considered duress that may, according to circumstances, be violent or by intimidation.

#### Article (179)

Duress by violence nullifies consent and invalidates choice and duress by intimidation nullifies consent but does not invalidate the choice.

#### Article (180)

Duress varies according to the difference between persons, their age, weakness, ranks and the degree of their affection and affliction from duress and from any other circumstance that may affect the seriousness

thereof.

Article (181)

Duress is conditioned upon the author's ability to execute his threats and the victim's prevalent impression that the constraint shall immediately materialize if he does not execute what he was forced to do.

Article (182)

Where the victim of one of the two kinds of duress is forced to make a contract is not enforceable, but it becomes so if he or his heirs ratify it, expressly or impliedly, after the cessation of duress.

Article (183)

Where the husband coerces his wife through beating her or forbidding her to see her parents, or doing any similar act, in order to force her to assign to him one of her rights or donate a property to him, her act shall be unenforceable.

Article (184)

Where the coercion is issued otherwise than by one of the contracting parties, the person forced to enter into the contract must not insist on the invalidity of the contract, unless it is proven that the other contracting party had or was supposed to have knowledge of such coercion.

B) Deceit and Undue Influence

Article (185)

Deceit is the act by which one of the contracting parties deceives the other through the use of fraudulent means, in words or other means, inducing him to assent to what he would have never consented to do in the absence of such means.

Article (186)

Deliberate silence on a fact or circumstance constitutes a deceit if it is established that the victim of deceit would have not concluded the contract had he known of this fact or circumstance.

Article (187)

Where one party, using undue influence, deceives the other party and it is established that the contract has been made with an exorbitant hardship, the deceived party may rescind the contract.

Article (188)

Exorbitant hardship in real or other property is the one that does not fall within expert's appraisal.

Article (189)



Where the property of the interdicted or the sick person on his death bed has been the objects of a transaction tainted, even slightly, with undue influence and their debt cover all their belongings, the contract is subject to removal of the hardship or acceptance by the creditors, otherwise it is void.

#### Article (190)

If the deceit is perpetrated by other than the contracting party and the victim of such deceit establishes that the other contracting party had knowledge of such deceit, he may rescind the contract.

#### Article (191)

A contract made under exorbitant hardship but without deceit shall not be rescinded except as concerns the property of the interdicted, the Wakf and the State.

#### Article (192)

The right to rescind on grounds of deceit and exorbitant hardship shall be forfeited by the death of the person entitled to ask for rescission, by disposing of the contract's object, wholly or partially, through an act indicating acceptance, or by having it perish in his possession, by consumption, defection or its increment.

### C) Mistake

#### Article (193)

Mistake is not taken into consideration except where it occurs in the text of the contract or if revealed by the surrounding circumstances and conditions, the nature of things and customs.

#### Article (194)

Where the mistake occurs in the nature of the contract or in one of its formation conditions or in its object, the contract shall be void.

#### Article (195)

A contracting party may rescind the contract if he commits a mistake in a matter of substance such as the object of the contract or in the person of the other contracting party or in one of his characteristics.

#### Article (196)

Unless otherwise provided by law, a contracting party may rescind the contract if he makes a mistake of law provided the conditions of mistake in facts are satisfied in accordance with articles (193) and (195).

#### Article (197)

A mistake in calculation or writing, shall not affect the contract, but must be corrected.

#### Article (198)

Whoever is under a mistake may not avail himself of it in a manner contradicting with the requirements of good faith.

### 5. Object and Cause of Contract

#### A) Object of the Contract

#### Article (199)

Every contract must have an object to be added to it.

#### Article (200)

1. In pecuniary transactions, the object must be appraisable.
2. It may consist of a bare property, usufruct as it may consist of an act or abstention there from.

#### Article (201)

Should the object be impossible in itself shall be impossible in itself, at the time of the contract, the contract shall be void.

#### Article (202)

1. In the absence of deceit, the object of financial transaction may be a future thing.
2. It is prohibited to deal with the inheritance of an alive person, even if with his own consent, unless in the circumstances stipulated by the law.

#### Article (203)

1. A designated object must be provided for financial compensation and negating flagrant ignorance, by indicating its special location, if it is already existing by the time of the contract or the statement of its and characteristic features, while mentioning its magnitude, if being an appraised thing or anything of the sort which deny flagrant ignorance.
2. If the object is known to the contracting parties, then no need to describe it or define it otherwise.
3. If the object shall not be designated according to the above, the contract shall be null and void.

#### Article (204)

If the object to be disposed of or its consideration is an amount of money, its quantity and kind must be determined. The currency fluctuation at the time of payment is immaterial.

#### Article (205)

1. The object must be a thing that can be disposed of according to the terms of the contract.
2. Should the law forbid negotiating anything or should it be contrary

to public policy or morals, the contract is void.

#### Article (206)

A contract may include a suitable condition which confirms its terms, admitted by custom or usage, beneficial to one of the contracting parties or others unless it is prohibited by the legislator or contrary to public policy or morals, in which case the condition is void but the contract remains valid except where the condition is the prime motive of contracting and, in this case, the contract shall also be void.

### B) Cause of the Contract

#### Article (207)

1. The cause shall be the direct intended purpose of the contract.
2. It must be existing, valid, lawful, and not inconsistent with public policy or morals.

#### Article (208)

1. The contract is not valid unless it provides a lawful benefit to the contracting parties.
2. In contracts, the existence of such lawful benefit is supposed unless there is proof to the contrary.

## 6. Valid, Void and Voidable Contracts

### A) The Valid Contract

#### Article (209)

A contract is valid if licit in its essence and characterization, issued by a qualified person, having an object that can be governed by the contract and an existing, valid and licit cause, validly specified and not subject to a void condition.

### B) The Void Contract

#### Article (210)

1. The void contract is the illicit one, by origin and description, due to a defect in one of its constitutive elements, its object, purpose or the form imposed by law for its valid formation. This contract shall have no effect and cannot be ratified.
2. Every interested party is entitled to invoke the invalidity, and the judge to decide it ex officio.
3. Action of nullity may not be heard after the lapse of fifteen years as of conclusion of the contract, but every interested person may, at any time, raise a plea in avoidance of the contract.

#### Article (211)

1. Where a contract is partially void, the whole contract shall be void unless the share of each part is determined, then the contract shall be void in that part and shall remain valid for the rest.
2. If the contract, in part of it, is suspended, this part shall remain so subject to its being authorized and, when accepted, the whole contract shall be enforced, otherwise it shall be void in the suspended part alone to the extent of its share in the consideration and shall be enforced in the other part to the extent of its share.

### C) The Voidable Contract

#### Article (212)

1. The voidable contract is licit in its essence but not in its characterization. It shall be valid once the cause of its voidableness has ceased to exist.
2. Ownership of the object of the contract is not established unless upon receiving its value.
3. It shall have no effect except within the limits specified by law.
4. Each of the contracting parties or their heirs shall have the right to rescind the contract after notifying the other party.

### 7. The Suspended Contract and Non-Binding Contract

#### A) The Suspended Contract

#### Article (213)

The implementation of a transaction shall be suspended until authorized, in case the author of the transaction is a trespasser of another person's property; or if he is the owner disposing of his property but subject to a lien in favor of a third party; or where the author of the transaction is a minor disposing of his property but his act is at the same time profitable and detrimental to him; or done by a person under duress; or if the law so provides.

#### Article (214)

Authorization of a contract shall be given to the owner, the owner of a right on the object of the contract, the tutor or guardian or the minor himself when completing his capacity, the person under duress after disappearance of coercion, or the person specified by law.

#### Article (215)

1. Authorization shall be by any act or words so indicating expressly or impliedly.
2. Silence shall be considered approval if customarily indicating assent.

#### Article (216)

In order to be valid the authorization must concern a transaction that can be authorized, both at its performance and at the moment of giving the authorization. Moreover, the beneficiary of this authorization, the contracting parties and the object of the transaction must exist at the moment of granting it, in addition to the consideration thereof in case it is in kind.

#### Article (217)

1. Once authorized, the suspended act of disposition shall be enforced as at its inception and the subsequent authorization shall be considered as a prior power of attorney.
2. Should authorization be withheld, the transaction is void.

### B) The Non-Binding Contract

#### Article (218)

1. The contract shall be non binding with respect to one, or both, contracting parties, despite its validity and enforceability, if the right of rescission is given without need to secure the approval of the other party or resort to court.
2. Any of the two contracting parties has independently the right to rescind such contract if, by nature, it is not binding to him or if he retained for himself the right to rescind it.

### 8. Options That Impair the Binding Effect of the Contract

#### A) The Condition Option

#### Article (219)

In binding contracts but subject to rescission, the contracting parties may, both or one of them, stipulate upon conclusion of the contract or subsequent thereto, a condition option for himself or for a third party fixing the period within which the parties have to reach an agreement. Should they fail to fix such period, the judge may fix it in accordance to custom.

#### Article (220)

In financial transactions, if the condition option is stipulated in favor of both contracting parties, the two considerations shall remain their respective property. In case the option condition is in favor of one of them, his consideration shall remain his property and the consideration of the other party shall not accrue to him.

#### Article (221)

1. The beneficiary of the option provision shall have the right to rescind the contract or approve it.
2. If he opts for approval, the contract shall be binding as of the time of its formation and if he opts for rescission, the contract shall be rescinded, and considered as if it never existed.

#### Article (222)

If the option is stipulated in favor of each of the contracting parties and one of them opts for rescission, the contract shall be rescinded, even if the other party approves it, but if he opts for approval, the other party's option shall remain in effect during the option period.

#### Article (223)

1. Rescission or approval shall be effective by any act or statement indicating any of them, explicitly or implicitly.
2. If the period shall end, without electing approval or rescission, the contract becomes binding.

#### Article (224)

1. The validity of rescission is conditioned upon electing it within the option period and the knowledge thereof by the other party, if the rescission is verbal and is not conditioned by mutual assent or resorting to court.
2. The approval, however, is not conditioned upon knowledge thereof by the other party.

#### Article (225)

The option shall be forfeited by the death of the beneficiary thereof within the option period and the contract shall be binding to his heirs, but the option of the other party shall remain open to him until the expiry of the option period, provided he was given this option.

### B) The Viewing Option

#### Article (226)

The viewing option is given, in contracts that may be rescinded, to the party in favor of whom the act was performed, even if he does not condition the contract upon such option, and if he did not see the object of the contract which was only specified by description.

#### Article (227)

The viewing option shall remain until viewing is achieved, within the agreed period, or forfeited.

#### Article (228)

The viewing option shall not prevent the enforcement of the contract, but shall render it non binding with respect to the party in favor of whom the option is given.

#### Article (229)

1. The viewing option may not be forfeited by surrender.
2. It shall be forfeited by viewing the object of contract, its

express or implied acceptance, by the death of the party having the option, total or by disposing of it by the beneficiary of the option in a way that does not allow rescission or that gives right to others.

#### Article (230)

Rescission, by viewing option, shall be accomplished by any action or statement that explicitly or implicitly indicates it, provided that the other contracting party has had knowledge of it.

### C) Designation Option

#### Article (231)

It may be agreed that the object of contract would be one of two or three things, giving any of the contracting parties to opt for one of these provided that the consideration for each and the option period are stated.

#### Article (232)

If both contracting parties do not fix the option period, or the period fixed for either party has elapsed without exercising his option, the other party may ask the judge to fix the option period or the object of the transaction.

#### Article (233)

The contract shall not be binding to the party having the option until he exercises it. Once the express or implied choice is made, the contract becomes enforceable and binding in accordance thereto.

#### Article (234)

The effect of exercising the designation option goes back to the date of formation of the contract.

#### Article (235)

1. If the designation option is given to the purchaser and one of the two things perishes in the hands of the seller, the buyer, at his discretion, may take the other thing at its price or leave it. Should however the two things perish, the sale is null and void.

If one of the two things under option perishes in the hands of the buyer, the perished thing is designated for sale and the buyer is bound to pay its price and the other thing shall be held in trust.

If both things perish one after the other, the first one shall perish as a sold object, and the other as an object under trust. If they perish simultaneously, the buyer is liable for half the price of each.

2. If the designation option is for the seller and one of the things under options perishes prior or after receiving payment, the seller shall have the choice to bind the buyer to purchase the other thing or to rescind the contract. However, if the two things perish before payment, the contract is void.

If both things perish successively, the first one shall perish in

trust, and the second in sale. If both things perish simultaneously, the buyer shall be liable for half the price of each.

#### Article (236)

In case of death of the person for whom the option was given within the option period, his right shall devolve to his heirs.

### D) The Option of Defect

#### Article (237)

The right for rescission of the contract, under the option of defect, shall be operative in contracts, where rescission is likely to occur, without stipulating it in the contract.

#### Article (238)

The defect which makes the option operative must be old, affecting the value of the contract's object, unknown to the buyer and provided the seller did not specify the discharge thereof as a condition in the contract.

#### Article (239)

1. If the defect fulfills the conditions mentioned in the previous article, the contract shall not be binding to the option holder before payment, and rescindable thereafter.
2. Rescission of the contract prior to receiving payment, with all what it entails, without need for consent or court action provided that the other contracting party has knowledge thereof. After payment rescission shall take place only by consent or by court action.

#### Article (240)

Rescission of the contract on grounds of defect shall result in returning the object of the contract to its owner and recovering what was paid.

#### Article (241)

1. The defect option shall be forfeited by accepting the defect after knowledge of it, by disposing of the contract's object even before knowledge thereof, by its perishing or diminishing after payment or its increment prior to payment in an uninterrupted manner but not generated from it due to an act of the purchaser and, after payment if due to an act of the purchaser and, after payment if due to an independent cause generated by it.
2. The defect option shall not be forfeited by the death of its holder, and shall be fixed for his heirs.

#### Article (242)

The defect option holder shall have a possessory lien against the object of the contract, and a plea for reduction of price.



### Section III: Effect of the Contract

#### 1. Between Contracting Parties

##### Article (243)

1. Unless the law provides otherwise, the contract's provisions apply on the object of the contract and its consideration immediately upon its formation without making them dependant on payment or anything else.

2. As regards the contract's rights (obligations), each of the contracting parties shall fulfill what the contract has bound him to do.

##### Article (244)

The contract against consideration, concerning the usufruct of properties, once fulfilling the conditions of its validity, shall establish the right of each of the contracting parties to the consideration received and shall bind each one of them to deliver his property, object of the contract, to the other.

##### Article (245)

The contract against consideration, concerning the usufruct of properties, once fulfilling the conditions of its validity, binds the party disposing of the property to deliver it to the beneficiary of the usufruct and binds the latter to hand over the usufruct consideration to the owner of the property.

##### Article (246)

1. The contract shall be implemented, according to the provisions contained therein and in a manner consistent with the requirements of good faith.

2. The contract is not restricted to what is contained therein but shall extend to its essentials in accordance with the law, custom and the nature of the transaction.

##### Article (247)

In bilateral contracts, where the reciprocal obligations are due, each of the contracting parties shall have the right to abstain from executing his obligation in case the other party does not honor his obligation.

##### Article (248)

If the contract is one of adhesion, and includes arbitrary conditions, the judge may modify such conditions or exempt the adherent, from it, according to the requirements of justice. Any agreement to the contrary shall be void.

##### Article (249)

If public exceptional unpredictable circumstances shall arise, and

their happening has resulted in making the execution of the contracted obligation, if not impossible, has become burdensome to the debtor in such a manner as to threatening him with heavy loss, the judge may, according to circumstances and by comparing the interests of both parties, reduce the burdensome obligation to reasonable limits, if justice so requires. Any agreement to the contrary is void.

## 2. As Concerns Third Parties

### Article (250)

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

### Article (251)

Personal rights created by the contract relating to a property that has subsequently been transferred to a particular successor, shall devolve to this successor at the same time as the transfer of title to the property, if it is an essential element thereto and if the particular successor in title had knowledge of these rights at the time of the transfer of the property to him.

### Article (252)

The contract does not impose any obligation on third parties, but may establish a right in their favor.

### Article (253)

A person who binds himself to procure the performance of an obligation by a third party does not in so doing bind the third party. If the third party refuses to perform the obligation, the person who engaged himself to obtain such performance shall be liable to pay damages to the other contracting parties.

He may avoid paying damages by performing himself the obligation he undertook to procure.

Where the third party consents to perform the obligation, his consent is effective only from the time that it is given, unless it is indicated that he intended expressly or impliedly that the consent is retrospective as from the time of issuing the undertaking.

### Article (254)

1. A person may contract in his own name rights for the benefit of a third party if he has a personal interest, material or moral, in its performance.

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

the beneficiary the defences arising out of the contract.

3. The stipulator may also claim the performance of the stipulation made in favor of the beneficiary, unless it appears from the contract that the beneficiary alone has the right to do so.

#### Article (255)

1. The stipulator himself, but not his creditors or heirs, may revoke the stipulation, provided that the revocation is made before the beneficiary notifies the author of the undertaking or the stipulator of his wish to benefit from it, unless this is contrary to the requirements of the contract.

2. In the absence of any express or implied agreement to the contrary, the revocation does not liberate the author of the undertaking vis-a-vis the stipulator.

The stipulator may substitute a new beneficiary in place of the former beneficiary or may retain for himself the benefit of the stipulation.

#### Article (256)

In a stipulation made in favor of a third party, the beneficiary may be a future person or body, as he may be a person or body who is not identified at the time of contracting, provided that he can be identified at the time when the effects of the contract come into operation in accordance with the stipulation.

### Section IV: Interpretation of Contracts

#### Article (257)

The principle in contracts is the assent of the parties and the contractual obligations they are bound to perform.

#### Article (258)

1. In contracts, purposes and meanings are decisive, not the wording or construction forms.

2. True meaning is the basis of words. A word shall not bear a metaphor unless it is impossible to construe them according to their true meaning.

#### Article (259)

Implicit indications shall not have no bearing vis-a-vis express statements.

#### Article (260)

Giving effect to uttered words is prevalent over neglecting them, but if this is impossible then they should be neglected.

#### Article (261)

Stating part of what is indivisible is like stating the whole.

#### Article (262)

The absolute shall be given effect without limitation unless it is limited by an express provision or tacitly.

Article (263)

Description of what is present is futile and of what is absent is to be considered.

Article (264)

Among merchants, known practices are alike agreed conditions.

Article (265)

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

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

Article (266)

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

2. The construction, however, of obscure expressions in adhesion contracts must be detrimental to the adhering party.

## Section V: Dissolution of Contracts

### 1. General Provisions

Article (267)

If a contract is valid and binding, none of the contracting parties may revoke, modify or rescind it except by mutual consent, order of the court or a law provision.

Article (268)

Subsequent to the formation of the contract, the contracting parties may dissolve the contract by mutual agreement.

Article (269)

Dissolution, as concerns the rights of contracting parties, amounts to rescission and, as concerns third parties' rights, a new contract.

Article (270)

Dissolution shall occur between present persons through offer and acceptance and by negotiating provided that the object of the contract does exist and is in the hands of the concerned party at the moment of dissolution. If this object has partially perished, dissolution applies proportionately on the other part.

#### Article (271)

The parties may agree that in case of non-performance of the obligations deriving from the contract, the contract will be deemed to have been «ipso facto» without need to obtain a court order. Such an agreement does not release the parties from the obligation of serving a formal notification, unless the parties agree that such notification is dispensed with.

#### Article (272)

1. In bilateral contracts, if one of the parties does not perform his contractual obligations, the other party may, after serving a formal notification to the debtor, demand the performance of the contract or its rescission.

2. The judge may order the debtor immediate performance of the contract or grant him specified additional time, as he may order rescission with damages, in any case, if deemed justified.

#### Article (273)

1. In bilateral contracts, if a force majeure arises that makes the performance of the obligation impossible, the corresponding obligation shall, be extinguished and the contract ipso facto rescinded.

2. If the impossibility is partial, the consideration for the impossible part shall be extinguished. This shall also apply on the provisional impossibility in continuous contracts. In both instances the creditor may rescind the contract provided the debtor has knowledge thereof.

### 2. Effects of Contract's Dissolution

#### Article (274)

When a contract is or shall be rescinded, the two contracting parties shall be reinstated to their former position, prior to contracting, and in case this is impossible, the Court may award damages.

#### Article (275)

If the contract is dissolved on grounds of nullity, rescission or for any other reason, and both contracting parties have to return what they have taken possession of, each one of them may retain what he has received, as long as the other party did not retribute what he has received from him, or did not submit a guarantee for its restitution.

### Chapter Two. Unilateral Act of Disposition

#### Article (276)

Unless otherwise provided by law, the act of disposition may be unilateral, without being dependant on the acceptance of the beneficiary of such act, unless it contains an obligation to third

parties under the law.

#### Article (277)

Unless otherwise provided by law, the unilateral act of disposition shall be governed by the provisions applicable to contracts except those pertaining to the meeting of two minds required for the formation of the contract.

#### Article (278)

If the constitutive element of a unilateral act of disposition is present and it has fulfilled its conditions, the author of the act may not withdraw there from, unless otherwise provided by law.

#### Article (279)

1. If the unilateral act of disposition is an act of proprietorship it shall be binding to the alienee unless he accepts it.
2. If the act is a forfeiture embodying ownership or a discharge of a debt it shall be binding upon the alienee but it may be revoked within the meeting.
3. If it is a mere forfeiture, it shall be binding upon the alienee and may not be revoked.
4. All the above shall be effective unless otherwise provided by law.

#### Article (280)

1. A promise is what the promisor imposes on himself in future for the benefit of others, not as a pecuniary obligation but its object may be a contract or an act.
2. The promise binds the promisor except in case of his death or bankruptcy.

#### Article (281)

1. A person who makes a promise to the public of a reward in exchange for a specified service and fixes a specific period of time, is bound to give the reward to the person who performs the service, even if he acted without giving consideration to the promise of reward.
2. Where the promisor does not fix a period of time for the performance of the service he may withdraw his promise through a notice to the public provided that his notice does not affect the rights of a person who has already performed the service prior to such withdrawal. The right of action for the reward will be forfeited, if such action is not lodged within three months from the date of publication of the notice of withdrawal.

### Chapter Three. Tort

#### Section I: General Provisions

#### Article (282)

The author of any tort, even if not discerning, shall be bound to

repair the prejudice.

Article (283)

1. Tort shall be committed by perpetration or by causation.
2. If committed by perpetration, he is unconditionally bound to repair the prejudice and, if by causation, it is conditional upon transgression premeditation or if the act caused the prejudice.

Article (284)

If the perpetration and the causation are both present, the act shall be considered as committed by perpetration.

Article (285)

If any person shall mislead another, he shall be liable for reparation of the prejudice resulting from misleading.

Article (286)

Whoever had his property damaged by someone else, shall not damage the property of the latter, otherwise each shall be liable to make good what he had damaged.

Article (287)

In the absence of a provision in the law or an agreement to the contrary, a person is not liable for reparation if he proves that the prejudice resulted from a cause beyond his control such as a heavenly blight, unforeseen circumstances, force majeure, the fault of others or of the victim.

Article (288)

Whoever causes an injury to another in legitimate defense of his person, honor or property or, of the person, honor or property of others, is not responsible, provided that he does not exceed the measures necessary for his defense, as otherwise he will be liable to damages for this excess.

Article (289)

1. The act is the responsibility of the doer and not of the one who ordered it, unless the doer was compelled to act. Compulsion that is taken into consideration must amount to imminent duress.
2. Notwithstanding the above, a public servant is not responsible of his acts that injured third persons if he acted in compliance to an order given by his superior whenever he was under duty to comply with, or if he believed so and establishes that his belief of the legality of his act is based on reasonable grounds and that he observed the precautionary measures in performing his act.

Article (290)

The judge may reduce the amount of damages, or not allow any, if the injured has contributed, by his action, in the happening of such injury or in its increase.

Article (291)

When several persons are responsible for a prejudicial act, each one of them is responsible for his share in it and the judge may decide to allot the liability equally between them or consider them jointly and severally responsible.

Article (292)

Damages shall, under all circumstances, be assessed to cover the prejudice sustained and the lost profit provided it is a natural consequence of the prejudicial act.

Article (293)

1. Damages shall include moral damages. Shall be considered moral damages, trespassing against others in their freedom, honor, dignity reputation social standing or financial position.
2. Spouses and closet relatives of the family may be adjudged damages for the moral prejudice sustained by them as a result of the death of the injured.
3. Recovery of moral damages is not transferable to others unless its amount is fixed by agreement or a final court judgment.

Article (294)

Damages may be paid by installments, as it may consist of a regular periodical payment and, in either cases, the debtor may be ordered to provide a deposit in guarantee assessed by the judge, or an acceptable security.

Article (295)

Damages will consist of a money payment. Upon request of the victim, however, the judge may, in accordance with the circumstances, order that the damage be made good by restoring the parties to their original status, or by performing, in compensation, a specific matter connected with the prejudicial act.

Article (296)

Any condition exonerating from tort liability shall be deemed null and void.

Article (297)

Civil liability, once its conditions fulfilled, shall not impair criminal responsibility, and the criminal penalty shall have no bearing on determining the scope of civil liability and the assessment of damages.

Article (298)

1. An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible.
2. Where a claim arises out of a criminal offense and the hearing of



the penal action is still pending after the lapse of the periods above-mentioned in the preceding clause, the action for damages may still be heard.

3. An action for damages is prescribed in any case after fifteen years from the date on which the prejudicial act was committed.

## Section II: Liability Arising From Personal Acts

### 1. Injury to the Person

#### Article (299)

Damages are compulsory due for prejudice to the person.

Unless otherwise agreed between the parties, either blood money or compensation for defect of sold value, in cases they are due, may not be added to damages.

### 2. Damage to Property

#### Article (300)

Without prejudice to the general provisions on damages, whoever damages or destroys the property of another, shall be liable to replace it, if fungible, or pay its value, if ad valorem.

#### Article (301)

Without prejudice to the general provisions on damages, in case the damage is partial, the perpetrator shall be liable to compensate the loss in value and in case it is a gross damage, the property owner may opt either to receive the value of the damaged part or abandon the property and take its value.

#### Article (302)

1. If one destroys the property of others pretending that it is his own, shall be liable to damages for what he has destroyed.
2. Should he destroy the property of another, with his permission, he shall not be liable for damages.

#### Article (303)

If an infant, whether discerning or not, or the like, shall destroy the property of others, he shall be responsible in his personal funds.

### 3. Extortion and Transgression

#### Article (304)

1. The hand that has taken is liable until it gives it back.
2. The one who extorts the property of another shall have to restore it back in the same condition in which it was at the time of extortion, and at the same place where extortion occurred.

3. Should he consume, destroy, lose it or if it has been destroyed due to his transgression or without it, he shall have to replace it or pay its value, on date, and at the place, of extortion.
4. He shall also bear liability of its profits and increments.

#### Article (305)

If one shall destroy the extorted property while under the control of the extortioner, the victim of extortion shall have, at discretion, the option to recover the damages from the extortioner and this latter may go back on the author of destruction, or recover damages from this latter who, in this case, has no right to revert on the extortioner.

#### Article (306)

If the extortioner has disposed of the extorted property, with or without consideration, and such extorted property shall be destroyed, in whole or in part, while under the control of the person in favor of whom the act of disposition was made, the victim of extortion may opt either to claim damages from either one. So, if he recovers damages from the first, the act of disposition is valid, and if he recovers from the second, the latter may revert on the extortioner in accordance with the law provisions.

#### Article (307)

1. The extortioner of the extortioner shall be treated as extortioner.
  2. If the extortioner of the first extortioner shall return back the extorted property to the first extortioner, he shall be alone discharged and if he returns it to the victim of extortion he and the first extortioner shall be discharged.
  3. If the extorted property is damaged or has been destroyed while under the control of the extortioner, the victim of extortion shall have the option to claim compensation from the first extortioner, or if he so wishes, from the second extortioner.
- He may also claim damages from the first for part of the damaged property and from the second for the other part. So if he is compensated by the first extortioner, this latter may revert back against the second extortioner and if compensated by the second, the latter may not revert on the first.

#### Article (308)

Under all circumstances, the judge shall, if he deems it justified, condemn the extortioner to pay damages as deemed adequate by him.

#### Article (309)

Whoever has under his custody an object and neglected its protection, transgressed it, or unduly deprived its owner from it, denied it or died without declaring it, shall be liable to replace it or pay its value, according to the circumstances.

#### Article (310)

Whoever has taken possession of money, by larceny or highway robbery

and seized money, shall have to restore to its owner, if still existing, replace it or pay its value, if it has been consumed, and even if he has been sentenced.

#### Article (311)

1. If the extorted object has undergone self change, the usurped person shall have an option either to recover it or receive a similar object in replacement.
2. If the extorted object shall change, in such a way as to change its name, the extortioner is liable to replace it.
3. If the extorted property shall change by the addition made by the extortioner out of his own money, the extorted person shall have the option either to pay the added value and recover the extorted object in in kind, or hold the extortioner liable to provide its substitute.
4. If the extorted property shall change by reduction in its value as a result of its utilization by the extortioner, he shall be liable to return the property back and pay the reduction in value.

#### Article (312)

Whatever amounts to extortion shall be treated as such.

### Section III: Liability Arising from the Acts of Others

#### Article (313)

1. No one is liable for the act of another person, however, upon request of the victim, the judge, if he deems it justified, shall order any of the following persons, as the case may be, to pay the damages to which the tort doer has been sentenced:
  - a) The person who is, by law or by agreement entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, unless he proves that he has fulfilled his duty of supervision, or if the prejudice would have been anyhow sustained even if he has fulfilled his duty with the required care.
  - b) The one having actual authority to control and guide the tort doer, even if he was not free in his choice, if the tort was perpetrated by a subordinate in the exercise of his duty or because of it.
2. The one who settled the damages is entitled to revert on the person sentenced for payment thereof, in order to recover what he has paid.

### Section IV: Liability Arising from Animals and Things, and the Use of Public Roads

#### 1. Animals

#### Article (314)

The felony caused by an animal is punishable, but the liability for the prejudice caused is on the one having control over it, whether

being its owner or not if due to his negligence or transgression.

## 2. The Collapse of Buildings

### Article (315)

1. The injury to others caused by the collapse of a building, in whole or in part, is the liability of its owner or the person in charge of it, unless he proves that he is not a trespasser or negligent.

2. Whoever is in danger of damage from a building is entitled to call on the owner to take the necessary precautions to prevent the danger, and if the owner fails to take such precautions, to obtain an order from the court authorizing him to take the necessary precautions himself at the cost of the owner.

## 3. Things and Machinery

### Article (316)

Whoever is in charge of a thing whose supervision requires special care in order to protect him from its danger, or of a machine, is liable for damage caused by these things or machines except that which, without prejudice to any special provisions in this respect.

## 4. Use of Public Right

### Article (317)

The use of a public right is limited by the safety of others. So, if the user of a public right causes to third persons a prejudice which cannot be prevented, he incurs liability.

## Chapter Four. Beneficial Act

### Section I: Enrichment Without Cause

#### Article (318)

No one is entitled, without cause, to enrich himself to the detriment of another person, without just cause. If he does so, he is liable to reconstitute it.

#### Article (319)

1. Unless otherwise provided by law, whoever enriches without just cause, is bound to reconstitute what he obtained, if existing, or replacement thereof of its value, if not existing.

2. If one, unintentionally, loses control over his property, which was merged by accident with the property of somebody else, in such a manner as it cannot be separated without prejudice to any of the owners, then the property of lesser value shall follow the one with

greater value, after settlement of its price. If both are equal in value, they shall be sold for their account, and the price thereof shall be equally divided and distributed among them, unless otherwise stipulated by Law.

## Section II: Payment Not Due

### Article (320)

Whoever gives something, being under the belief that he is under duty to do so, but it was later revealed that it is not due by him, he is entitled to recover it from the one who received it, if existing, or a similar thing in replacement thereof or its value, if not existing.

### Article (321)

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

### Article (322)

Restitution may also be made of a payment effected in the performance of an obligation which had not at the time matured, if the payor was not aware that payment was not then due.

### Article (323)

If settlement has been made by other than the debtor and in consequence of this payment the creditor, acting in good faith, has given up his document of title or security obtained, or allowed his claim against the real debtor to be prescribed, he is not bound to retribute what he has received and the real debtor must indemnify the payor, if appropriate.

### Article (324)

Whoever unduly receives that which is not due to him, he is bound to retribute it to the payor together with the profits and interests. The judge may indemnify the right owner of what he has failed by neglect to collect at that time.

## Section III: Voluntary Agency

### Article (325)

Whoever does a beneficial act to a third person without being ordered by him, but authorized by the judge, commanded by necessity or imposed by custom, he is considered his agent and is governed by the following provisions.

### Article (326)

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

Article (327)

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

Article (328)

The voluntary is responsible to indemnify the person for whom he acts for the prejudice sustained by the latter and, if circumstances so justify, the judge has to assess the amount of the indemnity.

Article (329)

When the voluntary agent delegates to a third party the whole or part of the work, he shall be responsible for the acts of his delegate, without prejudice to the right of the person for whom he acts to have a direct recourse on this delegate.

Article (330)

The voluntary is bound by the same obligations as a mandatory as regards the restitution of that which he received as a result of the voluntary agency and must submit an account for his acts.

Article (331)

The person for whom the voluntary agent has acted will be bound to carry out the obligations entered into on his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances, and to indemnify him in respect of any loss he has suffered as a result of his management. The voluntary agent is not entitled to any remuneration for his work unless the work falls within the scope of his professional business.

Article (332)

1. If the events of the death of a voluntary agent, his heirs are bound by the same obligations as those of a mandatory upon his death.
2. In the event of the death of the person for whom he acts, the voluntary agent is bound by the same obligations to the heirs as he was to the person of whom they were the successors in title.

#### Section IV: Reimbursement of Third Parties Debts

Article (333)

Whoever reimburses the debt of another, upon his order, is entitled to revert on the person giving the order for what he has paid on his behalf and shall substitute the original creditor in his claim of the debt from the debtor whether he the right of reversion is specifically provided for or not.

#### Article (334)

Whoever fulfills the debt of another without his order is neither entitled to revert for what he has paid on the debtor, except in the instances provided for in Article (325), nor revert on the creditor unless this latter discharges the debtor from the debt even after recovering his debt from the payor.

#### Article (335)

If a mortgagor settles the debt of somebody else, to liberate his mortgaged property in security for such debt, he is entitled to revert on the debtor for what the amount settled by him.

### Section V: Joint Provision

#### Article (336)

The claim arising, from a beneficial act, shall not be heard after the lapse of three years from the date on which the creditor had knowledge of his right of reversion, and in any case fifteen years from the day on which the right arose.

### Chapter Five. The Law

#### Article (337)

Rights which are directly and solely arising from law are governed by the provisions of the law giving right to such rights.

## PART TWO. THE EFFECTS OF A RIGHT

### Chapter One. General Provisions

#### Article (338)

A right must be settled whenever its legal maturity conditions are satisfied. If the debtor is in default, the right shall be compulsory enforced, either in kind or through payment of an indemnity, in conformity with the law provisions.

#### Article (339)

1. Implementation shall be willful if it is done by settlement or its equivalent.
2. It shall be forced if settled in kind or through compensation.

#### Article (340)

In case a right loses, for any reason whatsoever, the protection of the law, it may not be forcibly enforced and becomes a natural obligation against the debtor.

#### Article (341)

If the debtor settles a natural obligation, his settlement shall be valid and not considered a payment which is not due.

## Chapter Two. Enforcement Means

### Section One: Willful Enforcement

#### 1. Settlement

##### A) Parties to the Settlement

###### Article (342)

1. Payment may be made by the debtor, his agent, or any other interested person.
2. It is also valid if made by a person having no interest in doing so, whether pursuant to an order of the debtor or without such order, the creditor may, however, refuse settlement from a third party in case the debtor objected to such payment and notified his objection to the creditor.

###### Article (343)

As a condition to be discharged from a debt, the payor must be the owner of what he settled. In the event the debtor is a discerning minor, an imbecile of legal age or, a prodigal under custody, and pays the debt he owes, his payment is valid unless it is detrimental to the payor.

###### Article (344)

Payment to some creditors shall not be effective as concerns the other creditors, if the debtor is interdicted and pays the debt that caused interdiction or sick in his last illness and the payment is detrimental to the other creditors.

##### B) The Payee

###### Article (345)

Payment shall be made to the creditors or his representative. Shall be considered qualified to recover the debt, whoever presents to the debtor a discharge issued by the creditor, unless it is agreed that payment shall be made to the creditor in person.

###### Article (346)

If the creditor lacks full legal capacity, the debtor shall not be discharged unless by settlement to his guardian. In the event that settlement is made to the creditor and the object of settlement perishes in his hands, or is lost by him, the guardian may claim the debt from the debtor.



### C) Rejection of Settlement

#### Article (347)

If the creditor unjustifiably refuses to accept the duly offered settlement, where acceptance is a must, or abstain from performing the acts without which settlement is not complete, or has declared that he will not accept the settlement, the debtor shall notify him with a warning and fix to him an adequate delay to perform what he has to do in order to recover his right.

#### Article (348)

Notification of the creditor shall result in putting the object of the obligation under the guarantee of the creditor, if it was previously under the guarantee of the debtor, and the debtor shall be entitled to deposit it on the creditor's expense and be compensated for the damages sustained.

#### Article (349)

If the object of settlement is a per se specified thing, and it had to be delivered at the place where it is located, the debtor may, after warning the creditor to take delivery thereof, obtain the judge's permission to deposit it. Should this object be an immovable property or is destined to stay where it is, the debtor may ask that it be put under sequestration.

#### Article (350)

If the object of settlement is quickly perishable, or requires heavy costs to be deposited or sequestered, the debtor may, with the judge's permission, or without it when necessary, sell it at its market price if possible otherwise it shall be sold by public auction. Depositing its price shall be equal to depositing the thing itself.

#### Article (351)

Deposit or an equivalent procedure may also be acceptable if the debtor ignores the identity or residence of the debtor, if the creditor is interdicted and has no representative to accept the settlement on his behalf, or that the debt was subject of disputed between several persons, or there were other serious causes that justify such a procedure.

#### Article (352)

As regards the debtor, a duly made offer shall stand in place of settlement if followed by a deposit satisfying its legal requirements, a similar procedure if accepted by the creditor, or validated by a final judgment.

#### Article (353)

1. If the debtor offers settlement of the debt, and follows such an offer by a deposit or similar procedure, he may withdraw such an offer, as long as it is not accepted by the creditor, or is not

validated by a final court decision has been issued for its validity. Should he withdraw his offer, neither his partners in the debt nor his guarantors shall be discharged.

2. If the debtor shall withdraw his offer, after being accepted by the creditor, or validated by a court decision, issued for its validity, and the creditor has accepted such withdrawal, the creditor may not, afterwards adhere to the securities guaranteeing his right thereto and the partners in the debt, as well as the guarantors shall be discharged.

#### D) Object of Settlement, Its Time, Place, Expenses and Proof

##### Article (354)

1. If the debt is identified by designation, the debtor may not settle a substitute thereto without the consent of the creditor, even if such substitute is equal in price to the thing due, or be of a higher value.

2. If however the debt is not identifiable by designation, the debtor may settle it with a similar thing even if not accepted by the creditor.

##### Article (355)

1. In the absence of an agreement or provision allowing it, the debtor may not force the creditor to accept partial payment of his right.

2. If the debt is disputed in part thereof, and the creditor accepts the settlement of the approved portion, the debtor may not refuse settlement of the undisputed part.

##### Article (356)

If the debtor is under obligation to settle, with the debt, any expenses and what he has paid does not settle the debt in addition to such expenses, the amount settled shall, unless otherwise agreed, be deducted from the expense account then from the principal amount of the debt.

##### Article (357)

If the debts, owned by the debtor are several, and they were all due to only one creditor, and of one kind, and what the debtor paid does not cover all such debts, the debtor may upon settlement specify the debt he wishes to settle first as long as there is no legal or conventional impediment that prevents such designation.

##### Article (358)

If the debt is not specified in the manner stated in the preceding Article, the payment shall be deducted from the debt falling due. In case there are several matured debts, deduction shall apply to the most burdensome on the debtor and if all are equally burdensome then from the debt specified by the creditor.

#### Article (359)

1. In the absence of an agreement or a provision to the contrary, settlement must take place immediately once the obligation is finally due on the debtor.
2. Unless prevented by a law provision, the judge may, however and in exceptional cases, give the debtor a reasonable delay, or delays, within which he has to execute his obligation, that is if his condition so requires, and if the creditor shall not sustain from such postponement a serious damage.

#### Article (360)

1. If the debt was deferred, the debtor may pay it before its maturity date if this is in his interest, and the creditor is bound to accept such payment.
2. If the debtor settles the debt before maturity date, then what was received as payment matures, the debt shall reinstate its postponed status as it previously was.

#### Article (361)

1. Unless otherwise agreed or stipulated, if the object of obligation was specified by designation, it must be delivered at the place where it was at the time when the obligation was born.
2. In the other obligations, settlement shall be at the place where the residence of the debtor is, at the time of settlement, or in the place where the main office of the business of the debtor is, if the obligation was related to such business.

#### Article (362)

If the debtor shall send with his messenger the debt to his creditor and if perished while under the control of such messenger, before reaching the creditor, then such perished debt shall encumber the debtor's assets. If the creditor orders the debtor to settle the debt to his messenger and the latter does so, then its perishing shall be supported by the assets of the creditor and the debtor shall be discharged from the debt.

#### Article (363)

Unless otherwise provided by law, the settlement expenses shall be assumed by the debtor.

#### Article (364)

1. The one who settles a part of the debt has to ask for a discharge for what he has settled, together with endorsing the debt instrument that such settlement has been effected. If he pays all the debt, he is entitled to ask for the restitution of the debt instrument or its cancellation.  
If the debt instrument was lost, he shall have to ask the creditor to confirm, in writing, the loss of such instrument.
2. If the creditor refuses to carry out what he has been bound to fulfill as per the preceding paragraph, the debtor may deposit the

object of the due debt with the court.

## 2. Performance Equivalent to Settlement

### A) Substitute Settlement

#### Article (365)

The creditor may accept, as settlement for his debt, something else, or a legal right to be settled by the debtor. Such agreement, for substitute settlement shall be governed by the general provisions concerning the contracts provided for in this Law.

#### Article (366)

1. The substitute settlement shall be governed by the sale provisions, if the substitute is a specific property in lieu of the debt.
2. It shall be subject to the provisions for the payment in discharge of the debt.

#### Article (367)

The first debt shall be extinguished together with its securities in case of substitute settlement, and the right of the creditor shall be transferred to the substitute.

### B) Compensation

#### Article (368)

Compensation is the settlement of a debt due to a creditor, against a debt owned by him to his debtor.

#### Article (369)

Offsetting is either compulsory, and takes place by the power of law, or facultative, carried out by agreement of both parties, or judicial carried out by decision of the judge.

#### Article (370)

The forced offset requires that each of the parties be a creditor and debtor for the other, and that both debts be similar in kind, description, maturity, force and weakness, and further provided that applying such offset does not prejudice the rights of third parties regardless of whether the two debts have the same cause or different ones.

#### Article (371)

Conventional offset may be performed even in the absence of one of the conditions required for forced offset.

#### Article (372)

The judicial offset, if fulfilling its conditions, shall be carried

out by decision of the judge, upon an original or incidental request.

#### Article (373)

If the depositary is indebted to the depositor, or an usurper is indebted to the owner of the usurped property, and the debt was of the same nature as that of the depositor usurped property, the offsetting shall not take place except by agreement of both parties.

#### Article (374)

If a creditor destroys a property owned by the debtor, the debt shall be forfeited if the destroyed property is of the same kind as the debt, otherwise offset shall apply only by agreement of both parties thereto.

#### Article (375)

Offsetting shall be carried out upon request of the interested party and within the limits of the smaller of the two debts.

#### Article (376)

If at the time the offsetting is sought, the court action is barred by prescription, this shall not prevent carrying out the offsetting as long as the period preventing the action to be heard did not lapse at the time the offset was still possible.

#### Article (377)

If a debtor pays his debt, while he could have asked the offset with a right owned by him, he may not adhere to the securities pertaining to this right to the prejudice of third parties unless he had justifiable reason to ignore its existence.

### C) Merger

#### Article (378)

1. When the qualities of creditor and debtor in the same debt are united in the same person, the debt is extinguished to the extent of the merger.
2. There is no merger when the creditor is a heir to the debtor and participates with the other creditors in order to recover his debt from the estate.

#### Article (379)

When the cause which gave rise to the merger disappears retrospectively, the debt is reinstated to its former status.

## Section II: Forced Implementation

### 1. Execution in Kind

#### Article (380)

1. The debtor shall be compelled, upon being duly summoned to perform his obligation in kind, whenever possible.
2. When, however, specific performance is too onerous for the debtor, the judge may, upon request of the debtor, limit the creditor's right to a sum of money as substitute, if such performance does not seriously prejudice the creditor.

#### Article (381)

1. When the object of the right is the doing of an act, and the nature thereof or the agreement demands that it be performed by the debtor in person, the creditor may refuse the performance of the obligation by any other person.
2. In the case of non-performance by the debtor of an obligation to do something, the creditor may request the authorization of the judge to carry out the obligation. He may, in case of urgency, perform it without authorization from the judge. In both cases, performance shall be carried out at the expense of the debtor.

#### Article (382)

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

#### Article (383)

1. Unless otherwise provided by law or stipulated in the agreement, a debtor who is required to preserve a thing, to manage it or to act with prudence in the performance of his obligation he brings to the performance thereof the care of a reasonable person, even if the object in view is not achieved.
2. Under all circumstances, the debtor remains liable for fraud or gross negligence.

#### Article (384)

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

#### Article (385)

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

### 2. Compensation in Lieu of Performance

#### Article (386)

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

#### Article (387)

Unless otherwise provided in the law or stipulated in the contract, damages are not due unless the debtor has been formally summoned.

#### Article (388)

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

- a) If the execution of the obligation becomes impossible or useless due to some act of the debtor;
- b) If the object of the obligation is the payment of damages in respect of an illicit act;
- c) If the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him;
- d) If the debtor declares, in writing, that he does not want to perform his obligation.

#### Article (389)

If the event that the amount of damages is not fixed by law or in contract, the judge will assess it to be commensurate with the prejudice effectively sustained when it occurred.

#### Article (390)

1. The two contracting parties may fix, in advance, the amount of damages either in the contract or in a subsequent agreement subject to the law provisions.
2. The judge may, in all cases, at the request of one of the parties, amend such an agreement, in order to make the amount assessed equal to the prejudice. Any agreement to the contrary is void.

### Section III: Licit Means to Secure Performance

#### 1. The Debtor's Property as Security for Payment

##### Article (391)

1. All the debtor's properties shall be held as security for reimbursing his debts.
2. Without prejudice to the law provisions in this respect, all creditors have equal ranks as concerns this security.

#### 2. Indirect Action

#### Article (392)

1. Every creditor, even if his right has not fallen due, may exercise in the name of his debtor all his debtor's rights save only those that are purely personal or cannot be attached.
2. The exercise by a creditor of the rights of his debtor is not admissible, unless the creditor proves that the debtor himself has not exercised such rights and that the debtor's failure to do so is such as to result in or increase his bankruptcy. The debtor's forced intervention in the court action is a must.

#### Article (393)

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

### 3. Action In Simulation

#### Article (394)

1. If a simulated contract has been concluded, creditors of the contracting parties and particular successors in title may, if they are in good faith, avail themselves of the hidden contract and establish, by any means, the simulation of the contract by which they were prejudiced.
2. If the case of a conflict of interest between the interested parties, some of whom rely upon the ostensible contract and others on the hidden contract, the former shall have preference.

#### Article (395)

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

### 4. Non-Opposability of the Debtor's Act to the Creditor

#### Article (396)

If the actual or deferred debt covers the debtor's patrimony, whether by adding or being equal to it, the debtor is prohibited to give as donation what he is not bound to donate or not customarily accepted. The creditor may ask the court to order that such act is not opposable to him.

#### Article (397)

If the creditors shall claim the debtor, whose debt, exhausted his patrimony, the latter may not donate his property or dispose of it against consideration, even without favoritism. The creditors are entitled to ask the court to order the non-opposability of such act to them, the sale of his property and set off their rights from the



proceeds of the sale, according to the law.

Article (398)

If the creditor pretends that his debt covers the entire patrimony of the debtor, he has only to prove the amount of debts owed to him and the debtor shall have to establish that the property he owns exceeds in value the amount of the debt.

Article (399)

Whenever the act has been declared non-opposable, the creditors who have been prejudiced by such act shall benefit of this decision.

Article (400)

1. The claim of non-opposability of the act may not be heard after the lapse of three years from the day the creditor had knowledge of the cause of non-opposability.

2. This claim shall not, under all circumstances, be heard after the lapse of fifteen years as of the performance of such act.

## 5. Interdiction of the Bankrupt Debtor

Article (401)

Interdiction may be imposed on the debtor whenever his due debts exceed in value his patrimony.

Article (402)

1. Upon request of the debtor or one of the creditors, interdiction shall be adjudicated by the judge of the domicile of the debtor. The case shall be examined summarily.

2. Any of the creditors may obtain, by virtue of the interdiction order, a decision from the competent judge to attach all the possessions of the debtor, except those that may not be attached. Attachment shall remain in effect on the debtor's property in favor of the creditors until the removal of the attachment.

Article (403)

The judge has, in every case before interdicting the debtor, to consider in his assessment all the debtor's surrounding circumstances, the extent of his responsibility for the causes, that led to the request for interdiction, the lawful interests of his creditors and every other circumstance that may affect his financial status.

Article (404)

1. On the day of entry of the interdiction case, the court clerk must record the contents of such case in a special register, the decision rendered in the case, and every other judgment confirming or canceling the said decision, on the same day the judgment is given.

2. The clerk shall also dispatch, to the bureau of the Ministry of Justice, a copy of such registrations and endorsements, to be recorded

in the General Register, organized according to a decision to be issued by the Minister.

#### Article (405)

In case of change of domicile, the debtor has to inform of this change the clerk of the court of his previous domicile. Upon taking knowledge of this change of domicile, whether informed by the debtor or advised by any other means, the clerk has to send copy of the interdiction order, as well as of the information endorsed on the margin of the registration, to the court in which jurisdiction falls the new domicile, in order to record same in its registers.

#### Article (406)

The interdiction shall entail the following:

- 1) Mature all deferred debts due by the debtor.
- 2) The debtor's acts of disposition, of his existing assets or the ones to exist at a future date, shall not be opposable to all his creditors.
- 3) As of the registration of the contents of the lawsuit, his acknowledgment of a debt to another person shall be of no effect.

#### Article (407)

If the debtor is interdicted, the president of the competent court shall, upon a petition submitted by the debtor, decide to grant him a subsidy to be taken from his own funds. An opposition may be filed against the decision taken on the petition within three days from the date it is rendered, if filed by the debtor, or from notifying such decision to the creditors if the opposition is submitted by them.

#### Article (408)

The assets of the interdicted debtor shall be sold, and the proceeds allotted between the creditors to be set – off the debts, in accordance with the procedures provided for in the law, leaving a sufficient amount for the subsidy to be paid to him and to those depending of him.

#### Article (409)

The debtor shall be sanctioned for fraud in the following instances:

- 1) If a case has been filled against him for a debt, and he intentionally has been declared bankrupt, to cause prejudice to his creditors and the case ended up by adjudicating the debt and the interdiction.
- 2) If he has concealed, after he has been condemned to interdiction, some of his possessions to prevent taking execution measures thereon; or has fabricated false or exaggerated debts, with the intention of causing prejudice to his creditors.
- 3) If he has fraudulently changed his domicile, which resulted into a detriment to his creditors.

#### Article (410)

1. Interdiction shall be removed by a court judgment, rendered by the judge of the debtor's domicile, upon application submitted by any interested person, in the following instances:

- a) If the assets of the interdicted have been allotted between the creditors;
- b) If it is established that the debts of the debtor have become less than his assets;
- c) If the debtor settles his matured debts that did not mature because of the interdiction, and, in this case, the due dates of the debts shall be reinstated to their previous status provided the debtor has paid all due installments.

2. The court clerk, on his own initiative, shall annotate, in the margin of the registration provided for in article (404), the judgment terminating the interdiction and shall send copy thereof to the cabinet of the minister of Justice for further annotation.

#### Article (411)

Interdiction shall be terminated ipso jure after the lapse of five from the date of endorsement of slaughter.

#### Article (412)

The debtor may, after the termination of interdiction, ask that the debts which were due because of interdiction, and were not settled on their maturity date, return to their previous due dates, provided that he had settled his debts that became due for a reason other than interdiction.

#### Article (413)

Termination of interdiction shall not prevent creditors from challenging the debtor's acts, or availing himself of using his rights in accordance with articles (392), and from (394) to (400).

### 6. Right of Retention

#### Article (414)

Whoever is under an obligation to supply something may refrain from performing his obligation so long as his creditor does no offer to perform an obligation incumbent on him arising out of the obligation of the debtor and connected therewith.

#### Article (415)

Each of the contracting parties in bilateral financial transactions in general may retain the object of the contract, while in his hands, until he receives the due consideration.

#### Article (416)

Whoever spends on someone else's property, while in his possession, necessary or useful expenses is entitled to abstain from restituting it until he recovers what is legally due to him; unless otherwise

agreed or provided in the law.

Article (417)

1. Whoever retains the thing must preserve it, and must render an account of its fruits.
2. If the thing retained is of a perishable nature or susceptible of deterioration, the person who retains the thing may obtain from the judge authorization to sell it in accordance with the procedures followed in the sale of a pledge property. The right of retention will then be transferred to the price thereof.

Article (418)

Whoever retains a thing by using his right of retention shall have priority, on all other competing creditors, to recover his right from such thing.

Article (419)

1. Unless otherwise provided in the law, the right of retention is extinguished by the fact of the thing ceasing to be in the hands of the possessor or the holder.
2. Nevertheless, the person retaining the thing, who has lost possession thereof without his knowledge or in spite of his opposition, may claim restitution of the thing within a period of thirty days from the time he became aware of the loss of possession, but prior to the lapse of one year since the date of the loss.

### Chapter Three. Acts Subjects to Suspensive Conditions and Time Clauses

#### Section I: Condition

Article (420)

The condition is a future fact upon which the existence of the act or its extinction depends on its materialization.

Article (421)

The absolute act is that which is achieved in an absolute and unconditional manner without being deferred to future time and occurs instantly.

Article (422)

A suspended act is that which is tied up by a non materialized condition, or a future event, and its effect shall be postponed until the condition is materialized.

Article (423)

In order that suspension be valid, the context of the condition must neither be materialized or impossible.

Article (424)

The act is void when the condition on which it depends is impossible, contrary to religious precepts, public policy or morality.

Article (425)

The act depending of a suspensive condition, that is not inconsistent with the contract, is not executory unless after materialization of the condition.

Article (426)

The act shall cease to exist when the condition to which it is subject materializes. The creditor is bound to return what he took and in case this is impossible because of him, he is bound to compensate.

Article (427)

That which is subject to a suspensive condition is established upon materialization of the condition.

Article (428)

The condition must as much as possible, be observed.

## Section II: Time Clauses

Article (429)

The act may be added to a term which, when due, shall result in the determination of the rules of its effectiveness and extinguishment.

Article (430)

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

Article (431)

A debtor will forfeit the benefit of the term in the following instances:

- 1) If he is declared bankrupt or interdict;
- 2) If he does not supply the security of the debt as agreed upon;
- 3) If he has, by his own act or for a reason beyond his control, diminished the real securities of the debt, unless he proceeds to complete same.

Article (432)

If the term is for the benefit of one of the parties, he may give it up by his own unilateral will.

Article (433)

The term debt will not become due by the death of the debtor unless it is guaranteed by a real security.

## Chapter Four. Plurality of the Object of an Act

### Section I: Alternative Objects

#### Article (434)

The object of an act may be several things and the debtor is entirely discharged if he performs one of these.

The option, in the absence of any special provision in the law or clause in the agreement to the contrary, belongs to the debtor, if absolute. The object of the act is subject to the provisions applicable to the option of designation.

### Section II: Exchange of the Object

#### Article (435)

1. The act is substitutive if its object is a single thing and the debtor will be discharged if he gives as substitute another thing.
2. The original alone, not the substitute, shall be the object of obligation, and will determine its nature.

## Chapter Five. Plurality of Parties to an Act

### Section I: Solidarity Between Creditors

#### Article (436)

Solidarity between creditors shall not exist unless by agreement or by a law provision.

#### Article (437)

The debtor may settle his debt to any of the joint creditors, unless one of them notifies him that he will not accept payment.

#### Article (438)

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

#### Article (439)

1. Joint creditors may claim the debt from the debtor either jointly or severally.
2. The debtor may not be opposed to the debt of one of his joint creditors on grounds specific to another creditor. He may, in his opposition, raise the grounds specific to this creditor or the grounds common to all other creditors.

#### Article (440)

All that which a joint creditor receives on account of the debt reverts to all creditors and will be divided equally between them, unless otherwise provided by law or agreed between them.

### Section II: Joint Debt

#### Article (441)

A debt is joint when its cause and the cause of another debt are united, if the debt has devolved by inheritance to several heirs, a commonly consummated property or the substitute of a loan taken from common property.

#### Article (442)

Each partner in the common debt may claim his share in it and that what he received will be considered property common between all partners, each in proportion of his share.

#### Article (443)

1. If one of the two partners receives part of the joint debt, the other party has to make him participate in it proportionately to his share. They both may sue the debtor for his share.
2. If a partner chooses to sue the debtor, he may not turn back on his partner unless his share has perished, and only to the extent of what he received.

#### Article (444)

1. If one of the partners receives his share in the joint debt, then disposed of it or consumed it, the other partners are entitled to claim their share in it.
2. If it perishes while in his possession without negligence from his part, he is not liable to answer for the shares of his partners in it. In this case, he has received his share and the balance of the debt owed by the debtor will be due to his other partners.

#### Article (445)

If one of the partners obtains from the debtor a guarantor for his share in the joint debt, or if the debtor refers him to his assignee, the other partners will participate with him, within the limits of their shares, in the amount received from the guarantor or the assignee.

#### Article (446)

If one of the partners purchases, against his share in a joint debt, a thing owned by the debtor, the other partners may hold him liable to compensate within the limits of the portion of the price taken from their shares, or revert on the debtor to the extent of their shares. They may also, if they agree, participate in the ownership of what their partner bought.

Article (447)

A partner may donate his portion in the debt to the debtor or release him thereof, without having to compensate his partners for what he has donated or released.

Article (448)

One of the partners in the joint debt may reach a compromise for his share therein, thus if the consideration for the compromise is of the same kind of the debt, the other partners may either share in what was received or sue the debtor. If, however, the consideration for the compromise is of a kind different from that of the debt, they may sue the debtor or the compromising partner who will have to pay them their share in what he received or their share in the debt.

Article (449)

1. None of the partners in a joint debt may defer it alone without the consent of the others for such deferral.
2. He may defer his share without the consent of the others and, in this case, he shall not share with them what they will receive out of the debt.

Section III: Solidarity Between Debtors

Article (450)

Solidarity between debtors will only take place unless by agreement or by a law provision.

Article (451)

If one of the joint debtors settles the debt in full, the others are released.

Article (452)

1. The creditor has to claim his debt from all his joint debtors, or some of them, taking into consideration the ensuing characterization of his relation with every creditor that may affect the debt.
2. Every debtor, when asked to pay, is entitled to file an opposition on grounds that are only special to him or common with the other debtors.

Article (453)

If a creditor reaches an agreement with one of the joint debtors for a substitute settlement, the others shall be discharged unless he reserved his right vis-a-vis all of them.

Article (454)

Should the share of one of the joint debtors be extinguished for a reason other than settlement, it shall not be extinguished as concerns the other debtors except to the extent of the debtor's share in the



debt.

Article (455)

If the creditor does not agree to release all the rest of the joint debtors from the debt, he shall only be entitled to claim the balance of the debt after deducting the share of the debtor who has been released by him, unless he reserved his right to revert on them for the entire debt and, in this case, they shall be entitled to sue the debtor to the extent of his share in the debt.

Article (456)

Unless otherwise agreed, should the creditor release one of the joint debtors from solidarity, his right to revert on the others for the entire debt shall remain.

Article (457)

If the creditor releases one of the joint debtors from the debt or from solidarity, the remaining debtors may revert on such debtor within the limits of his share in the proceeds of the debtor among them who has been declared bankrupt. However, if the creditor has released such debtor from all liability from the debt, then the creditor shall bear the share of this debtor in the proceeds of the bankrupted debtor.

Article (458)

1. The non-admission for hearing the case on grounds of prescription, as concerns one of the joint debtors shall not benefit the other debtors except within the limits of the share of such debtor.
2. Should the time limitation be interrupted or cut off as concerns one of the joint debtors, the creditor may not avail himself of this against the others.

Article (459)

In the performance of his obligation, the joint debtor is held liable for his act and, if summoned or sued by the creditor, this shall have no bearing as concerns the other debtors. Summons served by one of the joint debtors to the creditor shall, however, benefit the other joint debtors.

Article (460)

The reconciliation reached between one of the joint debtors and the creditor shall not be executory if it results into adding a new obligation on the debtors, or increased their existing obligation, unless they accept it. They shall benefit from the reconciliation if it includes release from the debt or discharge by any other means.

Article (461)

Acknowledgment of the debt by a joint debtor shall not be binding on the others. If one of the joint debtors refuses to take an oath tendered by the creditor, or if he tenders the oath to the creditor

and the latter takes the oath, the oath refused or tendered will not prejudice the other joint debtors. However, in case the creditor tenders an oath to the debtor who takes it, the other debtors shall benefit from such oath.

#### Article (462)

A judgment given against one of the joint debtors will have no effect against the others, but they shall benefit from it if given in favor of such debtor, unless the judgment is based on a ground relating only to him.

#### Article (463)

The joint debtor, from among the others, who settles the debt will have a claim against each of the others to the extent of his share. If one of the joint debtors is declared bankrupt, he will bear with the solvent joint debtors the consequences of such bankruptcy, without prejudice to revert on the bankrupt debtor when he becomes solvent.

#### Article (464)

If one of the joint debtors is the principal debtor in the debt, while the remaining debtors are guarantors, he shall not have any claim against them.

### Section IV: Indivisibility

#### Article (465)

An act cannot be divided when it has for its object something which by its nature is not susceptible of division, or if the intention of the parties that it should not be divided.

#### Article (466)

1. When there are several creditors in respect of an indivisible act, or there are several heirs to the creditor in this same act, each creditor or heir may claim the satisfaction of his right in full.
2. If one of these contests, the debtor shall have to fulfill his obligation to all of them together or deposit the object of the obligation with the competent authority, according to what is required by the law.
3. Each of the creditors shall have recourse against the creditor who has received payment.

#### Article (467)

1. When there are several debtors in respect of an indivisible act, each one of them is liable for the debt in full.
2. The debtor who has paid the debt shall have recourse against the others, each one for his share.

### Chapter Six. Extinction of the Right

## Section I: Discharge

### Article (468)

In case the creditor willingly discharges his debtor from a right he has on him, the right is extinguished.

### Article (469)

Discharge is not dependant on the debtor's acceptance but shall be void if refused by him and, if the debtor dies before acceptance, the debt shall not encumber his estate.

### Article (470)

The discharge is valid if given for an existing debt and not for a future one.

### Article (471)

1. Discharge is governed by the substantive provisions governing every donation.
2. No special form is required for discharge even if it is the release of an obligation whose existence was conditional upon a special form imposed by law or agreed upon between the parties.

## Section II: Impossibility of Performance

### Article (472)

A right is extinguished if the debtor establishes that its performance has become impossible by reason of a cause beyond his control.

## Section III: Extinctive Prescription

### Article (473)

A right shall not be extinguished by time limitation but the hearing of the court case, against the one who denies it, shall not be admissible after the lapse of fifteen years without legal excuse, after due observance of the matter governed by special provisions.

### Article (474)

1. A case concerning a claim of any periodical recurring right, when denied, shall not be heard after the lapse of five years without legal excuse.
2. As concerns revenue due by a holder in bad faith, the case, against who denies it, may not be heard after the lapse of fifteen years, without legal excuse.

### Article (475)

When denied and in the absence of a legal excuse, the case may not be heard after the lapse of five years, as concerns the following rights:

- 1) Rights of physicians, pharmacists, lawyers, engineers, experts, professors, teachers and brokers, provided that the debts are due as remuneration for work coming within the scope of their profession or in payment of expenses incurred by them.
- 2) Taxes and fees due to be recovered, if such have been unduly paid, without prejudice to the provisions stated in special laws.

#### Article (476)

If denied and in the absence of a legal excuse, a case may not be heard after the lapse of two years if it concerns a claim for the following rights:

- a) The rights of merchants, manufacturers in respect of things supplied to persons who do not trade in such things; rights of hotel and restaurant owners for the cost of accommodation and food and for expenses incurred by them on behalf of their clients.
- b) The rights of workmen, servants and wage earners in respect of their pay, daily or otherwise, and the cost of supplies provided by them.

#### Article (477)

1. In the instances mentioned in the preceding article, the case may not be heard even if the creditors are still performing other works for the debtor.
2. In case an acknowledgment or an instrument is drawn up embodying any of the rights referred to in articles (474), (475) and (476), the case may not be heard after the lapse of fifteen years as of it becomes due.

#### Article (478)

Prescription runs only from the day on which the debt becomes due and from the date on which the condition is realized, if subject to a suspensive condition and, in case of an action on a warranty, from the date its maturity is established.

#### Article (479)

A case shall not be heard if left by the predecessor then by the successor thereafter, if the total of the two periods reach the period prescribed for its non admittance.

#### Article (480)

The period of prescription barring the admittance of hearing the case is calculated in days; the first day does not count and prescription is completed when the last day is at an end, unless it is an official holiday, then it shall extend to the following day.

#### Article (481)

1. Prescription barring the admittance of hearing the case is interrupted whenever there is a lawful excuse barring claim of the right.
2. The period within which the excuse still exists shall not count in

the calculation of the prescribed period of prescription.

Article (482)

If some of the heirs do not file a case claiming a right to their decedent, within the period prescribed for its hearing, without a lawful excuse and, the remaining heirs have such an excuse, the case shall be heard on prorata a basis of the latter's shares in the estate.

Article (483)

Prescription prescribed for barring the non-admittance of hearing the case shall be interrupted by an express or tacit admission of the right by the debtor.

Article (484)

The period prescribed to bar the hearing of the case is interrupted by a court claim or any legal proceedings instituted by the creditor claiming his right.

Article (485)

1. If the period prescribed to bar the hearing of the case is interrupted, a new prescription period shall commence and shall have the same duration as that of the former one.
2. The right of whatever kind is not subject to prescription if adjudicated by a final unchallengeable judgment.

Article (486)

The prescription barring the hearing of a case in which a right is claimed shall extinguish claiming the accessories of this right even if the period of prescription prescribed to claim these accessories is not completed.

Article (487)

1. The plea of non-admittance to hear the case on grounds of prescription may not be renounced before acquiring the right to submit such a plea. Likewise, it is not admitted to agree on a term of prescription other than that fixed by law.
2. Every person, who is legally capable of disposing of his rights, may renounce, even tacitly, his right to submit such a plea after being in a position to do so.

Article (488)

1. The judge of his own initiative cannot decide not to hear the case on basis of prescription, but this must be requested by the debtor or by any interested party.
2. Prescription may be invoked at any stage of the proceedings unless the circumstances show that the person entitled to raise such a plea has waived his right thereto expressly or tacitly.

## BOOK TWO. CONTRACTS

### PART ONE. PROPRIETARY CONTRACT

#### Chapter One. Sale and Barter

##### Section I: Sale

##### 1. Definition and Elements of Sale

###### Article (489)

Sale is the exchange of non monetary property for a monetary property.

###### Article (490)

1. It shall be provided that the sold be known for the buyer, such a knowledge that denies all flagrant ignorance.
2. The sold to be known for the purchaser by the statement of its conditions, and typical characteristic descriptions. If it is present it shall be sufficient to indicate it.

###### Article (491)

If it shall be mentioned, in the contract, that the buyer had enough knowledge of the sold, he shall have no right to annul the contract, for lack of knowledge, unless he proved that the seller has deceived him.

###### Article (492)

1. If the sale is by a model, it shall be enough to be viewed, and the sold must be identical.
2. If the sold appeared to be not identical to the model, the buyer may opt to accept it or return it back.

###### Article (493)

1. If both buyer and seller disagree as for the identification of the sold to the model, and the model and sold present, the experts' opinion shall prevail. If the model shall be lost while under the control of either buyer or seller, the final word in identification or differentiation shall be for the other party, unless his adversary proved the contrary.
2. Should the sample be in the hands of a third party, by mutual agreement of the parties, then it was lost, and the thing sold was specifically designated, and there is no disagreement between the parties as to the identity of the thing sold, the statement of the vendor on its conformity with the sample shall prevail. In case the thing sold is specified or designated by its kind, and there is no agreement between the parties as to its being the object of the sale, the statement of the purchaser on its non conformity with the sample shall prevail, unless the vendor proves the contrary.

###### Article (494)

1. The sale may be conditioned upon trial for a fixed period which, if not specified in the contract, shall be considered the usual period.
2. The vendor is bound to make the trial available to the purchaser.

Article (495)

1. The purchaser may, within the testing period, accept such sale or refuse it, even if he did not try the thing sold, provided that, in case of refusal, he gives notice to the vendor.
2. If the trial period has expired, and the vendor kept silent, while having the opportunity to try the thing sold, his silence shall be considered acceptance, and the sale shall be binding on him.

Article (496)

If the thing sold perishes while in the hands of the purchaser, pursuant to its receipt, he is bound to pay the price agreed upon to the vendor; if it perishes prior to delivery for a reason beyond the purchaser's control, it shall be on the responsibility of the vendor.

Article (497)

The sale after trial and the acceptance of the thing sold shall be effective as of the date of the sale.

Article (498)

If the purchaser becomes incapacitated prior to accepting the sale, his tutor or guardian must opt for what is in his interest, taking into consideration the rules and conditions provided for in the law.

Article (499)

If the purchaser dies before making his choice, while having a creditor whose debt covers his assets, the right of trial shall pass to this creditor, otherwise it shall pass to his heirs. Therefore, in case they all agree to accept the sale or to return the thing sold, their agreement shall be binding, and if some approve the sale and the others reject it, restitution of the thing sold becomes a must.

Article (500)

The purchaser may not use the thing sold within the trial period, except to the extent customarily required for trial. If he uses it beyond this purpose for a reason other than trial, the sale becomes binding.

Article (501)

The provisions governing the sale subject to trial shall apply to sale subject to testing except that the right to tasting does not pass to the heirs and the sale becomes final.

Article (502)

The proceeds of the thing sold accruing during the trial period shall be in favor of the vendor and its expenses charged to him, except where the proceeds form part of the sale, in which case the purchaser

shall be entitled to these proceeds if the sale is completed.

#### Article (503)

The price is what both contracting parties have agreed upon in consideration of the sale, whether it exceeds the value or is short therefrom. The value is what the thing has been assessed without increase or decrease.

#### Article (504)

If both the vendor and the purchaser have mutually agreed upon fixing the price at the market value, such shall be assessed at the time and place of sale. If there is no market in that place, reference should be made to the market price at the place at which the prices and customarily deemed applicable.

#### Article (505)

If both parties declare a price other than the price agreed upon, the true price shall prevail.

#### Article (506)

1. Sale may take place by adding a profit to the cost price, sell at a price lower than the cost price or at exactly the cost price, provided the cost price is known at the time of the contract and the amount of profit, in the sale for profit, and of loss, in the case of sale at a price lower than the cost price, is fixed.
2. If it appears that the seller made an over statement of the cost price, the purchaser is entitled to reduce the price to the normal level.
3. If the cost price of the thing sold was unknown at the time of contract, the purchaser may rescind the contract upon his knowledge thereof; the same shall apply if the vendor concealed a matter affecting the sale, or the cost price, but this right shall be forfeited if the thing sold perished or was consummated, or if the purchaser was dispossessed of its property after delivery.

#### Article (507)

1. An increase in price made by the purchaser after the contract, if accepted by the vendor, shall be added to the original contract and the fixed price together with the increase shall form the consideration for the whole sale.
2. The reduction in price made by the vendor after the contract, if accepted by the purchaser, shall be made part of the original contract and the balance of the price after reduction shall represent the contract price.

#### Article (508)

The price shall be payable in advance unless agreed or customarily practiced that it be deferred or paid by installment over a definite term.



#### Article (509)

If payment of the price is deferred or done by installment, the term shall start from the date of delivery of the thing sold.

#### Article (510)

If the buyer shall pay a part of the price, he is not entitled to claim proportionate delivery of the thing sold if splitting shall result in a reduction in its value.

### 2. Effects of Sale

#### A) Obligation of the Seller

##### First – Transfer of Ownership

#### Article (511)

1. Unless otherwise agreed or stipulated by Law, ownership of the thing sold shall be transferred to the purchaser once the sale has been completed.
2. Each of the parties to the sale has to fulfill his obligations except those deferred.

#### Article (512)

When the goods are sold in bulk, ownership is transferred to the purchaser in the same way as ownership of a definite specified thing.

#### Article (513)

1. In a credit sale the vendor may stipulate that the transfer of ownership to the purchaser is subject to integral payment of the price, even if the thing sold has been delivered.
2. If the price has been fully paid, the purchaser's ownership shall be deemed to have taken place as from the date of sale.

##### Second – Delivery of the Thing Sold

#### Article (514)

The vendor is bound to deliver the thing sold to the purchaser free of any other right, unless otherwise agreed or stipulated by Law. He is equally bound to perform everything necessary from his part to transfer ownership to the purchaser.

#### Article (515)

If, according to the Law or current custom, the nature of the thing sold, requires the delivery of his ownership titles, the vendor is bound to deliver same to the purchaser. Should he refrain from delivering them or pretend their loss, and then were found, the judge shall force him to deliver them. If they are not found in case they are allegedly lost, the purchaser shall be at choice of returning the

thing sold or resume the sale.

Article (516)

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

Article (517)

Delivery includes delivery of the accessories of the thing sold and of all fixture thereon as well as everything appropriated permanently for its use and everything else which, according to custom, as accessory to the thing sold even if not mentioned in the contract.

Article (518)

Contracting for construction or trees shall include the land on which the construction is erected, and the land in which the roots of the trees extend. Likewise, contracting for a land shall include the constructions and trees thereon, unless otherwise provided by contract or custom, a legal condition or custom requires otherwise. Contracting for a house shall include all its fixed utilities to the exclusion of the movable ones, unless it is specified by the purchaser that they be included in the contract.

Article (519)

Unless otherwise specified as a condition or customarily accepted, the sale of land shall not include the plants thereon.

Article (520)

The sale of trees as such or as accessory to the land includes the produce that did not totally or mostly develop shoots or buds but if it did, it is not covered by the contract unless its appendage to the root figures as a condition or customarily accepted. In case each of the trees or plants have up to their half developed shoots or buds, each shall follow the aforementioned rule.

Article (521)

The contract that shall deal with plants taken by shearing shall not include the leftovers unless a condition or custom provide otherwise.

Article (522)

If the vendor duly delivers the sold item to the purchaser, he shall not be answerable for what shall happen to it afterwards.

Article (523)

When the quantity of the thing sold is fixed in the contract and, in the absence of an agreement or custom, a deficiency or increment in it shows, the following rules shall apply:

1) In case severance is not detrimental to the thing sold, the increase shall be in favor of the purchaser, who is entitled to recover it in kind, and the deficiency recovered from his account whether the price is fixed by unit or for the total of the thing sold.

If the thing sold shall be adversely affected by severance and the price is fixed per unit, the vendor is entitled to the value of the increase and the deficiency charged to his account.

If, however, the named price covers the total value of the thing sold, the purchaser is entitled to the increment while the price shall not apply to any deficient quantity.

2) If the thing sold shall be adversely affected by severance and the price is fixed per unit, the vendor is entitled to the value of the increase and the deficiency charged to his account.

If, however, the named price covers the total value of the thing sold, the purchaser is entitled to the increment while the price shall not apply to any deficient quantity.

3) If the increment or deficiency add to the obligation of the purchaser beyond what he has intended to purchase or change the nature of the transaction, he may opt for the cancellation of the sale unless the difference is trifling and it does not contradict the purpose sought by the purchaser.

4) In case the purchaser takes delivery of the thing sold with knowledge of the deficiency, he shall forfeit his right to the cancellation option mentioned in the preceding paragraph.

#### Article (524)

The case for rescinding the contract or reducing the price, or completing it, shall not be heard after the lapse of one year as of delivery of the thing sold.

#### Article (525)

1. Delivery of the thing sold may be completed in effect or by releasing it to the purchaser allowing him to receive it and there is no hindrance to his possession thereof.

2. Delivery, of anything, is done in accordance with its nature, and according to the agreement or custom.

#### Article (526)

When the thing sold was in the possession of the purchaser prior to the sale, in any capacity or for any reason whatsoever, this possession is considered delivery, unless otherwise agreed.

#### Article (527)

If both parties to the sale agree to consider, in a particular case, the purchaser having taken delivery of the thing sold, or if the law orders considering some instances as delivery, the delivery shall be considered de jure completed.

#### Article (528)

Delivery is completed de jure by registration of the thing sold in the name of the purchaser, if the law requires registration for the transfer of ownership.

#### Article (529)

Delivery shall also be considered as having taken place de jure in the two following instances:

- 1) If the vendor keeps the thing sold with him at the request of the purchaser.
- 2) If the vendor notifies the purchaser (to pay the price and take delivery of the thing sold within a fixed period otherwise it shall be considered delivered) and he did not.

#### Article (530)

1. The vendor is bound to deliver the thing sold at the place where it is located at the time of contract.
2. If the contract includes, or the custom requires, dispatching the thing sold to the purchaser, delivery shall not be effective until the thing reaches him.

#### Article (531)

1. If the thing sold perishes before delivery as a result of a cause beyond the control of either party to the sale, the contract shall be dissolved and the price refunded to the purchaser.
2. If the thing sold perishes partially, the purchaser shall be at option either to rescind the sale or take the remaining part against payment of its share of the price.

#### Article (532)

1. If the thing sold perishes prior to delivery, or some of it damaged, by an act of the purchaser, he shall be considered as having taken delivery of the thing sold and shall be bound to pay the price.
2. Should the vendor be, in this case, at option and chooses to rescind the sale, the purchaser shall warrant to restitute in kind a similar thing or the payment of its price and appropriate what is left of it.

#### Article (533)

1. If the thing sold perishes, before delivery, by the act of another person, the purchaser shall be at option either to rescind the sale or, if he wishes, accept it and he shall be entitled to turn back against the responsible person to warrant the restitution in kind of a similar thing or payment of its value.
2. If the thing sold perishes partially, the purchaser shall be at option to choose any of the following:
  - a) Rescind the sale;
  - b) Take the remainder against payment of its share in the price and the sale shall be rescinded as concerns the perished portion;
  - c) Sign the contract for the whole sale at the named price and turn back on the responsible person to compensate for the damaged part.

#### Article (534)

1. The vendor warrants that the thing sold is free from any right to third persons encumbering the sale if the cause of its becoming due precedes the sale contract.

2. The vendor's warranty remains in effect if the cause of maturity is due to an incident occurring after the sale resulting from his act.

#### Article (535)

1. Litigation concerning the recovery of the thing sold, before its delivery, shall be addressed to both the purchaser and the vendor.
2. If the litigation arises pursuant to delivery of the thing sold and the purchaser did not ask, in due time, for the forced intervention of the vendor in the action and a final judgment has been rendered against him, he shall lose his right to demand the execution of the warranty in case the vendor establishes that his intervention in the case would have resulted in the rejection of the action in recovery.

#### Article (536)

1. If the action in recovery of the thing sold is decided, the recover may revert on the vendor for the price should he authorize the sale and the purchaser shall be entitled to the thing sold.
2. If the recover did not accept the sale, the contract shall be rescinded and the purchaser shall revert on the vendor for the price.
3. The vendor shall warrant to the purchaser any betterment introduced by him in the thing sold estimated at its value on the date of its delivery to the recoverer.
4. The vendor shall also warrant to the purchaser the damages occurring from the recovery of the thing sold, which rose by the fall due of the sold.

#### Article (537)

1. A clause providing for the exclusion of the vendor's warranty of the price upon recovery of the thing sold is prohibited and shall annul the contract on account of such clause.
2. The knowledge of the purchaser, that the thing sold is not the property of the vendor, shall no to prevent him from taking action as concerns the price upon recovery.

#### Article (538)

If recovery is based on the avowal of the purchaser or his refraining to take oath, he may not take action against the vendor.

#### Article (539)

1. If the buyer compromises with the prospective recover with the respect to the payment of an amount of money prior to having the latter obtain a judgment in his favor, and the vendor refutes the claimant's right, the purchaser shall then have to prove that the claimant is entitled to his claim after which the vendor shall be at option either to refund the consideration paid for the compromise or restitute the price to the purchaser.
2. If the compromise takes place after adjudication in favor of the recoverer, the buyer shall keep the thing sold and may take action against the vendor for the price.

#### Article (540)

1. Should part of the thing sold be recovered prior to taking delivery by the purchaser of the whole thing, he shall be at option either to reconstitute what he has received and recover the price thereof, or accept the sale and take action as concerns the part recovered.
2. If part of the thing sold has been recovered after total delivery to the purchaser and caused a defect in the other part, the purchaser has to reconstitute the remaining part and take action against the vendor for the price, or adhere to it against payment of its share in the price. If, however, recovery did not cause a defect and the part recovered is the smallest, the purchaser shall have no other remedy except to take action for the reconstitution of the share of the recovered part in the price.
3. If, after sale, it is revealed that a right of a third party encumbers the thing sold, the purchaser shall be at option either to wait until this lien is removed or rescind the sale and take action against the vendor for the price.
4. In an easement, it is presumed that the vendor does not give a warrant if this easement is apparent or if the vendor has revealed it to the purchaser.

#### Article (541)

1. If the claim for recovery is made after the perishing of the thing sold while in the possession of the seller, he shall warrant its value at date of purchase to the recoverer and action against the vendor for the price.
2. If the amount warranted by the purchaser exceeds the nominated price, he is entitled to take action for the difference together with a warrant for damages due according to clause 4 of Article (536).

#### Article (542)

The recoverer is entitled to claim from the purchaser the revenues or yields of the thing sold to the extent benefited by him after deducting the expenses required for production and the purchaser shall take action against the vendor to recover what he has paid to the recoverer.

### Third – Warranty of Hidden Defects (Option in Case of Defect)

#### Article (543)

1. The sale shall be considered concluded, on basis that the thing sold is free from defects other than those customarily tolerated.
2. The general rules concerning the option in case of defect shall govern the sale contract, taking into consideration the dispositions of the following Articles.

#### Article (544)

1. If an old defect appears in the thing sold, the purchaser shall be at option either to reconstitute it, or accept it at the nominated price,

but he may not retain it and claim the amount of the decrease in price due to the defect.

2. The defect is considered old if it was existing in the sold before sale, or happened after sale while still under the control of the seller before delivery.

3. The defect occurring upon purchase shall be considered as old if based on a previously existing cause in the thing sold while in the hands of the vendor.

4. The old defect is conditioned upon being occult. A defect is occult when it cannot be discovered by normal look on the outward appearance of the thing sold, detected by an ordinary person, discovered only by an expert or does not show except by practice.

#### Article (545)

The vendor is not answerable for the old defect in the following instances:

- 1) If, upon sale, the vendor indicates to the purchaser the defect;
- 2) If the purchaser accepts the defect after he has been aware of it, or after taking knowledge of it from someone else;
- 3) If the purchaser buys the thing sold with knowledge of the defect;
- 4) If the vendor sells to the things sold, on condition that he does not warrant any or a specific defect in it unless the vendor intentionally hides the defect or the purchaser was in a state that prevents him from discovering it;
- 5) If the sale was done by public auction by order of the judiciary or administrative authorities.

#### Article (546)

In case the purchaser, prior to taking knowledge of the defect, disposes of the thing sold as the owner would do, his option is forfeited.

#### Article (547)

If the thing sold perishes due to an old defect, while in the hands of the purchaser or consumed it before taking knowledge of the defect, he shall take action against the vendor for deduction of the value of such defect.

#### Article (548)

1. If a new defect will appear in the thing sold, while in the hands of the purchaser, he may not return it with the old defect, but shall have a claim against the vendor for the reduction of the price unless the vendor accepts taking it back with its recent defect.

2. In case the occurring defect ceases to exist, the right to return the thing sold with its old defect to the vendor shall be reinstated to the purchaser.

#### Article (549)

1. Should the thing sold increase in such a way as to prevent its return back, then the purchaser discovered an old defect therein, he

shall have the right to claim from the vendor the reduction in price because of the defect and the latter shall not be entitled to claim the restitution of the thing sold to him.

2. The preventing increase is every property of the purchaser related to the thing sold.

#### Article (550)

1. When several things were sold in one lot and defects appeared, before delivery, in some of these things, the purchaser may opt between purchasing the whole lot at the nominated price or return it back in full.

2. If several things were sold as one lot and an old defect appeared, after delivery, in some of these things, and there is no harm done as a result of sorting them out, the purchaser may return the defective part against its share in the price, but he shall not have the right to return them all without the consent of the vendor. Should the sorting and separation of these things be prejudicial the purchaser shall have the option either to return the whole lot or accept it against its full price.

#### Article (551)

1. If there is in the thing sold a defect that necessitates its restitution, and the purchaser, before being aware of the defect, has constituted in favor of a third party a right thereon that does not transfer title, he shall be entitled to return it to the vendor with this defect after clearing it from such right if the thing sold was not altered during this period.

2. If he has constituted a right to third parties after his knowledge of the defect, he shall forfeit his right in returning it. Should the sold thing be altered, the same provisions governing the alteration of the thing sold bearing an old defect shall be applicable.

#### Article (552)

The right of the purchaser to return back the defective thing sold shall not be forfeited due to the change in its value.

#### Article (553)

1. The yields of the returned defective thing sold, which are not considered a part thereof, shall belong to the purchaser as of the time of possessing the thing sold, up to the date of rescinding the sale. He may not claim from the vendor the expenses spent on the thing sold.

2. As for the yields of the sold thing which are considered a part thereof, shall belong to the vendor.

3. As concerns the thing sold that does not have any yields, the purchaser shall have a claim against the vendor for what he has spent.

#### Article (554)

The warranty of the returned defective thing sold shall be transferred from the purchaser to the vendor once the vendor accepts to take it



from the purchaser, even though he does not collect it in fact or upon establishing before the courts the presence of a defect even before ordering restitution, if the vendor is absent, otherwise the warranty shall not be transferred until the order of restitution is rendered.

Article (555)

1. The lawsuit in warrant of the defect is not receivable due to prescription occurring after the lapse of six months as of taking delivery of the thing sold, unless the vendor binds himself for a longer period.
2. The vendor shall not adhere to this duration if it has been proved that hiding the defect was by fraud imputed to him.

B) Obligation of the Purchaser

First – Payment of the Price and Taking Delivery of the Thing Sold

Article (556)

Unless otherwise agreed, the purchaser has to pay the price upon contracting and before taking delivery of the thin sold or claiming such delivery.

Article (557)

1. The vendor may retain the thing sold until receipt of what is due to him from the price, even if the purchaser has given him a mortgage or a security.
2. If the purchaser accepts deferring the price, his right in retaining the thing sold shall be forfeited and he becomes under obligation to deliver it to the purchaser.

Article (558)

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

Article (559)

1. If, prior to payment, the purchaser takes possession of the thing sold of the price under the sight of the vendor, who did not prevent him therefrom, this will be considered an authorization to take delivery.
2. In case, prior to payment, the purchaser takes possession of the thing sold without authorization of the vendor, the latter may recover it. If it perishes or becomes vitiated while in the hands of the purchaser, it shall be considered as delivered.

Article (560)

Spoiling by the purchaser of the thing sold, even unintentionally, is considered delivery.

Article (561)

If the purchaser ignores the place of the thing sold, at the time of contract, and thereafter takes knowledge of it, he shall have at will the option either to rescind the sale or ratify it and take delivery of the thing sold at the place where it is.

Article (562)

1. Subject to an agreement or custom to the contrary, the purchaser is liable to hand over the down payment of the price at the place where the thing sold exists at the time of contract.

2. If the price is a deferred debt, on the purchaser and there is no agreement as to its payment at a specific place, it must be paid at the domicile of the purchaser at time of maturity of the debt.

Article (563)

If the purchaser takes possession a thing under negotiation of purchase and it perishes or was lost while in his possession, and the price thereof was specified, he must pay it, and if such price was not specified there is no warranty except in case of trespass or default.

Article (564)

1. If an action in restitution is instituted against the purchaser based on a prior right on the thing sold, or on a right given to him by the vendor, the purchaser may retain the price until the vendor provides a solvent surety guaranteeing to the purchaser to return the price paid upon confirmation of the restitution. The vendor may ask the court to order the purchaser to deposit the price with it instead of providing a surety.

2. The provision of the above clause shall apply if the purchaser discovers in the thing sold an old defect warranted by the vendor.

Article (565)

In case the sale specifies a certain delay for payment of the price and if not paid within this delay by the purchaser, there is no sale. If not paid and the thing sold is still in the possession of the vendor, the sale shall be considered ipso facto rescinded.

Article (566)

1. If the purchaser takes delivery of the thing sold, then dies bankrupt before paying the price, the vendor may not reconstitute it and the price shall become a debt on the estate and the vendor shall be in the same rank as the other creditors of the estate.

2. If the purchaser dies bankrupt, before taking delivery of the thing sold and payment of the price, the vendor may retain the thing sold until he receives the price from the estate and his rank shall be preferential to the other creditors of the estate.

3. If the vendor has received the price, and died bankrupt before delivery of the thing sold, this thing shall be considered a consignment in trust with him and the purchaser shall have precedence thereon over the other creditors.

## Second – Costs of Sale

### Article (567)

Subject to agreement, a law provision or custom to the contrary, the costs of delivering the price, the sale contract and its registration as well as the other costs are borne by the purchaser, while the costs of delivery of the thing sold are to be borne by the vendor

## Section II: Different Sales

### 1. “Selm” Sales With Deferred Delivery

#### Article (568)

“Selm” is the sale of a property with deferred delivery against a prepaid price.

#### Article (569)

The validity of a deferred delivery sale is subject to the following conditions:

- 1) The thing sold should be a property that can be designated by description and quantity, and be available at time of delivery.
- 2) The contract is to include a statement of the nature of the sale, its kind, its quantity and the period within which delivery shall be done.

#### Article (570)

The capital of the sale with future delivery (i.e. its price) must be known quantitatively and qualitatively, and not to be conditionally deferred for a period exceeding three days.

#### Article (571)

The purchaser may dispose of the thing sold before taking delivery of it.

#### Article (572)

If delivery of the thing sold is impossible prior to the expiry of the period set for completion thereof due to a sudden contingency, the purchaser shall be at option to wait for its availability or rescind the sale.

#### Article (573)

If the vendor, in a sale with deferred delivery, dies before the expiry of the period set for delivery, he shall have a choice between rescission of the contract and recovery of the price from the estate or wait until the expiry of this term and, in this case, lay a seizure on assets of the estate sufficient to cover payment of the thing sold, unless the heirs provide a solvent surety guaranteeing, upon expiry of its term, delivery of the thing sold.

#### Article (574)

1. If the purchaser in a sale with deferred delivery exploits the farmer's need, and buys from him a future crop, at an evidently unjust price or oppressive conditions, the vendor shall, when the term set for delivery matures ask the court to modify the price or the conditions, in such a way to relieve the injustice.

The court, in such a case, shall take into consideration the circumstances as to the time, place, the general level of the prices and their difference between the date of the contract and that of delivery, according to custom.

2. The purchaser is entitled to refuse the modification deemed by the court equitable, and recover the true price which he actually paid to the vendor, and thereupon, the vendor shall be entitled to sell his crop to whomever he wishes.

3. Shall be void every agreement or condition purporting to forfeit this right whether such condition is included in the sale contract itself or in the form of another separate obligation of whatever nature.

#### Article (575)

It shall be void that the capital of the sale with future delivery and the object of delivery be two foods or two currencies, it is sufficient for other than food, that they both differ in type and utility.

#### Article (576)

1. If there is for the thing sold subject to future delivery times where it appears but ceases to be so when the period set for delivery matures before taking possession of it by the purchaser, he must wait until it reappears, if he is the cause of such delay, otherwise he shall be at option either to rescind the contract or wait until it appears.

2. If its existence shall cease after taking delivery of part thereof by the purchaser, he must wait for the other part unless the parties agree to account for what has been delivered.

#### Article (577)

The object of the sale must be a thing of the same nature but may be of a different nature in the following instances:

- a) The substitute in exchange should be delivered in advance;
- b) The substitute should be valid for delivery against payment of the price;
- c) The delivered should be other than food.

#### Article (578)

If the time of delivery matures, the vendor shall deliver it to the purchaser at the place agreed upon or, if the parties did not specify a special place of delivery, at the place of conclusion of the contract. Unless otherwise agreed, neither the vendor is bound to

deliver nor the purchaser to take delivery in a place other than the two mentioned places.

#### Article (579)

1. If the vendor and purchaser disagree about, or fail to specify, the quantity of the thing sold with future delivery or the time of delivery, those prevailing between people shall preclude otherwise the via media shall prevail.
2. If both disagree about the place for delivery of the thing sold, and one of them states that it is the place of conclusion, this place shall prevail and if no statement has been made by either of them then delivery has to be made in its market at the place of formation of the contract.

### 2. Sales of Vacant Space

#### Article (580)

The sale of vacant space for construction purposes may occur in one of the following forms:

- a) The sale of a vacant space over a land, the validity of such sale does not depend on the description of the projected construction;
- b) The sale of vacant space above a construction, on condition that the construction to be built thereon is described;
- c) The sale of vacant space over a vacant space to be constructed thereon, on condition that each of the lower and upper constructions are described. In case of one of such three sales, whereby the purchaser has become the owner of the entire vacant space above the land or above the construction, within the limits of what he bought from this space, but he is not allowed to build more than what was agreed upon without the consent of the land owner or the owner of the lower construction.

#### Article (581)

The sale of vacant land shall result in the following:

- 1) It shall not be rescinded by the destruction of either the lower or upper construction.
- 2) The owner of the lower construction shall have to reconstruct it if destroyed, and restore it if weakened. The owner of the upper construction, with the consent of the owner of the lower construction, or by court order, may reconstruct it.

### 3. Bulk Sale

#### Article (582)

1. The bulk sale is the sale of whatever may be dry-measured or weighable, or prepared without measure or weight or counting, considering as sufficient its gross estimation. This sale shall be effected in bulk, even if the fixation of the price shall depend on

the quantity sold.

2. The bulk sale may be allowed under the following conditions:

- a) The purchaser should have viewed it at the time of contracting, or have viewed it, before contracting, a viewing after which it does not usually get altered until the contract, unless its viewing shall cause damage to it, in which case it shall be sufficient to describe it;
- b) The parties to this sale ignore its measure, weight or number, with the possibility of its gross estimation. If it is established to one of them, at the time of contract, that the other party had knowledge of the quantity of the thing sold, the contract shall be void, and if he knew that the other had knowledge thereof after the contract, he shall be at option either to return the thing sold or pursue the sale.

#### 4. Sales With Deferred Payment

Article (583)

The vendor of a thing with deferred payment may purchase it from the person who has sold it to him with an immediate or deferred price payment unless both sales are different in price and term, and the payment of the lesser price would be at a date preceding the payment of the higher price, in such a case the second sale shall be rescinded, if the sale is still in effect, otherwise both sales shall be rescinded.

#### 5. Sale on Basis of a Sample

Article (584)

The sale on basis of a sample is a sale occurring between the one who acts as a purchaser of goods, that he does not have, vis-a-vis the buyer of a specific item, so if he is asked to provide the requested item he purchases it and sells it at a price higher than what he paid for it. Such sale is allowed unless it constitutes a sale with deferred price higher than that previously agreed between them. If this be the case, the second purchase is cancelled and the thing must be sold at the place agreed upon in the first sale to which shall be added the lesser of the remuneration for effectuating this transaction and of the profit.

#### 6. Sale of Foodstuff and Other Things Before Delivery

Article (585)

Whoever owns a thing, by purchase or otherwise, may sell it before taking delivery thereof from its previous owner, unless it is bartering foodstuff, then its purchaser, through dry measuring, may not sell it before taking delivery thereof. However, if he purchases it in bulk sale, he may sell it before delivery

## 7. Sale of Fruits

### Article (586)

1. Fruits, though their maturity is not apparent, may be sold with its stem and may not be sold separately from the stem unless matured totally or partially. Maturity starts to be apparent when the fruit is beginning to ripen and becomes edible and ready for use.
2. If the stem of such fruits are of the yearly repetitive fruit bearing type, they may be sold, in case the first growth starts to mature, if the following growth cycles are successively linked in such a manner as they cannot be distinguished from each other, but if they can, the second growth yield may not be sold until it matures.

### Article (587)

If the fruits are damaged, after their sale, due to a natural blast that cannot be repelled, the purchaser shall be entitled to ask for the reduction of the price thereof, in proportion to what has been affected by the blast, if such an affliction has occurred before the full ripening thereof and the usual harvesting, and should the value of the afflicted amount equals the third or more of the fruits value. However, if the damage is due to lack of water, the value of the damaged portion shall be deducted from the price, even if its value was less than the third.

## 8. Sale of Cultivated or Seeded Land

### Article (588)

1. If in the land sold there were plants, that are harvested only once a year, such plants remain the property of the vendor until their first harvesting, unless the purchaser has conditioned that they be his.
2. If, in the sold land, there were plants that are repeatedly harvested or bearing fruit, the stem is for the purchaser, and the apparent harvested crop is for the vendor, who shall have to cut it off on the spot, unless the purchaser has kept it for himself, and in this case the latter shall have to cut it off immediately.

### Article (589)

1. In case a seeded land is sold, and the seed is of kind that the plant resulting therefrom is harvested only once per year, it shall be for the vendor; like a plant in which the vendor ignores it contains seeds therein upon conclusion of the contract, he shall opt between either to rescind the contract or proceed with it without warranty.
2. However, if the seeding is of a type where the resulting plant is clipped once after the other, or its fruit is repetitive or its stem shall remain alive, it shall be for the purchaser.

## 9. Example of the Sale of Palm Trees and Trees

### Article (590)

1. If a palm tree is sold, when its spadix began to break through, or when its fruits began to burgeon or were out of their perianth without blossoming or be apparent, they shall be for the vendor, and left until clipping, and what has been sold earlier shall be for the purchaser, and the last word shall be for the vendor who shall swear that they began to show or break out of their perianth.
2. Each of the vendor and purchaser may benefit of what the owner, in whole or in part, may condition for himself.

### Article (591)

1. Cleavage of some spadix in the palm trees, or the appearance of some fruit in the single tree, shall be considered as a cleavage and the appearance of all its spadix and fruit.
2. Where, however, there are multiple palm trees or trees and some, to the exclusion of the others have been cleaved or fruits started to show on some, each shall be governed by its own rule.

## 10. Sale of Self Edible Crops

### Article (592)

Self edible crops and their formed grains in spikes, both, may be sold.

### Article (593)

1. Whoever buys a self-edible crop and by fractioning it found that it is putrid and each fraction thereof has no value, he may claim back the full price if all fractions are found putrid or the price of the rotten fractions if some fractions only are uneatable.
2. If the fractions have a value, the purchaser shall be at option either to retain it with damages or return what is left after breaking it, but if the whole thing sold is spoiled the purchaser is entitled to damages.

## 11. Transmission by Dissociation

### Article (594)

Transmission by dissociation is the sale made by an heir, after death of the decedent, of his share in the inheritance, to one or more other heirs, in consideration of a determined compensation, even if the assets of the inheritance were not yet specified.

### Article (595)

1. The dissociation contract shall transfer the share, of the vendor, in the inheritance, to the purchaser, and the purchaser shall replace the vendor in that share.



2. The transmission contract shall not comprise all the property of the deceased which will appear after the formation of the contract, and which both parties to the contract were ignoring at the time of contract. Likewise it shall not comprise the rights due to the estate from either or both of the contracting parties, as well as the rights due by the estate to both or to one of them.

#### Article (596)

The vendor shall not warrant to the purchaser anything except the existence of the inheritance and the establishment of his right therein, in case the contract without stipulating any preference as to any of the contents of the estate.

### 12. Sale During Last Illness

#### Article (597)

1. Last Illness: is when a person is unable to resume his usual business occupations and where the illness leads most probably to death within last then one year. Should his illness lasts for one year or more while being in a stagnant health condition without aggravation, his acts are considered valid.

2. Shall be considered as last illness, conditions in which a person is surrounded by the risk of death and where in similar conditions the person is most probably going to perish even if he is not sick.

#### Article (598)

A sale made by a person during his last illness, to an heir, shall be governed by the provisions of the following Article.

#### Article (599)

1. If the sick person sells to a foreigner at a price equivalent to the price of a similar thing or a little less, the sale is enforceable and is not contingent on the authorization of the heirs.

2. If the sale was at price inferior to the value of the thing sold at the time of death, the sale shall be valid against the heirs if the difference between the value of the thing sold and the price paid does not exceed one third of the value of the estate including the thing sold.

3. If this difference exceeds one third of the value of the estate, the sale is only valid against the heirs if approved by them, or if the purchaser pays to the estate the amount necessary to make up the two thirds, otherwise the heirs shall be entitled to rescind the sale.

#### Article (600)

A sale made by the sick person to a foreigner shall not be effective for less than the value of a similar thing, even with little unfairness, against the creditors, if the estate is covered with debts. The purchaser shall then pay the price of a similar thing otherwise the creditors are entitled to rescind the sale.

Article (601)

1. The sale made by an ill person may not be rescinded, if the purchaser has disposed of the thing sold, in such a manner as making the purchaser, in good faith, acquire a legal right in the assets of the thing sold against a consideration.

2. In such a case, the creditors of the estate, which is fully covered with debts, may claim back from the one who purchased from the sick person the difference between the price and the value of the thing sold. The heirs shall have the same legal right, if one of them was the purchaser, but if he was a foreigner, he shall have to refund to the estate what completes the two thirds of the value of the thing sold.

13. Sale by a Representative to Himself

Article (602)

Without prejudice to the provisions of special laws, no person who represents another person by virtue of a law provision, an agreement or an order of a competent authority may purchase, either in his own name or in the name of an intermediary, even at a public auction, property entrusted to him in his representative capacity.

Article (603)

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

Article (604)

Excepting the provisions of the two preceding Articles, the representative, the intermediary or the expert may purchase for himself if so authorized by his principal or the concerned person.

14. Sale of a Property Belonging to Another

Article (605)

If a person sells the property of another, without his consent, the sale shall be concluded contingent upon the ratification of the owner.

Article (606)

If the owner ratifies the sale, the contract will become binding on him and enforceable against the purchaser. The contract will also become enforceable in case title of the thing sold passes to the vendor subsequent to the formation of the contract.

Section III: Barter

Article (607)

Barter is the exchange of property or pecuniary right with consideration other than money.

Article (608)

Parties to a barter contract will be considered vendor and purchaser at the same time.

Article (609)

Barter shall not deviate from its nature by the addition of some money to one of the bartered goods.

Article (610)

In the absence of an agreement to the contrary, the expenses of the barter contract, and costs of delivery and the like shall be born by the parties in equal shares.

Article (611)

The provisions governing sale apply to barter as far as they are not in contradiction with its nature.

#### Section IV: Forbidden Sales and Barters

Article (612)

The following may not be sold or bartered:

- a) What is hidden in the earth until plucked out and viewed;
- b) Tail bones of stallion or bull.

Article (613)

Sale and barter shall be prohibited and become void in the following cases:

- a) If one of the contracting parties is bound by Friday prayers, and signed the contract after the beginning of the call for prayer at the pulpit, until the completion of prayer. Also, if one or both contracting parties is bound by written prayer, and signed the contract after its time has been disturbed in such a way that nothing was left thereof except what accommodates it until it is over, contracting may be allowed in such cases if it was deemed needed or necessary.
- b) If a contract has been concluded for a property to be used illicitly and one of the parties had knowledge of it from the other or by presumption.
- c) If a Muslim sells over the sale of a Muslim, or bought over his purchase, or bartered over his barter at the time of one of the options or conditions opened in the presence of the parties at the meeting place.

#### Chapter Two. Gift

## Section I: Elements of a Gift and Conditions of Execution

### Article (614)

1. Gift is the conveyance, to another person and without consideration, of property or financial right, during the lifetime of the donor.
2. A donor may, without being divested of the intention of making a gift, impose upon the donee the performance of a specific obligation. This obligation shall constitute the consideration for the gift.

### Article (615)

1. A gift is formed by an offer and an acceptance, and completed by receipt thereof
2. In a gift, the offer alone is sufficient if the donor is the natural or legal guardian of the donee and the property donated is in his possession. Likewise if the donee is a minor custody of the donor.

### Article (616)

A gift contract shall not be executory in case the thing donated is not the property of the donor, unless approved by the owner thereof and consented that it be given to the donee.

### Article (617)

1. The gift of a debt the debtor is valid and shall be considered a discharge.
2. The gift may also be made to a person other than the debtor and shall be completed if the debtor pays the debt to the donee.

### Article (618)

1. The donor may recover the donated property if he so provides in the contract in case the donee fails to fulfill specific obligations in favor of the donor or of any person of interest to him.
2. If the donated property has perished or the donee has disposed of it, the value thereof shall be due to the donor computed as of the time of the act of disposition or perishing.

### Article (619)

The donor must not be interdicted as concerns his gift, he must not also be a man of war or, on other words a non-Muslim citizen of a non-Muslim State that is in a state of declared or effective war with the Muslims and provided he did not ask for peace.

### Article (620)

The gift of a debtor, whose debt has covered all his property, is valid but contingent on the ratification of the creditor.

### Article (621)

Whoever mortgages a thing as collateral for a debt then donated it to a person other than the mortgagee and this latter consented to it, the donation is valid and the debt due to him shall remain without

sureties, even if the mortgagor is insolvent. In case the mortgagee does not accept the gift made to a person other than him and the mortgagor is insolvent, the gift is null but if he is solvent, the gift is valid if he pays his debt prior to its due date or submit a trustworthy surety.

#### Article (622)

If the mortgaged property is donated to anybody else than the mortgagee then the donor dies prior to the release of the mortgage, the possession of the mortgaged property shall not be, after donation, be considered for the account of the donee and the gift shall be null and void.

#### Article (623)

The gift shall be void whenever a debt covers the whole property of the donor before the donee takes possession of the donated property, even if the debt occurred after the date of the gift.

#### Article (624)

1. Donation of trees while making an exception for their fruit for one or more years, on condition that the donee will irrigate and serve them during this period, shall not be allowed, and must be rescinded if it already took place.
2. The rescission of the gift shall result in an obligation on the donee to reconstitute the trees if remaining in their status.
3. If, however, there is a change in the status of the trees, the donee shall have to pay its price as of the day he took possession thereof and it shall become his property as of such date. If this be the case, he shall be entitled to claim back from the donor a similar quantity of the yields he took from these trees, if such quantity is known to him, otherwise their value.

#### Article (625)

Whoever donates a thing to a person, then donated it before delivery to a second person who took possession thereof before the first, he shall be entitled thereto and the donor shall not be under obligation to pay its value to the first person.

#### Article (626)

The gift of consigned goods made to the consignee is void, and likewise the gift of a borrowed thing to the borrower, if not accepted by the consignee or the borrower except after the death of the donor, whether they had knowledge of the gift prior or subsequent to his death.

#### Article (627)

If the thing borrowed is donated to other than the borrower, or the thing is consignment to other than the consignee, and the donor dies prior to the end of the loan period or prior to the restitution of the consignment, the possession by the borrower of the thing borrowed, or

the consignee of the thing under consignment, shall be considered as a possession by the donee and the donation completed, if the donor did not deny it, otherwise the possession by each shall be considered made for the account of the donor and the donation shall be void.

Article (628)

1. The gift made by the minor, and the prodigal without consideration is void.
2. The guardian of the interdicted may not donate any of his ward's property unless he is his father, and the gift is made with consideration.

Article (629)

If a leased property is donated to other than the lessee, and the lessor dies before the end of the lease period, the possession thereof by the lessee, subsequent to the donation, shall not be considered as a possession by the donee before collecting same from the lessee, and in this case the possession of the lessee shall be considered as a possession by a donee.

Article (630)

If one of the spouses has donated to the other a property that necessarily has to be commonly held, or if the wife donates to her husband their common, the completion of the donation shall not be contingent on a separate possession by the donee of the donated property. If, however, one of them donates to the other a property that does not, by necessity, have to remain common, or if the husband donates to his wife their common domicile, the donation is not complete unless the donee takes independently hold of the thing donated.

Article (631)

1. The consideration for the conditional gift must be known, otherwise both parties may rescind the contract, even after the receipt of the donated property, unless they agree to specify the consideration before rescission.
2. If the donated property perishes, or if the donee has disposed of it before rescission, he shall have to restitute its value as of the day of its collection.

Article (632)

The promise of a gift or the gift of a future property shall be void.

Article (633)

If one of the parties to a gift deceases or becomes bankrupt, before receipt of the donated property, the gift shall be void, even if made without consideration.

Article (634)

1. A gift may be accepted by the donee after the death of the donor if

the donated property is received by the donee, to give a thought before accepting or rejecting the gift, and he did not accept it except after the death of the donor.

2. The object of donation may also be received after the death of the donor or if he endeavored to receive it during his lifetime but he did not succeed except after his death.

Article (635)

A gift by a person on his deathbed is governed by the provisions applicable to a will.

Article (636)

The execution of a gift contract is contingent on any procedure which the law condition its fulfillment for the transfer of ownership. Any party to the contract may complete the required procedures.

## Section II: Effects of a Gift

### 1. As Concerns the Donor

Article (637)

The donor is under obligation to deliver the thing given to the donee and in this regard the provisions governing delivery of the thing sold shall be followed.

Article (638)

Unless otherwise agreed a donor is under no obligation to warrant against dispossession if the gift was made without valuable consideration but he is responsible to make good any damage sustained by the donee as a result of this entitlement should he intentionally hide the cause of such dispossession. However, if the gift is made for valuable consideration his warranty is limited to the value of the consideration paid by the donee.

Article (639)

If dispossession becomes due after the perishing of the thing donated while in the hands of the donee and the dispossessor opts to revert on the donee in implementation of the warranty, the latter may claim back from the donor what he has paid under the warranty.

Article (640)

If dispossession becomes due and the donee has increased the value of the thing given in such a manner as the increment could not be separated without damage, the dispossessor cannot take possession before paying the value of this increment.

Article (641)

A donor does not warrant that the thing given is free of hidden defects, even if intentionally hidden by him, except where the gift

was made for valuable consideration.

## 2. As Concerns the Donee

### Article (642)

The donee is under obligation to give the consideration asked by the donor whether it is due to the donor or to a third party.

### Article (643)

Unless otherwise agreed, should the consideration against the gift be the payment of a debt due by the donor or by another person, the donee is under obligation to pay the debt.

### Article (644)

Unless otherwise agreed, if the thing donated is encumbered with a lien to pay a debt due by the donor or by another person, the donee is under obligation to pay the debt.

### Article (645)

The costs of the gift contract and the expenses of delivering and transporting the thing given shall be on the donee, unless otherwise agreed.

## Section Three: Revocation of the Gift

### Article (646)

1. The donor may revoke the gift before receiving payment without the consent of the donee.
2. He may revoke it after payment with the consent of the donee. If the donee does not consent to the revocation, the donor may apply to the judge for rescission and revocation of the gift whenever he has reasonable grounds in support, unless there is an obstacle to the revocation.

### Article (647)

The following may constitute reasonable grounds for the revocation of a gift:

- a) If the donor has become unable to maintain himself in accordance with his social position or to meet an obligation to pay alimony which he is legally bound to pay to another person;
- b) In the event of a child being born to the donor after the donation and still being alive at the time of the revocation, or if the donor had a child which he believed dead at the time of the donation and is discovered to be still alive;
- c) If the donee has failed without justification to meet his contractual obligations or failed in his duties towards the donor or one of his relatives, and such failure constitutes serious ingratitude on his part.



Article (648)

If the donee kills the donor, with premeditation and without right, his heirs are entitled to annul the gift.

Article (649)

The following constitutes an impediment to revocation of a gift:

- a) If the gift is made by one spouse to the other or to a cognate to a degree precluding marriage unless the gift may unjustifiably result in discriminatory preference between them;
- b) If the donee has definitely alienated the thing given; if however, such alienation is only partial, the donor may revoke the gift as to the remaining part;
- c) If there is an inherent increase of the thing given, involving an increase in value thereof; or if the donee transforms the thing given in such a manner as causing a change in its name;
- d) If one of the contracting parties dies after receipt of the thing donated;
- e) If the thing given perished while in possession of the donee; and in case the loss is partial revocation may be for the remaining part;
- f) If the gift has been made against valuable consideration;
- g) If the donation constitutes alms or an act of charity;
- h) If a creditor donated the debt due to him to the debtor.

Article (650)

1. Revocation of the gift, whether by mutual consent or judicially, shall nullify the effect of the contract.
2. The donee is only liable for the restitution of the fruits as from the date of the agreement of revocation or from the date of the judgment. He is entitled to restitution of the necessary expenses but as for the other expenses he may claim restitution only up to the increase in value of the thing donated.

Article (651)

1. If without consent of the donee or without a court decision, the donor takes back the thing given, he is responsible for its perishing whatever the cause may be.
2. If the revocation of the gift is pronounced by a judgment and the thing donated perishes while in the possession of the donee, after he has been summoned to hand back the thing given, the donee is responsible of the perishing whatever the cause thereof may be.

Article (652)

The father may recover what he had donated to his son; the mother may as well recover what she had donated to her son, if he is not an orphan, but if he is, she may not be allowed to recover it from him, even if he became orphan after the gift.

Article (653)

The right of each one of the parents in recovering what has been

donated to their son shall be forfeited in the following instances:

- a) If the thing given has undergone an inherent change or has been alienated by the donee.
- b) If a financial transaction took place, with the donee pertaining to the gift, and the revocation of the gift has prejudiced the donee or third party.
- c) If the donee or the donor contracted, after the gift, a serious illness, and until it disappears any of the two parents shall recover his right to reconstitute what he has donated to his child.

## Chapter Three. Partnership

### Section I: General Provisions

#### 1. Partnership in General

##### Article (654)

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

##### Article (655)

1. A partnership is deemed by the fact of its constitution, to be a juristic person.
2. Such juristic personality shall not be opposed to third parties until completion of the formalities of registration and publication required by law.
3. Third parties may, however, if the partnership has not completed the formalities referred to above, avail themselves of this juristic personality.

#### 2. Elements of the Partnership

##### Article (656)

1. A partnership contract must be in writing.
2. If the contract is not in writing, this shall have no bearing on the third party's rights. As concerns the partners themselves the contract shall, however be considered valid unless one of them challenges its validity then it shall be considered invalid as of the date of introducing the case in court.

##### Article (657)

1. The capital of the partnership must be a sum of money or its equal in negotiable instruments, and in case it is not cash money its value must be assessed.
2. The contribution of the partners may be in equal or uneven shares but a debt owed by third parties may not be a share in the partnership's capital.

#### Article (658)

1. If the contribution of a partner consists of a right of ownership, of an usufruct or of any other real right, the provisions as to sale shall apply as regards warranties in case of perishing, or against dispossession, defects or deficiencies.
2. If, however, the contribution consists merely of the use of the property, the provisions as to lease shall apply as regards the above warranties
3. If the contribution of a partner consists of his services, he must carry out the services he has undertaken to perform under the contract.

#### Article (659)

1. The profits shall be distributed as provided for in the contract.
2. If the share of each of the partners in the profits has not been determined in the contract, the profits must be apportioned between them, each in proportion of his contribution in the capital.
3. The losses shall be apportioned between the partners, each in proportion of his contribution in the capital, and any contrary condition shall be void.

#### Article (660)

If the partners agree that the share of any of them in the profits shall consist in a fixed sum of money, this condition is null and void and the profits shall be apportioned in proportion of the contribution of each in the capital.

#### Article (661)

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

#### Article (662)

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

### 3. Management of the Partnership

#### Article (663)

1. In the absence of a provision or agreement to the contrary, each partner represents the other partners in the performance of the partnership's business and acts of disposition coming within the objects for which the partnership was formed.
2. Every partner is a trustee of the partnership's moneys in his

possession.

#### Article (664)

1. If it is agreed, in the partnership's deed to delegate to one of the partners to represent the partnership and to manage its business, he alone is entitled to perform all acts coming within his delegation and all accessory acts deemed necessary thereto.
2. If the delegation is given to more than who are not authorized to act severally, they have to act jointly except in matters that do not need an exchange of opinions or in an urgent which may cause prejudice to the partnership if not attended to.
3. A partner entrusted, in the partnership's deed, with the management of the partnership may not be revoked or his delegation limited without legitimate reason.

#### Article (665)

1. The partnership manager may be appointed from among the partners or from outside the partnership with or without a salary.
2. The manager shall act within the limits of the objects of the partnership entrusted to him provided he abides with the contract provisions or, in the absence of such provisions, with what is customary.
3. If the manager exceeds the limits of his competences he shall be liable to compensate any prejudice sustained by the partnership as a result of his acts.

#### Article (666)

1. The partnership may have more than one manager.
2. If they are several, the competence of each shall be specified.
3. Their discharge or the discharge of any of them shall be done in the same manner by which they were appointed.

#### Article (667)

Whoever has been delegated, for the management of the partnership, or appointed as manager thereof, may not withdraw or resign at a time that may be detrimental to the company.

#### Article (668)

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

### 4. The Effects of the Partnership

#### Article (669)

1. The partner, entrusted with the management of the interests of the partnership shall watch over its interests as if they were his own, unless he has been appointed a manager on remuneration, in which case he shall not exercise less care than an ordinary man.

2. He shall also abstain from any activity prejudicial to the interests of the partnership or contrary to the object for which the partnership was formed.

#### Article (670)

A partner may not retain any of the partnership's funds and, if he does, he shall be liable for the payment of damages for any prejudice caused to the partnership as a result of such retention.

#### Article (671)

1. If the assets of the partnership do not cover the debts related to its objects, the partners shall be liable for the balance of these debts from their own funds, each in proportion to his share in the losses of the partnership.

2. If, however it is provided in the partnership's deed that they are jointly and severally liable, they shall all jointly be answerable for the debt.

#### Article (672)

1. Personal creditors of a partner cannot, before liquidation of the partnership, obtain payment of their claims out of such partner's share in the capital but only of his share in the profits.

2. In case the partnership's deed provides for the joint liability of the partners, such creditor may obtain payment from the capital of the partnership subsequent to its liquidation.

### 5. Wind Up of the Partnership

#### Article (673)

A partnership comes to an end in one of the following instances:

- a) Expiration of its term or by the achievement of the object for which the partnership was formed;
- b) Total loss of its capital or the capital of one of the partners before turning it over to the partnership;
- c) Death, insanity, bankruptcy, insolvency, interdiction or withdrawal of one of the partners;
- d) Unanimous agreement of the partners;
- e) A court order pronouncing the dissolution of the partnership.

#### Article (674)

1. Prior to the expiration of the partnership's term, this term may be extended for a fixed period and this shall be considered a continuation of the partnership.

2. If notwithstanding the expiration of the term or the achievement of the object for which the partnership was formed, the partners continue to carry on their work, this shall constitute an implied extension of the partnership, from year to year on the same conditions.

3. The creditor, of one of the partners, may oppose the extension of

the partnership. His opposition will suspend the effect of this extension so far as he is concerned.

#### Article (675)

1. It may be agreed that, in the event of the death of one partner, the partnership will continue with his heirs, even if they are minors. In this case, and subject to the conditions and provisions stipulated by law, the heirs shall, pursuant to their approval or the approval of their legal or appointed guardian, replace the decedent.
2. It may also be agreed that, in case of death, interdiction, bankruptcy, or retirement of one of the partners, the partnership will continue between the other partners. In such a case, such partner or his heirs will only be entitled to his share in the assets of the partnership. This share will be assessed in accordance with its value at the date of the event which resulted in the partner ceasing to be a partner, and must be paid in money. Such partner will share in subsequent rights only to the extent that such rights arise from operations prior to the event which resulted in his ceasing to be a partner.

#### Article (676)

The court may, on the demand of any one of the partners, order the dissolution of a partnership for non-performance by a partner of his obligation, or for having caused a serious damage to the partnership as a result of his management.

#### Article (677)

1. The majority of the partners may apply to the court for the exclusion of any partner, whenever their request is based on serious grounds, justifying such exclusion.
2. A partner may also, if the duration of the partnership is fixed, apply to the court to authorize his retirement from the partnership if he gives adequate reasons for his request.
3. In both above instance, the discharged or retired partner's share shall be governed by the provisions of Article (675), paragraph 2, and such share shall be estimated according to its value as at the date of introducing the case in court.

### 6. Liquidation and Partition of the Partnership Property

#### Article (678)

The liquidation and the partition of the partnership property is carried out in the manner agreed upon between the partners; failing such agreement, any interested party may apply to the court to appoint one or more liquidations to carry out the liquidation and partition.

#### Article (679)

1. The juristic personality the partnership will be maintained, to the extent required for liquidation.

2. Until a liquidator is appointed, the partnership's manager, or managers, shall be deemed, as far as third parties are concerned, the liquidators.

#### Article (680)

The liquidator shall undertake all the liquidation tasks such as making the inventory of the partnership's assets, collect its dues, pay its debt and sell its property to the extent that it be ready for partition. He shall have to observe all the restrictions stipulated in the order of his appointment and he may not do any act not required for liquidation.

#### Article (681)

Rules concerning the partition of common property shall apply to the partition of the partnership's property.

#### Article (682)

1. The partnership assets are divided between all the partners after payment of the creditors' rights, deduction of amounts required to cover debts that have not fallen due or are subject to litigation and repayment of disbursements resulting from liquidation.
2. Each partner shall be allocated an amount proportionate to his share in the capital. He shall also receive from the profits, and bear from the losses the proportion agreed to, or provided for in the present Law provisions.

### Section II: Some Types of Partnerships

#### 1. Business Partnerships

##### Article (683)

The business partnership is a contract by virtue of which two persons, or more, agree to undertake a work and warrants it to third parties in consideration of a fee, whether they share the work equally or in a disproportionate manner, provided their share in the work is combined or concomitant.

##### Article (684)

1. Each of the partners shall be bound to perform the work he agreed to and which was undertaken by one of them.
2. Each one of them is entitled to receive the fee agreed upon and the work master shall be discharged if he pays it to any of them.

##### Article (685)

The partner who has accepted his share of the work is not bound to perform it personally, he may give it to his partner, or to other than a partner, unless the work master has conditioned that it be performed by him in person.

Article (686)

1. Profits shall be shared between the partners as agreed upon between them.
2. Profits may be divided unequally even if the work is shared equally.
3. Each of the partner is entitled to his share in the profits even he does not perform his work due to a justifiable reason.

Article (687)

The partners are jointly liable to complete the work.

Article (688)

In case the thing that the object in which the work is to be performed perishes or becomes defective due to an act of one of the partners, the work master may recover the compensation from any of them, at his choice, and losses shall be apportioned between the partners in proportion to their share in the warranty.

Article (689)

In a business partnership, the place of work may be offered by some of the partners and the machines and tools by the others. They may likewise agree that the place, the machines and the tools should be offered by some of them and the work performed by the others.

Article (690)

1. The activities of a business partnership may consist in loading and transporting things regardless of the kind and loading capacity of the transport means offered by each partner as long as each partner warrants the work
2. If the partnership object is not accepting to perform the work but only to lease the transport means and divide the rent between them, the partnership is void and the rent of each of these means shall be vested to its owner and each one assisting in the collection of the rent and in transporting shall be entitled to the ordinary fee payable for such work.

## 2. Apparent Partnership

Article (691)

1. An apparent partnership is a contract whereby two, or more, persons agree to purchase something on credit, due to their credibility, and then sell it on basis that they are partners sharing the profits.
2. The partners shall be responsible for the price of the thing purchased, each in proportion of his share in it, whether they purchased it in common or separately.

Article (692)

Unless otherwise agreed, profits and losses shall be apportioned between the partners in proportion to their liability assumed upon



purchasing the thing on credit.

### 3. Speculative Partnership (Capital Advance)

#### Article (693)

The speculative partnership is an agreement whereby the capital owner agrees to provide the capital and the other party to endeavor and work aiming at realizing a profit.

#### Article (694)

In order to be valid, speculation should satisfy the following conditions:

- 1) Capacity of the financier to give a proxy and of the proxy to act as such.
- 2) The capital invested should be known and negotiable.
- 3) The capital may not be a loan or deposit by the financier of which the party receiving the loan or the deposit is liable to refund or reconstitute it.
- 4) Payment of the capital to the other party in the contract.
- 5) The share of each partner in the profits must be determined and common property.

#### Article (695)

1. Subsequent to receiving the capital, the receiving partner shall have the capacity to dispose of it by proxy from the provider.
2. The receiving party shall act as a trustee of the capital received and a partner in the profits.

#### Article (696)

The party receiving the capital may not be asked to warrant it if lost or perished without negligence from his part.

#### Article (697)

The speculation may be general and absolute or limited in time, place or kind of trade or by any other restricting condition.

#### Article (698)

1. In case the speculation contract is absolute, the speculator shall be considered authorized to act and dispose of the capital in speculation matters and its ramifications according to the established custom in this respect.
2. The speculator may not mix up the speculation moneys with his own funds or give it in speculation to others, unless admitted customarily or if authorized, by the capital provider, to act according to his own judgment.
3. Likewise, the speculation capital may not be given as a gift or loan or as a collateral for a debt so as it exceeds the amount of the capital, without express authorization of the capital provider.

#### Article (699)

Should the capital provider limit the speculation to certain restrictions that should be followed and if the speculator exceeds the limits within which he is authorized to act, the profits shall be allocated as agreed upon between the partners and the losses to be born by the speculator.

Article (700)

If the speculator shared with another speculator the speculation money, or sold some of his goods on credit basis, without the permission of the capital's owner, the first speculator shall guarantee the speculation money against all deterioration or loss, in both instances.

Article (701)

If the speculator pays the speculation money, without the consent of the capital's owner, to another person to use it for his work with, then the first speculator shall guarantee whatever deterioration or loss sustained and nothing shall be required from the second speculator. If the latter realizes a profit, the first speculator shall not take any part thereof, and the second speculator shall collect part of the profit which was allocated to him if equal to the part allocated for the first speculator and, if less, the increment shall be in favor of the capital owner and not to either the first or second speculators.

Article (702)

If the speculator uses the speculation money in his trade and loses part of it and pays the balance, without permission from the capital owner, to another for the purpose of speculation and the latter realizes a profit, the capital owner shall recover, from the second speculator, all his capital plus his share in the profit. In this case, the second speculator shall be entitled to turn back on the first speculator for the balance of his share in the profit should he be unaware of the violation or loss of the first speculator, otherwise he shall not be entitled to claim anything from him.

Article (703)

1. The speculator and the capital's owner must share the profit, in the proportion agreed in the contract and, if not fixed, it shall be divided between them according to the prevailing custom, otherwise in equal shares.
2. If it is allowed to the speculator to mix his money with the speculation capital, the profit shall be divided proportionately with the capital, thus the speculator shall collect the profit of his capital, and the profit of the speculation money shall be distributed among the contracting parties in the manner stated in the first paragraph.

Article (704)

1. The capital's owner shall bear, alone, the loss, and any condition

to the contrary shall be void.

2. If any of the speculator money shall deteriorate it shall be deducted from the profit and, if it exceeds it, the remainder shall be charged to the capital account. The speculator shall not be held liable for it.

#### Article (705)

Speculation shall terminate in the following instances:

- 1) Rescission of the contract by either of the contracting parties.
- 2) The dismissal of the speculator by the capital owner, and the speculator shall be prohibited to dispose of the speculation money, after his knowledge of the dismissal, if such money was in the form of cash money otherwise, the speculator may convert it to cash.
- 3) The expiry of the term, if it was limited by a certain period.
- 4) If one of the contracting parties passes away, or became insane, or interdicted.

#### Article (706)

If one of the contracting parties has terminated the speculation, before term, the prejudiced party may claim back from the other to repair the damage sustained by him.

#### Article (707)

1. If the speculator dies without specifying the speculation money, the right of the capital owner shall be a debt against the estate.
2. If the speculator has specified it prior to his death, and it was found in his estate, it shall be allocated for the capital's owner, in priority against his rivals.

#### Article (708)

The general provisions applicable to a company shall govern the business companies, speculation and methods thereof, in all matters that does not contravene the special provisions applicable to each.

#### Article (709)

The rules stipulated in this chapter shall not violate the provisions of the particular laws.

### Chapter Four. Loan

#### Article (710)

A loan is the transfer to the borrower of ownership of a sum of money or any fungibles upon condition that the borrower returns, at the end of the loan, a thing equal in amount, kind and quality.

#### Article (711)

The borrower owns, by contract, the loan in full property even if he did not collect it from the lender and it shall be adjudicated in his favor if the lender refrains from delivering it to him. The loan shall

not become void if any impediment occurs to the borrower preventing him from disposing of the sum of money before receiving it.

Article (712)

1. The lender must, as a condition, enjoy the capacity to donate.
2. The guardian or the custodian does not have the authority to lend or borrow a sum of money owned by whoever is under his guardianship or custody except by permission of the court.

Article (713)

The borrowed money must be fungible and consumable.

Article (714)

If the loan contract is conditioned upon paying a benefit that exceeds the contract requirements, other than guaranteeing the borrowers right, the condition is void but the contract is valid.

Article (715)

A loan may be granted on condition of a pledge or guarantee.

Article (716)

In the event of dispossession of the borrowed money while the loan is still effective and in the hands of the borrower, his obligation to refund a similar thing shall be forfeited and he shall be entitled to turn back on the lender claiming satisfaction for any prejudice that he may sustain because of this dispossession, if acting in bad faith.

Article (717)

If a hidden defect appears in the borrowed money, the borrower shall only be liable to restitute its value, as defective.

Article (718)

1. If the loan has a fixed or customary date of maturity, the borrower is under obligation to refund it to the lender upon expiry of its period, even if he did not benefit from it.
2. If the loan it has no due date, the borrower is not bound to restitute it until the expiry of a reasonable period within which he is enabled to benefit of it as accustomed in similar things.

Article (719)

1. The borrower is bound, upon expiry of the loan period, to restitute a thing equal in amount, kind and quality, at the agreed time and place, regardless of whatever change may occur to its value.
2. If restitution of a similar thing reveals to be impossible, the lender's right shall accrue to its value on the day received.

Article (720)

If several persons borrowed a thing which was received by one of them with the consent of the others, none of these may claim from him more than his share in the thing received.

#### Article (721)

1. Unless otherwise explicitly or impliedly agreed to the contrary, the borrower is bound to repay the loan at the country where it has been granted.
2. If it has been agreed that repayment should be done in another country where the value of the loan differs from its value at the place of origin, the lender's right shall accrue on the value at the place where the loan originated.

### Chapter Five. Compromise

#### Article (722)

Compromise is a contract by which the two parties thereto put an end to a litigation and settle a dispute by mutual consent.

#### Article (723)

1. In order to effect a compromise, the parties must have legal capacity to dispose for valuable consideration of the rights which are the object of the compromise.
2. The capacity to donate is required if the compromise includes waiver of some rights.

#### Article (724)

The compromise of the discerning child and the imbecile, if authorized, is valid if they do not sustain any apparent prejudice. The same rule shall apply to tutors guardians and curators, without prejudice to the specific law provisions.

#### Article (725)

The object of the compromise must be something which consideration may be taken as a substitute thereof even if it is not a sum of money and must be known as concerns collection and delivery.

#### Article (726)

1. The compromise consideration must be known if it requires collection and delivery.
2. If the compromise consideration is a property or usufruct owned by third parties, the validity of the compromise is incumbent on the consent of this third party.

#### Article (727)

1. Compromise may be made on rights whether admitted by the defendant or denied or to which he kept silent and did not show consent or denial.
2. In case of acknowledgment, if the compromise takes place on a consideration to be paid by the admitting party, it shall be considered a sale, or a rent, if on a usufruct.
3. In case of denial or silence, the compromise shall be considered an

exchange, as regards the plaintiff and in consideration of oath and settlement of the dispute, as concerns the defendant.

#### Article (728)

Should a person make a compromise on part of his claim or a portion of what he claims to be due by the other party, he has forfeited his right to the balance.

#### Article (729)

1. If a compromise is reached between two persons, each claiming a property in the possession of the other, provided that each keeps the property in his possession, it shall be considered a barter the validity of which is not dependent on knowledge of the two bartered properties.

2. Compromise shall be governed by the clauses of the contract which is closest in similarity with it, as concerns validity and its resulting effects.

#### Article (730)

1. Compromise shall result in transferring the right of the compromising party to the consideration thereof and forfeiture of his right object of the dispute.

2. Compromise shall be binding to both parties, and none of them, or his heirs thereafter, may retract therefrom.

#### Article (731)

The effect of compromise shall be restricted to the rights involved and settlement of the dispute thereto.

#### Article (732)

Both parties to a compromise may go back on it, if considered an exchange, but may not do so if it includes a waiver of some rights.

#### Article (733)

Compromise may not be reached in case it includes any of the following impediments:

- 1) Extinction of a debt in a debt.
- 2) Sale of the food exchanged before its receipt.
- 2) Deferred Exchange of gold for silver and vice versa.
- 4) Usury on credits granted.
- 5) Relieving the debtor from some of the deferred debt, with a view to expediting reimbursement
- 6) Removal of the deferred debt security from the debtor, against expediting payment with an increment added thereto.
- 7) Beneficial advance payments.

#### Article (734)

The innocent victim of a compromise by denial may reject the compromise in the following instances:

- 1) If the unjust acknowledges, after the compromise, the injustice

made to the other party.

2) If subsequent to compromise, a proof in favor of the victim of injustice was revealed that was unknown at the time of the compromise and took an oath that it was not known to him.

3) If he has a missing proof which he could not produce at the time of litigation and which he would have produced at the time of the compromise if it were there.

#### Article (735)

If a compromise was reached based on denial, due to the fact that the supporting document of the right object of the compromise was not in the possession of the defendant, he shall be entitled to renounce to the compromise if found thereafter. However, if he alleged that the document was with him and when asked by the plaintiff to produce it in order to take his right as stated therein he pretended that it was lost and reached a compromise with him, he may not renounce to the compromise thereafter, if found.

#### Article (736)

If one of the heirs reaches a compromise with a debtor to their decedent, the other heirs may constitute themselves as a party to the compromise or instead claim from the debtor their right or reach a compromise with him.

#### Article (737)

Some heirs may compromise on their share in the estate by accepting part of the estate subject to the presence of the other party in the compromise if he has received what is equal or below his share, or the presence of all the heirs if he received more than his share.

#### Article (738)

1. If one of the two creditors has compromised with a debtor to both of them, the other creditor may refuse to participate in the thing object of the compromise and revert on the debtor claiming his share. In case he finds him insolvent he may not have a claim at all against his partner.

2. The other creditor may join his compromising partner in what he has compromised, if he did not abstain from compromising and, in this case, he shall claim from the debtor the balance of his share and the compromising creditor shall have a claim against the debtor for what his partner took from the latter.

#### Article (739)

Compromise may not occur on consumables, such as honor, animal unspecified food against deferred food of the same or different unless the object of compromise is a property of equal or lesser value.

#### Article (740)

If it is impossible to have knowledge of something unknown, it may be the object of compromise against something known, provided ignorance

is from both sides or from the debtor alone.

#### Article (741)

Without prejudice to the provisions of articles 734 and 735 herein, compromise shall irrevocably settle the dispute. The claim of the defendant may not be heard even if he establishes evidence to his claim or to the fact that the denying party has previously acknowledged the object of the claim.

### PART TWO. CONTRACTS ON USUFRUCT

#### Chapter One. Leases

##### Section I: Leases in General

##### 1. Definition of Lease

#### Article (742)

A lease is granting ownership of the use of a specific thing to the lessee for a certain time in return for a fixed rent.

##### 2. Elements of a Lease

#### Article (743)

The conclusion of a lease contract is made contingent upon the capacity of the contracting parties at the time of the contract.

#### Article (744)

1. The implementation of a lease contract requires that the lessor, or whoever acts on his behalf, has the right to dispose of the leased premises.

2. The lease contract made by a person who by his own initiative and without authority from the owner is contingent upon the ratification of the owner of the right to dispose of the premises and the satisfaction of the conditions of its validity.

#### Article (745)

The object of the contract of lease is the enjoyment of the right to use the leased premises which takes effect by delivery thereof.

#### Article (746)

The use of the premises object of the contract is condition upon:

- 1) that it be realizable;
- 2) that it be sufficiently known in order to settle the dispute.

#### Article (747)

The premises object of the use must be known either by visiting, determining its location or giving its detailed description, otherwise



the contract shall be void.

Article (748)

1. Rent must be known either by specifying its kind and amount, if cash money, and by specifying its kind, description and determination of its amount, if otherwise.
2. If the rent is unknown, the lease contract may be rescinded and the rent for the period preceding the rescission shall be due on basis of the rental of similar premises.

Article (749)

The rent may be in kind, a debt or a usufruct.

Article (750)

The rent shall be due upon completion of the use or make its completion possible.

Article (751)

Payment of the rent may be in advance, postponed or by installment payable at fixed intervals.

Article (752)

1. If the contract does mention the period within which the rent should be paid, it shall absolutely be due after completion of the use or after its completion becomes possible.
2. As for the rent due for a time unit, the periods of payment shall be fixed by custom, otherwise the judge shall fix same upon request of the interested party.

Article (753)

No rent shall be due, for the period preceding the delivery of the leased object, unless the lessee is responsible for the delay in delivery.

Article (754)

The lease period shall start as of the date fixed in the contract, otherwise from the date of the contract.

Article (755)

The lease period must be made known.

Article (756)

In case the lease contract is made for an indefinite period or if it becomes impossible to establish the alleged period, the contract shall be considered made for the period specified for payment of the rent and expires at the end of this period upon request of any of the contracting parties.

Article (757)

If a lease contract expires, and the lessee continues to use the

leased object with the knowledge of the lessor and without his objection, the lease shall be considered renewed under the original conditions and for a similar term.

#### Article (758)

The lease may be reported for a future date which shall be binding by contract unless the leased object is the property of an endowment or of an orphan and, if this be the case, it may not be reported for more than a year from the date of the contract.

#### Article (759)

If the period of the lease has expired, and the necessity for its extension has been established, then it shall be extended to the extent of this necessity provided the lessee pays a rent equal to the rent of a similar object.

#### Article (760)

If the lessor asks the lessee to pay a specific increase, over and above the named rent, after the expiry of the lease period, this increase shall be binding to him in case the said period expires and he kept in possession of the leased object without objection.

### 3. Effects of a Lease

#### Article (761)

The two contracting parties are bound to implement the contents of the contract in such a way as to realize its legitimate objective.

#### Article (762)

If the lease contract has been validly formed, the usufruct of the leased object shall be transferred to the lessee.

### 4. Liability of the Lessor

#### A) Delivery of the Leased Property

#### Article (763)

1. The lessor is bound to deliver to the lessee the leased property and its accessories in a condition suitable for the full achievement of the purpose for which it was intended.
2. Delivery shall be completed by enabling the lessee to take hold of the leased property without an impediment obstructing the usufruct thereof, while remaining in his possession for an uninterrupted period until the expiry of the lease period.

#### Article (764)

The lessor may refrain from delivering the leased property until he receives the rent payable in advance.

#### Article (765)

1. If the object of the lease is something specific in consideration of a global rent and there is mention of the number of its units without specifying the rent for each unit, then it was revealed that its units are over or below what is mentioned, the rent shall be that named in the contract without any addition or deduction but in the latter case the lessee shall have an option to rescind the contract.
2. If the rent of each unit has been named in the contract, the tenant shall be liable for the named rent for the excess units, and the lessor is bound to deduct the named rent for the missing units. In either case, the lessee shall have an option to rescind the contract.
3. Should however the excess or the shortage be minimal without any effect on the intended benefit, the lessee shall have no such option.

#### Article (766)

The delivery of the leased property and its accessories shall have the same effects as the delivery of the thing sold, unless otherwise agreed by the contracting parties.

### B) Maintenance of the Leased Property

#### Article (767)

1. The owner is bound to repair the defects occurring to the leased property affecting the fulfillment of the intended purpose. In case he abstains from doing so, the lessee may ask the judge to allow him carrying out the repairs and claim from the lessor the expenditures incurred to the extent customarily allowed.
2. If the defect which the lessor is bound to repair, is customarily considered a minor or urgent thing, that cannot be delayed, and the lessee has asked him to repair it, but he delayed taking action, or it was impossible to contact him, the lessee may repair it and deduct the cost, to the extent customarily allowed, out of the rent.

#### Article (768)

1. If the lessee, by permission of the owner, has made constructions, or improvements, to the benefit of the leased premises, or its maintenance, he may claim from the lessor the cost thereof, to the extent customarily allowed, even if he did not reserve to himself the right to this claim.
2. However, if the works done by the lessee were for his personal benefit, he shall have no claim against the lessor.

#### Article (769)

1. The lessor may prevent the lessee from any work which may destroy or change the leased property, and from putting any machines or equipment that may be detrimental to it or reduce its value.
2. If the lessee does not abstain, the lessor may ask the judge to order the rescission of the contract, and remedy the damages caused by such transgression.

### C) Warranty of the Leased Property

#### Article (770)

1. The lessor may not do anything which disturbs the lessee in his enjoyment of the leased property during the period of the lease, and shall not make any alterations to the property that prevent or disturb such enjoyment, otherwise he shall be held liable.
2. The lessor not only warrants the lessee against his own acts and against those of his servants but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor.

#### Article (771)

If, as a result of such disturbance, the lessee is deprived from the enjoyment of the leased as provided in the contract, he may ask the rescission of the lease or a reduction of the rent together with the payment of damages for the prejudice sustained by him.

#### Article (772)

1. The lessor shall warrant the lessee all defects in the leased property that may prevent or considerably reduce the enjoyment thereof, but he does not warrant the defects that are customarily tolerated.
2. The lessor shall not warrant the defect if the lessee had knowledge of it at the time of the contract or could easily have knowledge of it.

#### Article (773)

If, as a result of such defect, the lessee is deprived of the enjoyment of the leased property, he may ask rescission or reduction of the rent, together with the payment of damages for the prejudice sustained by him.

#### Article (774)

The presence of a defect in a lease shall be governed by the provisions applicable to the option opened in case of defect in the property object of a sale in all matters that are not incompatible with the nature of a lease.

#### Article (775)

Any agreement exonerating from warranty against disturbance or defect is void if the lessor has fraudulently concealed the cause of such warranty.

### 5. Obligations of the Lessor

#### A) Preservation and Return of the Leased Property

#### Article (776)

1. The leased property is in trust in the hands of the lessee who

shall warrant every shortage, deterioration or loss resulting from his neglect or trespass. He is bound to preserve it as would an ordinary person do.

2. When there are several lessees, each one of them shall warrant the damages resulting from his trespass or neglect.

#### Article (777)

1. In the use of the leased property, the lessee may not exceed the limits of enjoyment agreed upon in the contract. In the absence of such agreement, enjoyment of the leased property should be within the purpose for which it was designed and in the manner customarily practiced.

2. In case he exceeds in his enjoyment the limits agreed upon or contradicts what is customarily practiced, he must warrant against whatever damage that may result from his act.

#### Article (778)

1. The lessee may not, without the permission of the lessor, make any alteration to the leased premises unless necessitated for its repair and no damage is thereby occasioned to the lessor.

2. Unless otherwise agreed, if, in the fulfillment of this obligation, the lessee exceeds its limits, he shall be compelled to reinstate the leased property to its original condition and, in addition, to pay compensation if due.

#### Article (779)

1. The lessee is bound to carry out the restoration works agreed upon or those of which he customarily in charge.

2. He shall have, during the lease period, to clean the leased property and remove all the dust or garbage accumulated thereon, and all what he is customarily in charge thereof.

#### Article (780)

1. The lessee may not prevent the lessor from carrying out the necessary maintenance works to the leased property.

2. In case these works shall disturb the lessee in his enjoyment of the leased property, he shall be entitled to rescind the contract unless he continues to enjoy the use thereof until the achievement of the maintenance works.

#### Article (781)

1. The complete loss of enjoyment of the leased property shall release the lessee from paying the rent as of the occurrence of such loss.

2. In case the loss is partial but in a manner that may affect the full enjoyment, the lessee is entitled to rescind the contract and he shall be relieved from paying the rent as of the rescission date.

3. Should the lessor repair the leased property prior to the rescission, the lessee shall only be relieved from paying the rent to the extent of the lost enjoyment but he shall not be entitled to rescind the contract.

#### Article (782)

1. If the full enjoyment of the leased property is prevented, due to an act of the competent authorities, without cause attributed to the lessee, the lease shall be rescinded and the rent forfeited as of the date of such prevention.
2. If only partial enjoyment of the leased property is prevented, in a manner that affects the designed enjoyment, the lessee is entitled to rescind the contract and he shall be relieved from paying the rent as of the date of notifying the lessor.

#### Article (783)

The lessee may rescind the contract in the two following instance:

1. If its execution shall lead to an evident detriment to the person or property, whether his own or of any of his subordinates, in the enjoyment of the rent property.
2. If anything occurs that prevents the implementation of the contract.

#### Article (784)

1. The lessee is bound, upon expiration of the lease period, to restitute the leased property to the lessor, in the condition in which it was at the time he took delivery thereof excluding loss or deterioration due to a cause not imputable to him.
2. If he retains it unlawfully, he is bound to pay to the lessor compensation equal to the rent of a similar property as well as damages for the prejudice sustained.
3. If the restitution of the leased property requires transportation, the transportation expenses shall be borne by the lessor.

#### Article (785)

If the lessee has erected buildings, planted trees in the leased property, even with the lessor's permission, the lessor is entitled, at the expiration of the lease, either to remove the buildings and the plants or appropriate the improvements at cost price ready for removal, if its removal is detrimental to the property, otherwise the lessor may not keep it without the consent of the lessee.

### B) Lending and Sub-Leasing the Leased Property

#### Article (786)

The lessee may lend or sublet the whole or part of the leased property without valuable consideration if the property is not altered through change of user.

#### Article (787)

The lessee may not sublet whole or part of the leased property to another person without permission or approval of the lessor.

#### Article (788)

In the instances shown in the previous two articles, the lessee must abide by the conditions set forth in his lease contract as to nature and duration.

#### Article (789)

If the lessee sublets the leased property with the permission of the lessor, the sub – lessee shall substitute the original lessee in all his rights and obligations resulting from the original contract.

#### Article (790)

If the contract, concluded with the original lessee, is rescinded or terminated, the lessor is entitled to terminate the contract with the sub-lessee and recuperate the leased property.

### 6. End of the Lease Contract

#### Article (791)

1. The lease shall terminate in the two following instances:
  - a) At the expiration of the agreed term unless automatically renewable;
  - b) At the expiration of the enjoyment right if the lease is issued by the owner of such right, unless approved by the owner of the property.
2. If, after the lease has expired, the lessee continues to enjoy the leased property with the express or implied acceptance of the lessor, the contract is deemed renewed under the same original conditions.

#### Article (792)

If the lessee has used the leased property without right, after the expiration of the lease term, he is bound to pay the rent due on a similar property for the period of utilization, and shall in addition warrant the lessor against any damage occurring to the leased property.

#### Article (793)

1. The lease shall not end with the death of one of the contracting parties.
2. The heirs of the lessee may, however, request the termination of the contract, if they establish that, due to the death of their decedent, the onus of the contract has become heavier than what their financial resources can bear or if it exceeds the limits of their needs.
3. If the lease has only been contracted due to the occupation of the lessee or for other personal considerations, then he passed away, his heirs or the lessor may ask the termination of the contract.

#### Article (794)

1. One of the contracting parties may, for an unforeseen excuse concerning him, ask the termination of the lease contract and, in this

case, he shall warrant to the other party, within customary limits, against the damages that he may sustain as a result of such termination.

2. In case the lessor is the one who asks the termination of the contract, the lessee is not bound to restitute the leased property until he receives the compensation or obtains a sufficient collateral.

#### Article (795)

1. If the leased property is sold without permission of the lessee, the sale shall be enforced between the seller and the purchaser but shall not affect the right of the lessee.

2. If the lessee authorized the sale or approved it, the sale shall be binding to him and he shall be under obligation to deliver the leased property unless he has paid the rent in advance, in which case he is entitled to retain the leased property until he is reimbursed a portion of the rent equivalent to the period during which he did not enjoy the use of the said property.

#### Article (796)

The lease contract of a house or a similar property shall not be terminate because of the illicit use of it by the lessee and he was ordered by the public prosecution to put an end to his viciousness. In case of non compliance to this order, the judge shall, upon request of the owner or a neighbor, evict him from the property and have it leased to another person, in case the house or the neighbor has suffered a prejudice, in which case he has to pay the rent for the period starting from the date of his eviction until the property is leased to a new lessee.

### Section II: Certain Kinds of Lease

#### 1. Leases of Agricultural Lands

##### Article (797)

The lease of an agricultural land is valid if accompanied by a statement specifying what is cultivated therein or allowing the lessee to plant whatever he wishes.

##### Article (798)

The lease of a land may not be a definite lease while occupied by unharvested plants duly planted, unless the lessee is the owner of these plants.

##### Article (799)

The lease of planted land may be allowed, and the owner thereof shall be charged to pluck off the plants and deliver it to the lessee, in the two following instances:

a) If the land has been rightfully cultivated and the plants harvested at the time of the lease.



b) If the land was not unduly cultivated, whether the plant was harvested or not.

Article (800)

The lease period of the planted land may start at a future date when the land will be vacant.

Article (801)

1. If a person leases a land for cultivation, the lease thereof shall include all its rights, however the agricultural tools and machines and the permanent fixed constructions are excluded unless specified in the contract.

2. If the contract includes the lease of the agricultural tools, machines, and others, the lessee is bound to maintain and use these properly.

Article (802)

Whoever leases a land that he can plant as he wishes, he may cultivate it repeatedly during the year, summer and winter.

Article (803)

If the lease period has terminated before ripening of the plants, for a reason beyond the control of the lessee, it shall be left in consideration of a rent of similar things until its ripening and harvesting.

Article (804)

The lessee must work the agricultural land in accordance with the requirements of normal agricultural use. He must maintain the land in a good state of production and he is not allowed to change the established method of cultivating the land, the effects of which might extend beyond the period of the lease.

Article (805)

1. The lessee is bound to carry out repairs necessary for the normal enjoyment of the land.

2. The lessee must carry out the repairs which are required for the usual utilization of the land, and the maintenance of irrigation machines, drains, roads, viaducts and wells.

3. This, unless the agreement or custom runs otherwise.

Article (806)

If the leased land is submerged by water so that it becomes impossible to cultivate, or if water is cut off, and land has thus become impossible or too onerous to irrigate, it or if a force majeure has impeded its cultivation, then the lessee may rescind the contract and shall not have to pay the rent.

Article (807)

If the plants have been destroyed before its harvest, for a reason

beyond the control of the lessee, he shall have to pay from the rent in proportion of the period lapsed before the destruction of the plants, and the remainder shall be forfeited, unless it was within his ability to plant similar ones, thus he shall be bound to pay the share of the rent for the remaining period.

#### Article (808)

Neither the contract may be rescinded nor the whole, or part of the rent forfeited if the lessee has received a warranty from any source against the prejudice sustained.

## 2. Sharecropping (Muzaraa)

### A) Definition of Sharecropping

#### Article (809)

Sharecropping is a contract, for the exploitation of a land between the land owner and the exploiter, whereby the produce is shared between them in the proportion agreed upon.

### B) Formation of the Sharecropping Relation

#### Article (810)

The validity of a sharecropping contract is contingent upon:

- a) The land must be known and fit for cultivation;
- b) The kind of plants and the type of seeds must be specified otherwise the exploiter shall be given the freedom to plant whatever he wishes;
- c) The share in the produce for each of the two parties should be defined in terms of a proportion in common property.

#### Article (811)

It is not allowed to condition the deduction of the cost of seeds or the value of the tax on the bare land from the principal of the produce before partition.

#### Article (812)

In sharecropping, the duration of the agreement must be specified in such a way as to be consistent with the achievement of the purpose there from, otherwise the contract shall remain in force for a single agricultural cycle.

### C) Effects of the Sharecropping Contract

#### Article (813)

If the sharecropping contract is formed, the produce shall be owned in common by the parties thereto and shall be divided between them in the

proportion agreed upon.

#### Article (814)

1. If the sharecropping land is adjudicated to another person after planting it but before harvesting and the two parties to the sharecropping contract were in good faith ignoring the reason why it was adjudicated, they may keep the land under sharecropping until the end of the season of what has been planted and the party who has contributed by offering the land shall have to pay to the adjudicated owner a rent equivalent to that of a similar land.

2. In case both parties were of ill-faith, the adjudicated owner is entitled to pluck off the plants and recover his land free from any occupancy and without any obligation to either one of them.

3. If the one who has offered the land is alone of bad faith, and the adjudicated owner refused to leave the land in their possession in consideration of a just rent until the end of the season, then the following shall apply:

a) If the seeds were supplied by the one who has offered the land, he shall pay to the other party a just fee commensurate with his work, together with a compensation equivalent to the amount disbursed, wages paid to the workers, etc. within customary limits if the contract binds him to make such disbursements. The party offering the land may avoid this by paying to the other party the value of his share in the plants once matured, not plucked off, until harvest.

b) If the seeds were supplied by the farming partner, he shall be entitled from the party offering the land the value of his share in the ripened crops until harvested.

c) In both cases, whether the seed was supplied by him or by the one who has offered the land, the sharecropper may opt to take his share out of the plucked off crop, then he will get nothing else.

#### D) Obligations of the Land Owner

##### Article (815)

1. The land owner shall have to deliver the land fit for cultivation, with all its easement rights such as drinking and passage, and all what is allocated for its exploitation, if permanently fixed thereon.

2. He shall also be liable to repair the agricultural tools which he shall have to deliver fit for use, whenever they need repair, as a result of normal use.

#### E) The Sharecropper's Obligations

##### Article (816)

1. The sharecropper shall be liable for the supplies of the agricultural works, the maintenance of the crop and its preservation, the irrigation canals and any similar things, until the season of the crop harvesting.

2. The supplies of the crop after its ripening, harvest and what follows, as well as the ensuing expenses until partition of the produce shall be the liability of each of the contracting parties in the proportion of his share.

#### Article (817)

1. For the purpose of cultivation and preservation of the land and its auxiliaries, as well as the plants and the crop, the sharecropper shall have to exert the care of an ordinary person.

2. In default of the above and if his neglect shall cause a prejudice, he is bound to pay damages.

#### Article (818)

1. The sharecropper may not rent the land or charge others of its cultivation except with the consent of the land owner.

2. Should the sharecropper violate such obligation, the land owner may rescind the sharecropping contract. If the land was, at the time of rescission, cultivated and the seed was supplied by the land owner, he may recover such, and revert on the sharecropper for the prejudice sustained; and if the seed was not supplied by him, he may either recover the land cultivated and pay the cost of the seeds to its owner, or to leave the crop for both until its harvesting time, and charge the first sharecropper with the equivalent rent and compensation for the damages caused by him.

### F) Expiration of the Sharecropping Contract

#### Article (819)

The sharecropping contract shall end by the expiration of its term. If such term has expired before the ripening of the crop, the sharecropper may keep until it ripens in consideration of paying the rent of an equivalent land proportionate with the amount of his share in the crop for the following period. The necessary expenses for the green crop shall be born by each of the land owner and the sharecropper in proportion to their shares.

#### Article (820)

1. Should the land owner pass away while the crop did not yet ripen, the sharecropper shall keep carrying on the work until the ripening of the crop, and the heirs may not prevent him.

2. If the sharecropper dies before the ripening of the crop, his heirs shall replace him in the work, until ripening of the crops, despite the refusal of the land owner

#### Article (821)

1. If the sharecropping contract is rescinded, or its voidance has been demonstrated or declared by judgment, the whole crop shall be for the seeds owner. If the said owner is the land owner, the sharecropper is entitled to the wage payable for similar work, and if the seeds

owner shall be the sharecropper, the land owner shall be entitled to the rent of a similar land.

2. In both instances, the wage or the rent of a similar work or land may not exceed the share value of its owner in the crop.

### 3. Planted Land Servicing Contract (Mussacat)

#### Article (822)

This service contract is one between a worker and the owner of trees or plants according to which the worker undertakes to service the trees or plants for a determined period in consideration of a share in common of the crop.

#### Article (823)

The validity of this contract is contingent upon determining the share of each party to the agreement by a proportion in common property.

#### Article (824)

In order that this service contract be valid, the trees must be fruit bearing during the year of the contract, the fruits are not ripened before the agreement and that the succeeding growth does not bear fruits prior to reaping the previous one without interruption of the fruit bearing process. Should one of the afore – mentioned three conditions be in default, the service contract of the above shall not be valid unless it is accessory to an agreement fulfilling these conditions.

#### Article (825)

If the service contract concerns trees to which plants are auxiliary thereto, or vice versa, and the value of the auxiliary is one third of the principal's value or less, then the contract on the principal shall include the auxiliary and the result shall be as follows:

First: The worker in a service contract shall be in charge of its servicing as he serves the principal.

Second: Its produce may not be conditioned to be the property of the principal or the worker.

Third: The share of the worker from this produce shall be similar to his share in the principal.

Fourth: The validity conditions of the servicing contract must be met as concerns the principal to the exclusion of the accessory.

#### Article (826)

The servicing contract is binding and is not rescindable by one party without justifying excuse.

#### Article (827)

1. The servicing contract should limited to the period of plucking off or to a time during which plucking off usually occurs. If it is undetermined at the time of the contract then it shall be limited to

the time when plucking off is due, if the fruits are from one productive origin, or the first plucking off if from various and different origins; provided that that the second plucking off takes place during the period of the sharecropping. If the fruits come from several but not different origins, the term of the contract shall extend to the last plucking off.

2. If a period has been fixed in the contract, during which there is probability for the fruits to blossom but it did not show yet, none of the contracting parties may have a claim against the other.

#### Article (828)

Unless otherwise provided, the works and expenses required for the servicing shall be subject to the following provisions:

a) The works needed for the servicing of the trees, the growth of the produce and its quality and its preservation until ripening such as irrigation, tree grafting and lopping shall be the task of the worker. The fixed works, however, that does not reoccur each year, such as drilling wells, erecting warehouses, are the responsibility of the trees and plants owner.

b) The pecuniary costs needed for the exploitation and ordinary care such as, the price of fertilizers, and pesticides, until ripening of the produce, shall be the obligation of the owner of the trees or the plants.

c) As for the expenses needed after the ripening of the crop, like harvesting and storage expenses, these shall be the liability of both parties, each one according to the proportion of his share in the produce.

#### Article (829)

The worker may not assign his duties to third parties without the authorization of the owner of the trees or plants, otherwise the said owner shall have an option to take all the crop, if he so wishes, and give the one who executed the work the wages for performing similar works, or leave to them the produce and turn back on the first servicing worker for the cost of a similar crop, in addition to damages for the prejudice sustained as a result of his act.

#### Article (830)

If the trees, the fruits, or the plants have become due to a third person and the two contracting parties to the servicing contract, or one of them, have spent or taken action affecting the growth of the trees, fruits or plants so, depending on the circumstances, the following shall result:

1) If the rightful owner has approved the servicing contract, he shall substitute the previous possessor in all his rights and obligations, towards the worker, emanating from the contract and shall refund to the one who has offered the trees or plants, an amount equal to the relevant and useful expenses customarily spent by him.

2) If the rightful owner did not approve the contract, which was made in good faith without knowledge of either party of the reasons for

entitlement, the entitled party may chose either to take what he is entitled to and pay to the worker the price thereof, and to the one who has offered the trees or plants, the amount equal to the useful expenses customarily spent by him; or leave the crop until the end of the season and take from the one who has offered the trees or plants, a customarily adequate compensation for the benefits lost due to such waiting period.

3) If both parties to the contract are of ill faith at the time of contracting, the beneficiary may take his dues without liability towards any of them.

4) If one of them is of bad faith and the other acted in good faith, the latter may claim, from the rightful owner, a compensation considered fair by custom for whatever his disbursements or work benefited the trees or plants.

#### Article (831)

If the worker fails to work, or if he is not entrusted with the fruits, the trees or plants, the owner shall be liable for the wages payable for similar work executed prior to rescission.

#### Article (832)

1. The servicing contract shall not end by the death of the owner of trees or plants, and his heirs shall not prevent the worker from resuming his work according to the contract.

2. Should, however, the worker die, his heirs may chose between terminating the contract and resuming the work. If they chose termination of the contract, and the fruits did not yet ripen, they are entitled, upon ripening, the share of these fruits that would have been for their decedent in proportion of his work until his death.

3. If it has been provided that the worker has to execute the work in person, the servicing contract shall end upon his death and his heirs shall be entitled upon ripening of the fruits, the share due to their decedent in proportion to the work performed by him.

#### Article (833)

In case the worker has shown negligence in the performance of the work assigned to him by agreement or custom, his share in the crop shall be reduced in proportion to the neglected work.

#### Article (834)

The provisions regulating the sharecropping contract shall govern the servicing contract in whatever has not been provided for in the preceding articles.

### 4. Partnership Between Land and Plants Owners (the "Mugharasa")

#### Article (835)

"Mugharasa" is the participation between a land owner and the person who undertakes to plant specific orchards, supplied by him, provided

they become partners in the land and trees at a known percentage, if the trees has reached a certain growth before bearing fruits.

#### Article (836)

The validity of the mugharasa is contingent upon fulfilling the following conditions:

- 1) The mugharasa should be in fixed assets of palm trees or trees and not in seasonal recurring plantations.
- 2) The palm trees or trees, object of the mugharasa, must be determined at the time of formation of the contract.
- 3) The shares in the partnership in both the land and the palm trees, or trees, must be determined.
- 4) The partnership, in land and palm trees or trees, shall start as from the date at which the trees reach a certain degree of growth before bearing fruits.

#### Article (837)

The provisions governing planted land servicing contract shall apply to mugharasa in as much as they are not in contradiction with its nature.

### 5. Rental of "Wakf" (Estates in Mortmain)

#### Article (838)

1. The one who is entitled to manage the wakf shall be in charge with its rental.
2. If two persons are entitled to manage the wakf, either one may not unitarily decide of its rental.

#### Article (839)

1. The person entitled to administer the wakf may not lease it to himself, even in consideration of the current rent, unless he has accepted the lease from the judge.
2. He may let the mortmain property to his ascendants or descendants, for a rent higher than the current rent, by permission of the judge.

#### Article (840)

The beneficiary, even if he is the sole beneficiary, may neither grant a lease nor receive the rent unless the right to do so is given to him by the constituent of the wakf, or he is so authorized by the person who is entitled to grant a lease.

#### Article (841)

1. The condition put forth by the constituent of the wakf must be observed in the lease, so if he fixes a period for the lease, it should be complied with.
2. If no one accepts the lease for the specified period and the administrator of the wakf was not given the right to lease for the period considered to the benefit of the wakf, the matter shall be



brought forward before the judge in order to authorize the lease for the period considered by him in the interest of the wakf.

Article (842)

1. If the constituent of the wakf did not fix the lease period, the rent for shall, at most, be for one year for immovable properties, and three years for the lands; unless otherwise required in the interest of the wakf and permission of the judge, in this respect, has been granted.

2. Any lease entered into for a longer period, even by successive contracts, shall be reduced to the period mentioned in the preceding clause.

3. In case the wakf is in need of construction and does not generate enough revenue, the judge may authorize leasing it for a period sufficient for the purpose.

Article (843)

1. The properties of the wakf may not be leased for a rent inferior to the current rent of similar properties and any contract to the contrary shall be rescinded, unless the tenant agrees to pay the current rent for similar premises and provided the interest of the wakf has been taken into consideration.

2. The estimation of the current rent for similar properties, at the time of formation of the contract, without consideration of any change that may occur during the contracting period.

Article (844)

If some improvement has occurred to the site, as such, where the wakf property is located, which has led to an exorbitant increase of the current rent in the locality that is not attributable to the expenses incurred by the tenant or the improvements done by him, the tenant shall have to opt either to terminate the lease or accept the new current rent as of the time of such improvement, regardless of the fact whether the lease was made for the purpose of construction or for any other purpose.

Article (845)

1. If the lease period has expired, and the tenant has constructed or planted, out of his own money and for himself, in the wakf property with the permission of the person in charge of letting, he shall then have the priority over others for rental for a future period at the current rent of a similar property.

2. If he does not accept the current rent of a similar property, and the destruction of the construction or the plucking of the trees shall be detrimental to the leased property, the wakf administering body shall be entitled to appropriate these additions at their cost after destruction or plucking, unless they agree with the tenant to leave the construction or the plantation until it falls and the tenant shall be entitled to the rest of it.

3. The administrator may rent the property in mortmain, along with the construction and the plants, with the consent of their owner provided the latter receives a share in the rent commensurate with his

ownership thereof.

#### Article (846)

If the rental period has expired, while the tenant has a construction erected or trees planted on the premises, out of his own money, without permission, he shall be ordered to destroy what he has erected or pluck what he planted, if not detrimental to the wakf, otherwise he shall have to wait until the construction or the trees fall and he then be entitled to the remains thereof. In both instances, the Wakf Body is entitled to appropriate what has been erected or planted at a price not exceeding its value destroyed or plucked, or standing as they actually are, whichever is less.

#### Article (847)

In matters requiring the permission of the judge, the opinion of the Ministry in charge of the wakf affairs must be sought, prior to the issue of such permission, as to what is required in the best interest of the wakf.

#### Article (848)

The provisions governing lease contracts shall apply to the lease of wakf, in as much as it is not in contradiction with the preceding law provisions.

### Chapter Two. Lending

#### Section I: General Provisions

#### Article (849)

Lending is to give others the right to appropriate, without valuable consideration the use of a specific thing during a specific time or for a specific purpose, which thing the borrower undertakes to restitute after use. The borrowed thing is the thing which usufruct has been appropriated.

#### Article (850)

Lending is completed by receiving the borrowed thing, prior to which it shall have no effect.

#### Article (851)

The borrowed thing must be specified, usable non – consumable, allowed for use even if not allowed for sale.

#### Article (852)

The lender must be the owner of the usufruct, even if he is not the owner of the borrowed thing itself and he is not interdicted as to its use.

#### Article (853)

The borrower must have the capacity to receive the loan.

Article (854)

1. Should the lending period be restricted by a certain time or act, then the lender may not recover the borrowed thing. If it is not restricted in time or the performance of an act, he is not entitled to restituting it prior to the expiry of the period current in similar loans.
2. The lender shall recover it from the borrower, under all the circumstances, if it is used for a purpose other than what it was loaned for, or if he experience an unexpected different need for borrowing.

Article (855)

The borrowed thing is a trust in the hands of the borrower, if it perishes or is lost or depreciated without trespassing or negligence, there is no warrant by him, unless it has been agreed otherwise.

Article (856)

The guardian or the custodian may not lend any property owned by his ward. If any one of them lent it, the borrower shall be liable for the current rent for similar property, and if it perishes the borrower shall warrant it.

Article (857)

The wife may not, without the consent of her husband, lend anything owned by him, which is not usually in her possession. If so she does, and the borrowed thing perishes or become defective, the husband may opt either to sue her, or the borrower, in warrant.

Article (858)

Unless otherwise agreed, when a person borrows a land for the purpose of erecting a construction, or planting trees therein for a period limited by agreement or custom, then the lender shall have, at the end of such period, the choice to ask the borrower to destroy the construction, or pluck off the trees and the leveling of the land to its original condition, or to pay him the price of the construction or the value of the plucked off trees.

Article (859)

The lender is not entitled to claim, from the borrower, the rent of the borrowed thing after the utilization thereof.

Article (860)

1. If the borrowed thing has been dispossessed while in the hands of the borrower, the lender does not warrant it, unless otherwise agreed or the reason for dispossession has been concealed on purpose.
2. The lender shall be responsible for every prejudice sustained by the borrower as a result of this dispossession.
3. If dispossession takes place subsequent to the perishing of the

borrowed thing while in the possession of the borrower without trespassing or negligence from his part, and the dispossessor has chosen to ask for the warrant, the borrower may claim from the lender what he warranted to the dispossessor.

4. The lender does not warrant against hidden defects, unless he has deliberately concealed such defects or has warranted that the thing is free from defects.

## Section II: Obligations of the Borrower

### Article (861)

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

2. If he has neglected to drive away any prejudice to the borrowed thing, while he could do it, he shall be bound to warrant.

### Article (862)

The borrower shall bear the charges of the borrowed thing and the expenses of its restitution and the fees for its transportation.

### Article (863)

1. The borrower may only use the thing lent in the manner common to absolute lending unlimited in time, place or kind of use.

2. If it is limited by a period of time, or a place, he shall observe this restriction. If determined by kind of use, he may not go beyond a similar and less prejudicial limitation.

### Article (864)

1. If, a defect occurs from the use of the thing borrowed which may devalue it, the borrower shall not warrant the amount of the devaluation unless it results from its use contrary to the current use.

2. If the borrower goes beyond what is customary in such loaning of the thing or in using it, thus resulting in its perishing or defectiveness, he shall warrant to the lender any prejudice occurring to the thing.

### Article (865)

The borrower may not, without the permission of the lender, dispose of the borrowed thing in such a manner as to give a right to someone in its use or its property by loaning, mortgaging, leasing it or otherwise.

### Article (866)

The borrower may deposit the borrowed thing with an honest person, capable of keeping it, and does not guarantee it if it shall perish while under his control, without any breach or neglect.

### Section III: Termination of Lending

#### Article (867)

Lending comes to an end by:

- 1) Expiration of the term agreed
- 2) Serving the purpose for which it was done
- 3) Death of the lender or the borrower, and shall not devolve to the heirs of the borrower.

#### Article (868)

If the borrower dies without having knowledge of the lending and the thing borrowed was not found in his estate, its value at time of death shall be considered as a debt on the estate.

#### Article (869)

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

#### Article (870)

1. If the lending has been rescinded or expired, the borrower shall have to restore the borrowed thing to its owner, and abstain from its utilization, unless the law has allowed him to keep it.
2. If it shall end by the death of the borrower, his heirs shall deliver it to the lender upon request.

#### Article (871)

1. If the borrowed thing is a precious item, the borrower shall have to deliver it by himself to the lender. Other things, however, may be delivered in person or through the intermediary of those under his guardianship having capacity to act.
2. The borrowed thing must be restituted at the agreed place, otherwise in the place at which it was borrowed, or customarily fixed.

## PART THREE. LABOUR CONTRACTS

### Chapter One. Contract For Work

#### Section I: Definition And Scope

#### Article (872)

Contract for work is one by virtue of which one of the parties undertakes to do a piece of work in consideration of a remuneration which the other party undertakes to pay.

#### Article (873)

1. The contractor may undertake to supply the 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.

2. The contractor may undertake to supply the material and the work as well.

#### Article (874)

In a contract for work, the location, the kind of work, its quantity, the way it should be performed and the duration of work must be described and the remuneration fixed.

### Section II: Effects of Contracting

#### 1. Contractor's Liabilities

#### Article (875)

1. In case the master sets forth as a condition that the contractor has to provide all or part of the materials, he is responsible for its good quality as provided for in the contract, if any, otherwise in conformity with the current custom.

2. When the materials are supplied by the master, the contractor is bound to care for their preservation, observe in his work the technical requirements and to return to their owner whatever left of it; otherwise he shall warrant against perishing, defect or loss thereof.

#### Article (876)

In the absence of an agreement or trade custom to the contrary, the contractor shall provide, at his own expense, the tools and accessories he needs to perform his work.

#### Article (877)

The contractor shall perform his work according to the conditions of the contract. If it is established that he is fulfilling his obligations in a manner that is defective or contrary to the agreement, the master may ask the immediate rescission of the contract, if remedying the situation is impossible, otherwise the master may summon the contractor to abide by the terms of the contract and rectify, within a reasonable time, the manner in which he is performing the work. If at the expiration of the fixed delay, the contractor fails to comply with this requirement, the master may ask the judge the cancellation of the contract or authorize him to hand over the completion of the work to another contractor at the expense of the first contractor.

#### Article (878)

The contractor shall warrant the results of his act and work against prejudice or loss whether or not caused by his trespassing or negligence. There is no warrant if this occurs from an accident that could not be avoided.

#### Article (879)

1. If the contractor's work shall produce some effects on the property, he may have a lien over it until he receives the remuneration due to him, and if it perishes in his possession prior to payment of the remuneration, he shall neither be liable to warrant nor entitled to remuneration.
2. If his work shall not have any effect on the property itself, she shall have no right to detain it in payment of his remuneration and if he does so he shall be liable to warrant against his unlawful act.

#### Article (880)

1. If the object of the contracting contract was the erection of buildings or other fixed constructions that the architect has designed, to be executed by the contractor, under his supervision, they shall be jointly liable, for a period of ten years or a longer agreed period, to indemnify the master of work for total or partial destruction of these buildings or fixed constructions and for every defect endangering the solidity and security of the building; all this unless the two contracting parties agreed that these constructions are meant to stay for less than ten years.
2. This obligation to indemnify shall remain in effect even if the defect or the destruction is due to a defect in the ground itself, and even if the master authorized the erection of the defective buildings or fixed constructions.
3. The ten year period shall start as of the time of delivery of the work.

#### Article (881)

If the architect's work is limited to the preparation of the plans without being entrusted with the supervision of their execution, he shall be responsible only for defects in the plans.

#### Article (882)

Any clause tending to exonerate or limit the warranty of the contractor or the architect is void.

#### Article (883)

Court action on the warranty may not be heard after three years from the occurrence of the destruction or the discovery of the defect.

### 2. Obligations of the Master

#### Article (884)

The master must take delivery of the completed work as soon as the contractor completes it and places it at his disposal. If the master, in spite of being formally summoned, fails without reasonable cause to take delivery, and the work perishes in the hands of the contractor or becomes defective, without any trespassing or neglect from the latter, he shall not be bound to warrant.

Article (885)

The master is bound to pay the remuneration for the work upon taking delivery of the work contracted, unless otherwise agreed or practiced by custom.

Article (886)

1. When a contract is concluded in accordance with an estimate drawn up on a unit price basis and it becomes evident, during the course of the work, that it will be necessary to complete the work, according to the agreed plan, to considerably exceed the estimated price, the contractor is bound to notify the master forthwith of the matter stating the anticipated increase in price. If he fails to do so, he shall forfeit his right to recover the expenses incurred in excess of the estimate.
2. If the estimated excess in the price for the execution of the plans is considerable, the master may release himself from the contract and stop the execution without delay and pay the contractor the cost of the works done by him estimated in accordance with the terms of the contract.

Article (887)

1. When a contract is concluded on a lump sum basis according to an agreed plan, the contractor has no claim to an increase in price required for the execution of the plan.
2. If a modification or addition is made to the plan, with the consent of the master, the current agreement with the contractor, as regards such a modification or addition, shall be observed.

Article (888)

If the contract did not specify a price for the work, the contractor shall be entitled to the price for similar works, in addition to the cost of the materials provided by him as required by the works.

Article (889)

1. If there were no agreement as to the remuneration of the architect, who made the plans for the building and supervised their execution, he shall be entitled to the remuneration payable for similar work, in accordance with the current custom.
2. If happens what impedes the completion of the work's execution, according to the design he has prepared, he shall deserve the wage according to what he has performed.

Section III: Sub-Contracting

Article (890)

1. The contractor may entrust the execution, of the whole or part of the work, to a subcontractor unless he is precluded from so doing by a clause in the contract, or unless the nature of the work requires that



he executes the work in person.

2. The contractor, in such a case, shall remain responsible towards the master of the work.

#### Article (891)

The subcontractor may not have a claim against the master, as regards the dues of the first contractor, unless the latter refers him to the master.

### Section IV: The End of a Contract for Work

#### Article (892)

The contract for work shall come to an end by completing or by rescission of the contract by mutual agreement or by order of the court.

#### Article (893)

When an excuse arises that prevents the execution of the contract, or the completion of its execution, any of the contracting parties may ask for its rescission or termination, as the case may be.

#### Article (894)

If the contractor has started the execution of the work and then became unable to accomplish it, for a reason beyond his control, he shall be entitled to value of the completed work, in addition to the expenses disbursed for its execution to the extent of the benefit that the masters derives from such work.

#### Article (895)

The party prejudiced from rescission may claim compensation from the other party within the limits allowed by custom.

#### Article (896)

1. A contract for work is dissolved by the death of the contractor, if it was agreed that he executes the work in person or if his personal skill was taken into account in the contract.

2. If the contract does not include such provision, or if such personal skill was not taken into account in the contract, the master may ask for the rescission of the contract in case the heirs do not offer the necessary qualifications for the proper execution of the works.

3. In both instances, the value of the completed works and the expenses incurred shall devolve to the heirs in accordance with the contract and what is required by custom.

## Chapter Two. Employment Contract

### Section I: Formation and Conditions

Article (897)

1. An employment contract is a contract whereby one of its parties undertakes to perform some work to the benefit of the other party under his supervision and administration, in consideration of a salary which other party undertakes to pay.
2. If, however, the wage earner is not prohibited to work for another employer, or if he is not tied up in his work by a specific time to the benefit of the employer, the employment contract does not apply to him and he is entitled to his remuneration in accordance with the agreement.

Article (898)

1. The employment contract may be for a limited or unlimited period, and for a specific work.
2. If the employment contract is for the lifetime of the employee or of the employer or for more than five years, the employee may, after the lapse of five years, terminate the contract, without indemnity, provided that he notifies the employer six months beforehand.

Article (899)

The employment period shall start as of the time fixed in the contract, otherwise as of the date of the contract, unless the custom or the circumstances of the contract otherwise provide or require.

Article (900)

1. Should the employment contract be for a limited period, it shall automatically come to an end by the expiry of its term and if both parties thereto continue its execution, this shall be considered as renewal for an unlimited period.
2. In case the employment contract is for the execution of a specific work, it shall end by the achievement of such work. If this work is renewable by its nature, and the execution of the contract continues, after the completion of the work agreed upon agreed upon, the contract shall be considered tacitly renewed for the period required for the performance of the same work anew.

Article (901)

1. The employee's salary is what he receives under the contract in money or benefit of any kind.
2. If the salary is not fixed in the contract, the employee shall be entitled to get a wage in accordance with the rates, if any, applicable to work of similar nature, otherwise the judge will fix it according to the requirements of equity.

Article (902)

1. The following sums form an integral part of an employee's salary and are taken into account in computing the attachable portion thereof:
  - a) Commissions payable to canvassers, commercial travelers and

commercial representatives;

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

c) Any gratuity paid to a worker in addition to his salary, as well as fidelity bonuses for increase in his family charges and other similar allowances, if payment of such sums is provided in the individual contract of employment or in factory regulations or if these sums are customarily payable so that the employee considers these as forming part of his salary and not a bounty, provided that these amounts paid are of known value before the attachment is made.

2. Tips are deemed to be part of the 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 its 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, an employee's salary may consist solely of the tips received and the food he consumes.

#### Article (903)

If someone performs a work for another, upon his request and without agreement as to the remuneration, he shall be entitled to the salary payable for similar work, if he is salaried, otherwise he is not entitled to any salary.

#### Article (904)

If the work under contract is teaching something which may be of some assistance from the instructed person to his instructor, and it is not mentioned in the contract who deserves the remuneration from the other party, the custom, in effect between those concerned at the place of work, shall be followed.

### Section II: Effects of the Employment Contract

#### 1. The Employee's Obligations

##### Article (905)

The employee must:

- 1) Perform in person the work and use, in so doing, the care of an ordinary man.
- 2) Observe, in his conduct the requirements of tact and morality.
- 3) Obey the orders of the employer relating to the performance of the agreed work in all what does not expose him to danger and does not violate the law or morality.
- 4) Preserve with care things entrusted to him for the performance of his work.

5) Safeguard the industrial or commercial secrets of the work, even after the expiration of the contract, as required by the agreement or customarily practiced.

Article (906)

The employee shall be bound by all that is customarily considered as an accessory of the work even if not so provided in the contract.

Article (907)

The worker may not engage himself, during his work time in anything else nor work, during the period of his employment contract, for another employer, otherwise his employer may either rescind the contract or reduce the wage in proportion to the employee's negligence in discharging his work.

Article (908)

The employee warrants whatever shortage, perishing or missing that may affect his employer's property due to his negligence or trespassing.

Article (909)

1. When the work entrusted to the employee enables him to have knowledge of the secrets of his employer's business or to know the clients of the establishment, the parties may agree that the employee will not be entitled, after the termination of the contract, to compete with the employer or participate in a competitive business.
2. Such agreement shall not be valid unless it is limited as to time, place and kind of work, to the extent necessary for the protection of the legitimate interests of the employer.
3. The employer may not avail himself of such an agreement if he terminates the contract without any cause attributable to the employee; nor can he avail himself of such agreement if he himself has given the employee adequate grounds to terminate the contract.

Article (910)

If both parties agree to hold the employee liable in case he commits a breach of a condition restraining competition and this clause is so onerous as to act as a pressure on the employee to compel him to remain in the service of his employer, the condition will not be valid.

Article (911)

1. When the employee discovers a new invention or discovery while in the service of his employer, the latter will not be entitled to it except in the following instances:
  - a) In case the nature of the work agreed to aims to attain such purpose.
  - b) If the contract expressly stipulates that the employer is entitled to any invention reached at by the employee.
  - c) When the employee realizes his invention through the materials, tools, constructions or other means put at his disposal by the

employer for this purpose.

2. If, however, the invention or discovery, in the foregoing instances, is of serious economic importance, the employee may ask for a special remuneration to be fixed in accordance with the principles of equity, taking into account the extent of help supplied by the employer.

The above provisions will be without prejudice to the provisions of the laws on inventions and discoveries.

## 2. Obligations of the Employer

### Article (912)

1. The employer must pay the employee his salary as agreed whenever he performs his work or when he prepares and devotes himself to it, in case no work has been assigned to him.

2. Payment of the salary to the employee will be at the time and place fixed in the contract or established by custom.

### Article (913)

The employer will:

a) Make available all the means of security and safety in his establishment and provide all what is necessary to enable the employee fulfill his obligations.

b) Make sure that the machines and the apparatuses used for work are in proper running condition so that it does not cause any prejudice.

c) Observe the requirements of morality and politeness in dealing with his employee.

d) To give to the employee, at the end of his service, a certificate mentioning the kind of his work, the starting and ending dates of his service, the amount of his salary as well as of all additions thereto paid to him.

e) Give back to the employee all his personal papers.

### Article (914)

If the employer asks another person to perform a work against reward, he shall be bound to pay him a salary equal to that payable for similar work, whether this person is a wage earner or not.

### Article (915)

The employer will have to provide food and clothing for his worker, if customarily established, whether this condition is mentioned in the contract or not.

### Article (916)

If the period fixed for work has expired and there is a reason justifying its extension, the contract shall continue to run as long as necessity so require and the employer shall be liable to pay a salary equal to that payable for such extended period.

#### Article (917)

When the term of work is fixed in the contract, and the employer rescinds the contract before its expiry, with no valid excuse or a defect in the work performed by the worker, he shall have to pay him the salary due until the end of such period, if the worker has made himself available for service within it.

#### Article (918)

Each of the employer and employee shall perform the obligations imposed by the special laws, side by side with the obligations stipulated in the above articles.

### Section III: End of the Employment Contract

#### Article (919)

1. Subject to the provisions of articles (898) and (900), a contract of employment ends at the expiration of the term fixed unless renewed, or upon completion of the work agreed upon.
2. When the duration of the contract is not fixed by the agreement or by the nature of the work or by its object, each of the contracting parties may terminate the contract at any time provided it is preceded by a notice to the other party of his intention to do so within a reasonable time prior to the expiration of the contract.

#### Article (920)

1. When a cause arises preventing its execution, the contract may be rescinded.
2. Should any of the contracting parties has an unexpected excuse concerning him, he may ask for the rescission of the contract.
3. In both mentioned instances, the party asking rescission shall be liable for the prejudice caused by rescission to the other party.

#### Article (921)

The contract shall end by the death of the employee as well as of the employer in case the personality of the latter has been taken into consideration upon conclusion of the contract.

#### Article (922)

1. Actions arising out of a contract of employment are prescribed after one year from the time of termination of the contract.
2. Actions in relation with the disclosure of trade secrets are not subject to such limitation.

#### Article (923)

1. Unless governed by a special provision, the contract of employment shall be governed by the same provisions applicable to lease contracts.
2. The provisions of the employment contract shall not apply on workers governed by the labor law, except to the extent at which it

does not expressly or impliedly contradict the laws applicable to them.

## Chapter Three. Mandate

### Section I: General Provisions

#### Article (924)

A mandate is a contract whereby a principal appoints a proxy on his behalf to perform a licit and known act.

#### Article (925)

1. The conditions for the validity of the mandate are the following:
  - a) The principal must have the right to dispose by himself of the acts constituting the object of the mandate;
  - b) The proxy must not be prohibited from disposing of what he has been empowered to perform;
  - c) The object of the proxy must be known and apt to be given by proxy.
2. A power of attorney in litigation is not conditioned upon acceptance of the other party to the litigation.

#### Article (926)

A mandate may be absolute, restricted or made subject to a condition precedent or deferred for a future time.

#### Article (927)

1. The mandate is special if it is restricted to one or more specific matters; it is general if it comprises all matters which can be entrusted to a proxy.
2. If a special mandate, it confers on the proxy a power to act in matters specified therein and in matters necessarily incidental thereto as required by the nature of each matter mandated and prevailing custom.
3. If general, it empowers the proxy to perform all acts of exchange and disposal, gratuities being excepted and requires a specific mention authorization.

#### Article (928)

A mandate given in general terms, which does not specify the intended meaning thereof, only confers on the proxy the power to perform acts of management and preservation.

#### Article (929)

Any act that is not one of management or preservation requires a special mandate specifying its nature and all acts incidental thereto as required in the mandate.

#### Article (930)

The subsequent ratification of the act shall be considered as a prior

mandate.

## Section II: Effects of a Mandate

### 1. Duties of the Proxy

#### Article (931)

The mandate shall confer to the proxy the power to dispose of all matters included therein without exceeding its limits except if more beneficial by virtue of the contracting contract, the agent shall be fixed the charge of disposing in what shall be entertained by the agency, without exceeding the limits thereof unless in whatever shall be more beneficial to the principal.

#### Article (932)

1. If the mandate is gratuitous; the proxy must exercise in its performance the degree of care he gives to his own affairs.
2. When the mandate is for remuneration, the proxy must exercise in its performance the diligence of a reasonable man.

#### Article (933)

1. When several proxies are appointed by virtue of a separate contract, each one of them may act independently within the limits of the mandate issued to him except when the principal provides otherwise, then none of them may act independently and their independent act shall not bind the principal.
2. When several proxies are appointed by the same document without being authorized to act severally, they must act jointly except in cases where a unanimous decision cannot be reached, such as litigation, without an exchange of views with the other co-proxies, or where an exchange of views is not essential, such as receiving a payment or paying a debt.

#### Article (934)

1. The proxy may not appoint a substitute to perform all or part of the acts mandated unless he is permitted to do so by the principal or authorized to follow his opinion. In this case the substitute shall be considered as a proxy to the principal.
2. When the proxy is authorized to appoint a substitute without specifying the person, he is liable towards his principal for his faulty choice in appointing the substitute or for faulty instructions he has given to him.
3. In a special mandate the proxy, if overloaded by his work, may mandate another person to assist him but not to act independently.

#### Article (935)

Contracts of donation, lending, pledging, deposit, loaning, partnership, speculation and compromise upon denial, contracted by the proxy, if not attributed to his principal are not valid.



Article (936)

1. Contracts of sale, purchase, rent, compromise upon avowal are not necessarily added to the principal within the mandate; but if the proxy attributes these to the principal within the limits of the mandate, they shall be for the account of the principal and, if added to him without declaring that he is contracting in his capacity of proxy, the rights deriving from the contract shall be his.
2. In both instances, the ownership shall be established to the principal.

Article (937)

Monies collected by the proxy for the account of his principal shall be considered as a deposit not guaranteed by him if it perishes in his hands without negligence from his part.

Article (938)

The proxy empowered to receive money has no power to litigate and the proxy for litigation has no power to receive money, except with a special authorization from the principal.

Article (939)

In litigation a party may not mandate an enemy of his rival.

Article (940)

1. A proxy asked to purchase a thing without mention of the price may buy it at the price paid for a similar thing, or even at a little higher price in things that do not have a specified price.
2. If he purchases with a small disadvantage in price a thing that has a specified price or at a considerably disadvantageous price, the contract may not be enforced against the principal.

Article (941)

1. The proxy mandated to purchase a specific thing may not buy it for himself and if he does, the purchase shall be for the account of the principal even if he declares that he purchases it for himself.
2. The proxy mandated to purchase may not sell to his principal something that he owns.

Article (942)

The purchase shall be for the proxy's account if:

- a) The principal has specified and the proxy bought for a higher price.
- b) The agent bought at a considerably disadvantageous price.
- c) He declared that he is purchasing the property for himself, in the presence of the principal.

Article (943)

1. If the proxy for purchase has paid the price of the thing sold from his own funds, he is entitled to claim from his principal what he has

spent, within the normal standards, in implementation of his mandate.  
2. He may retain what he has bought until he receives its price.

#### Article (944)

1. The proxy, who has been mandated, in an absolute manner, to sell the property of his principal has to sell it at a suitable price.
2. If the principal has fixed the price of the thing sold, the proxy may not sell it at a lower price.
3. In case he sold it at a lower price without a prior authorization, or a subsequent ratification of the principal, and delivered it to the purchaser, the principal shall be at option either to retrieve the sold thing or ratify the sale or recover from the proxy the difference in price.

#### Article (945)

1. The proxy mandated to sell may not buy for himself what he was mandated to sell.
2. He may not sell it to his ascendants, descendants, spouse or to whomever such an act may draw benefit or cause a loss, except at a price higher than the price paid for similar things. He may sell to those mentioned at the price payable for similar things, if he was mandated to sell to whomever he wishes.

#### Article (946)

1. If the proxy mandated to sell is not bound to sell in cash, he may sell the property of his principal either in cash or on credit basis as customary.
2. If the proxy sells it on credit, he may take a pledge or ask for a surety to the buyer for what he sold on credit even if the principal did not mandate him to ask for these.

#### Article (947)

1. The principal has the right to receive the price of the thing sold from the purchaser even if this right is given to the proxy and the purchaser may pay it to the principal and payment to him discharges the purchaser from liability thereto.
2. If the mandate is gratuitous, the proxy is neither bound to obtain payment of the price of the thing sold nor collect it but only to give authority to his principal to receive it or collect it.
3. If the proxy is remunerated; he is bound to obtain payment of the price and to collect it.

#### Article (948)

The proxy is bound to give to his principal all necessary information in connection with the execution of his mandate and render him an account thereof.

## 2. The Principal's Obligations

#### Article (949)

The principal shall have to pay the agreed remuneration to the proxy whenever he executes the work assigned to him. In case there is no agreement as to the remuneration and the proxy is one of those who work for remuneration, he shall be entitled to the remuneration usually paid for such work, otherwise he shall be considered acting gratuitously.

#### Article (950)

The principal has to reimburse his proxy the expenses incurred by him to the extent usually accepted in the implementation of a mandate.

#### Article (951)

1. The principal shall be bound by all the rights to which his proxy is entitled on account of executing the mandate in the usual manner.
2. He shall be answerable for all the prejudice sustained by his proxy because of the normal execution of his mandate, unless such is the result of his negligence or mistake.

#### Article (952)

1. If the principal orders somebody else to pay his debt from his own funds and this other person did, this shall be considered as a mandate and the ordered person may claim back from the orderer what he has paid, whether the latter has, or not, conditioned payment upon reverting back on him.
2. If he has ordered him to cover the principal's expenses or those of his parents or children, the person who was given such order may claim back the amount known to be actually spent, even if reverting back on the debtor was not provided as a condition.

#### Article (953)

The provisions governing representation in contracts, provided for in the present Law, apply to the relationship of the principal and the proxy with the third party dealing with the proxy.

### Section III: The End of a Mandate

#### Article (954)

The mandate comes to an end by:

- a) The completion of the mandated work it;
- b) The expiration of the period for which it was given;
- c) The death or incapacity of the principal, even if the mandate confers a right to a third person, except as concerns the mandate to sell the mortgaged property if the mortgagor has mandated the court or the mortgagee to sell the mortgaged property upon expiration of the term thereof;
- d) The death or incapacity of the proxy, even if the mandate confers a right to a third person. However, the heir or the guardian, should he have knowledge of the mandate and be of full capacity, must give

notice of the death to the principal and take all necessary measures dictated by the circumstance in the best interest of the principal.

Article (955)

The principal may, at any time he wishes, revoke his proxy or limit his powers unless the mandate confers a right to a third person or is issued in the interest of the proxy and, in such case, the principal may not end or limit the mandate without the consent of the person in whose interest the mandate was.

Article (956)

The principal shall indemnify the proxy for the prejudice sustained as a result of an untimely or unjustified revocation.

Article (957)

The proxy may renounce his mandate which does not confer a right to a third party. He has to notify his principal of this renunciation and carry through any work he has commenced to such a condition that it does not expose the principal to prejudice.

Article (958)

1. If the mandate is against remuneration, the proxy warrants indemnifying the principal from whatever prejudice resulting from his untimely or unjustified renunciation.
2. If the mandate confers a right to a third party, the proxy must carry through the mandated work unless there are serious reasons justifying his renunciation. In such a case, he shall have to notify the right owner, and wait for a period within which the latter shall have time to protect his right.

Article (959)

The proxy in litigation shall be revoked if he acknowledges something on behalf of his principal outside court sessions or, if the avowal being excluded from the mandate, he avows in or out of court.

Article (960)

If the proxy in litigation disposes of whatever he was mandated to after taking knowledge of his revocation, he shall be liable to indemnity and if he disposes of it prior to such knowledge, his act shall be enforceable.

Article (961)

The mandatory of a proxy is revoked by the death or bankruptcy of the original principal and by his revocation from the part of the principal or the proxy who mandated him, but shall not be revoked by the revocation or death of the original proxy.

## Chapter Four. Contract of Deposit

## Section I: General Provisions

### Article (962)

1. Deposit is a contract whereby one person to take delivery from the depositor of a thing which he undertakes to keep in safe custody and return in kind.
2. The thing deposited is the property deposited with a trustee for safe keeping.

### Article (963)

The validity of the contract is conditioned upon the thing deposited being a property that can be controlled by possession.

### Article (964)

Deposit is completed by taking possession of the thing deposited de facto or de jure.

### Article (965)

The depository is neither entitled to claim remuneration for keeping the thing deposited nor a rent of the premises where it is kept, unless provided for upon depositing or practiced by special custom.

## Section II: Effects of the Contract

### 1. Obligations of the Depository

#### Article (966)

The thing deposited is put in trust under the control of the depository. Unless otherwise agreed, he is liable to indemnity if it perishes because of his act or negligence in keeping it

#### Article (967)

1. The depository is bound to exercise in the custody of the thing deposited, the care which an ordinary person employs in his own affairs; he has to put it under similar custody.
2. He shall preserve it in person or by one of his dependents with whom he can entrust his own property.

#### Article (968)

1. The depository may not deposit the thing in his custody with a third person without permission of the depositor unless he is compelled to do so but he has to recuperate it upon the cessation of such compelling cause.
2. If he has deposited it with somebody else, with the consent of the depositor, he shall be liberated from his obligation and the third person shall be the depository.

#### Article (969)

The depository may not utilize the thing deposited or confer to others

a right thereon without authorization of the depositor; if he does so and it perishes or devaluates, he is liable to indemnity.

#### Article (970)

If the depository shall travel taking with him the thing deposited without authorization of the depositor, while he was able to deposit it in the custody of another person, and the thing deposited perishes or deteriorates he shall be liable to indemnity. If he travels with it because he did not find another custodian to leave it in his custody, and it perishes or is lost without fault imputable to him, he is not liable for indemnity.

#### Article (971)

1. If the depository has borrowed the thing deposited or traded therewith, without the consent of the depositor, he shall warrant it and shall not be discharge therefrom except by restituting a similar thing to the place of deposit, if fungible, or by paying its value to the depositor and not to the place of deposit, if valuable. The depository shall be entitled to the profit in case of trading it.

2. In case of borrowing or trading therewith with the consent of the depositor, it shall cease to be a deposit and become a debt on the depository of which he will not be discharged unless he returns a similar thing, if fungibles, or the value thereof, if ad valorem, to the depositor and not to the place of deposit.

3. If he has borrowed some of the thing deposited or traded therewith, he shall warrant this part as detailed above, as the case may be, and the other part shall remain on deposit.

#### Article (972)

1. The depository is bound to return the thing deposited and deliver it to the depositor at the place of deposit, unless the contract includes a condition stipulated in the interest of both parties to the contract, or one of them, and in this case the condition required should be observed.

2. If the thing deposited has perished or being devaluated, without breach or negligence on the part of the depository, he shall have to give to the depositor whatever warranties obtained by him and transfer to him whatever rights obtained against third persons he may have acquired as a result thereof.

#### Article (973)

The depository shall have to restitute the benefits and yields of the thing deposited to the depositor.

#### Article (974)

If the thing deposited perishes in the hands of the depository, even due to his fault, he has to cover the damages.

#### Article (975)

1. If the depository intermingles the thing deposited with a thing

which could not be distinguished therefrom and is not similar in kind or character, he shall warrant it as soon as it is mixed; but there is no warranty from his part if it can be distinguished or if it is similar in kind or character.

2. In such instance, if some of the mixture has been deteriorated, the warranty shall be apportioned according to their share in this mixture until the deteriorated part could be distinguished, then the warranty shall be on the owner of this part specifically.

#### Article (976)

If the thing deposited is lost or stolen from the depository, due to non - observance of the method of its preservation as prescribed in their agreement or customarily followed for the preservation of similar things; or due the fact that he forgot it in a place where he left it or if he took it with him in a place while he could have put it at his home or with a trusted person before entering such place. In all the above cases he is bound to warrant it.

#### Article (977)

1. If the depository takes the thing deposited with him to return it to the depositor, or if he forwards it to him, without his consent in both cases, then it perishes or is lost by him or by the messenger in charge of forwarding while in his way to the depositor, he shall be liable of its warranty.

2. In case of litigation as to whether or not the authorization was given, the statement of the depositor given under oath shall prevail.

#### Article (978)

1. If the depository pretends the deterioration or loss, without fault from his part, of the thing deposited, he shall be believed and in case the depositor accuses him of prevarication or insist that he is a liar, he shall have to administer oath on him. If he refuses to take the oath, in case of accusing him of prevarication, he shall warrant the thing deposited as soon as he refuses to swear, but the oath shall not be tendered back to the depositor. In case the depository refuses to take the oath, in case of assertion that he is a liar, he shall not warrant the thing deposited unless he tenders back the oath to the depositor who shall have to swear that the depository is a liar.

2. If, upon depositing, the depositor has provided as a condition that he will not take oath in the case of deterioration or loss, this condition shall have no effect.

#### Article (979)

If the depository, upon claiming the thing deposited from him, denies having received it and the depositor submits a proof that he received it but the depository alleges that he has returned it to him, or that it deteriorated without fault from his part, he shall warrant the thing deposited and any allegation from him as to its restitution or deterioration shall not be admitted.

#### Article (980)

Where there are several depositories, and the thing deposited is indivisible, it may be kept by one of them with the consent of the others or by each successively.

In case it is divisible, it may be partitioned between them and each shall keep his share in deposit respectively.

#### Article (981)

If the depositor has been absent in intermittent intervals, the depository must continue to preserve the thing deposited until proof of his death or his being alive is established. Should the thing deposited be subject to perishing during the waiting period, he shall have to secure the authorization of the court to sell it and keep in deposit the proceeds with the court treasury.

#### Article (982)

1. If two persons have deposited a joint property with another, and one of the depositors has asked the depository to reconstitute his share, in the absence of the other, he shall have to reconstitute it, if among fungibles; otherwise he shall turn down the request until acceptance of the other depositor.

2. If the thing deposited is subject of dispute between them, he shall abstain to reconstitute it to one of them without the consent of the other or a court order.

#### Article (983)

1. In case of death of the depository and the thing deposited was in kind among the assets of his estate, it shall be considered in trust with the heir who shall have to return it to its owner.

2. If it was not found in kind, then there shall be no warranty on the estate if:

a) The heir establishes that the depository has stated the status of the thing deposited such as reconstituted by him, perished or lost without breach or negligence from his part.

b) The heir recognized and described it and stated that it was lost or has perished after the death of decedent, without breach or negligence.

3. If the depository dies without identifying the thing deposited, and it was not found in his estate, it shall be considered a debt on the estate and its owner shall share the other creditors in his claim.

#### Article (984)

1. If the depository dies and his heir has sold the thing deposited and delivered it to the purchaser after which it perished, the owner thereof shall have the choice either to claim its price on the date it is sold, if non fungible, or claim a similar thing, if fungible.

2. If the thing deposited was still in the hands of the purchaser, its owner shall be at choice either to take it back and reject the sale or approve the sale and take the price thereof.



#### Article (985)

If, among the estate of a decedent, it was found a thing on which it was written in the handwriting of the decedent or the depositor that it is a deposit with indication of its owner and the quantity thereof and was found partly missing, the missing part shall be taken from the estate if it is made known that he has disposed of the thing deposited.

### 2. Obligations of the Depositor

#### Article (986)

The depositor is bound to pay the agreed remuneration, in case the deposit is made against remuneration.

#### Article (987)

1. The depositor must repay the expenses, authorized by him, incurred by the depository for the preservation of the thing deposited.
2. If the depositor was absent, the depository may bring the matter to the attention of the judge to order as deemed convenient by him.

#### Article (988)

1. If the depository has spent on the thing deposited without the consent of the depositor or the permission of the judge, he shall be considered as a donor.
2. The depository may, however, in necessary or urgent cases, spend on the thing deposited, an amount customary acceptable, and claim from the depositor what he has spent out of his own funds.

#### Article (989)

1. The depositor shall bear the expenses of restituting the thing deposited as well as the delivery expenses.
2. He shall have to indemnify the depository against any loss he may incur as a result of the deposit unless such loss resulted from his trespassing or neglect.

#### Article (990)

If the thing deposited has been the object of a dispossession, the depository shall be entitled to refer back on the depositor for what he had warranted.

#### Article (991)

In case of death of the depositor, the thing deposited shall be delivered to his heir, unless his estate is covered with debts and, in this case an authorization of the court in this respect becomes necessary.

### Section III: Certain Kinds of Deposits

#### Article (992)

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

#### Article (993)

1. The deposit of effects brought in by guests of hotels or similar establishments is warranted by the proprietors of these establishments who are responsible for any loss or shortage occurring thereto.

2. As regards articles of value, sums of money or securities they shall not be warranted, without breach or neglect, unless the owners of such establishments accept to keep these valuables, having knowledge of their value, or unless they have refused, without just cause, to keep them, or if the loss has been caused by their gross negligence or by the gross negligence of one of their staff, then they shall be covered by a warranty as customarily practiced.

#### Article (994)

1. Hotel guests, or those of similar establishments, shall have to inform the proprietors of such establishments of their effects, lost or stolen, prior to their departure from the establishment.

2. Action in warranty of what has been lost or stolen shall not be heard after the lapse of six months as of the date of departure from the establishment.

#### Article (995)

1. Each of the depositor and the depository, may terminate the contract whenever he so wishes, provided that such termination shall not at an inconvenient time.

2. However, if the deposit was made against remuneration, neither of them may terminate the contract prior to the expiry of the deposit period but the depositor is entitled to ask for the return of the thing deposited at any time if he pays the entire balance of the remuneration and provided that there is no condition to the contrary.

#### Article (996)

1. If the depository is stricken by an insanity from which there is no hope of recovering his senses and the depositor establishes against the tutor or guardian that the deposit was made, so if the thing deposited is still there in kind it shall be restituted to its owner, otherwise the depositor shall recover its value from the funds of the insane provided he has a solvent surety.

2. If the depository shall recover his senses and alleges that he had returned the thing deposited or that it perished without breach or negligence from his part, his oath in this respect shall prevail and he may ask the refund of the amount taken from his funds or from his surety in lieu of the thing deposited.

### Chapter Five. Custody Contract

## Section I: General Provisions

### Article (997)

Custody is a contract whereby the two parties in dispute entrust to a third party a property to be safeguarded and managed and returned together with its yields to whoever establishes his right thereto.

### Article (998)

If the two contracting parties agreed to put the property under the control of two or more persons, none of them may separately keep it or dispose of its income without the consent of the others.

### Article (999)

In case of disagreement, the two parties to the dispute may ask the judge, in order to prevent an imminent danger, or for a just cause, to appoint a custodian to take delivery of the property to preserve and manage it, and authorizing him to exercise any right, which the judge shall deem it in the interest of both parties.

### Article (1000)

In case it is revealed that custody is indispensable to preserve the rights of those concerned judicial custody may be imposed on the property in mortmain in the following cases:

- 1) If the property in mortmain is vacant or a conflict arose between those in charge of such property or by one of them and the Nazir, or when an action for the removal of the Nazir. In such cases the custody ends upon appointment of a Nazir to the Wakf, whether such appointment is provisional or definite.
- 2) When the Wakf is in debt.
- 3) When one of the beneficiaries of the Wakf is bankrupt, and that custody has been revealed to be necessary for the protection of the rights of the creditors, then custody will be ordered in respect of his share alone unless it is impossible to isolate it, otherwise custody will be ordered in respect of all the property in mortmain.

### Article (1001)

If the parties to the dispute fail to agree on the person of the custodian, the judge shall appoint him.

## Section II: Obligations and Rights of the Custodian

### Article (1002)

Property under the control of the custodian shall be held in trust, and he may not exceed, in his mission, the limits set up for him, otherwise he shall incur liability.

### Article (1003)

The rights, obligations and powers of the custodian are defined in the

agreement or in the judgment ordering custody. In the absence thereof, the provisions relating to deposit and mandate will apply in so far as they do not conflict with the provisions stated in the present chapter.

Article (1004)

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

Article (1005)

Apart from acts of preservation and administration, the custodian must not act without the consent of the parties to the dispute or without authorization of the judge unless there is an urging necessity that shall endanger the produce or the movable property subjecting it to deterioration or perishing.

Article (1006)

The custodian is bound to provide the interested parties with all necessary information relating to the implementation of his task and to render accounts thereof within the delays and by the means agreed upon by the parties or ordered by the judge.

Article (1007)

The custodian must render accounts of the amounts expended during the performance of his mission, taking into consideration reasonable amounts spent in similar situation by another source.

Article (1008)

If the custodian provided as a condition that his work be remunerated, he shall be entitled to such remuneration upon completion of his task, and if he did not put such a condition, but he is one of those working against remuneration, he shall be entitled to the similar wage payable in similar situations.

Article (1009)

The custodian may resign his task at any time provided he informs the concerned persons and carry on the works he started until reaching a stage where it shall not prejudice the parties to the dispute.

Article (1010)

In case of death of the custodian, his inability to perform the duties entrusted to him, or in case a dispute arises between him and one of the concerned persons and the parties did not agree on naming a substitute, the judge shall appoint a custodian of his choice upon request of one of the parties in order to resume performance of the unaccomplished task.

Section Three: End of Custody

Article (1011)

The custody comes to an end upon completion of the work or by agreement of all the interested parties or by decision of the judge. The custodian must then forthwith reconstitute whatever has been entrusted to him to the person agreed upon by the concerned parties or designated by the judge.

PART FOUR. ALEATORY CONTRACTS

Chapter One. Betting and Gambling

Article (1012)

Betting is a contract by which a person is bound to pay a sum of money, or give something else, as agreed upon, to the one who succeeds in attaining the aim targeted in the contract.

Article (1013)

Betting is allowed in racing, shooting, sports or muscle building.

Article (1014)

The validity of a betting contract is contingent upon the following:

- a) The bet should be known and the one bound to pay it specified in person.
- b) The object of the contract must be described in a manner excluding any excuse of ignorance; i.e. in racing; the distance between the starting and ending points; and in shooting: the number of shots and the acceptable target shot.

Article (1015)

The bet may be payable in kind or a debt, immediately due or deferred as a whole, or partly due and partly deferred.

Article (1016)

If racing takes place with a bet, it is considered a contract binding the racers and none of them may disengage except by mutual agreement.

Article (1017)

Where the betting is between two individuals or two groups, the bet may be paid by one of them or by a third party, and each category is considered as one person being bound by the outcome of the bet.

Article (1018)

In case the contestants in a betting are more than two and it was intended to reserve to other than the winner some of the outcome, the share payable to the next in rank in the race should be lesser than that payable to the one preceding him.

Article (1019)

It is acceptable that the outcome of the bet be payable by one of the contestants or by a third party to the winner; but if the two contracting parties agree that the winner shall be entitled to a prize from the other party, this is not allowed since the contract shall turn out into gambling.

#### Article (1020)

If one of the contestant's arrow meets an obstacle which deviates it from its target, or if his horse or camel is hit on the face, or the whip conducting it is taken from the hands of its rider thus causing reduction in its running speed, it shall not be considered in these instances outraced. If, however, the whip has been forgotten by the rider before riding, or it fell from his hand while riding, thus causing reduction in its running speed, it shall be considered outraced.

#### Article (1021)

1. Any agreement relating to gambling, or prohibited betting, is void.
2. A person who loses in gambling or prohibited betting may, notwithstanding any agreement to the contrary, reclaim what he has paid within six months from the time when he paid what he lost. He may prove such payment by all means of claim.

### Chapter Two. Life Annuities

#### Article (1022)

1. A person may gratuitously bind himself to pay another person periodical payments during his lifetime.
2. In case this obligation is related to education, medical treatment or agreement, it must be honored in accordance with customary practice unless otherwise specified in the obligation.
3. The validity of this obligation is contingent upon its being established in writing.

#### Article (1023)

1. A life annuity may be granted for the lifetime of the obligee or any other person.
2. In the absence of an agreement to the contrary, the obligation, in the absolute, is considered made for the lifetime of the obligor.

#### Article (1024)

Should the obligor fail to meet his obligation, the other party may demand due performance of the contract.

#### Article (1025)

If the annuity is settled for the lifetime of the obligor, who dies prior to the death of the obligee prior to the date when the periodical payment becomes due, the obligee will be entitled to part of the annuity proportionate to the period that expired until the death

of the obligor, within the limits agreed upon, and, unless otherwise agreed, he shall have a claim against the estate; the payment due being considered as a will.

## Chapter Three. Contract of Insurance

### Section I: General Provisions

#### Article (1026)

1. Insurance is a contract whereby both the insured and the insurer cooperate together to face the risks or accidents insured against and, whereby in consideration of a specified amount or periodical premiums, the insurer undertakes, upon occurrence of the event or the risk specified in the contract, to pay to the insured or the beneficiary a sum of money, an annuity or any other pecuniary right.
2. The law regulates the insurance organization, namely as concerns their legal forms, method of formation, means of performing their activities and supervision thereon, in order to achieve the cooperation aims of insurance without prejudice to the mandatory provisions and fundamental principles of Islamic Sharia.
3. Until the enactment of the law referred to in the above clause, shall remain in force, the rules and conditions actually observed concerning insurance and insurance organizations.

#### Article (1027)

Without prejudice to the provisions of the preceding Article, insurance may cover risks occurring out of personal accidents, workmen compensation for labor accidents, insurance against theft and breach of trust, car and tort insurances and all other events which custom or law allows insurance against the risks resulting therefrom.

#### Article (1028)

The following conditions in a policy of insurance are void:

- a) The condition providing for the forfeiture of the right to insurance on account of a breach of the laws, unless such breach constitutes a deliberate felony or misdemeanor;
- b) The condition providing for the forfeiture of the insured's right due to his delay in notifying the authorities that have to be notified, or in producing documents, if it appears that the delay was for an acceptable excuse;
- c) Any printed condition relating to cases involving nullity of the contract or forfeiture of the insured's right, which is not shown in a clear manner;
- d) The arbitration condition included in the printed general conditions of the policy and not as a special agreement distinct therefrom;
- e) Any arbitrary condition, the breach thereof appears that it has no bearing on the occurrence of the event insured against.

#### Article (1029)

1. Exoneration of the insurer from his liability may be agreed upon, in case the beneficiary pays an indemnity to the victim without the consent of the insurer.
2. The agreement referred to above may not be invoked if it is established that payment of the indemnity was in favor of the insurer.

#### Article (1030)

The insurer may be subrogated into the right of action which the insured may have against the author of the damage involving the responsibility of the insurer, to the extent of the compensation he has paid, unless the author of the unintended damage is an ascendant of the insured, one of his descendants, spouse or one of those living with the insured under the same roof, or a person for whose acts the insured is responsible.

#### Article (1031)

Provisions, concerning the various insurance contract, which are not mentioned in the present law, shall be governed by special laws.

### Section II: Effects of the Contract

#### 1. Obligations of the Insured

##### Article (1032)

The insured is bound to:

- a) Pay the agreed amounts on the term fixed in the contract;
- b) Reveal at the time of conclusion of the contract, all information which the insurer consider of importance to be known by him in order to assess the risks covered by him;
- c) Inform the insurer of all matters, occurring during the contract period, which lead to the aggravation of risks.

##### Article (1033)

1. If the insured, in bad faith, conceals a matter or makes a false statement in such a manner as to lessen the importance of the risk insured against, or leads to a change in its object, or if he fraudulently breaches his promise to fulfill an obligation, the insurer is entitled to demand rescission of the contract and be paid all premiums due prior to such demand.
2. In the absence of fraud or ill faith, the insurer, upon demanding rescission, has to refund to the insured all premiums paid by him or the portion thereof for which he assumed no risk at all.

#### 2. Obligations of the Insurer

##### Article (1034)

The insurer is bound to pay the insured amount or the sum due to the



insured or the beneficiary, as agreed, upon occurrence of the risk or maturity of the period fixed in the contract.

#### Article (1035)

Insurance covering tort liability shall have no effect unless the victim files a claim against the beneficiary after the occurrence of the event from which resulted such liability.

#### Article (1036)

1. Actions arising out of insurance contracts shall be barred by limitation after the expiration of three years from the date of the occurrence which gave rise to such action, or of the knowledge of the interested party of its occurrence.
2. This period, however, shall only run, in the event of concealment by the insured of the information relating to the risk insured against, or submission of incorrect statements, as from the date the insurer has taken knowledge thereof.

### Section III: Provisions Relating to Certain Classes of Insurance

#### 1. Fire Insurance

##### Article (1037)

In insurance against fire, the insurer is liable for the following:

- a) Damages resulting from fire even caused by earthquakes, thunderbolts, hurricanes, winds, cyclones, domestic explosions, damages caused by airplane and other air vessels crashes or whatever is customarily included in this class of insurance.
- b) Damages which are the inevitable result of fire.
- c) Damages to things covered by the insurance by reason of salvage measures or of measures to prevent the extension of the fire.
- d) Disappearance of the things covered by the insurance, occurring during the fire, unless it is established that this was occasioned by theft.

##### Article (1038)

The insurer is liable for damage resulting from the unintentional fault of the insured or the beneficiary.

##### Article (1039)

Notwithstanding any agreement to the contrary, an insurer is not liable for damages caused deliberately or fraudulently by the insured or the beneficiary.

##### Article (1040)

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

##### Article (1041)

The insurer is liable for the damages resulting from the fire even if the fire broke out owing to a defect in the thing insured.

#### Article (1042)

1. Whoever insures a thing or an interest with more than one insurer must notify each one of them of the other insurance contracts, the value thereof and the names of the insurers.
2. In case there is more than one insurer, the insurance value must not exceed the value of the thing or interest insured.

#### Article (1043)

When a thing or interest is insured with more than one insurer for amounts exceeding in total the value of the thing or interest insured; each insurer is bound to pay a part equivalent to the proportion between the capital assured and the value of all the insurance contracts added together provided that the total sum paid to the insured does not exceed the damage incurred by him as a result of the fire.

#### Article (1044)

Fire insurance contracted on the chattels belonging to the insured in bulk and that were present, when the fire broke out, at the places occupied by him, shall extend to the things belonging to the members of his family and to those in his service, if they share the same living with him.

#### Article (1045)

1. Should the thing insured be encumbered with a pledge, or with other real warranties, these rights will be transferred to the compensation due to the insured by virtue of the contract of insurance.
2. If these rights have been registered and notified to the insurer, even by registered letter, the insurer may not pay the amount due by him to the insured except with the consent of these creditors.

## 2. Life Insurance

#### Article (1046)

The insurer, in the case of life insurance, is bound to pay, to the insured or to the beneficiary, the sums agreed upon the occurrence of the event insured against or on the maturity date stipulated in the contract, without need to establish the damages sustained by the insured or the beneficiary.

#### Article (1047)

The formation of the insurance contract on the life of a third party is conditioned by the written approval of such third party, prior to the conclusion of the contract or, in case he lacks capacity, the contract shall only be concluded if approved by his lawful representative.

Article (1048)

1. The insurer is released from the obligation to pay the sum assured in case the insured commits suicide and he shall refund to the beneficiary an amount equivalent to the value of the insurance reserve, unless the beneficiary establishes that suicide was not meant to have the sum assured become due so, in this case, he shall be entitled to the sum of the premiums paid less the expenses that should be deducted therefrom.

2. When suicide is due to an act beyond the control or awareness of the insured, or for any other reason leading to a total absence of will, the insurer shall be bound to pay the entire sum assured agreed upon. The beneficiary shall have to establish that the life assured was, at the time he committed suicide, out of control of his actions.

Article (1049)

1. The insurer is released from his obligations when the insurance is taken out on the life of a person other than the insured and he deliberately causes the death of this person or if the death occurs at his instigation.

2. If, however, the beneficiary of the insurance is a person other than the insured who deliberately caused the death of the insured, or if death occurs at his instigation, he shall be deprived of the sum assured. In the case of an attempted homicide, the insured shall be entitled to substitute another person for the beneficiary.

Article (1050)

1. The insured may provide that the sum assured be paid to persons specified in the contract or to be nominated at a later date.

2. If the insurance is made for the benefit of the spouse of the insured, his sons, descendants or his heirs, the sum assured shall be due to those who effectively have these qualifications at the death of the insured. Should the heirs be the beneficiaries, the sum assured shall be divided upon them in accordance with their legal shares in the estate.

Article (1051)

An insured who has undertaken to pay periodical premiums may release himself from the contract at any time provided he gives written notice to the insurer of his intention to do so. He shall be released from payment of subsequent premiums.

Article (1052)

1. Neither incorrect particulars nor misstatements as to the age of the insured shall render the insurance contract void, unless the true age of the insured exceeds the limit specified in the table of rates.

2. If, as a result of incorrect particulars or misstatements, the premium agreed upon is less than the premium that 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.

3. If, however, the agreed premium is higher than the premium which should have been paid on the basis of the true age of the life insured, the insurer shall be bound to refund the excess received by him and to reduce the subsequent premiums to the limit corresponding to the true age.

#### Article (1053)

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

#### Article (1054)

The amount of insurance payable to the insured or to the beneficiary, at the maturity of the period stipulated in the contract, may not include any usurious interests.

#### Article (1055)

Amounts agreed to be paid upon death of the insured shall not be included in his estate.

### PART FIVE. PERSONAL GUARANTY CONTRACTS

#### Chapter One. Suretyship

##### Section I: The Elements of Suretyship

#### Article (1056)

Suretyship is the joining of the financial assets of one person, the surety, to the financial assets of the debtor in the fulfillment of his obligation.

#### Article (1057)

1. Suretyship is formed by using this word or words of guaranty.
2. It shall be complete and executable by an offer made by the surety unless rejected by the guaranteed debtor.

#### Article (1058)

Suretyship is validly contracted if the surety has full capacity to donate.

#### Article (1059)

Suretyship is void if contingent on an option to be made by the surety.

#### Article (1060)

Suretyship may be of immediate execution or subject to a valid condition or to a suitable condition precedent or entered into in

respect of a future time or of a temporary nature.

Article (1061)

The validity of a suretyship is conditioned upon its object being warranted by the principal as a known debt, kind or person and being deliverable by the surety.

Article (1062)

The suretyship may consist of the wife's alimony or that of the parents even before it is adjudicated by the court or conventionally agreed upon.

Article (1063)

Suretyship of the seller's representative to the purchaser, to pay the price of what he was mandated to sell, is not valid, so is the suretyship of the guardian in respect of what he sold of the minor's property, as well as the suretyship of the Nazir in respect of what he sold of the Wakf property.

Article (1064)

1. The suretyship of a person on his death bed is not valid if his funds are covered with debts.
2. His suretyship is, however valid, if his debts do not cover his entire funds, in which case the provisions governing wills shall apply.

Article (1065)

Suretyship conditioned upon the discharge of the principal is a transfer; and the transfer subject to the non release of the transferor is a suretyship.

Article (1066)

The surety to a conditional suretyship or to a future debt may go back on his suretyship prior to the entitlement of the debt.

Article (1067)

Unless otherwise agreed, suretyship extends to the accessories of the debt and to the expenses of claiming the debt.

## Section II: Certain Kinds of Suretyship

### 1. Suretyship in Person (Face's Guarantee)

Article (1068)

1. Suretyship in person binds the surety to assure the due appearance of the debtor at the time fixed upon request of the creditor and if he fails to do so, the judge may condemn him to a daily fine for delay in performance of an obligation, as he may release him from this fine if he establishes his inability to have him appear.

2. If the surety binds himself to pay a specified amount as a penalty in case of failure of having the debtor duly appear, he must pay this amount, but the judge may, if justified, fully or partially exempt him therefrom.

Article (1069)

When the surety undertakes to pay the debt in case he fails to deliver the debtor, he is bound to fulfill his obligation.

Article (1070)

1. In suretyship in person, the surety is released from his obligation if he delivers the debtor to the creditor or fulfills the obligation object of the suretyship.

2. The surety shall also be released by the death of the guaranteed debtor but not in case of death of the person in whose favor the surety is given and, in this latter case, the heirs of this person are entitled to ask the surety to have the debtor duly appear at the time fixed.

Article (1071)

The guaranteed debtor must be delivered at the place fixed by the surety and, in the absence thereof, at the place of the contract.

Article (1072)

If the surety satisfies the right due for the absence of the guaranteed debtor and the impossibility of having him to duly appear, then it was established the death of this debtor prior to payment, he is entitled to recover what he paid.

Article (1073)

If it is not clear from the suretyship whether it is one whose object is pecuniary or in person, and there is no presumption as to which is meant, it shall be construed as a pecuniary suretyship. If the surety alleges that it meant a personal suretyship and the creditor alleges that it is a pecuniary one, the allegation of the surety, after taking oath, shall prevail.

Article (1074)

The husband may revoke the suretyship in person given by his wife without his authorization, even if the guaranteed debt is less than one third of her funds.

## 2. Suretyship Against Dispossession

Article (1075)

Suretyship against dispossession is a guaranty to refund the price of the thing sold in case of dispossession.

Article (1076)

The surety of the seller, in case of dispossession, shall not be asked to fulfill his obligation until dispossession is adjudicated and the seller is ordered to refund the price.

### Section III: The Effects of Suretyship

#### 1. Between the Surety and the Creditor

##### Article (1077)

1. The surety has to fulfill his obligation upon maturity of the fixed delay.
2. If his obligation is subject to a condition precedent, fulfillment shall take place upon this condition is materialized.

##### Article (1078)

1. The creditor may have a claim against the principal and / or the surety.
2. If the surety has a guarantor, the creditor may have a claim against any of them at his choice.
3. His claim against any of them shall not forfeit his claim against the others.

##### Article (1079)

The suretyship may be restricted to payment of the debt from the debtor's funds deposited with the surety, provided he obtains the assent of the debtor.

##### Article (1080)

When the suretyship is absolute, the surety's obligation shall follow that of the principal whether immediately due or deferred.

##### Article (1081)

If the due debt has been guaranteed by one of the sureties through a deferred suretyship, the debt shall be deferred as regards the surety and the principal together, unless the surety has conditioned the deferred period to be added in his favor or the creditor has accepted deferment as regards the surety. In this latter case the debt shall not be deferred as concerns the principal.

##### Article (1082)

When the debt is secured by an encumbrance on an immovable property, prior to the suretyship, and the surety demands that the debt be claimed first from the principal, execution on the funds of the surety may not take place before execution on the property securing the debt.

##### Article (1083)

The guarantor of a surety may ask the debtor to claim his debt first from the first surety.

Article (1084)

If the surety or the debtor dies prior to the maturity of the deferred debt, the debt becomes due as concerns the estate of the deceased.

Article (1085)

When the same debt is secured by several sureties, any of them may be asked to pay the debt unless they all secured the debt in the same contract without specifying that they act jointly and severally then each shall be liable only for his share in the suretyship.

Article (1086)

In case the sureties are jointly and severally liable and one of them settles the debt on its maturity, he 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 the surety who is bankrupt.

Article (1087)

Suretyship established by a law provision or a judicial order, when absolute, shall entail joint and several liability between the sureties.

Article (1088)

When the creditor has accepted a thing of another kind in payment of the debt, the principal and the surety is discharged, unless this thing is dispossessed.

Article (1089)

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 (1090)

1. The surety is not entitled to call upon the principal for any thing given on behalf of the latter by him, unless the suretyship was given or accepted upon request of the principal and the surety has effectively given it.
2. He is not entitled to call upon the principal to refund what he has paid from the deferred debt except after maturity of the debt.

Article (1091)

1. 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 against the debtor.
2. When the debt is secured by another real pledge or similar right 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 transfer his rights to the surety, provided the surety bears the expenses of such transfer and call upon the debtor to refund the expenses paid by him.



Article (1092)

When the debt matures, the creditor must claim it within six months from the maturity date otherwise the surety shall be considered not concerned with the suretyship.

2. Between the Surety and the Debtor

Article (1093)

1. When the surety has given in lieu of the debt something else, he shall have a right of action against the debtor for what he secured and not for what he has given.
2. When, however, he compromised with the creditor on a portion of the debt, he shall have a right of action for what he compromised and not the total debt.

Article (1094)

1. When the principal discharges the debt before the surety, or if he is aware of any reason barring the creditor from claiming his right, he must inform the surety of it. If he fails to do so, and the surety has discharged the debt, he shall be at option either to call upon the principal or the creditor for reimbursement.
2. If the claim is filed against the surety, he must ask for the forced intervention of the principal, failing which the principal may avail himself of all means to rebut the debtor's claim.

Article (1095)

The surety, pecuniary or personal, is entitled to ask the court to forbid the secured debtor from traveling outside the country, if the suretyship was done at his request and there are proof that this will cause prejudice to the surety.

Article (1096)

The surety is entitled to call upon the debtor to reimburse him the expenses incurred in the implementation of the suretyship contents.

Article (1097)

If the debtors are jointly and separately liable, any of their sureties, requested by all of them, may have a claim on any of them for the portion of the debt paid by him.

Article (1098)

The surety may not take a consideration in exchange of his suretyship and, if he does, he must return it to its owner. The suretyship shall be forfeited if he takes the consideration from the creditor, the debtor or a third person with the knowledge of the creditor. If, however, he takes it without the knowledge of the creditor, he shall be bound by the suretyship as well as by giving back the consideration.

## Section IV: End of the Suretyship

### Article (1099)

The suretyship comes to an end by any of the following events:

- a) Paying the debt.
- b) Perishing of the property in the possession of the secured debtor, due to force majeure, prior to its request.
- c) Cancellation of the contract giving rise to the right which the secured debtor has to honor.
- d) Discharging the surety from his suretyship or the debtor from his debt.
- e) Death of the secured debtor.
- f) Bringing the secured debtor at the place of delivery after expiration of the term fixed even if the beneficiary of the suretyship refuses to take delivery, unless unduly prevented.
- g) Bringing the secured debtor prior to the expiration of the term and there is no harm to the beneficiary of the suretyship from taking delivery thereof.
- h) If the secured debtor delivers himself voluntarily.

### Article (1100)

The surety for the price of sale is released from his suretyship if the sale is rescinded, or the thing sold is dispossessed, or returned due to a defect therein.

### Article (1101)

If the surety or the secured debtor makes a compromise with the creditor on a portion of the debt, both shall be discharged of the balance, but if the compromise states that the surety alone shall be discharged and the creditor shall have a choice either to take from the surety the portion of the debt object of the compromise and the balance from the principal or claim from the principal the whole debt.

### Article (1102)

Upon death of the beneficiary of the suretyship, the right devolves to his heirs.

### Article (1103)

If the creditor dies and his estate devolves exclusively to the debtor, the surety is released from the suretyship and if he has, in addition, another heir, the surety shall only be released from the share of the debtor in the estate.

### Article (1104)

The surety, in a temporary suretyship, shall only be bound to fulfill the obligations resulting during the period of the suretyship.

### Article (1105)

1. If the surety or the debtor refers the creditor, for the entire secured debt or part of it, to another person by virtue of a transfer of right accepted by the transferee or by this other person, both the principal and the surety shall be discharged within the limits of this transfer.

2. If the discharge of the surety only is stipulated as a condition in the transfer, he will be discharged alone to the exclusion of the principal.

## Chapter Two. Transfer

### Section I: Formation of a Transfer

#### Article (1106)

The transfer is an assignment of debt and of the claim from the transferor to the transferee.

#### Article (1107)

The transfer is a binding contract, unless one of its parties has reserved for himself the option to revoke it.

#### Article (1108)

1. Transfer may be restricted or absolute.

2. A restricted transfer is one that restricts, upon its execution, the debt which is due to the transferor from the transferee, or the property which he holds in trust or in guaranty.

3. The absolute transfer is the one which has no restriction of this sort, even if existing.

#### Article (1109)

1. The validity of a transfer is conditioned upon the acceptance of the transferor, the transferee and the third party beneficiary.

2. The transfer is formed between the transferor and the transferee provided it is accepted by the concerned creditor

#### Article (1110)

The validity of the transfer is conditioned upon the transferor being indebted to the concerned creditor but not upon the transferee being indebted to the transferor. If the transferee accepts the transfer, he shall be liable to pay the debt to the concerned creditor.

#### Article (1111)

The beneficiary in a mortmain may transfer his right, when due, to a third party and refer him to the person in charge of the mortmain if the proceeds of the wakf were in his possession prior to the transfer.

#### Article (1112)

The acceptance of the father or of the guardian of a transfer on a third party is possible, if it is beneficiary to the minor, such is

the case when the transferee is more solvent than the transferor, but not admitted if he is near or equal to him in solvency.

#### Article (1113)

In addition to the general conditions, the formation of a transfer is conditioned upon:

- a) It must be executable and not subject to a condition precedent except if it is suitable or customarily acceptable but not deferred to a future date.
- b) Its execution should not be deferred to an unknown date.
- c) It should not be limited to a specific period.
- d) The thing transferred should be a known debt that can be substituted.
- e) The object of the transfer to the transferee, in a restricted transfer, should be a debt or a property that cannot be substituted and that the two objects be equal in kind, quantity and characteristics.
- f) It must not comprise a conditional or anticipated emolument to one of the parties. The transfer shall not be affected by an emolument added after its conclusion which shall not be due.

#### Article (1114)

1. The transfer is null if it lacks one of its constitutive conditions and the debt goes back to the transferor.
2. If the transferee has paid to the creditor prior to the revealing of nullity, he may claim it back from either the transferor or the creditor.

#### Article (1115)

The transfer is null if the cause of the debt, assigned to or transferred to, is void.

### Section II: The Effects of Transfer

#### 1. Between the Creditor and the Transferee

#### Article (1116)

When the transfer is validly formed, the creditor is entitled to claim the debt from the transferee; the transferor shall be released from the debt and the claim as well.

#### Article (1117)

The debt shall be transferred to the transferee with the same characteristics as on the transferor; if it is due immediately, the transfer shall be so and if deferred, the transfer shall be deferred.

#### Article (1118)

The creditor and the transferee may, after the formation of the transfer, agree on part of the debt or less, defer payment of the due

debt, pay the deferred amount before term, or take something in exchange of the debt unless this constitutes usury for late payment.

#### Article (1119)

The debt transferred shall maintain its securities despite the change in the person of the debtor. The surety, personal or pecuniary, however, shall not be bound towards the creditor unless he accepts the transfer.

#### Article (1120)

The transferee may, towards the creditor, avail himself of all incidental pleas of defense relating to the debt, which he had towards the transferor as he may exercise the pleas which the transferor has towards the creditor.

### 2. Between the Transferor and the Transferee

#### Article (1121)

The transferor may claim from the transferee the debt or the property owed by him to the former, if the transfer is not restricted to any of these and has fulfilled all its conditions. The transferee is not entitled to retain either of these until payment is made to the creditor.

#### Article (1122)

The right of the transferor to claim from the transferee the debt or property held by him shall be forfeited if the transfer is restricted and have satisfied its conditions. The transferor, however, shall not be discharged towards the creditor if he settles any of these to the transferor.

#### Article (1123)

In a valid transfer, of both kinds, the transferee may not abstain from settlement to the creditor even if the transferor has received from the transferee his debt or recovered the property that was with him.

#### Article (1124)

1. If the absolute transfer has been completed with the consent of the transferor, a set-off shall take place the debt that the transferee owes him and the amount paid in execution of the transfer.

2. In case he has no debt owed to him by the transferee, he shall have a claim against him after execution of the transfer.

### 3. Between the Creditor and the Transferor

#### Article (1125)

The transferor has to deliver to the creditor the instrument

establishing the right transferred as well as all information and means enabling him to exercise this right.

#### Article (1126)

Unless otherwise agreed, if the transferor warrants to the creditor the solvability of the transferee, this warrant applies only to his solvability at the time of the transfer.

#### Article (1127)

1. In case the transferor dies before collecting the debt of the restricted debt, the creditor shall be allotted the funds pertaining to the transferee or in his possession during the lifetime of the transferor
2. The due date of the debt shall remain as it is in the transfer, of both kinds, in case of death of the transferor, and the debt shall become due upon the death of the transferee.

#### Article (1128)

1. The restricted transfer shall be void if the debt is forfeited or the property is dispossessed due to a matter preceding the transfer. In this case, the creditor shall have a claim to recover his right from the transferor.
2. The restricted transfer shall not, however, be void if the debt is forfeited or the property dispossessed due to a reason that accrued subsequent to the transfer and the transferee shall, after settlement, claim back from the transferor what has paid.

#### Article (1129)

The creditor shall have a right of recourse against the transferor in the following instances:

- a) If the transfer is rescinded by mutual assent of the parties thereto.
- b) If the transferee denies the transfer and there is no proof of its existence and the transferee took an oath in denial thereof.
- c) If the property assigned by a restricted transfer perishes and it was not warranted.

### 4. Between the Creditor and Third Parties

#### Article (1130)

1. Where there are several transfers of the same right, the one that is first opposable to third parties shall prevail.
2. The assignment is not opposable to third parties except by a formal notification to the transferee or his acceptance thereof by virtue of a document bearing a certified date.

#### Article (1131)

1. If an attachment is laid down between the hands of the transferee prior to the time the transfer becoming opposable to third parties,

the transfer is considered, as regards the author of the attachment, as another attachment.

2. In this case, if an attachment is laid down after the transfer became opposable to third parties, the debt shall be divided between the author of the first attachment, the creditor and the author of the second attachment, in equal parts, provided it is taken from the share of the second seizer a sufficient amount to enable the creditor completing the amount of the transfer.

### Section III: End of the Transfer

#### Article (1132)

The transfer ends by settling its object to the creditor effectively or de jure.

## BOOK THREE. THE PRINCIPAL REAL RIGHTS

### PART ONE. RIGHTS OF OWNERSHIP

#### Chapter One. The Right of Ownership Generally

##### Section I: Limits and Protective Measures

#### Article (1133)

1. Ownership right is the power given to the owner to freely dispose, use and enjoy of his property.

2. The owner of a thing has alone, the right to enjoy the property owned, its yields, fruits and products and to dispose of the property by all acts of disposition allowed by law.

#### Article (1134)

1. The owner of a thing owns everything that constitutes an essential element of it which cannot be separated therefrom without having the thing perish, deteriorate or change.

2. Unless otherwise stipulated by law or provided in the agreement, the ownership of land includes that which is above and below, as far as it can be usefully enjoyed in height and depth.

#### Article (1135)

1. No one can be deprived of his property without lawful reason.

2. Expropriation for public utility may take place against a fair compensation and in accordance with the law provisions.

##### Section II: Restrictions on the Right of Ownership

#### 1. General Provisions

Article (1136)

An owner has the right to dispose freely of his property, unless his act is excessively detrimental to others or constitutes a violation to the law or to the regulations concerning public or private interest.

Article (1137)

Excessive detriment may cause weakness of construction, its demolition or deprivation of the essential necessities, that is the utilities intended from construction.

Article (1138)

When third parties interests are tied up with the property, the owner may not dispose of it in a manner detrimental to the right owner without his consent.

## 2. Restrictions As to Neighborhood

Article (1139)

Obstructing light from the neighbor is considered excessive detriment, so no one is allowed to erect a construction blocking the windows of his neighbor's dwelling in such a manner as to obstruct light from him, otherwise the neighbor may ask the removal of such construction in driving away any prejudice he may sustain.

Article (1140)

If someone has a property of which he lawfully dispose and another person erects in the neighborhood a construction which has been prejudiced by the old situation, the owner of the recent construction may not allege prejudice and he has to drive away from him any damage that he may sustain.

Article (1141)

1. The owner or the person benefiting from the use of the airspace over the property through which have spread the tree branches of another person, has the right to claim the removal of what has trespassed his airspace even if no damage occurred to him. Should he abstain, he is liable compensate what has perished because of him. The prejudiced party is moreover entitled, without need to a court order and without liability on his part, to remove what has spread over his property even by cut - off, if this is the only way to eliminate the damage.

2. The same remedy shall apply to the tree roots which have spread within the land of others.

Article (1142)

The owner of the building is entitled to ask the prevention of his neighbor from planting trees in the vicinity of his building, if such trees are of a kind that has roots that may spread and, if planted, he



has the right to ask for its plucking.

Article (1143)

1. A neighbor may neither compel his neighbor to erect a wall or similar partition on the boundaries of his property nor to desist himself from part of the wall or of the land on which it is erected.
2. The owner of the wall is not entitled to demolish it without strong excuse, if this is prejudicial to his neighbor whose property is sheltered behind this wall.

Article (1144)

1. The owner must not exercise his right in an excessive manner to the extent detrimental to his neighbor's property.
2. The neighbor has no right of action against his neighbor for the usual unavoidable inconvenience, but he may claim the suppression of these inconveniences if they exceed the usual limits, taking into consideration in this respect custom, the nature of the immovable properties, their respective locations and the use for which they are intended. The license issued by the competent authorities is not a bar to the exercise of such a right of action.
3. Restricting the Rights of the Person in Favor of whom the Act of Disposition has been taken.

Article (1145)

The owner may not provide in his act of disposition, whether a contract or a will, conditions restricting the rights of the person in favor of whom it has been taken, unless these conditions are licit and are intended to protect a lawful interest of the disposer, the disposed to or a third party for a limited period.

Article (1146)

Every condition preventing the party disposed to from disposing shall be void unless it fulfills the provisions of the preceding article.

#### 4. Right of Way

Article (1147)

A private road is like a co-ownership to those who have the right of passage on it. None of the right owners may do anything thereon without authorization of the other co-owners.

Article (1148)

1. Passers-by on a public road, when have the right of passing through a private road.
2. The owners of the private road may not agree to sell or partition it or close its point of ingress.

Article (1149)

None other than the co-owners of a private road may open a door on it

or have passage on it.

#### Article (1150)

If one of the co-owners of a private road blocks a door opened on it, he shall not forfeit his right of way and he, or his predecessor, may reopen it.

#### Article (1151)

Costs of the private road construction have to be borne by each of the co-owners in proportion to the benefit accrued to each.

### Section III: Joint Ownership

#### 1. General Provisions

##### Article (1152)

Without prejudice to the provisions concerning inheritance shares of each heir, when two or more persons are owners of the same thing, through any of the reasons of acquisition of property, but their respective shares in it are not allotted distinctively, they are joint owners and, in the absence of a proof to the contrary, they shall have equal shares in the joint property.

##### Article (1153)

1. Each of the co-owners in the property shall be entitled to alienate freely of his share without obtaining the permission of the other co-owners provided he does not cause prejudice to the rights of all other co-owners.

2. When the alienation is focused exclusively on a separate part of the joint property and, upon partition, this part is not allotted to the disposer; the right of the acquirer of the alienated part is transferred, as of the date of alienation, to the part accruing to the disposer as a result of the partition. If the acquirer did not know that the disposer did not own the property alienated separately at the time of the contract, he shall have, as well, the right to annul the alienation.

##### Article (1154)

In the two cases of commingling and confusion, a co-owner in common may not alienate his share without the authorization of the other co-owner.

##### Article (1155)

1. 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.

2. When one of the co-owners assumes the management without objection from the other co-owners, he shall be considered acting as a proxy to them.

#### Article (1156)

1. A decision taken by the majority of 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.
2. Failing a majority, the co-owners may appoint a manager and establish, for the management and enjoyment of the property, rules applicable on all the co-owners, their successors, general or special; otherwise one of the joint co-owners may apply to the court to take the necessary measures for the preservation of the property and appoint a manager thereof.

#### Article (1157)

1. Co-owners who possess at least three quarters of the property held in common may decide, in order to obtain a better enjoyment of the property, to make essential modifications or changes, in the purpose for which the property was intended, which exceed the normal scope of management, provided that these decisions are officially notified to the other co-owners. Dissenting co-owners are entitled to refer the matter to the judge within two months from the date of notification.
2. The judge before whom the matter was referred, if he approves the decision taken by the majority, take whatever decision he deems appropriate as to the measures to be taken. He may, in particular, order that security be given to the dissenting co-owner so as to guarantee any compensation that may become due to him.

#### Article (1158)

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

#### Article (1159)

The costs of managing the joint co-ownership and its preservation, as well as taxes imposed on it and all other charges resulting from common property or encumbering the property shall be borne by all co-owners, each in proportion of his share.

### 2. Cessation of Joint Ownership

#### Article (1160)

Partition is the division, by consent or by order of the judge, of the common property and specifying the share that was held in common.

#### Article (1161)

The allotted part in property must be divisible and owned by the co-owners when operating the partition.

#### Article (1162)

Without prejudice to the provisions of the other laws, whoever wishes to end the status of common property and was not, in this respect, in

agreement with the other co-owners, is entitled to apply for a judicial partition.

Article (1163)

The validity of a partition by agreement requires the consent of every partitioner.

Article (1164)

1. The validity of a judicial partition requires that it be requested by one of the co-owners.
2. The judicial partition shall take place even if one of the co-owners disagrees.

Article (1165)

The property held in common must be divisible in such a manner as not to depart from the benefit aimed at by the partition.

Article (1166)

When a property cannot be divided in kind or when such partition involves a serious diminution in the value of the property object of partition, every co-owner is entitled to sell his share to another co-owner or petition the judge to sell it in the manner laid down by the law; the auction being restricted to the co-owners in common if they ask for it unanimously.

Article (1167)

1. The personal creditors of any co-owner may oppose the partition, whether reached by agreement or judicially, through a notification served on all co-owners, if partition is conventional, or an intervention in the proceedings, if judicial.
2. The partition shall be without effect as regards the creditors if the co-owners do not have them intervene in all stages of the proceedings.
3. If the partition has already taken place, the creditor who has not intervened cannot attack it unless there has been fraud.

Article (1168)

When a debt on the decedent shows up after the partition of the estate, the partition is cancelled unless the debt is paid by the heirs or they have been discharged by the creditors or there is a property other than the divided one of which the debt can be paid.

Article (1169)

The co-owner, party to the partition, is the sole independent owner of his share allotted to him after the partition.

Article (1170)

The partition may not be revoked after its completion. All the partners may, however, rescind and terminate the partition by agreement between them and restore the divided property in its common

status as it was.

#### Article (1171)

Partitioning things of different species and those in kind of the same species shall be subject to the provisions applicable to acceptance on condition, after sight examination and option of rescission on grounds of defect. As to partition of fungibles, they shall be subject to the option of rescission on grounds of defect to the exclusion of the two other provisions concerning acceptance on condition and after sight examination.

#### Article (1172)

1. Whoever, in a partition by consent, has fallen under serious inequity, may request from the judge the rescission of the partition and order a new partition on equitable basis.
2. Inequity shall be evaluated on basis of the value of the partitioned property at time of partition.

#### Article (1173)

The action for rescission and re-partitioning shall not be heard if it is not instituted within the year following the partition.

#### Article (1174)

The partition is void if the property partitioned dispossessed as a whole or only a part of it held in common and, in this latter case a new partition shall take place for the remaining part of it.

#### Article (1175)

The partition of a non authorized agent is contingent upon the approval, by words or by act, of the co-owners of the partitioned property held in common.

### 3. Partition of Usufruct

#### Article (1176)

Partition of usufruct is the sharing of enjoyment which may be temporal or spatial. In the former, the co-owners of the common property successively enjoy the whole common property for a period proportionate to the share of each one of them; in the latter, each of the joint owners enjoy a specific part of the common property.

#### Article (1177)

1. In temporal sharing of usufruct, the period of time must be specified, while this is not required in spatial enjoyment of common property.
2. The co-owners shall agree on the period of time of sharing the usufruct, otherwise the court shall fix the period considered by it as adequate, taking into consideration the nature of the dispute and of the common property, and shall draw lots to specify the start of the

temporal sharing of usufruct and determine the place in the spatial enjoyment of common property.

#### Article (1178)

As concerns the opposability towards third parties, the capacity of the co-owners, their rights and obligations and the means of proof, the sharing of usufruct shall be subject to the provisions of the lease contract, if not in contradiction with the nature of this partition.

#### Article (1179)

1. The co-owners shall agree, during the process of the final partition to share the enjoyment of the common property between them until the completion of such partition.

2. If the co-owners do not reach an agreement as to sharing the enjoyment of the common property, the judge may, upon request of one of the co-owners, order it and he may, in this respect, seek the assistance of experts if need be.

#### Article (1180)

1. If one of the co-owners of the divisible common property asks the partition and the other co-owner asks sharing the enjoyment thereof, the action in partition shall be admitted.

2. If one of them asks sharing the usufruct, while none has asked the partition, and the other one refrains, he shall be compelled to accept sharing the usufruct.

3. If one of the co-owners asks for sharing the usufruct of a common property that is not divisible and the other abstains, he shall be compelled to accept sharing the usufruct.

#### Article (1181)

Sharing the usufruct shall not be void by the death of one or all of the co-owners and the heirs of the deceased shall replace him.

### 4. Compulsory Joint Ownership

#### Article (1182)

With due compliance with the provisions of articles (1165) and (1166) of the present law, co-owners in a commonly held property are not entitled to ask for its partition if it is revealed from the purpose for which it was affected that the property must always remain held in common.

### 5. Family Joint Ownership

#### Article (1183)

The members of the same family who have a common occupation or interest may agree in writing to establish a family joint ownership.

This joint ownership consists either of an inheritance which the members of the family agree to leave wholly or partly in joint ownership or of any other property belonging to them which they agree to place in such joint property.

Article (1184)

1. A family joint ownership may be established 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.
2. When no period is fixed for such 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 (1185)

1. 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 co-owners.
2. If a person who is not 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 co-ownership if he and the other co-owners consent thereto.

Article (1186)

1. Co-owners who own the majority in value of the shares may appoint amongst themselves one or more managers to administer the common property. 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.
2. A manager may be discharged in the same manner as he was appointed,. The court may also, upon the request of any owner, discharge him if there is a serious cause justifying such discharge.

Article (1187)

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

## 6. Ownership of Storeys in Buildings

Article (1188)

1. 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, or any part registered under this description, or if the nature of the building require that it be of common use; especially comprising the following:

- a) The foundations, the main walls.
  - b) Common separating walls and walls affected to entrances and to support the ceilings.
  - c) Ventilation canals for utilities.
  - d) Floor supports, vaults, entrances, yards, roofs, stairs and staircases, passages, corridors, floor supports, lifts and concierge rooms.
  - e) Heating and cooling apparatuses, all kind of pipes, gutters, drains, common installations and extensions such as lighting and water supplies and their supplements and all that are considered ancillaries to the building with the exception of those that are inside the storeys or the apartments.
2. All the above, in the absence of any provisions to the contrary in the title deeds or private law.

Article (1189)

Common parts in the building, as stipulated in the preceding article, cannot be divided; the share of each owner shall be proportionate to 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.

Article (1190)

The inner walls which separate two apartments belong in common property to the owners of these two apartments if not considered among the common parts.

Article (1191)

Every owner may utilize the parts held in common, in accordance with the use they are intended, provided he does not prevent the other owners exercising their rights.

Article (1192)

Every owner must participate in the cost of the preservation, maintenance, management and reconstruction of the parts held in common. Unless otherwise provided in the building management statutes, the share of every owner in these costs will be calculated in proportion to the value of his share in the building. Every owner causing an increase in the costs of the building shall be responsible to cover such increase.

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

Article (1193)

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, is to the benefit of such parts without changing their allotment or sustaining prejudice to the other owners.

Article (1194)



1. The owner of a lower storey is bound to execute works and repairs necessary to prevent higher storey from falling.
2. If he refuses to execute the necessary repairs, the judge may, upon request of the prejudiced party, may order the execution of the necessary repairs and the prejudiced party is entitled to claim from the owner of the lower storey the costs sustained by him.

#### Article (1195)

1. If the building falls down, the owner of the lower storey is bound to rebuild his storey as it was, failing which, and in case the owner of the higher storey rebuilds it, with his consent or with permission of the judge, he may claim from the owner of the lower storey his share in these costs paid by him.
2. If the owner of the lower storey refuses to rebuild and this was done by the owner of the upper storey without the judge's authorization or the consent of the owner of the lower storey, he may only claim from the latter his share in the building at the time of reconstruction.
3. If the owner of the upper storey rebuilds the lower storey without referring to its owner and establishing his refusal, the former shall be considered as donating these costs and he has no claim whatsoever against the latter.
4. In the two first instances, the owner of the upper storey may prevent the owner of the lower storey from disposing and making use of his storey until he has repaid the amount due to the former. He may also let it, with the judge's authorization and recover his right from the rent.

#### Article (1196)

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

### 7. Union of Owners of Storeys and Apartments

#### Article (1197)

1. Whenever there is a joint property of a building divided into storeys or apartments, the owners thereof may constitute between themselves a Union to manage it and ensure proper use.
2. The objective of constituting such Union may also be the construction or the acquisition of buildings with a view to allocating the ownership of parts of such buildings to members of the Union.
3. In its formation, statutes, management and powers and all other matters of its concern, the Union shall be subject to the relative law provisions.

### 8. Party Wall

#### Article (1198)

Any of the partners in a party wall may not heighten the wall by increasing construction on it without authorization of the other partners.

Article (1199)

1. If a partner in a party wall has a serious interest in heightening it, he may do so on his own expenses provided he does not cause a serious prejudice to his partner. He is responsible of its maintenance and of making it fit to support the burden of its heightening without affecting its ability thereto.

2. If the party wall is not fit to support the heightening, the co-owner who desires to heighten the wall must reconstruct it 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.

Article (1200)

A neighbor who has not contributed to the expenses of heightening may become a co-owner 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 (1201)

1. An owner of a party wall is entitled to make use of it for the purpose for which it is normally intended and to put on it to support the roof without making it support too great a weight for its strength.

2. 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-owners in proportion to their respective shares in it.

Article (1202)

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.

## Chapter Two. Reasons of Acquisition of Property

### Section I: Appropriation of a Property Without an Owner

#### 1. Movables

Article (1203)

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

Article (1204)

1. A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing his ownership thereto.
2. Animals, other than domestic animals, are deemed to have no owner so long as they are at liberty. Tamed animals which were accustomed to return to their specified place and then have lost this habit, become without an owner.

Article (1205)

1. Treasures found in a land owned by a specific person are deemed to be his ownership but he has to pay one fifth to the State.
2. Treasures explored in a land owned by the State are fully owned by such State.
3. If, however the land is duly in mortmain, whatever explored therein belongs to the Wakf.

Article (1206)

Minerals found buried in a land is State ownership even if found in a land that has an owner.

Article (1207)

Matters concerning, treasures, minerals as well as the right of fishing, the right to things found and to antiquities are governed by special laws.

Article (1208)

Whatever thing of pecuniary value thrown by the sea and its property has not been claimed by anyone is the property of the founder who first has taken possession thereof. If ownership is claimed by a non Muslim or a non Dhimmi, one fifth of it goes to the State Treasury and the balance to the founder. If it was preceded by a claim in ownership by a Muslim or Dhimmi, it is for its owner, if he has knowledge thereof, otherwise it shall be deemed an abandoned thing.

## 2. Immovable Property

Article (1209)

1. Uncultivated land which has no owner is the property of the State.
2. The appropriation or the possession of uncultivated land can only be effected with the authorization of the State in accordance with the laws in force.

Article (1210)

An uncultivated land is a land with no affectation neither by ownership or use. Affectation takes place by developing the land, by its becoming within the inviolable domain of a State, a well, a tree or a dwelling.

Article (1211)

1. Whoever develops or constructs an uncultivated land with authorization of the State, becomes the proprietor thereof.
2. The competent authority may authorize the development of an uncultivated land by using it for his benefit without appropriating it.

#### Article (1212)

When a person develops part of a land by authority of the State and leaves the other part, he becomes owner of the developed part to the exclusion of the other part unless the uncultivated part falls in the middle of the developed lands.

#### Article (1213)

The development of an uncultivated land takes place by erecting a construction on it, planting trees, drilling water from it or the like and it becomes the property of the one who developed it. If it is abandoned for a long period of time and developed by another person it will become, by its development, the property of this other person. This land will also become the property of the latter, even before the lapse of a long time after its abandonment by the former, if the first developer keeps silent without justification after his knowledge thereof. If, however he does not keep silent or if his silence is excused, it will remain his property but the second developer will be entitled to the gross value of what he developed, in the first instance, and the reduced value, in the second instance.

#### Article (1214)

The inviolable domain of a State is its points of ingress and egress, its wood cutting area and its pastures. The inviolable parts of a dwelling are the easements enjoyed by its inhabitants during their living therein. Easements of dwellings gathered in one domain may be enjoyed by the inhabitants of each dwelling in as much as no prejudice is sustained by their neighbors. The inviolable well is its output sufficient for drinking and irrigation and that prejudice will be sustained if any thing affects its output or water. The inviolable space of a tree is all what it needs for its irrigation, the extension of its roots and branches and that prejudice will be sustained if anything adversely affects its growth. The inviolable space is reserved for the inhabitants of the State or dwelling, or the owner of a well or tree and they may prevent others from enjoying it or do anything in such domain.

#### Article (1215)

1. Whoever acquires a land through purchasing or is bestowed it by inheritance or donation from the developer, then it was abandoned, it shall not cease to be his property by its abandonment regardless of the period of abandoning it.
2. If it is developed by another person, he shall not acquire its ownership through developing it except by a possession having duly fulfilled its conditions.

#### Article (1216)

1. Walling an uncultivated land is not considered as developing it.
2. Whoever walls a land he shall have preference over all others for a period of three years. If, however, he does not develop it within this period of time, the land may be given to another person provided he develops it.

#### Article (1217)

Whoever drills a well in an uncultivated land, by authorization of the competent authority, it becomes his property.

### Section II: Amodiation

#### Article (1218)

The yields of an exploited land are the ownership of the exploiter and it is conditioned upon the possibility of being initially appropriated.

### Section III: Inheritance and Liquidation of the Estate

#### 1. General Provisions

##### Article (1219)

1. The heir shall acquire by inheritance the immovable and movable properties as well as the rights included in the estate.
2. The designation of the heirs, their shares in the succession and the devolution of the estate is governed by the precepts of the Islamic Sharia and the laws issue in application thereof.

#### 2. The Estate

##### A) General Provisions

##### Article (1220)

1. In the absence of the appointment, by the decedent, of an executory custodian to his estate, the court may, at the request of one of the concerned parties, appoint as administrator of the estate a person chosen unanimously by the heirs, failing such unanimity the judge shall, after having heard the heirs, choose such administrator.
2. If among the heirs there is a fetus in gestation, an incapacitated person or lacking capacity or an absent, the provisions of the special laws should be observed.

##### Article (1221)

The appointment of an administrator by the deceased must be confirmed by the judge, if so requested by one of the concerned parties.

Article (1222)

1. The appointed administrator of the estate may resign his duties in accordance with the provisions governing mandate.
2. The judge, upon request of a concerned party or the public prosecution, or even without request at all, may, whenever justified, discharge the administrator and appoint another one.

Article (1223)

1. The Court shall enter, in an ad hoc register, the orders appointing administrators of the estate, confirm their appointment if made by the decedent, their discharge or their renunciation.
2. Such entry shall produce its effect on those dealing with third parties, as concerns the immovable properties belonging to the estate.

Article (1224)

1. The administrator of the estate shall, pursuant to his appointment, take possession of the property of the estate and proceed with their liquidation under the control of the judge. He may ask for remuneration to be appreciated by the judge.
2. The estate shall bear the costs of the liquidation and these costs shall have a privilege in the same preferential rank as legal expenses.

Article (1225)

The judge must, when necessary, take all necessary measures for the preservation of the estate. He may, in particular order that the cash money, securities and articles of value, be deposited with the Treasury of the court, in which jurisdiction all or most of the estate property is situated, until completion of the liquidation process.

Article (1226)

The administrator of the estate has to pay out of the assets of the estate:

- a) Burial and funeral expenses.
- b) Sufficient alimony, up to an acceptable limit to be paid, out of these assets, to the needy heir until liquidation of the estate after obtaining a court order to pay it and to deduct this alimony from the share in the estate of each heir to whom such alimony is paid.
- c) Any dispute arising as regards such allowance shall be settled by the judge.

Article (1227)

1. As from the date of appointing an administrator of the estate, the creditors may only take proceedings, or continue those already commenced in connection with the estate, against the administrator.
2. All proceedings taken against the decedent must, at the request of any interested party, be suspended until settlement of all debts on the estate.

Article (1228)

No heir may, before receiving an inheritance certificate showing his share in the net estate, dispose of estate assets, recover estate debts, or set off a personal debt against a debt of the estate.

Article (1229)

1. The administrator of the estate is bound to take the necessary measures to preserve its assets, perform all necessary acts of administration, represent the estate in the actions brought before the court and recover the debts due to the estate.

2. The administrator of the estate, even if not remunerated, is responsible to the same extent as a paid proxy. The Court may call on him to render an account of his administration at fixed intervals.

Article (1230)

1. The administrator of the estate must address to its creditors and debtors a notice calling upon them to submit a statement of all their claims and debts, within a delay of two months from the publication of such notice.

2. The notice must be posted on the notice board of the court within which jurisdiction the decedent was last domiciled and the court within the jurisdiction of which all or most of the estate assets are situated. This notice must also be published in a daily newspaper.

Article (1231)

1. The administrator of the estate must, within three months from the date of his appointment, file with the Court, which appointed him, an inventory statement of the assets and liabilities of the estate with an assessment of their value. He must also inform, by registered letter, all concerned of this filing.

2. He may apply to the judge for an extension of time, if this extension is justified.

Article (1232)

The administrator of the estate may, for the purpose of assessment of the value of the estate's assets and the preparation of their inventory, seek the assistance of an expert. He must also record all pertinent information disclosed by the papers of the deceased and those coming to his knowledge. The heirs must advise the administrator of all debts and claims of the estate known to them.

Article (1233)

Any person, including an heir, who fraudulently appropriates a part of the assets of the estate, is liable to the penalty provided for in the Penal Code for misappropriation.

Article (1234)

Any dispute as to the accuracy of the inventory should be filed with the competent court, within thirty days from the date of depositing the inventory statement.

## B) Settlement of the Debts of the Estate

### Article (1235)

- a. Upon the expiration of the delay fixed for the submission of disputes arising out of the inventory, the administrator of the estate will proceed, upon the authorization of the Court, with the payment of the uncontested debts of the estate.
- b. Debts which are contested will be settled after the final decision of the court on their veracity.

### Article (1236)

In the event of the estate being insolvent, or of the possibility of it being so, the administrator must suspend the settlement of any debt, even if uncontested, pending final decisions in respect of all disputes concerning the estate.

### Article (1237)

1. The administrator will discharge the debts of the estate with funds derived from claims recovered, cash in hand, proceeds of the sale of movables belonging to the estate and, if insufficient, from the sale price of real estates.

2. 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 in the Law on Procedures before the civil courts\* unless all the heirs agree on another manner. If the estate is insolvent the approval of all the creditors, to the manner agreed upon between the heirs, is necessary. The heirs are always entitled to take part in the auction.

\* The Law on Procedures Before the Civil Courts issued by virtue of Federal Law No.(11) of 1992 dated 24/02/1992

### Article (1238)

The Court may, at the request of all heirs, pronounce that the debt covered by a real security has become immediately due for payment, and fix the amount payable to the creditor.

### Article (1239)

Any heir may, after distribution of the deferred debts that are covered by a real security, pay the amount allocated to him before the due date.

### Article (1240)

Creditors of the estate, whose debts have not been paid because they were not shown in the inventory and were not covered by a real security on the property of the estate, have no remedy against whoever acquired in good faith a real right on this property, but have a claim against the heirs to the extent to which they have benefited from the estate.



Article (1241)

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

C) Delivery and Partition of the Estate

Article (1242)

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

Article (1243)

1. The administrator of the estate shall deliver to the heirs the property of the estate devolving on them.
2. The heirs may, upon the expiration of the time fixed for the submission of the disputes relating to the inventory of the estate, demand that all or part of the things or cash which are not required for liquidation be provisionally delivered to them, with or without security.

Article (1244)

The court will, upon request of one of the heirs or of the interested parties, issue a certificate of inheritance specifying the legal heirs and the share of each in the inheritance.

Article (1245)

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

Article (1246)

1. If the request for partition is acceptable, the administrator of the estate will proceed with the partition provided it will become final only upon the unanimous approval of the heirs.
2. If the heirs do not unanimously approve the partition, the administrator of the estate will ask the court to effect the partition in accordance with the provisions of the law; the cost of the action in partition will be deducted from the shares of the heirs.

Article (1247)

The partition of an estate shall follow the rules governing partition of property, as well as the provisions of the following articles.

Article (1248)

If there is, amongst the property of an estate, an agricultural, industrial or commercial enterprise constituting a distinct economic entity and the heirs did not agree on carrying on the exploitation thereof, and third parties have no claim on such property, 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, provided that the value of the property is determined and 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 will not be less than the price for similar enterprises.

Article (1249)

If, at the time of partition, 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 bankrupt subsequent to the partition.

Article (1250)

A will dividing the property of the estate between the heirs of the testator 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 (1251)

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

Article (1252)

If the partition does not include all the property of the decedent at the date of his death, the property which has not been included in the partition devolves in common on the heirs in accordance with the rules of inheritance.

Article (1253)

If one or more of the contingent heirs included in the division predecease the decedent, the divided part allotted to him or them devolves in common on the other heirs in accordance with the rules of inheritance without prejudice to the rules concerning the mandatory will.

Article (1254)

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

Article (1255)

If the debts of the estate are not included in the partition, or if they are included and the creditors do not agree to the partition, any heir may, if these debts are not settled in agreement with the creditors, petition the court for partition and settlement of debts, provided that account must be taken, as far as possible, of the partition made by the decedent and the considerations which guided him

to reach such partition.

### 3. Rules Applicable to Estates That Have Not Been Liquidated

#### Article (1256)

If the estate has not been liquidated in accordance with the preceding provisions, the unsecured creditors of the estate may take action, in respect of their claims or legacies, on the immovable property of the estate which has been alienated or which has been encumbered with real rights to the benefit of third parties, provided that they have laid down an attachment prior to the registration of the alienations.

### Section IV: Acquisition by Will

#### Article (1257)

1. A will is an act of disposition taken by a person to be executed after his death.
2. The legatee acquires the ownership of the property bestowed upon him by will.

#### Article (1258)

A will is governed by the rules of the Islamic Sharia and the law provisions deriving therefrom.

#### Article (1259)

Legal action concerning a will or oral revocation thereof may not, in case of denial, be heard after the death of the testator unless are found official papers or papers completely written and signed in the handwriting of the testator, or if the paper on which is written the will or the revocation thereof bears the certified legal signature of the testator.

#### Article (1260)

1. Every legal act made by a person during an illness immediately preceding his death, with the purpose of making a gift, is deemed to be a testamentary disposition and will be governed by the rules applicable to wills regardless of the description given to such an act.
2. The heirs of the decedent have to prove that the disposition has been made by their decedent during an illness immediately preceding his death. The legal instrument establishing the act cannot be invoked against the heirs unless the instrument bears a certified date.
3. If the heirs establish that the act of disposition was made by the decedent during the illness immediately preceding his death, the act is deemed to be a gift, unless otherwise proven by the beneficiary of such act or there exist special provisions to the contrary.

#### Article (1261)

When a person disposes of a property in favor of his heirs, reserving at the same time the possession and the enjoyment of this property during his lifetime, the disposition is deemed to be a testamentary disposition and, in the absence of any evidence to the contrary, shall be governed by the rules applicable to wills.

## Section V: Accession

### 1. Accession in Respect of an Immovable Property

#### A) Accession by Act of Nature

##### Article (1262)

Alluvium brought by the river to the land of a person becomes his property.

##### Article (1263)

1. The owner of a land displaced as a result of an Act of God may claim such land if it can be determined for sure. The owner of the enriched land shall guarantee to the owner of the impoverished land payment of its value and acquire its ownership.

2. Court action regarding the claim of such land will not be heard after the lapse of one year from the date of such incident.

##### Article (1264)

Large or small islands, formed by nature in the river channel, are deemed to be part of the State domain.

##### Article (1265)

Large or small islands formed within lakes, as well as lakes and sea alluviums are considered State property.

##### Article (1266)

Land uncovered by the sea, lakes, ponds or swamps, which have no owner are considered State property.

#### B) Accession by Act of Man

##### Article (1267)

All constructions, plantations or works existing on the land are, in the absence of evidence to the contrary, deemed to have been carried out by the owner of the land at his own expense and belong to him.

##### Article (1268)

Constructions erected by the owner of the land, on his land but with materials belonging to another and without his consent, and if these materials still exist and their recovery is claimed by their owner, the land owner must return same to him. In case such materials are

obsolete or depleted, the owner of the land must pay its value to their owners. In both instances, an indemnity, if justified, has to be paid.

#### Article (1269)

When a person carries out a construction, plantation or other erections with his own materials on land which he knows is not his property, without the consent of the owner of the land, the latter is entitled to demand the removal of these works at the expense of the one who erected them. When the removal is detrimental to the land, the owner of the land may appropriate these works at their break up value.

#### Article (1270)

When a person carries out a construction, plantation or other erections with his own materials on land owned by a third party, basing himself on a lawful cause,, then if the standing value of these erections is greater than the value of the land, the author thereof may appropriate the land at a price equal to that paid for similar land. If the value of the land is not below the value of the added erections, the owner of the land may acquire the erections at their standing value.

#### Article (1271)

If a third party carries out works with his own materials, with the permission of the owner of the land, the latter 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, the standing value of these works.

#### Article (1272)

If a third party carries out plantation or other erections with materials belonging to another, 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 outstanding amount due by him in respect of the value of the works.

#### Article (1273)

When one of the share owners, in a divisible common property, builds for himself, without the consent of the other co-owners, then the property was partitioned and, if the built - up part falls in the lot allocated to the builder, it becomes his property, but if it falls in the lot allocated to the other co-owner, he may acquire ownership thereof at their removal value or he may ask the builder to demolish what he erected.

## 2. Accession of Movable Property

#### Article (1274)

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 an agreement between the owners, shall decide the matter under litigation guided by custom and rules of equity and justice, taking into consideration the damage already done, the condition of the two parties and their good faith.

## Section VI: The Contract

### Article (1275)

The ownership of movables, immovable properties and other real rights are transferred by contract whenever satisfying its basic elements and conditions as set forth in the Law and without prejudice to the following articles.

### Article (1276)

Ownership of movables not specified as to their species is transferred only by identification.

### Article (1277)

Ownership of immovable property and of other real rights are not transferred, either between parties or as regards third parties, except by registration in accordance with the relative law provisions.

### Article (1278)

An undertaking to transfer ownership of an immovable property is restricted to the obligation of paying a compensation if the promisor breaches his undertaking whether or not it provides for compensation.

## Section VII: Preemption

### 1. General Provisions

#### Article (1279)

Preemption is the entitlement of a co-owner having a share in an immovable property to take the share of his partner who has transacted his share against its price, in a financial transaction, and for its value in a non-financial transaction, which indicates that he accepts to take it at its customary value.

#### Article (1280)

The right of preemption belongs to:

- 1) The Nazir of a mortmain on a common property if the settlor has entitled him to take the share of a co-owner by preemption for retention purposes.
- 2) The person entitled to the mortmain property after expiration of its term or after the death of all beneficiaries, if the mortmain property is a common real estate and one of the co-owners has sold his share in it.

#### Article (1281)

The right of preemption does not belong to:

- 1) The beneficiary of a mortmain to part of a real estate held in common between the settlor and another person, if the co-owner sells his share irrespective of the fact that the beneficiary intended to mortmain the share that he wanted to take by preemption, unless he is the one entitled, at the end of the mortmain, to the share to which he is the beneficiary; in which case he shall be entitled to take it by preemption in full property.
- 2) The neighbor, in the event of sale of an adjoining property, even if he may have a right of way through a lease or an easement.
- 3) The Nazir of a mortmain on a common property if the non - mortmain share is sold, even if the Nazir intended to mortmain this share which he wanted to take by preemption, unless the settlor entitles him to take by preemption for mortmain purposes, in which case he may do so.

#### Article (1282)

A co-owner shall not have a preemption right in the following instances:

- 1) Crops, whether sold separately or with the land and, in this latter case, preemption may be exercised on the land alone to the extent of its share in the price, but the crops remain the property of the purchaser.
- 2) A well, in case the land that it waters is partitioned and the well remains a common property but if the land is not partitioned, it is subject to preemption whether the co-owner sells his share in it separately or in conjunction with his share in the land.
- 3) The precincts of a house or a passageway giving access to it, whether the co-owner sells his share in each separately or in conjunction with his share in the house, if the house is partitioned but the precincts or the passageway remain common property between the two co-owners, and if the house is not partitioned the precincts and the passageway shall be subject to preemption as ancillaries thereto.
- 4) An animal unless it is attached to a commonly held property, for use in tilling or irrigation or the like, and the co-owner sells his share in the land and in the animal together, in which case it becomes subject to preemption as appurtenant to the property.

#### Article (1283)

The person against whom preemption is exercised is the owner of the share of one of the co-owners in full property supervening upon the ownership of the other co-owner by way of a transaction even if not pecuniary.

#### Article (1284)

The preempted property is a divisible real estate transacted by one of the co-owners, even by way of exchange with a similar real property, or if the real property is a building or trees owned by two co-owners of a land in mortmain. There will be no preemption if the real property is not divisible.

Article (1285)

1. If one of the co-owners sells his share in a commonly held real property and the other co-owners take this share by preemption, it shall be divided between them according to the shares and not per capital. If the purchaser is one of them, they shall leave him his share of the preemption in it, up to the purchase price, and shall not take from him the full share.
2. Shares will be considered as of the date of exercising preemption and not from the date of sale.

Article (1286)

1. If the preemptors are of different degrees, the preemption right belongs to the one who participates with the seller of the preempted property in the pre-determined share in the succession, and, if he forfeits his right, then to the heir who does not participate in a pre-determined share of the estate and, if this latter forfeits his right, then to the legatee, unless he forfeits his right, in which case it goes to the co-owner who is a stranger to the estate.
2. Each of the above-stated shall participate in the preemption of those who come after him in the scale of preemption but not vice versa. The heir of each one of them shall substitute him in his preemption right and in participating in the preemption with those in a lower degree in the scale of preemption.

Article (1287)

1. If there are several sales of a real property subject to preemption and the preemptor was unaware of the several sales, or if he had knowledge but was absent, he shall have the option to take by preemption at any of the sale prices and pay the chosen price to the purchaser who was in possession of the land even if it is lesser than the price at which he purchased, and the purchaser shall have a claim for the amount in excess against the seller. If the preemptor had knowledge of the successive sales and was present, he shall take it at the last sale price only.
2. If a preemptor accepts a sale, all subsequent rights shall be cancelled and all prior dispositions shall be affirmed. Any person whose purchase has been consequently annulled shall have a claim against the seller for the price he has paid to him and not for the value of the property.
3. Under all circumstances, if any defect appears in the property, or if it has been dispossessed, the purchaser shall be liable for the price of the accepted sale.

Article (1288)

A preemptor shall exercise preemption for himself and not for others and if he does exercise it for a third party, even as a gift to the latter or as a gratuity, the preemption will be annulled and his right to take it for himself will be forfeited.



Article (1289)

1. Preemption after sale shall be established whenever there is a justifying cause for it.
2. A donation for consideration shall be treated as a sale.

Article (1290)

The real property giving rise to preemption must belong to the preemptor at the time of purchasing the preempted property.

Article (1291)

Once established, preemption is not foreclosed by the death of the seller, the purchaser or the preemptor.

Article (1292)

Preemption is not allowed on:

- a) Property acquired by donation without corresponding consideration, given as a charity or devolving by inheritance or legacy.
- b) Building and trees sold on purpose without the land on which they stand or on building and trees standing on lands owned by the State.

Article (1293)

The right of the preemptor on preemption shall be forfeited in the following instances:

- a) If he shares with the purchaser of the share of his co-owner, or buys or leases it from him, even if he ignores that this shall cause forfeiture of his preemption.
- b) If he sells his share even if he has no knowledge that his co-owner sold his share before him.
- c) If, within two months and without good reason, he did not ask to take the share by preemption, knowing that the land has been constructed or planted by its purchaser.
- d) If, within two months and without good reason, he did not demand preemption as of the time he has knowledge of the sale made by the co-owner of his share, if he is present in the country, and as of his return from voyage and his knowledge of the sale made by his co-owner; if absent at time of the sale. Should he deny knowledge of the sale, while the purchaser alleges that he knew of it, he will be believed in his denial if made under oath.

Article (1294)

If the preempted property is sold in one deal, the preemptor shall have the option either to take it all or leave it to the purchaser, but he may not choose to take part of it without the other part unless with the consent of the purchaser, whether the sold property was one share or divided in several shares and whether there was one seller or purchaser or several.

Article (1295)

If some of the preemptors forfeit their right to preemption, or were absent before exercising their right to it, the others or those

present among them may either take the whole of the preempted property or leave it all but may not take part of it to the exclusion of the other part without the consent of the purchaser.

In case the person present elects to take the whole preempted property, the provisions of the following article should be observed.

#### Article (1296)

1. If some of the preemptors were absent before exercising his right to preemption and the present preemptors choose to take the whole of the preempted property and thereafter arrives one of the absentees, he will take his share in the preemption from the one present, on the assumption that the preemption is for two persons only, and if a third one of the absentees arrives he will take his share on the assumption that the preemption is for three persons, and if fourth one arrives he will take his share on the assumption that the preemption is for four persons; and so on. so forth.

2. Liability for the price of what they have taken, if dispossessed or upon appearance of a defect shall be upon the purchaser even if the seller exempted him from the sale prior to taking the sold property from him by preemption.

#### Article (1297)

The claim for preemption shall not be heard:

- 1) if the sale is made by public auction according to the procedures prescribed by law;
- 2) if the sale is made between ascendants and descendants, the spouses, relatives up to the fourth degree or in-laws up to the third degree;
- 3) if the preemptor renounces his right to preemption expressly or tacitly.

## 2. Preemption Procedures

#### Article (1298)

1. The preemption action must be filed within two months as of the date of knowledge of sale by the preemptor.

2. Under all circumstances the preemption claim shall not be heard after the lapse of six months as of the registration date.

#### Article (1299)

1. The action in preemption shall be filed, against the purchaser, with the court in whose jurisdiction the property is situated.

2. The court shall decide each case relating to the true price of the preempted property and it may grant the preemptor a respite of one month to pay the amount ordered by the court, otherwise his preemption shall be declared void.

#### Article (1300)

1. The purchaser may claim before the judge from the preemptor to

exercise his right to preemption or renounce to it. His answer to either option will bind him and, if he does not answer, the judge shall declare the forfeiture of his right to preemption.

2. If he asks for a respite in order to think it over before giving his answer to exercise his right or renounce to it, the purchaser may reject his request.

3. Whoever wishes to purchase cannot, prior to the sale, ask the preemptor to exercise his right or renounce to it, and if he does so prior to the sale and forfeited the preemption, this forfeiture shall not be binding upon the preemptor.

#### Article (1301)

Without prejudice to the rules relating to registration, the title of the preemptor in the sale shall be established by order of the court or by taking delivery by consent.

### 3. The Effects of Preemption

#### Article (1302)

The yields of the property from which the purchaser benefited prior to preemption shall be his up to the time of exercising the preemption. If he has leased it to a third party prior to preemption and the rent was due lump sum or on monthly basis and the lessee paid the rent, the preemptor may not rescind the lease. The rent shall belong to the purchaser if the remaining period of the lease, after exercising preemption, does not exceed one year. If the rent is payable on monthly basis and the lessee did not pay the rent, or if the remaining period of the lease is more than one year, the preemptor may cancel the lease or affirm it and the rent shall belong to him after exercising his right to preemption.

#### Article (1303)

1. The acquisition of a preempted real estate, by order of the court or by consent is considered a new purchase subject to the options of sight inspection and defect by the preemptor even if the purchaser waived his right thereto.

2. The preemptor is not entitled to benefit from the delay given to the purchaser for payment of the price, except with the consent of the seller.

3. If the property is dispossessed in favor of a third party, subsequent to the exercise of the right of preemption, the preemptor shall have a claim for the price against the seller or the purchaser, whoever received it from him.

#### Article (1304)

1. If, prior to the action in preemption, the purchaser made some additions to the preempted property out of his own funds, or has built or planted trees, the preemptor shall have a choice either to abandon his right to preemption or acquire the ownership of the property at

the price thereof together with the increase in value as a result of the addition or of such construction or plantation.

2. When, however, such addition, construction or plantation has been made after filing the action in preemption, the preemptor may abandon his right to preemption or demand their removal, if appropriate, or accept the status quo after paying the bare value of the addition or of what has been newly introduced to the land, if removed.

3. If the preempted property has been diminished for a reason not imputable to the purchaser, or by his act but serving some interest, the preemptor may take it for its full price and shall have no claim with respect to the diminution, or may leave it to the purchaser. If diminution is caused by his act which serves no interest, then the price due by the preemptor shall be reduced by the value of such diminution.

#### Article (1305)

The preemptor may quash all the purchaser's dispositions even if the preempted property is put into mortmain or affected as a place of worship.

#### Article (1306)

Mortgages, as collateral, or a privilege right for or against the purchaser on the preempted property shall have no effect against the preemptor if completed subsequent to the filing of the action in preemption. The creditors shall maintain their rights on the price of the property.

### Section VIII: Possession

#### 1. General Provisions

#### Article (1307)

1. Possession is the actual domination of a person, by himself, over a thing or right which may be negotiated.

2. Possession by an intermediary is valid whenever the intermediary acts 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

3. The individual lacking discretion may acquire possession through his legal representative.

4. Possession does not result from an act done by permission or merely tolerated.

#### Article (1308)

Possession obtained by duress or obtained secretly or in a dubious manner has no effect, as regards the person against whom the duress, secrecy or dubious means are exercised, except from the time that such defects have ceased to exist.

Article (1309)

1. Possession is deemed continuous as from the time it becomes apparent through using the thing or the right in a normal and regular manner.
2. Whoever alleges that he has acquired ownership by lapse of the limitation period may rely on the possession of the person from whom the property was transmitted to him.
3. The tenant, the usufructuary, the bailee, the borrower or their heirs may not plead limitation of time.

Article (1310)

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

Article (1311)

1. If several persons are in dispute as to the possession of the same thing or right, the possession shall provisionally be deemed with the one who has the physical possession unless it is established that he has obtained such possession in a defective manner.
2. In the absence of a proof to the contrary, possession shall maintain the same character with which it started.

Article (1312)

In the absence of proof to the contrary, the possessor of a thing shall be considered of good faith if he has no knowledge that he is trespassing on the right of others.

Article (1313)

1. The possessor shall cease to be of good faith only as of the time he becomes aware that his possession constitutes a trespass to the right of others.
2. Likewise, the good faith character shall cease to exist as of the time the possessor is notified in the pleadings of the defects of his possession.
3. Whoever usurps by duress the possession of another person shall be considered of ill-faith.

Article (1314)

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

Article (1315)

1. Possession does not cease if a temporary obstacle prevents the possessor from exercising his actual control over the thing or the right.
2. The claim as regards possession shall not be heard if such 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.

3. The period of one year runs from the moment from which the new possession commences, if it takes place overtly, or from the day on which the former possessor knew of it, if it commences secretly. In the presence of a major obstacle preventing the filing of the claim, the period of one year is computed as of the time it becomes possible to file the claim.

#### Article (1316)

If the possessor brings a hands – free action in court in order to reconstitute his possession, he is entitled to demand preventing the defendant from erecting constructions or planting trees in the disputed land as long as the case is under examination, provided that he submits sufficient securities to cover the indemnity payable to the defendant for the prejudice that he may sustain in case it is revealed that the claimant is unjustified in his claim.

## 2. Effects of Possession

### A) Acquisitive Prescription

#### Article (1317)

A person who possesses a movable or an unregistered immovable property considering himself the title owner thereof, or possesses a real right on a movable or on an unregistered immovable property, and his possession continues without interruption for fifteen years, shall not be actionable in property or in rights in rem by any person who has no legitimate justification.

#### Article (1318)

1. If the object of possession be an unregistered immovable property or a real right in rem and the possession has been acquired in good faith and, at the same time, based on a valid cause, the period barring the hearing of the case shall be seven years.

2. A valid cause is a document or an event proving possession of a real estate. Shall be considered a valid cause:

- a) Transfer of title by inheritance or legacy.
- b) A gift inter vivos with or without consideration.
- c) Sale and bartering.

#### Article (1319)

1. No claim as to the origin of a mortmain property or as to inheritance can be heard if they could be brought, but failure to do so is not based on a legitimate cause, against a person in possession of a real estate who acted as an undisputed owner for an uninterrupted period of thirty years.

2. Ownership of assets and real estates owned by the State, or its public organizations, as well as assets and real estates belonging to the charitable Wakf, cannot be acquired or be subject to rights in rem by prescription.

Article (1320)

1. No claim for absolute ownership, inheritance or mortmain bestowed on progeny, against the possessor of a real estate, shall be heard if such property has been in his possession and in the possession of the person from whom he acquired it by sale, gift, will or inheritance or otherwise, the period set forth for the prescription of such claims.
2. In the absence of proof to the contrary, actual possession coupled with an established previous one is a presumption that it existed between the two periods of time.

Article (1321)

No one can set up prescription barring the hearing of a claim in absolute property, if he is in possession of a real estate by virtue of a deed other than a property title. He cannot, on his own and for his benefit, change the cause and the origin of his possession.

Article (1322)

The period of limitation barring the hearing of a property claim shall not run as long as there exists between the right owner and the claim a legitimate excuse.

Article (1323)

The period of limitation is not interrupted by dispossession if the owner of the real estate if possession is reinstated to him or an action in reinstatement thereof is filed within a period of one year.

Article (1324)

The rules barring a claim, relative to rights of possession, by prescription shall apply to the calculation of the period, its cessation, interruption, raising the issue before the court, waiver thereof and agreement on modification of the period; within the limits that these rules are not in contradiction with possession and without prejudice to the foregoing provisions.

B) Possession of Movable

Article (1325)

1. No claim of ownership shall be heard against whoever possesses a movable property or a right in rem over a movable or a bearer warrant and his possession is based on a valid cause and in good faith.
2. Subject to proof to the contrary, mere possession is a presumption of ownership.

Article (1326)

1. As an exception to the provisions of the foregoing article, the owner of a movable or a bearer warrant who has lost it or has been robbed of or extorted, can, within three years from the date of the loss, the theft or the extortion, recover it from the one who

possesses it in good faith. The provisions governing extorted movables shall apply to such recovering.

2. When the thing robbed, lost or extorted 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 trading similar articles, such third party is entitled to recover from the person claiming restitution the price he has paid for the thing.

### C) The Recovery of Fruits

#### Article (1327)

A possessor in good faith acquires all fruits collected and benefits obtained during his possession.

#### Article (1328)

1. 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.

2. He may, however, claim refund of his expenses in connection with the production of these fruits.

### D) Recovery of Expenses

#### Article (1329)

1. The owner to whom the property is restituted must pay to the possessor all expenditure incurred by him that were necessary for the preservation of the thing from destruction.

2. As concerns useful expenditure, they shall be governed by the provisions of articles (1270) and (1272) of the present Law.

3. The owner is not liable to refund the expenses of a luxurious nature. The possessor may, however, remove works he has made with these expenses, provided he restores the thing to its original condition, unless the owner prefers to keep the works upon payment of their break up value.

#### Article (1330)

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

### E) Liability in the Event of Loss

#### Article (1331)

1. A possessor in good faith who has enjoyed the thing under the belief that it is his right is not liable to pay any compensation on this account to the person to whom he must restitute the thing.



2. The possessor in good faith is not liable for the loss or deterioration of the thing except up to the amount of compensation recovered or security obtained as a result of such loss or deterioration.

Article (1332)

If the possessor is in bad faith, he is liable for the loss or deterioration of the thing even if it resulted from a fortuitous cause beyond his control.

PART TWO. RIGHTS DERIVING FROM THE RIGHT OF OWNERSHIP

Chapter One. Rights of Usufruct, Use, Dwelling and Use of the Land of Another and Settlement

Section One: Usufruct

1. General Provisions

Article (1333)

Usufruct is right in rem given to the usufructuary in order to use a real estate owned by another and exploit it as long as it remains as it is.

Article (1334)

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

Article (1335)

The provisions concerning usufruct of lands owned by the State are governed by a special law.

2. The Effects of Usufruct

Article (1336)

The rights and obligations of a usufructuary are governed by the deed establishing the usufruct and by the provisions contained in the following articles.

Article (1337)

The usufructuary is entitled to the fruits of the property that is subject to usufruct all through the period of usufruct.

Article (1338)

1. The usufructuary may dispose of the property subject to usufruct the usual manner if the usufruct deed is free of any restriction.
2. If it is subject to a restriction, the usufructuary may dispose of it as it is or by similar or lesser act of disposition.

3. The owner of the property may object to any use of it that is unlawful or unsuitable to the nature of the property which is subject to usufruct and may petition the court to terminate the usufruct and order restitution of the property, without prejudice to the rights of third parties.

#### Article (1339)

1. The usufructuary is liable during the continuance of the enjoyment for all normal charges required for the preservation and maintenance of the property subject to the usufruct.

2. In the absence of an agreement stipulating otherwise, the abnormal expenses and the cost of heavy repairs which did not arise from any fault on the part of the usufructuary, they will be charged to the owner.

#### Article (1340)

1. The usufructuary must preserve the thing subject to usufruct with the usual diligence of a normal person.

2. He is not responsible for the deterioration or loss of the property which occurred without any violation or negligence from his part.

#### Article (1341)

The usufructuary is liable to pay the value of the thing that is subject to usufruct if it is deteriorated or lost after the termination of the usufruct, if he has delayed to reconstitute the property to its owner while he could have done so and even if the owner did not ask him to reconstitute it and even if he did not use the thing after the lapse of the usufruct period.

#### Article (1342)

1. The usufructuary must give notice to the owner:

- a) If a third party claims to have a right over the thing which is subject to usufruct or is usurped;
- b) If the thing perishes or deteriorates or requires major repairs the cost of which should be borne by the owner;
- c) If it is necessary that he takes protective measures against unforeseen danger.

2. If the usufructuary fails to give such notice, he shall be liable for the prejudice sustained by the owner.

#### Article (1343)

1. The usufructuary may consume the movables subject to usufruct if it can be enjoyed only by consumption and has to return a similar thing or its value after the termination of his usufruct right. He also has to pay damages if the thing perishes prior to enjoyment or without any wrongful act from his part, being considered a loan.

2. If the usufructuary dies before returning the movables referred to above to their owner, he must secure their substitute of their value in his estate.

### 3. Extinguishment of the Usufruct Right

#### Article (1344)

The usufruct right ends:

- a) by the lapse of fifty years, unless another period is specified in the deed establishing such right;
- b) by the loss of the property that is subject to usufruct;
- c) if the usufructuary renounces to his right;
- d) by an order of the court due to misuse;
- e) by uniting the two capacities of owner and usufructuary in the same person unless the owner has an interest to maintain it, such as if the property is pledged.

#### Article (1345)

When the period set for the usufruct expires and there are standing crops on the land which is subject to usufruct, the land is left to the usufructuary against a fair rent until the crop matures and is harvested, unless the law provides otherwise.

#### Article (1346)

1. When the usufruct right is terminated by the loss of the thing, and compensation is paid or a security given, the right of the usufructuary is transferred to the compensation or the secured amount.
2. If the loss is not due to a fault of the owner, he is not compelled to return the thing to its status quo ante but if he does, the usufructuary recovers his right of usufruct if the loss is not imputable to him; unless otherwise agreed.

#### Article (1347)

Renouncement by the usufructuary to his usufruct right does not affect neither his obligations towards the owner of the property subject to usufruct nor the rights of third parties.

#### Article (1348)

The action concerning the claim of the usufruct right shall be barred by prescription if the claimant did not use his right for fifteen years.

### Section II: The Right of Use and the Right of Dwelling

#### Article (1349)

Usufruct may apply to the right of use or to the right of dwelling or to both together.

#### Article (1350)

The extent of the right of use and the right of dwelling is determined by the need of the right owner and his family, for themselves only, subject to the deed instituting the right.

Article (1351)

The right of use and the right of dwelling may only be assigned to third parties by virtue of an express provision in the deed instituting the right or for an extreme necessity.

Article (1352)

The provisions governing the usufruct right apply to the rights of use or dwelling to the extent they are not in contradiction with the foregoing provisions and with the nature of such two rights.

Section III: The Right to Use the Land of Others (Al Mussataha)

Article (1353)

The mussataha is a right in rem giving its owner the right to erect a construction or to plant on a land owned by another.

Article (1354)

1. The right of mussataha is acquired by agreement or by prescription.
2. It is transferred by inheritance or by legacy.
3. The deed instituting the right shall govern the rights and obligations of the owner of this right.

Article (1355)

1. The right of mussataha may be assigned or pledged.
2. It may be subject to easements provided it is not incompatible with its nature.

Article (1356)

1. The period of mussataha may not exceed fifty years.
2. When a period is not fixed, either the right owner or the owner of the land may terminate the contract.

Article (1357)

The owner of the mussataha right is the owner of all newly added constructions and plants and he may dispose of in conjunction with the right of mussataha.

Article (1358)

The right of mussataha ends:

- 1) by the expiration of the period;
- 2) by merging the two capacities of land owner and right owner in the same person;
- 3) if the right owner fails to pay the agreed consideration for two years, unless otherwise agreed.

Article (1359)

The right of mussataha does not end by the removal of the construction or the plants prior to the expiration of the period.

Article (1360)

Upon termination of the mussataha right, the constructions and plants shall, unless otherwise agreed, be subject to the provisions of Article (785) of the present Law.

Chapter Two. Wakfs

Article (1361)

The Wakf shall be subject to the provisions enacted by a special law.

Chapter Three. Servitudes

Section I: Establishment of Servitude Rights

Article (1362)

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

Article (1363)

1. The right to a servitude is acquired by grant, by a legal disposition or by inheritance.
2. Apparent servitudes, including rights of way, canal rights and water passage are also acquired by prescription unless it is established that the right is unlawful, in which case the damage must be made good irrespective of how old it is.

Article (1364)

Whoever allowed the use of a servitude over a land he owns may withdraw his permission whenever he wishes.

Article (1365)

1. In the absence of an agreement to the contrary, specific restrictions imposed limiting the right of the owner of a property to build thereon are considered servitudes on such property in favor of properties to whose benefit these restrictions have been imposed.
2. Any breach to these restrictions gives rise to a claim for material redress or to damages if justified.

Article (1366)

In the absence of an agreement to the contrary, when the owner of two separate properties has constituted an apparent servitude between the two, such servitude shall remain if title to the two properties, or one of them, is transferred to other owners without any change in the status of these properties.

## Section II: Scope of the Servitudes

### Article (1367)

The scope of the servitude right is delimited by the deed establishing it, by the prevailing custom in the location in which the property is situated and by the following provisions.

### Article (1368)

The owner of the dominant tenement is entitled to use his right within the lawful limits and to carry out any works necessary to use and preserve his right without increase in the burden of usufruct; he must use his right in the least harmful manner.

### Article (1369)

1. The cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.
2. 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.
3. 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.

### Article (1370)

The owner of the servient tenement has no right to do anything which will affect the use of the servitude, or to change its status, unless the enjoyment in the original place has become more burdensome to the owner of the servient tenement, or prevent him from carrying out the useful improvements. The owner of such property may then demand that this right be transferred to another place where he is able to use his right as easily as he was able to do at the original place.

### Article (1371)

1. If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property.
2. If, however, the servitude only benefits some of these parts, the owner of the servient tenement may demand that it ceases as regards the other parts.

### Article (1372)

1. If the servient tenement is divided, the servitude continues to exist in respect of each part thereof.
2. 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.

### Section III: Extinction of Servitudes

#### Article (1373)

The right to servitude ceases to exist by the expiration of the period for which it was established or by the total loss of the tenement object of the servitude.

#### Article (1374)

The right to servitude ceases to exist when both the dominant and the servient properties have the same owner; the right to servitude is, however, revived if the cause of extinction ceases retrospectively to exist.

#### Article (1375)

The right to servitude ceases to exist if conditions of both the servient and dominant properties so change that the right can no longer be used; the right to the servitude is, however, revived if the conditions return to their status quo ante.

#### Article (1376)

The right to the servitude ceases to exist if its owner ceases to use it and gives notice in this respect to the owner of the servient tenement.

#### Article (1377)

The right to the servitude ceases to exist if the servitude has lost 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.

#### Article (1378)

1. The claim to a right of servitude is barred by non use for a period of fifteen years.
2. When the dominant property is owned by several partners in common, the use of the servitude by one of the co-owners interrupts the prescription in favor of the other co-owners; likewise, the suspension of prescription in favor of the co-owners suspends prescription in favor of all other co-owners.

### Section IV: Specific Servitudes

#### 1. The Right of Way

##### Article (1379)

If it is established that some one has a right of way on a land owned by another, the owner of such land may not prevent him unless his passage over the land is an act of forbearance.

##### Article (1380)

The owner of a property that has no access to the public road, or if such access is achieved at exorbitant expense or with exhaustive effort, is entitled to a right of way on the adjacent land up to a usual extent, for a reasonable consideration, and this right may only be used on the property through which passage is less harmful and over such part as will achieve such purpose.

Article (1381)

If access to the public road is prevented due to the partition of the property by a legal disposition, a right of way may only be requested on parts of this property.

## 2. Water Easement

Article (1382)

Water easement consists in drawing water, in turns, for the purpose of irrigating land or plants.

Article (1383)

Every person may enjoy the use of water sources and its ramifications of public interest in accordance with the provisions of special laws and regulations.

Article (1384)

1. Whoever makes a stream or water course for the irrigation of his land, no one else is entitled to use it without his permission.
2. The neighboring owners may, however, use the stream or water course as required for the irrigation of their land after the owner has satisfied his needs therefrom. The neighboring owners, in this case, have to participate in the expenses of making and maintaining the stream or water course in proportion to the area of their lands which benefit from it.

Article (1385)

None of the partners in a water source or the common stream may dig a channel from it except with the permission of the other partners.

Article (1386)

In case the right owners of the water easement do not agree to carry out the necessary repairs to the water sources, its branches and common stream, they may be compelled to do so, in proportion to their shares, upon the request of any of them.

Article (1387)

Water easement may be inherited and the use of it may be bestowed by legacy but may not be sold except in conjunction with the land and may neither be donated nor let.



### 3. Irrigation Easement

#### Article (1388)

1. The irrigation easement is the right of the owner of a land to have irrigation water pass through the land of another person to reach from its distant source to its land.
2. If this right is established in favor of someone, the owners of adjacent lands in which these waters run may not prevent him from enjoying this right.

#### Article (1389)

If the irrigation easement is established in favor of someone in a servient property owned by another who sustains a prejudice, the owner of the water duct has to repair it in order to remove the prejudice. Should he abstain from doing so, the owner of the servient property may carry out the repairs at the expense of the duct's owner within customary limits.

#### Article (1390)

1. Every owner willing to irrigate his land from natural sources or from artificial sources that he has the right to dispose of, may have a water passage through the intermediate lands to his land, provided that he pays an advance compensation and further provided that such act does not seriously and adversely interfere with the right of the owner of the intermediate land to enjoy his right. If the land sustains, as a result thereof, damage, the owner of the land may claim a compensation for the damage sustained.
2. The owner of the land has to allow the necessary works on his land for the passage of water to a neighboring land against an advance payment of compensation and he may benefit of such construction works provided he bears a consideration for such use commensurate with the benefit he derives therefrom.

#### Article (1391)

Should the owner of the intermediate property incur damage caused by the construction works referred to in the preceding article, he may require from those who benefited from such works to make good the damage caused.

### 4. The Acquae Ductus Easement

#### Article (1392)

The Acquae ductus easement is a manner to arrange for the flow of the natural water or the drainage of the unusable water or that in excess of requirements by having it pass through the land of others.

#### Article (1393)

1. The lower lands receive the waters naturally flowing from higher lands without a human intervention in the flow.

2. The owner of the lower land may not erect a dam to prevent such flow.
3. The owner of the higher land may not, likewise, carry out any act which may increase the burden of the lower land.

Article (1394)

The owner of an agricultural land has the right to drain the unusable water or that in excess of his requirements by having it pass through the land of others in consideration of an adequate compensation.

Article (1395)

Owners of the lands through which runs ducted water may benefit from the installations specific for the drainage of these waters, provided that each one of them bears the costs of erecting, modifying and maintaining in proportion to the benefit drawn therefrom by each.

Article (1396)

No one is allowed to erect a harmful aquae ductus on the land of others or on a public or private road. The damage must be removed no matter how old it is.

Article (1397)

The owners of new installations may not drain their ducted water to the property of another person without his permission unless they have the right to do so.

Article (1398)

1. Without prejudice to special laws and regulations, the property owner has to prepare the surface of his land in such a manner as to allow the flow of rain water on his land or on a public or private road.
2. He is not allowed to drain this water to the adjacent land unless this right was anciently acquired.

## BOOK FOUR. REAL SECURITIES

### PART ONE. MORTGAGES

#### Chapter One. Definition and Constitution of a Mortgage

Article (1399)

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

Article (1400)

A mortgage can only be constituted by registering it and, in the

absence of an agreement to the contrary, the cost of the contract is to be borne by the mortgagor.

#### Article (1401)

1. The mortgagor must be the owner of the mortgaged property and must have legal capacity to dispose of it.
2. The mortgagor may be the debtor himself or a real guarantor who consents to mortgage his property for the benefit of the debtor.

#### Article (1402)

The mortgage of someone's else property is not allowed unless the true owner ratifies it by an official deed.

#### Article (1403)

1. A father may mortgage his property to his minor son and, in case of his nonexistence, the true grandfather (from the father's side), may mortgage his property to his grandson.
2. If the minor son is indebted to his father, he may mortgage, in his favor, his son's property.
3. The father or the true grandfather may mortgage the minor's property to secure a debt on the minor himself.
4. He may also mortgage the property of one of his minor sons in favor of his other minor son to secure a debt owed by the former to the latter.
5. Neither the father nor the true grandfather may mortgage the property of the minor to secure a debt owed to a third party from the father or grand father.
6. In the instances mentioned in clauses 2, 3, and 4 above, the authorization of the court is a must.

#### Article (1404)

1. The guardian may, by authorization of the court, mortgage the minor's property or that of an interdict, held by a third party as a security owed to this third party by any of the two.
2. He isn't allowed to mortgage his money at the young or the interdict or to mortgage the money of either of them to himself.

#### Article (1405)

The real property mortgaged as a security for a debt must be tangible and existing upon laying the mortgage.

#### Article (1406)

1. A mortgage securing a debt can only be laid on an immovable property, negotiable and capable of being sold by public auction, or a real right on an immovable property.
2. The Court may annul the mortgage contract in case the mortgaged property is not specifically and sufficiently described in the contract.

#### Article (1407)

The mortgage extends to the accessories of the mortgaged immovable property, namely buildings, plants, fixtures and all newly added constructions subsequent to the contract.

Article (1408)

1. A co-owner in an immovable held in common is entitled to mortgage his share which shall, after partition, be transferred to the divided share allotted to him, without prejudice to its transcription with the land registry department.
2. Amounts due to him as a result of equalizing the shares, or the proceeds of sale of the land shall be appropriated to reimburse the debt for which the mortgage was made.

Article (1409)

The consideration for a security mortgage must be a fixed sum due, or promised to be paid, determined upon mortgage or one of the secured real estates.

Article (1410)

The security mortgage is indivisible; every part of the mortgaged property shall secure the whole of the debt, and each part of the debt is secured by the mortgaged property.

Article (1411)

The provisions relating to security mortgage shall apply to movables which have to be registered in accordance with their specific legislations.

## Chapter Two. Effects of the Security Mortgage

### Section I: Effects of Mortgage Between the Contracting Parties

#### 1. As Regards the Mortgagor

Article (1412)

A mortgagor may dispose of the property mortgaged as security but any disposal by him shall not affect the rights of the mortgagee.

Article (1413)

1. The mortgagor may carry on the management of the mortgaged property and collect the fruits thereof up to the date of the forced expropriation of his ownership due to non-payment of the debt.
2. The fruits shall become incorporated in the mortgaged property as of the date of expropriation.

Article (1414)

The mortgagor warrants the mortgaged property and is held responsible for its safety until the reimbursement of the debt. The mortgagee may oppose any act that diminishes his warranty and may take all measures

preserving his right and claim from the mortgagor the expenses incurred in this respect.

#### Article (1415)

1. If the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim immediate payment of his debt or adequate security for his debt.
2. If the loss or deterioration is not imputable to the mortgagor, he may choose either to furnish adequate security or pay the debt in full before it falls due.
3. If acts are done which may result in the loss or deterioration of the mortgaged property, or which may render the mortgaged property insufficient to secure the debt, the mortgagee may apply to the Court to order the cessation of such acts and the adoption of the necessary measures to avoid the occurrence of the prejudice.

#### Article (1416)

In the event of loss of or deterioration to the mortgaged property, the mortgage is transferred to any right obtained in substitute thereof such as compensation, the insurance amount or payment on account of expropriation for public utility. The mortgagee may recover his right from these sums according to the order of his rank.

#### Article (1417)

If the mortgagor was a surety in rem, the debt may only be recovered from the mortgaged property and the mortgagor may not ask to refer to the debtor for payment before execution on his property.

### 2. As Regards the Mortgagee

#### Article (1418)

In a security mortgage, the mortgagee may assign his right to another person provided he obtains the approval of the debtor and the deed of assignment must be registered with the Land Registry Department.

#### Article (1419)

1. The mortgagee may recover his debt from the mortgaged property upon maturity of the debt in accordance with the order of his rank and after taking the measures provided for in the Law on the procedures before the civil courts\* and the special laws.
2. If the property does not fully cover his debt, he may obtain satisfaction for the balance of the debt from the debtor's properties as an ordinary creditor.

\* The Law on Procedures Before the Civil Courts issued by virtue of Federal Law No.(11) of 1992 dated 24/02/1992

#### Article (1420)

1. If it is specified as a condition in the mortgage contract that the creditor, in case of non payment, on maturity, of the debt by the

debtor, is entitled to acquire ownership of the mortgage property; or to sell such property without observing the law procedures, the contract is valid but the condition is void.

2. The condition is likewise void if it is embodied in a subsequent agreement.

#### Article (1421)

1. An effective lease, already entered into by the mortgagor, shall be of no effect as against the mortgagee unless bearing an officially fixed date prior to the mortgage.

2. As for the deferred lease which commences after the expiration of the effective prior lease, it shall absolutely have no effect as regards the mortgagee unless recorded in the mortgage contract.

### Section II: Effect of the Mortgage As Regards Third Parties

#### 1. General Provisions

##### Article (1422)

A security mortgage shall be effective against third parties only if registered before third parties have acquired a right in rem on the mortgaged property.

##### Article (1423)

In the absence of a contrary provision in the law or in the agreement, the effect of a security mortgage is limited to the amount specified in the mortgage deed and recorded with the Land Registry Department.

##### Article (1424)

Neither the transfer of a security mortgage nor the assignment thereof, or waiver of the order of its rank, shall have any effect as regards third parties unless recorded on the original deed evidencing the right and registered.

#### 2. Preference Right

##### Article (1425)

1. The debts due to the creditor mortgagees in a security mortgage shall be paid from the price of the mortgaged property, or from the substitute amount, by order of the rank of each, even if they registered the same day.

2. This rank is determined by the serial number of registration. If several persons present themselves at the same time to register their mortgages against the same debtor and on the same property, the registration of these mortgages shall take the same serial number and, upon distribution, they shall be considered of the same rank.

##### Article (1426)

A mortgagee may, within the limits of his secured debt, assign his rank in favor of another creditor having a mortgage on the same mortgaged property. All defences 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 (1427)

1. A mortgagee's rank is determined as of the date of its inscription.
2. He shall keep his rank until any indication of its extinction is recorded at the Land Registry Department.

Article (1428)

The registration of the security mortgage entails the tacit inclusion of the expenses of the contract and of the registration in the mortgage debt and its rank.

### 3. The Tracing Right

Article (1429)

The mortgagee is entitled to trace the mortgaged property into the hands of whoever possesses it in order to recover his debt upon maturity thereof, in the order of his rank.

Article (1430)

A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property and the sale thereof, in case the debt is not paid on its due date, after notification of the debtor and the possessor of the property in accordance with the procedures set forth in the Law on procedures to be followed before the civil courts 2 and the special laws.

Article (1431)

Shall be considered a third party possessor of a mortgaged property whoever, subsequent to the mortgage, acquires the title thereto, or to any other right in rem on it, for any reason, without being personally liable in respect of the debt secured by the mortgage.

Article (1432)

The third party possessor of a mortgaged property may, upon maturity of the debt secured by the mortgage and after being summoned, pay the debt and the expenses and claim from the debtor the amount paid by him in this respect. He may also be subrogated into all rights of the creditor who has recovered his debt.

Article (1433)

The third party possessor of a property secured by a mortgage is entitled to purge the property to which he acquired the title of any right in rem over it encumbering the property, as a security for a

transcribed debt, by paying the debt prior to the sale of the property or within the delays prescribed by the Law on procedures to be followed before the civil courts\* and the special laws.

\* The Law on Procedures Before the Civil Courts issued by virtue of Federal Law No. (11) of 1992 dated 24/02/1992

#### Article (1434)

In case of default in paying the debt, the proceedings of forced expropriation shall be those provided for in the Law on procedures to be followed before the civil courts\* and the special laws.

\* The Law on Procedures Before the Civil Courts issued by virtue of Federal Law No. (11) of 1992 dated 24/02/1992

#### Article (1435)

The third party possessor of a property secured by a mortgage may be a joinder in the proceedings of the sale of the property by auction. If the auction is knocked down to his favor and the price is paid by him, he shall be considered the owner of the property by virtue of his original title deed and the property shall be purged of the registered right.

#### Article (1436)

If the auction of the real property pledged as a security is knocked down to a person other than its holder, the latter will hold his right to it by virtue of the judgment of adjudication from the holder.

#### Article (1437)

1. The holder of the property is liable for any damage or impairment occurring to the pledged property according to the rules governing liability provided for in this Law.

2. He is bound to restitute the yields of the property as of the date he is summoned to pay the debt.

#### Article (1438)

In case the price of the sold property exceeds the value of the secured debt, the difference in excess belongs to the holder and his pledgee creditors may be paid out of this excess.

#### Article (1439)

1. The holder has, against the 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.

2. The holder 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 person other than the debtor.



### Chapter Three. Extinguishment of the Security Mortgage

#### Article (1440)

1. The security mortgage is extinguished when the secured debt is extinguished in full.
2. If the cause by reason of which it was extinguished disappears, the mortgage is revived to its status quo ante, without prejudice to the rights of bona fide third parties acquired in the interval between the extinguishment of the right and its revival.

#### Article (1441)

1. The debtor has to pay the debt secured by mortgage and its accessories prior to the lapse of the period set for its payment.
2. Should the creditor refuse such payment, the debtor may deposit it with the transcription department which, after ascertaining its value, will settle what is due by the debtor and deliver him the deed of discharge and purge the mortgage, without prejudice to the special laws provisions.

#### Article (1442)

The security mortgage is extinguishes by selling the mortgage property in accordance with the Law on procedures to be followed before the civil courts 2 and the special laws together with payment of the proceeds of the sale to the privileged creditors according to the rank of each, or deposit the amount thereof.

#### Article (1443)

The security mortgage is extinguished by transfer of title of the mortgaged property to the mortgagee or transfer of the right to mortgage to the mortgagor, provided that it is revived if the cause disappears with retrospective effect.

#### Article (1444)

The security mortgage is extinguished if the mortgagee creditor waives his right to it.

#### Article (1445)

1. The security mortgage is extinguished by the destruction of its object.
2. The provisions relating to the perishing of the mortgage property stated in this law must be observed.

#### Article (1446)

1. If the limitation period, barring the claim of the secured debt, expires the mortgagee may apply for a judgment purging the mortgaged property.
2. If the mortgaged property is transmitted to a possessor, he may submit a plea of non admittance to hear the action on grounds of prescription of the secured debt should the mortgagee abstains without

cause from filing a mortgage case against him within a period of fifteen years.

Article (1447)

A security mortgage is not extinguished by the death of the mortgagor or mortgagee but remains in effect as concerns the heirs.

PART TWO. PLEDGE

Chapter One. Definition and Constitution of a Pledge

Article (1448)

Pledge is a contract constituting a right to retain a property in the hands of the creditor, or a third party holder, as security of a right that can be recovered from it, in full or in part, in preference to all other creditors.

Article (1449)

The thing pledged must be deliverable upon pledge and apt to be sold by public auction.

Article (1450)

1. Fruits may be pledged before ripening but may not be sold in recovery of a debt except thereafter. If the pledgor is declared bankrupt or is dead prior to the ripening of the fruits, the pledgee shall rank with the other creditors in settlement of his debt out of the other assets of the pledgor.
2. If the fruits ripen subsequent to distribution, they shall be sold and the proceeds shall be allocated to the pledgee who shall reconstitute to the other creditors all what he has obtained from the distribution, if the proceeds obtained are equal to the debt, and in case they are less he shall reconstitute to them the amount in excess of what he would have received had he initially participated with them for the balance of his debt after receiving the sale proceeds of the pledged fruits.

Article (1451)

Perishable things may be pledged for a deferred debt and, if possible preserved, otherwise it shall be sold by auction and the proceeds of the sale shall be pledged instead.

Article (1452)

The consideration for a pledge must be an ascertained debt owed or promised, specified upon pledge or a secured property.

Article (1453)

In order that a pledge be considered completed and binding, the creditor or the third party holder must have received it and the pledgee may, prior to delivering it, revoke the pledge

Article (1454)

Should the pledgor be confronted with an impediment preventing him from financially disposing of the thing pledged prior to taking possession thereof by the pledgee, the pledge contract is void.

Article (1455)

The pledgor and the pledgee may agree to put the pledged thing in the hands of a third party holder, as if it was in the pledgee's hands and the pledge is completed upon receiving it.

Article (1456)

1. The third party holder may not deliver the pledged thing to the pledgor or the pledgee without the consent of the other as long as the debt exists and he may recover it if delivered by him.
2. If the pledged thing perishes prior to its restitution, the third party holder is liable for its value.

Article (1457)

In case the third party holder dies and the pledgor and pledgee did not agree to deposit the pledged thing with someone else, either of them may ask the court to order depositing it with a third party holder of its choice.

Article (1458)

The pledgor against a debt due by him or by others must own the thing pledged and have the capacity to dispose thereof.

Article (1459)

The provisions governing the security mortgage, provided for in articles (1403) and (1404) shall apply to pledge.

Article (1460)

The provisions governing the security mortgage, provided for in Article (1408) shall apply to the pledge of a commonly held property.

Article (1461)

If part of the commonly held property, or the like, is pledged the pledgee shall possess the entire property, if the other part is the property of the pledgor, otherwise he shall take possession of the part pledged.

Article (1462)

The provisions of Article (1410) of the present Law, concerning the indivisibility of the property mortgaged as security for the debt, applies to pledge and the entire property remains to secure the whole debt or parts of it.

Article (1463)

The pledge includes all what is included in a sale of accessories attached to the thing pledged.

Article (1464)

If the thing pledged, while in the hands of the purchaser, produce a distinct yield it shall follow as an accessory of the pledge, if it is of the same kind, otherwise it shall not be considered part of the pledge unless it is so specified in the pledge itself.

Article (1465)

1. The thing pledged may secure more than one debt of the same rank provided it is pledged in one contract.
2. The entire property shall be pledged with all creditors in consideration of the debt of each one of them.

Article (1466)

1. Lent property may be pledged by authorization of its owner and according to his conditions.
2. The lender may not retrieve the pledged property before payment of the debt.

Chapter Two. The Effects of a Pledge

Section One: Effects of the Pledge Between the Contracting Parties

1. As Concerns the Pledgor

Article (1467)

1. The pledgor may not dispose of the thing pledged except with the consent of the pledgee.
2. If the act of disposal is a sale, the right of the pledgee shall be transferred to the price of the thing pledged.

Article (1468)

1. If the pledgor acknowledges the thing pledged to a third party, his acknowledgment does not bind the pledgee.
2. Such acknowledgment does not forfeit the right of the pledgee in retaining the thing pledged until he receives the debt owed to him.

Article (1469)

The pledgor warrants the safety of the thing pledged. He must not do anything that diminishes his warranty or prevents the pledgee from exercising his rights.

Article (1470)

The provisions of Article (1415) of the present Law, concerning the loss or deterioration of the mortgaged property due to fault of the pledgor or to force majeure, apply to pledge.

Article (1471)

Upon loss or deterioration of the thing pledged, the pledge is

transferred to the thing that replaced it and the pledgee may exercise his right on it in accordance with the provisions of Article (1416) of the present Law.

## 2. As Concerns the Pledgee

### Article (1472)

The pledgee must, in person or through his trustee, preserve the thing pledged and use for its preservation the care of a reasonable man. He must answer for its loss or deterioration unless he can establish that they were due to a cause not imputable to him.

### Article (1473)

The pledgee may neither dispose of the thing pledged without the permission of the pledgor nor sell it unless he acts as an agent in the sale.

### Article (1474)

1. The pledgee may not profit from the thing pledged, movable or immovable, without the permission of the pledgor.
2. The pledgor may allow the pledgee to benefit from the thing pledged provided that the revenue obtained from the yields be applied, in the first place, in reduction of the expenditures paid by him on behalf of the pledgor and of the principal amount of the debt thereafter.

### Article (1475)

The pledgee may reserve for himself, as a condition, the appropriation of the benefit derived from the pledge, if such profit is determined in time or work, and deducted from the debt whether it be a debt derived from a sale or loan. In case it is not used in reduction of the debt, the pledgee may not stipulate such condition if the debt derives from a loan but it is allowed if derived from a sale with deferred payment of the price, provided that it is so specified in the sale contract.

### Article (1476)

If the pledgee misuses the thing pledged, the pledgor is entitled to demand that the thing pledged be placed in judicial custody.

### Article (1477)

The pledgee may retain the thing pledged until he is paid the full debt owed to him together with all related accessories and expenditures, after which he has to reconstitute the thing pledged to the pledgor.

### Article (1478)

1. If the pledged thing perishes while in the possession of the pledgee, he shall warrant its value at the time of taking possession thereof.

2. If the value of the pledge is equivalent to the value warranted by him, the debt shall be forfeited whether the loss occurring is due to the wrongful act of the pledgee or not.

3. If the value is inferior to the debt, the pledgor shall be discharged of the debt and the pledgee shall be liable for the balance, in case the loss is due to his wrongful act or negligence from his part in its preservation.

4. If the value is inferior to the debt, the debt shall be discharged in proportion to this value and the creditor is entitled claim the balance from the pledgor.

#### Article (1479)

In accordance with Article (1419) of this Law, the pledgee shall have the rights of the mortgagee in a security mortgage as concerns execution on the thing pledged then on all the debtor's assets, if he has not received satisfaction of the full debt owed to him.

#### Article (1480)

The provisions of Article (1420) of the present Law shall apply to pledge.

### Section II: The Effects of Pledge on Third Parties

#### Article (1481)

The thing pledged must be held by the pledgee or by the third party holder chosen by the parties to make the pledge valid as against third parties.

#### Article (1482)

The pledgee is entitled to retain the thing pledged until recovery of the full debt owed to him and its accessories and expenses. If the pledgee unwillingly loses possession of the thing pledged, he has the right to regain possession.

#### Article (1483)

The thing pledged secures the principal amount of the debt as well as the necessary expenses paid by the pledgee on behalf of the pledgor and the expenses of the pledge contract and its enforcement.

### Chapter Three. Provisions Concerning Certain Kinds of Pledge

#### Section I: Pledge of an Immovable (Antichresis)

#### Article (1484)

A pledge of an immovable is only valid as against third parties if, in addition to the possession by the pledgee of the pledged immovable, the pledge is registered.

#### Article (1485)

1. The pledgee creditor may lend or lease the pledged immovable to the pledgor provided it remains as a security for the discharge of the debt and without affecting the validity of the pledge as against third parties.

2. The provisions of Article (1474) of this Law on the yields of the pledged property shall apply to the lease prepaid by the pledgor.

#### Article (1486)

The pledgee creditor shall provide for the expenses necessary for the repair and maintenance of the pledged immovable, the due taxes and charges and deduct the amount of all these expenses from the yields of the pledged immovable or obtain repayment from the price thereof, upon selling it, according to the rank of privilege of his debt.

### Section II: Pledge of a Movable

#### Article (1487)

A pledge of a movable is only valid against third parties if, in addition to the possession by the pledgee of the pledged movable, it is inscribed in an instrument bearing a certified date setting out the amount of the debt and the pledged property.

#### Article (1488)

If the thing pledged appears to be in danger of perishing, deteriorating or diminishing in value, the pledgee shall, in this respect, notify the pledgor and, in case the latter fails to provide another security, either one of them are entitled to ask the court to sell the pledged thing and, thereupon, the right of the creditor is transferred from the thing pledged to the price thereof.

#### Article (1489)

If an advantageous occasion presents itself for the sale of the thing pledged, the pledgor may even before the maturity of the debt, apply to the court for authority to sell the thing pledged. The Court, when authorizing the sale, will fix the conditions and take a decision as to the deposit of the price.

#### Article (1490)

The foregoing provisions shall apply to the extent they are not in contradiction with the commercial laws and the special legislations compatible with the Islamic Sharia.

### Section III: Pledge of Debts

#### Article (1491)

Whoever pledges a debt due to him must deliver to the pledgee the instrument evidencing this debt.

Article (1492)

1. A pledge is valid, as regards the debtor, only upon notification to or acceptance of by the debtor of the pledge.
2. A pledge is only valid against third parties if the pledgee holds the title of the pledged debt.
3. The pledge shall be ranked in privilege as of the certified date of notification or acceptance.

Article (1493)

Registered bonds or bonds payable to order may be pledged in accordance with the special procedure prescribed by law for the transfer of such bonds, provided it is stated that the transfer is made by way of pledge.

Article (1494)

A debt that cannot be assigned or attached cannot be pledged.

Article (1495)

The pledgee has the right to collect the periodic dues and the related charges of the pledged debt and, in this case he has to set off these amounts first against expenses then against the principal amount of the debt.

Article (1496)

A pledgee is bound to look after the preservation 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 it at the time and place fixed for payment and forthwith inform the the pledgor thereof.

Article (1497)

The debtor of a debt given in pledge may avail himself against the pledgee creditor of the defences relative to the validity of the debt secured by the pledge as well as those defences that he may have against his own original creditor, to the extent that the debtor, in case of assignment, may oppose these defences against the assignee.

Article (1498)

1. 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.
2. The pledgor and the pledgee have to agree on a third party holder in order to deposit the amount paid by the debtor until maturity of the secured debt and the pledge shall be transferred to the amount deposited.

Article (1499)

If both 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 return the balance to the pledgor, if the amount due to



him and the secured debt are of the same kind, otherwise he may demand that the debt be sold or be appropriated to him, against payment of its value, in satisfaction of his right.

#### Article (1500)

The provisions governing the pledge of a movable are, to the extent they do not contradict the foregoing provision, applicable to the pledge of a debt.

### Chapter Four. Extinguishment of a Pledge

#### Article (1501)

The right to a pledge is extinguished as a result of the extinguishment in full of the secured debt and is revived with the debt if the cause of extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquired in the interval between the extinguishment of the debt and its revival.

#### Article (1502)

A right of pledge is also extinguished by one of the following causes:

- a) The renunciation of the right by the pledgee explicitly or impliedly.
- b) The union of the right of pledge and that of ownership of the thing pledged in one and the same person; provided it is revived upon retrospective disappearance of this cause.
- c) The loss of the thing pledged or the extinguishment of the right given in pledge.

#### Article (1503)

The pledge is not extinguished by the death of either the pledgor or the pledgee and will remain a pledge to the heirs until discharge of the debt.

## PART THREE. PRIVILEGED RIGHTS

### Chapter One. General Provisions

#### Article (1504)

A privilege is a real accessory right of preference granted by law to the creditor enabling him to collect his right by reason of its description.

#### Article (1505)

1. In the absence of a law provision fixing the preferential rank of a privileged right it ranks after the rights provided for in this Title.
2. Unless otherwise decided by law, privileged rights of the same rank will be paid pro rata to each other.

#### Article (1506)

General privileges extend to the whole of the debtor's property.  
Special privileges are limited to a specific movable or immovable.

#### Article (1507)

1. A privilege cannot affect the rights of a holder in good faith of a movable.
2. Shall be considered a holder within the context of the preceding clause, a lessor of an immovable, as concerns furniture used in the leased premises, and a hotel proprietor, as concerns the effects brought into the hotel by travelers.
3. If a privilege holder on a movable has reasonable grounds to apprehend its loss or misappropriation; he may apply that it be placed under judicial custody.

#### Article (1508)

1. Provisions governing the security mortgage are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights.
2. Privileges securing rights due to the Public Treasury as well as fees and expenses of judicial forced sales are not subject to registration.

#### Article (1509)

Provisions governing security mortgages relating to loss or deterioration of the thing mortgaged apply on privileged rights.  
In the absence of a law provision to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a security mortgage or a pledge.

#### Article (1510)

Priority rights shall terminate in the same manner in which rights under pledges for security and possessory pledges may terminate, and in accordance with the provisions for termination of those kinds of right unless there is a provision to the contrary.

### Chapter Two. Kinds of Privileges

#### Section I: General Rule

#### Article (1511)

In addition to the privileges established by special law provisions, the rights enumerated in the following provisions are privileged in their respective ranks of preference and shall be payable on pro rata basis between them.

#### Section II: General Privileges and Special Privileges Over Movables

Article (1512)

1. Expenses of legal proceedings incurred, in the common interest of the creditors, for the preservation and sale of the property of the debtor, have a privilege over the price of such property.
2. Such expenses are payable in priority to any other right, whether privileged or secured by a security mortgage, including rights of creditors for whose benefit such expenses have been incurred. Expenses incurred for the sale of the property are payable in priority to the costs of the procedure of distribution.

Article (1513)

1. Sums due to the government for taxes, duties and other dues of any kind are privileged in accordance with the conditions laid down by laws issued in this respect.
2. Such sums shall be paid out of the proceeds of sale of the property charged with the privilege, in whosoever's hands it may be, and before any other right, whether privileged or secured by a mortgage, except costs of legal proceedings.

Article (1514)

Costs incurred for the preservation or repair of the movable have a privilege over it and will be paid out of its price after the judicial expenses and sums due to the Public Treasury.

Article (1515)

1. The following rights are secured by a privilege over all the debtor's property, whether movable or immovable, to the extent of what is due of these rights during the last six months:
  - a) Alimony due by the debtor to persons he is in charge of.
  - b) Sums due for foodstuffs clothes and medicines supplied to the debtor and to persons depending on him.
2. These sums are payable immediately after the judicial expenses, amounts due to the Public Treasury and expenses for preservation and repairs. As between them these sums will be paid pro rata.

Article (1516)

1. 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 and are payable out of the proceeds of sale of the crop, immediately after the preceding rights, if any.
2. Prices of agricultural machines and expenses for their repair are secured by a privilege over such prices and shall have the same rank.

Article (1517)

Real estates and agricultural rents for two years, or for the duration of the lease if less than two years, and all rights to the lessor by virtue of the lease contract are secured by a privilege over all

attachable movables and crops existing on the leased premises and belonging to the lessee.

Article (1518)

Subject to the provisions relating to stolen or lost property, the rent privilege referred to in the preceding article is enforceable even when the movables belong to the wife of the lessee or to a third party whose right is not known to the lessor.

Article (1519)

1. Privilege over the lease debt is enforceable on movables and crops existing in the leased property even if they belong to the sub-lessee, in case the lessor did not authorize the principal lessee to sublet the leased premises to others.
2. If the lessor authorized the lessee to sublet the leased premises to others, the privilege will only be enforceable up to the amount due by the sub-lessee to the principal lessee.

Article (1520)

Subject to rights acquired by third parties in good faith, the lessor has an indefeasible right to follow the property charged with a privilege if they are removed from the leased premises notwithstanding the objection of the lessor or without his knowledge and the movables remaining on the property are not sufficient to secure the privileged rights. The privilege shall remain in force on the property so removed for three years from the date of removal, even to the detriment of a third party's right, if the lessor effects within thirty days from the date of removal an attachment on these movables. If, however, these movables are sold to a purchaser in good faith in a public market or by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

Article (1521)

Lease debts over real estates and agricultural lands are paid out of the price of the property charged with a privilege after the rights stated in the preceding articles, with the exception of the rights which are not enforceable as against the lessor who is considered a holder in good faith.

Article (1522)

1. 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.
2. Unless established by the traveler 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. The hotel proprietor may object to the removal of these effects, as long as he has not been paid in full, 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 on these effects.

#### Article (1523)

An hotel proprietor's privilege has the same rank as a lessor's privilege. Should both rights be claimed on these effects, the first in date will have priority, unless it is not enforceable on the other.

#### Article (1524)

1. The vendor of a movable has a privilege over the price of the thing sold and its accessories. This privilege is enforceable as long as the movable sold preserves its identity, without prejudice to the rights acquired in good faith by third parties, and subject to the special provisions applicable in commercial matters.

2. This privilege follows in rank privileges over movables referred to above. It operates 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 in the hotel.

#### Article (1525)

1. Co-owners who have partitioned a movable have a privilege over it as concerns the right of each one of them to have, as a result of the partition, a claim against the others, and to payment of what has been allotted to him.

2. The privilege of a co-partitioner has the same rank as a vendor's privilege, the first in date will have priority.

### Section III: Special Privileges Over Immovable Property

#### Article (1526)

1. The price and accessories due to the vendor of an immovable are secured by a privilege over the immovable sold.

2. Such privilege must be registered, notwithstanding the transcription of the sale, and its rank is fixed by the date of its registration.

#### Article (1527)

1. 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 at the time of the alienation of the immovable.

2. Such privilege must be registered, and its rank is fixed by the date of its registration.

#### Article (1528)

1. Co-owners who have partitioned an immovable have a privilege over it 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.

2. Such privilege must be registered, and its rank is fixed by the date of its registration.